



BY E-MAIL ONLY (crypto@treasury.gov.au)

Director, Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

31 May 2022

Crypto asset secondary service providers: Licensing and custody requirements (C2022-259046).

Dear Treasury,

Binance Australia is a registered digital currency exchange with AUSTRAC and Binance Australia Derivatives holds an Australian Financial Service licence.

Binance Australia understands the responsibility we, and every other major platform, have in collaborating with policymakers and regulators to contribute to the development of a regulatory framework with consumer protection and market integrity at its heart.

Binance Australia utilises the world's leading crypto market infrastructure, maintained through agreements with the Binance Group. Binance.com operates the world's largest cryptocurrency exchange by trade volume and holds regulatory permissions in France and Italy (EU) , and the United Arab Emirates and Bahrain (MENA).

We hope you find our response to the consultation helpful. We are keen to continue the discussion on this important issue, and look forward to discussing our response in further detail.

Thank you for taking the time to engage with us.

Yours faithfully,

Binance Australia

Contribution acknowledgment from Steven McWhirter, Director of Policy.

About Us

Binance Australia is a fully compliant and progressive Australian fintech brand that empowers customers and corporate institutions to access alternative, low-cost digital assets and products.

We are on a mission to make a positive impact on society by helping Australians achieve greater financial freedom and addressing important factors facing humanity.

RESPONSES TO THE CONSULTATION PAPER

Q1. Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'?

Yes, as much as possible the new requirements should align with globally consistent terminology and definitions based on Global Standard-Setting Bodies and international best practices e.g. Financial Action Task Force ("FATF"). More details will be discussed in our answers to question 3 below. Where definitions and terminology differ we would encourage a clear articulation of the reasons why to avoid legal and regulatory uncertainty and to help all operating entities to meet their responsibilities.

Q2. Are there alternative terms which would better capture the functions and entities outlined above?

As per question 1, we would encourage globally consistent terminology and definitions aligned with Global Standard-Setting bodies and international best practices. This will help enable global regulatory harmonisation, supervisory cooperation and industry interoperability.

Q3. Is the above definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments.

We would encourage alignment of the proposed definition with FATF. Many Virtual Assets function neither as a 'representation of value' (as they are not linked to any underlying asset and do not have a fixed dollar value) nor as a representation of 'contractual rights' (as digital assets may provide no contractual rights against a counterparty).

We would propose using the definition of 'Virtual Asset' based on FATF's definition as the basis of a new Virtual Asset regulatory framework.

We consider a Virtual Asset to be a digital representation of value that:

1. can be transferred, stored or traded electronically;
2. is fungible;
3. is not a security; and
4. functions (or is intended to function) as a medium of exchange for payment or investment purposes or is expressed as a unit of account or a store of economic value.

The growth of the stablecoin market has been over 10x in size since August 2020, even taking into account the recent declines. The interest in blockchain based stablecoins has seen central banks around the world begin trials in central bank digital currency. To support consumer protections, stablecoins must be clearly defined and described by both the issuer and the platforms offering access to the digital asset. Consumers should have easy to understand details of what mechanism is used to keep the stablecoin, stable. Penalties for failure to comply with the disclosure requirements, should be applied by enforcement agencies.

The new definition should capture stablecoins. There are different types of stablecoin, including ones that are asset backed, fiat-backed and algorithmically designed. The Binance Group offers BUSD, which is a fiat-backed stablecoin¹, regulated by the New York State Department of Financial Services (NYDFS) and backed by reserves subject to regular third-party attestations. In addition, BUSD is also green-listed by NYDFS, making it pre-approved for custody and trading by any of the NYDFS' virtual currency licensees, unlike many of its large competitors.

This approach is consistent with FATF's Updated Guidance, which notes that a "digital asset that is exchangeable for another asset, such as a stablecoin that is exchangeable for a fiat currency or a Virtual Asset at a stable rate" will be a Virtual Asset providing it is considered to have "inherent value to be traded or transferred and used for payment", rather than just being a record of ownership of something else. We consider this to be consistent with our experience of stablecoins.²

Q4. Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?

