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FAO: Committee Secretary, Senate Economics Legislation Committee

Swyftx submission on Corporations Amendment (Digital Assets Framework) Bill 2025 – regulating digital asset and tokenised custody platforms

We welcome the opportunity to provide feedback to the Senate Committee on the above legislation following its successful second reading. This is an important Bill that will help deliver stronger consumer protections and advance innovation in the digital asset sector.

Swyftx is an Australian digital assets brokerage, which supports more than 1.5 million retail, business, and SMSF clients across the ANZ region and the United States. We welcome the fact that the draft Bill provides legislative clarity and establishes a much-needed statutory foundation for an orderly, well-functioning, and competitive digital asset industry in Australia.

We also note several important refinements in the final Bill draft that provide increased certainty for the industry and its customers. These include:

- Provisions allowing entities that apply for an AFS licence during the transition period to continue operating while ASIC considers their application. This provides crucial business certainty and prevents disruption to Australian consumers.
- We support the requirement that ASIC must be reasonably satisfied its minimum standards do not restrict platforms to liquidity sources solely within the domestic regulatory perimeter.
- The shift from control to factual control (expressly excluding legal control) and the clarifications around joint control provide critical operational clarity.
- We support the updated custodial staking arrangement definition, the expanded list of benefits, and the section 765A amendments clarifying these interests are not financial products. *(Note: While welcome, exchanges will still require ASIC clarity as they review complex liquid and re-staking products against this exemption).*
- The clarification that facilities for tokenising money are not TCPs establishes an important boundary with the upcoming stored-value facility (SVF) licensing reforms.

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To ensure the legislation supports improved consumer outcomes and positions Australia as a global leader in the blockchain ecosystem, we wish to highlight a few areas for the Committee's consideration.

Key regulatory and market considerations

Competition and the brokerage model

We strongly support a framework that is tech-neutral and accommodates various business models. Swyftx, like a number of other participants in the local market, operates a brokerage model that supports competitive pricing for Australian consumers.

It is important to be clear that Swyftx does not operate an open order book to allow clients to transact directly against each other. Most brokerages act as the counterparty to trades. By doing so, they significantly reduce the risk of liquidity fragmentation in the local market, which in turn supports competitive pricing for both retail and institutional clients.

The broker model also supports consumer choice and protection in the domestic market. By acting as a counterparty in the transaction chain, brokerages like Swyftx provide Australian investors with the option to trade through a trusted, locally regulated entity. This ensures consumers can access global liquidity without being forced to navigate or expose themselves directly to unregulated, offshore counterparties.

To ensure a competitive market is maintained, we recommend the Minister's broad power to declare a Digital Asset Platform (DAP) as a financial market or Clearing and Settlement (CS) facility is expressly limited to cases where the effect is significant or material.

Furthermore, we believe any such designation should involve a transparent consultation process and a reasonable transition timeframe, given the very significance compliance complexity it would trigger and impact on consumers.

Addressing the digital asset advice gap

The current framework does not address the existing advice gap for digital assets. To protect consumers, financial advisers must be empowered to provide regulated guidance. We recommend ASIC provides additional, specific guidance to give financial advisers the regulatory certainty they need to advise clients on specific tokens.

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Offshore Stablecoins

Further clarification would be highly beneficial regarding the regulatory treatment and listing requirements for stablecoins issued by offshore providers. Clarification here will ensure platforms can remain compliant while offering these foundational, globally utilised assets.

The tokenisation market

Blockchain technology offers the potential for significant national productivity improvements, particularly through the tokenisation of real-world assets. We agree that the tokenisation of traditional private credit markets, equities, and real estate will become a major global market. CitiGroup[1] has estimated that between $4 to $5 trillion US dollars of tokenised digital securities and other assets could be issued by 2030 alone. Ensuring Australia's regulatory framework can seamlessly scale to accommodate this growth will position the nation as a leader in the space.

Australia's current framework relies on traditional financial market and licensing concepts that do not map cleanly to tokenised assets. While the draft Bill attempts to adapt these existing rules, there are gaps that do not provide sufficient coverage against the underlying regime. This creates structural friction for Australian firms seeking to tokenise assets domestically, even when the underlying assets are Australian. This also places significant pressure on regulators to provide stop-gaps where such inconsistencies exist. If regulators are unable to do so, and in the absence of practical regulatory reform, we risk seeing this high value tokenisation activity migrate offshore.

Group licensing and corporate authorised representatives

Digital asset businesses often operate through integrated corporate groups for legitimate governance and risk management reasons. To reflect this operational maturity, the regulatory framework should allow DAP providers to appoint corporate authorised representatives or rely on intermediary authorisation appointments to allow group entities to operate a DAP without holding an AFSL. This can be subject to conditions such as (a) only applying to platform operators that are related bodies corporate to the licensee and (b) a requirement that the licensee enter into a deed for the benefit of customers that makes them directly liable to those customers for any financial services provided.

Permitting this flexibility would support integrated group structures and prevent the unnecessary duplication of licences, compliance systems, and administrative

[1] Source: Citi GPS 2023 '*Money, Tokens, and Games'*: https://www.citigroup.com/global/insights/money-tokens-and-games

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functions. Importantly, this approach would not diminish consumer protections. The primary licensee would maintain appropriate regulatory oversight, enforce rigorous intragroup compliance reporting, and retain ultimate accountability.

Without this structural flexibility, Australian firms will be burdened with unnecessary operational costs, placing them at a competitive disadvantage compared to their global peers.

Frictions with the existing AFSL regime

While the draft bill makes significant strides in integrating DAPs into the broader financial framework, it relies heavily on historical AFSL concepts that do not map cleanly to digital assets. Because the underlying regime was built for traditional finance, we believe there remains a significant risk of unavoidable, technical breaches by licensees unless ASIC provides specific, pragmatic relief.

We are concerned, for example, that the current regime does not address (a) disclosure obligations for DAP operators for digital assets for which there is no central issuer or relevant disclosure documents that can be provided, and (b) technical requirements for value transfer services that are incompatible with digital asset infrastructure (e.g, the requirement to hold transit funds in a trust account with an authorised deposit-taking institution is not possible for digital asset payment products).

These examples highlight the structural limitations of applying legacy frameworks to novel asset classes. While ASIC relief mechanisms are a valuable tool, long-term reliance on administrative exemptions introduces ongoing legal and operational uncertainty for licensees. To ensure the regime's commercial viability and maintain Australia's attractiveness for capital investment, we recommend resolving these fundamental discrepancies directly within the primary legislation.

We understand that Treasury is currently obtaining feedback in relation to proposed updates to the Corporations Regulations 2001 (Cth) to address some of these issues. We welcome this exercise to apply as broadly as possible such that stop-gap requirements do not fall on regulators.

Recommendations

1. We recommend that the Committee acknowledges the structural frictions between digital assets and the traditional AFSL regime and encourages ASIC to consult early on providing the necessary regulatory relief to prevent widespread technical breaches.
2. We recommend that the Committee ensures the legislation explicitly maintains a clear boundary so that broker-model platforms are not inadvertently designated or regulated as financial markets.

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3. We understand that Treasury is currently seeking feedback regarding updates to the Corporations Regulations regarding levies (among other items), and we encourage ASIC to also undertake an early industry consultation process to determine impact on participants. Early visibility into these models will provide the operational certainty necessary for businesses to accurately forecast, plan, and resource their transition to the new regime.