Yes, well designed and efficiently administered regulation can play a critical role in delivering improved social and economic outcomes, including lower costs for consumers, safer and healthier communities, and higher living standards.

In particular, regulation should be designed to:

- provide clarity and certainty for affected parties, recognising that different groups may be affected differently; and
- avoid duplication or conflict with other existing or proposed regulations.

In the context of Virtual Assets we would highlight:

¹ <https://www.binance.com/en/blog/ecosystem/the-importance-of-fiat-reservebacked-stablecoins-421499824684903837>

² <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Updated-Guidance-VA-VASP.pdf>. paragraph 50, page 25.

Virtual Assets should be governed under a regulatory framework appropriate for the unique opportunities presented by Virtual Assets. While which institutions should have oversight over Virtual Assets in Australia should be left to the government to determine, terminology should be consistent across all regulatory frameworks. For example, 'digital currency' and 'digital currency exchange' are currently defined in the AML/CTF Act with a focus on the use of the currency under the money laundering and financing of terrorism frameworks³. In the meantime, ASIC's definition of 'crypto-assets'⁴ seems to be broader than just digital currency and also covers how certain assets or activities can be captured under the Corporations Act. If the proposed definition were to be adopted across all Australian regulatory frameworks, all relevant authorities would need to closely examine if all asset classes within the new definition have been properly captured under the current frameworks.

Q5. Should CASSPrs who provide services for all types of crypto assets be included in the licensing regime, or should specific types of crypto assets be carved out (e.g. NFTs)?

In respect of particular types of crypto assets and whether they should be carved out (e.g. NFTs) we would observe:

We see the process of compliance in the world of Virtual Assets as a collaborative effort, and a process in which proactive players within the industry come together with regulators and policymakers to build a system of rules and operating frameworks, in accordance with shared values, that creates a foundation for sustainable growth. This is important given the innovative nature of the crypto-landscape.

Binance Australia is pleased to note that Binance is the leading blockchain company in the global market, and we embrace the responsibility to lead the industry from the front and support regulators as they seek to establish a global regulatory framework for the industry.

We propose that Non-Fungible Tokens (NFTs) should not be considered as Virtual Assets, as they are not fungible. We would propose that NFTs be excluded at this time to enable governments and market participants to better assess the characteristics of NFTs and suitable regulatory approaches to them.

In particular, our proposed definition of a Virtual Asset requires fungibility (i.e. that any token is interchangeable and indistinguishable from another token). Given this, NFTs will not be within the scope of our proposed Virtual Asset definition (consistent with FATF). We believe this is appropriate, given that NFTs are a nascent phenomenon in the crypto-asset landscape and as such,

³ See AML/CTF Act section 3.

⁴ <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/>

while they merit further study, they should not currently be the subject of direct regulatory oversight.

We believe this is also consistent with the approaches being taken in other key jurisdictions e.g. the EU's draft Regulation on Markets in Crypto Assets, MiCA, specifically excludes NFTs from its scope at Article 4 (2).

More generally, the licensing regime for Virtual Asset exchanges should reflect the unique characteristics of the crypto industry. A core part of our proposed regime for regulation of Virtual Assets is the regulation and licensing of Virtual Asset exchanges, which will provide confidence for service providers such as banks and insurance companies to support the industry.

We believe that the regulatory framework applicable to Virtual Asset exchanges should be based on commonly accepted principles for the regulation of electronic trading platforms / markets for trading in securities and derivatives, subject to appropriate adaptation to meet the needs of the Virtual Asset market.

For example, we would expect that exchanges should have objective criteria for participation and undertake e.g. risk assessments and transaction monitoring of activities on their platform.

However, we propose adapting these principles to suit the unique requirements and needs of the crypto industry. In particular:

- given the expertise of exchanges like Binance Australia in assessing the viability and legitimacy of projects in the Virtual Assets space, it is appropriate for exchanges to be allocated primary responsibility for assessing the suitability of Virtual Assets for admission to trading, within a framework of accountability to relevant regulators; and
- crypto-asset exchanges globally tend to have much faster and more dynamic listing processes than the equivalent processes for securities. It is key that regulated Virtual Asset exchanges be able to maintain this dynamism and speed (subject to appropriate safeguards) in order to ensure their competitiveness and value to the industry.

Given these factors, we propose that, while regulators would be responsible for supervising the adherence of licensed Virtual Asset exchanges to regulatory requirements in relation to operational matters, the governance of the exchange's market, particularly in relation to the admission of Virtual Assets to trading, should be exchange-led.

Our proposal envisages that a licensed Virtual Asset exchange would be primarily responsible for ensuring that it is satisfied that the crypto-asset seeking admission is a Virtual Asset, and for

devising its own internal policies and procedures for reaching that conclusion. We consider this to be appropriate, given the expertise of exchanges in assessing new crypto projects.

We appreciate that it is important to ensure appropriate regulatory oversight of the admission process. Given this, we propose that a licensed Virtual Asset exchange seeking to admit a new Virtual Asset to trading on its exchange should be able to do so by following either of two routes:

1. Self-certification: Under this route, the exchange would, prior to admitting a new token to trading, self-certify to the relevant competent regulator that the Virtual Asset it intends to list is a Virtual Asset within the relevant definition, and that it has met the exchange's requirements for listing. The regulator would then have an opportunity to stay the listing within a prescribed time period. This approach is consistent with the approach taken by the US Commodity Futures Trading Commission ("CFTC") for the admission of derivatives.
2. Review: Under this route, an exchange may instead work with the relevant regulator to define listing requirements. We consider that this would be of particular use, firstly for smaller exchanges (which may not have a listing department as large or sophisticated as a leading exchange like the Binance Group), and secondly when dealing with products where there may be some uncertainty around their characterisation as a Virtual Asset.

In summary:

The proposed new regime for Virtual Assets should include a licensing regime for Virtual Asset exchanges which is based on the framework for securities and derivatives exchanges, subject to appropriate adaptation to meet the needs of the Virtual Asset market.

Licensed Virtual Asset exchanges should be responsible for ensuring that: its operating rules set out a clear admission process; it is satisfied that a crypto-asset seeking admission is a Virtual Asset; the crypto-asset seeking admission is suitable for listing; and there is a clear process for delisting.

Licensed Virtual Asset exchanges should be able to choose between the following routes for admission of Virtual Assets to trading: a "self-certification" option; and a "review" route. The regulator should also publish a regularly updated list of all Virtual Assets submitted to it under either the "self-certification" or "review" options.

NFTs should not be within the scope of the proposed Virtual Asset definition (consistent with FATF's interpretation). We believe this is appropriate, given that NFTs are a nascent phenomenon in the crypto-asset landscape and as such, while they merit further study, they should not currently be the subject of direct regulatory oversight.

Q6. Do you see these policy objectives as appropriate?

Yes, at Binance Australia, we know that regulation is an important part of the lifecycle of all innovative sectors and that it will be essential that crypto industry participants actively work with those who oversee laws and regulations.

Binance Australia understands the responsibility that Virtual Asset exchanges have in collaborating with policymakers and regulators to contribute to the development of a regulatory framework that will foster innovation and continue to provide users with access to new, world-changing innovations. The foundation of such a regulatory framework must be built on basic principles to maximise protections for users by fostering a safe, secure and stable digital ecosystem.

We have proactively implemented controls and technology to support regulation locally, including fiat fraud and dispute transaction monitoring alerts via Binance Australia's payment platform partner, and an external audit conducted by the government's appointed auditor who assessed Binance Australia's Data Privacy settings and Information Security framework with no adverse findings. We also engage closely with regional and national initiatives in Australia, including ongoing and close dialogue with local Law Enforcement teams on crypto related financial crimes and regular participation in industry events including the Australian FinCrime Festival and the Australian Financial Review Crypto Summit.

Globally within the wider Binance Group, partners include CipherTrace to instil further protections for our users, as well as Elliptic for blockchain investigations, Refinitiv for state of the art financial software and risk solutions, TRM blockchain monitoring, and artificial intelligence, machine learning and natural language processing driven anti-money laundering technology from ComplyAdvantage. We're proud to say that we have cleared multiple external anti-money laundering (AML) audits - a strong validation of our current AML controls and partnerships. Recently, we have partnered on working groups and seminars with notable anti-crime organisations such as the United Nations Office on Drugs and Crime (UNODC) and Interpol, and we look forward to future collaborations.

We have also grown our international compliance team and advisory board by 500% since last year. Notable appointments include former FATF Executive Secretary Rick McDonnell and former Head of the Canadian delegation to the FATF Josée Nadeau as compliance and regulatory advisors, as well as Max Baucus, the former US Senator for Montana and US Ambassador to China, to provide high-level guidance. Former US Treasury Criminal Investigator Greg Monahan joined Tigran Gambaryan, former special agent of the Internal Revenue Service—Criminal Investigation (IRS-CI) Cyber Crimes Unit, as Global Money Laundering Reporting Officer and Vice President of Global Intelligence and Investigations respectively, as well as Mark McGinness, the former Head of

International Relations at the Dubai Financial Services Authority (DFSA), who joins Binance as Chief Regulatory Liaison Officer and Steven McWhirter from the UK Financial Conduct Authority as our Director of Policy - these are the first of many high-profile additions to our team. We plan to continue to grow our team size with qualified and experienced advisors to support our global efforts.

The Binance Group is committed to being compliant with appropriate local rules where we operate. We are ready and look forward to being a partner in developing the proposals to help the industry grow in a safe, secure and sustainable manner. We aim to continue our efforts in working with regulators collaboratively to meet their concerns as the industry continues to grow.

Q7. Are there policy objectives that should be expanded on, or others that should be included?

As a responsible company Binance Australia would emphasise:

Virtual Assets should be governed under a regulatory framework appropriate for the unique opportunities presented by Virtual Assets. Crypto can be safe and accessible for everyone, but specific and tailored frameworks are required to prevent misuse and bad actors.

Supervised, Exchange-Led Governance is essential to striking the appropriate balance between regulatory oversight and allowing the continued innovation of the Virtual Asset industry. Exchanges should be regulated and asked to put in place certain controls to help regulate the industry where appropriate.

User protection and market integrity are paramount to the continued and sustainable development of this new sector. We propose strong and clear positions to protect users including mandatory insurance and asset funds to be in place, as well as mandatory KYC to adhere to international rules.

We propose that a number of measures should form part of any virtual asset regulatory framework, including:

1. requiring exchanges to maintain adequate insurance funds to compensate users for technical failures and system outages;
2. prevention of market manipulation to protect users from fraud through high-security measures and strong collaboration with law enforcement; and
3. mandatory AML/CTF and KYC checks, including robust risk management frameworks and fit-for-purpose risk and control self assessments.
4. A practical guideline to be introduced for Virtual Asset Exchange and Law Enforcement (LE) to follow. At present, a lack of clear approach for Law Enforcement to detect, prevent and

intervene with crypto related criminal activities jeopardises Virtual Asset Exchange' responsibilities and efficiency in cooperating with LEs to combat financial crimes.

This is in addition to ensuring that users are well educated about blockchain and its possibilities, as well as risks, so as to improve their knowledge and ensure safe trading practices. In general, a commitment to place their customers ahead of the shareholder interests is important to ensure the confidence in the digital marketplace.

We would also like clarification on appropriate transitional periods or grandfathering rights to allow time to comply. We anticipate that full compliance may take a period of time of months, and even years, based on experience in other markets. This transitional period should be factored in.

Q8. Do you agree with the proposed scope detailed above?

We believe the requirements should align with globally consistent terminology and definitions based on Global Standard-Setting Bodies and international best practices such as the Financial Action Task Force ("FATF"), the International Organisation of Securities Commissions ("IOSCO"), and the Financial Stability Board ("FSB").

While Virtual Asset Exchanges could be supervised by ASIC in terms of where financial products are offered, (e.g securities and derivatives), as well as certain consumer protection obligations, AUSTRAC can still remain to be the regulating body regarding AML/CTF obligations.

Q9. Should CASSPrs that engage with any crypto assets be required to be licenced, or should the requirement be specific to subsets of crypto assets? For example, how should the regime treat non-fungible token (NFT) platforms?

We consider user protection to be a core part of our mission. As part of this, we believe that products and services provided by businesses such as ours in relation to Virtual Assets should be brought within the regulatory perimeter. In order to achieve this goal, we propose the expansion of existing categories of regulated financial services (where appropriate and necessary) to allow for the provision of these services with regard to Virtual Assets, including, for example, asset management and "advising" on financial products. Further, we consider it appropriate for these services (when provided with respect to Virtual Assets) to be generally regulated in the same way as they would be with regard to other categories of financial products (e.g. securities and derivatives), so as to avoid regulatory arbitrage.

As per Q5, NFTs should not be considered Virtual Assets, as they are not fungible. Instead, we would propose that NFTs be excluded at this time so that governments and market participants can better assess the characteristics of NFTs and suitable regulatory approaches to them.

The new Virtual Asset regime should allow for yield-farming / staking services to be supported by Virtual Asset Exchanges as we believe they are uniquely placed to offer these services. If the exchange fails to provide the staking services advertised, we recommend that the user should be protected by the exchange's financial capacity.

The new Virtual Asset regime should allow a passporting regime for Virtual Assets based on any existing passporting regimes for the marketing of funds.

Q10. How do we best minimise regulatory duplication and ensure that as far as possible CASSPrs are not simultaneously subject to other regulatory regimes (e.g. in financial services)?

If starting from scratch a fundamental element of this would be regulation of Virtual Asset service providers by a single regulator, which would be responsible for regulating its entire business, regardless of whether the crypto-assets offered on its platform are considered to be “Virtual Assets” under our proposed definition, or any other form of financial instrument.

Where this may be unrealistic in Australia we would encourage well designed and efficiently administered regulation (based on Global Standard-Setting Bodies and international best practices) that strikes an appropriate balance between user inclusion and protection, market integrity and stability and the promotion of competition and continued innovation.

Q11. Are the proposed obligations appropriate? Are there any others that ought to apply?

Being an active member of the cryptocurrency community and fostering not only the growth of our industry, but maintaining the integrity of our ecosystem, is core to Binance Australia’s mission. These are objectives that we share with regulators and the vast majority of our peers across the industry.

Binance Australia supports requirements that are:

- administered in a flexible manner with the aim of ensuring that industry participants behave with honesty, fairness, integrity, and competence while keeping a simple, consistent and efficient regulatory approach.
- mitigate significant financial and operational risks, including custody risks, when engaging with crypto-asset service providers.

- provide industry with regulatory certainty as the crypto ecosystem and virtual economy continue to evolve.

Refer to point (9) - 'respond in a timely manner to ensure scams are not sold through their platform'. We would appreciate greater clarification of the scope of such obligations e.g. scams applied to listing/issuing of coins, or allowing scammers to use the platform, and or services provided by the Virtual Assets service provider. Some scams that can occur on the Virtual Assets service platform, as in traditional financial services, involve external criminals manipulating user's funds, ID takeover and Cyber Attack, of which Virtual Asset Exchanges have limited control over themselves. These types of scams require co-efforts from e.g. ScamWatch under ACCC, banks and financial institutions and Law Enforcements to combat them altogether. Other types of scams e.g. those that may originate from coin issuers could be mitigated through internal due diligence, assessments and controls obligations on Virtual Asset Exchanges.

With respect to suitably qualified independent audit rights we would suggest a proportionate and risk-based approach necessary for the regulator to gain the assurance required for the proper performance of their functions, whilst enabling the provider to protect the security and integrity of the service provided for the benefit of consumers and market integrity. For example:

- audit rights, audit frequency and areas to be audited should be exercised on a risk-based approach and adhere to relevant, commonly accepted international audit standards.
- where this cannot be agreed the service provider should reserve the right to discuss this with the Competent Authority.

Q12. Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?

Where crypto-assets are initially offered for free via airdrops (which we would interpret to mean blockchain-based projects and developers sending out free tokens to members of their communities) we do not believe they should be banned as this could be detrimental to innovation and competition within the industry. Instead of banning the airdropping of crypto, we recommend a solicited approach for the distribution of crypto. The approach would require Virtual Asset Exchanges to perform internal risk assessment and control on the distributed crypto while Virtual Asset Exchanges hold the responsibility in case of a scam for dispute, recovery and claims.

Similar consideration should apply to the marketing and promotion of free tokens so that any regulatory requirements applied are proportionate to the potential benefits and harms to innovation, markets and consumers.

Q13. Should there be a ban on not providing advice which takes into account a person's personal circumstances in respect of crypto assets available on a licensee's platform or service? That is, should the CASSPrs be prohibited from influencing a person in a manner which would constitute the provision of personal advice if it were in respect of a financial product (instead of a crypto asset)?

We consider user protection to be a core part of our mission. As part of this, we believe that products and services provided by businesses such as ours in relation to Virtual Assets should, where appropriate and necessary, be brought within the regulatory perimeter.

Hawking is prohibited under the Corporations Act 2001 (Cth) when offering financial products to retail clients and the standard is widely accepted within the financial industry. Owing to the lack of information on the virtual asset sector and for younger consumers more broadly, they have turned to their peers to access information and insights on this emerging market. This has created the opportunity for "finfluencers" to fill this education gap. The rise of "finfluencers" is not new, the movement has merely moved from offline methods to the internet. We support providing consumers the ability to connect with those filling the current gap in education so that consumers can have better control over their decisions and make informed choices. We recommend working together with Virtual Asset Exchanges to redefine - not restrict, consumer access to information and education on virtual assets.

In order for Australian consumers to access low-cost educational content, Binance Australia recommends that there is support for virtual asset information content producers, rather than further restrictions. This should take into account the boundary between regulated advice and information so that content can be made available that is not financial product advice. Binance Australia considers that influencers should disclose if, and when, they are being paid a fee to discuss the products or companies in their content, and that they should seek independent advice on the legality of their specific content.

Binance Australia takes the education and safety of its community seriously and successfully operates the Binance Academy which is freely available to the general public. It is not presented as suitable to an individual person, or based on a consideration of the circumstances of that person; and, as such, we would assume this would not constitute the provision of personal advice.

Q14. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

It is difficult to provide a definitive view at this stage however, but as a responsible operator Binance Australia recognises that initial and ongoing costs will be incurred that are similar to existing financial services regulation. At this estimate, we would expect the cost of implementation to be

over a million AUD. Clear regulation, rather than self-regulation, will be a more cost effective solution for all in the long run.

Alternative options This paper also seeks views on the following alternate options

Q15. Do you support bringing all crypto assets into the financial product regulatory regime? What benefits or drawbacks would this option present compared to other options in this paper?

No, not completely. We support the proportionate regulation of crypto assets in a manner that is consistent with terminology and definitions based on Global Standard-Setting Bodies and international best practices such as the Financial Action Task Force (“FATF”), the International Organisation of Securities Commissions (“IOSCO”), and the Financial Stability Board (“FSB”).

We would encourage well-designed and efficiently administered regulation that plays a critical role in delivering improved social and economic outcomes, including lower costs for consumers, safer and healthier communities, and higher living standards.

In particular, regulation should be designed to:

- provide clarity and certainty for affected parties, recognising that different groups may be affected differently; and
- avoid duplication or conflict with other existing or proposed regulations.

Where this consultation, and the subsequent requirements, can achieve these outcomes they are to be encouraged.

Should a decision be made to bring all crypto assets within scope of the ASIC financial product regime and outside of the Australian Consumer Law requirements this should be done in a manner that:

- is proportionate to the nature, scale, and complexity of the risks.
- provides regulatory clarity and gives confidence to both consumers and businesses, and encourages investment and innovation in the local crypto ecosystem.
- is consistent with terminology and definitions based on Global Standard-Setting Bodies and international best practices.

Q16. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

It is difficult to provide a definitive view at this stage however, but as a responsible operator Binance Australia recognises that initial and ongoing costs will be incurred that are similar to existing financial services regulation. At this estimate, we would expect the cost of implementation to be over a million AUD. Clear regulation, rather than self-regulation, will be a more cost effective solution for all in the long run.

Alternative option 2: Self-regulation by the crypto industry

Q17. Do you support this approach instead of the proposed licensing regime? If you do support a voluntary code of conduct, should they be enforceable by an external dispute resolution body? Are the principles outlined in the codes above appropriate for adoption in Australia?

We would encourage proportionate risk-based regulation that protects markets and consumers. A fundamental element of this would be regulation of Virtual Asset service providers by a single regulator, which would be responsible for regulating its entire business, regardless of whether the Virtual Assets offered on its platform are considered to be “Virtual Assets” (under our proposed definition), or any other form of financial instrument.

Where this may be unrealistic we would encourage well designed and efficiently administered regulation that strikes an appropriate balance between user protection, financial stability and promoting continued innovation based on Global Standard-Setting Bodies and international best practices.

Self-regulation and voluntary codes can be helpful to regulators when designing their regulatory frameworks but they are unlikely to deliver the consistency and regulatory clarity that a fast growing innovative industry such as crypto needs to effectively support its markets and consumers. As a responsible operator we welcome the opportunity to work with regulators as they seek to establish a global regulatory framework for the industry.

Q18. If you are a CASSPr, what do you estimate the cost and benefits of implementing this proposal would be? Please quantify monetary amounts where possible to aid the regulatory impact assessment process.

It is difficult to provide a definitive view at this stage however, but as a responsible operator Binance Australia recognises that initial and ongoing costs will be incurred that are similar to existing financial services regulation. At this estimate, we would expect the cost of implementation to be over a million AUD. Clear regulation, rather than self-regulation, will be a more cost effective solution for all in the long run.

Q19. Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?

No, as a responsible operator user protection and market integrity are paramount. We would observe that:

Virtual asset custody providers should be regulated. Safe custody is critical for users of Virtual Assets and for the stability of the market. As such, we believe that providers of Virtual Asset custody should be subject to regulation (in the same way that custodians of securities and derivatives are also subject to regulatory oversight). However, given that different custodial approaches may be appropriate in different circumstances, depending on the business, customer type, operating model and capabilities of a Virtual Asset exchange, the regulatory framework for custody of Virtual Assets should allow any of the below models to be used:

- Operator custody model: this is where the licensed exchange itself has custody of clients' crypto-assets;
- Self-custody model: this is where the holding and controlling of crypto-assets is handled by clients themselves, as owners of the crypto-assets; or
- Third party custody model: this is where a third party provides custody services for crypto-assets either (i) on behalf of the facility that trades and/or clear crypto-assets, or (ii) on behalf of clients who trade crypto-assets on such facilities.

The regulatory framework implemented for custody of Virtual Assets should be technology-neutral and principles-based in order to ensure that the requirements can adapt to the rapid pace of technological development in this area.

Operators of licensed Virtual Asset exchanges should be required to maintain insurance funds to cover certain user losses. In July 2018, the Binance Group (including Binance Australia) voluntarily put in place a self-insurance regime known as SAFU (Secure Asset Fund for Users) to help:

1. protect users interests; and
2. to cover certain types of losses incurred by users, funded by trading revenues.

We intend to continue operating a self-insurance fund and would encourage an insurance fund similar to SAFU to be a mandatory requirement for any licensed virtual asset exchange.

Q20. Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?

The financial health of the operator, as well as satisfying the fit and proper person criteria.

Q21. There are no specific domestic location requirements for custodians. Do you think this is something that needs to be mandated? If so, what would this requirement consist of?

No, safety and security of Virtual Assets is vitally important for consumer protection and appropriate regulatory safeguards should be in place to manage and mitigate these risks e.g. fit and proper testing of operators, supervision of operators and appropriate safekeeping arrangements of customer's Virtual Assets. However, whilst a traditional asset, such as cash or stock certificates may be held by a qualified custodian in a physical safe or lockbox, a Virtual Asset custodian is holding a client's private key information virtually (this is recorded on the blockchain) – versus a physical asset. It's a fundamentally different model of custody and one that prioritises having the most secure technology solution from a fiduciary perspective. For this reason, an important consideration for Virtual Asset custodians is the advanced security features that will be implemented rather than the physical location.

There has been significant developments in Virtual Asset custody over the last 5 years to improve the safekeeping of the assets while also improving accessibility. Further development is still required, as one of the barriers to Virtual Asset adoption is the practical difficulty some consumers face in managing virtual wallets as well as the potential cybersecurity risks. To that end, large competent Virtual Asset service providers have become a preferred wallet solution for consumers due to their security features, ease of access, transaction record statements and low-cost nature. However, there are high fixed costs associated with an effective custodian solution and low marginal costs due to the inherent scale business model required with custody. For Australian consumers to be able to access and benefit from best in class low cost custody solutions in an increasingly competitive and global digital marketplace, global custodian solutions will be necessary.

We note that the leading Australian Bitcoin ETFs, ASX-Listed Companies, and crypto funds, choose global, rather than local custodians for their virtual assets. These well-researched institutions prioritise global leaders in virtual asset wallet management, including Binance Australia.

Q22. Are the principles detailed above sufficient to appropriately safekeep client crypto assets?

Yes, as a responsible operator, Binance Australia recognises the importance of this aspect of its business.

Q23. Should further standards be prescribed? If so, please provide details

Please see our answers to questions 19 - 22.

Q24. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

It is difficult to provide a definitive view at this stage however, but as a responsible operator Binance Australia recognises that initial and ongoing costs will be incurred that are similar to existing financial services regulation. At this estimate, we would expect the cost of implementation to be over a million AUD. Clear regulation, rather than self-regulation, will be a more cost effective solution for all in the long run.

Consultation questions

Q25. Is an industry self-regulatory model appropriate for custodians of crypto assets in Australia?

No, please see our answers to questions 19 - 22.

Q26. Are there clear examples that demonstrate the appropriateness, or lack thereof, a self-regulatory regime?

Q27. Is there a failure with the current self-regulatory model being used by industry, and could this be improved?

Please see our answers to questions 19 - 22.

Q28. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

It is difficult to provide a definitive view at this stage however, but as a responsible operator Binance Australia recognises that initial and ongoing costs will be incurred that are similar to existing financial services regulation. At this estimate, we would expect the cost of implementation to be over a million AUD. Clear regulation, rather than self-regulation, will be a more cost effective solution for all in the long run.

Early views sought on token mapping

Consultation questions

Q29. Do you have any views on how the non-exhaustive list of crypto asset categories described ought to be classified as (1) crypto assets, (2) financial products or (3) other product services or asset type? Please provide your reasons.

We would support the proportionate regulation of crypto assets in a manner that is consistent with terminology and definitions based on Global Standard-Setting Bodies and international best practices such as the Financial Action Task Force (“FATF”), the International Organisation of Securities Commissions (“IOSCO”), and the Financial Stability Board (“FSB”).

We would also highlight existing terminology in other markets that Australia may wish to take into account. This includes the definitions in the EU Markets in Crypto-assets, and amending Directive (EU) 2019/1937 and the UK Financial Conduct Authority Guidance on Cryptoassets Policy Statement PS19/22 July 2019.

Q30. Are there any other descriptions of crypto assets that we should consider as part of the classification exercise? Please provide descriptions and examples.

We have no specific comments at this stage but would be happy to work with The Treasury to understand the different types of Crypto Assets as part of the proposed taxonomy work.

Binance Australia is supportive of a global taxonomy that provides clarity for market participants and would be happy to work with The Treasury to this effect.

Q31. Are there other examples of crypto assets that are financial products?

We would highlight tokenised equity as an example of a crypto asset that could be a financial product. Tokenised equity is widely considered to be the creation and issuance of digital tokens or "coins" that represent equity shares in a corporation or organisation. This introduces the benefits of blockchain technology including greater speed and certainty on settlement and clearing of financial products and also allows novel implementations such as frequent distributions.

Q32. Are there any crypto assets that ought to be banned in Australia? If so, which ones?

We have no specific comments at this stage but would be happy to work with The Treasury to understand the different types of Crypto Assets as part of the proposed taxonomy work.