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SUBMISSION TO THE SELECT COMMITTEE ON AUSTRALIA AS A TECHNOLOGY AND FINANCIAL CENTRE

Swyftx Pty Ltd (“Swyftx”, “we”) welcomes the opportunity to make a submission to the Senate Select Committee on Australia as a Technology and Financial Centre. This submission focuses on the issues set out in the Committee’s third issues paper, and specifically relates to the areas impacting Swyftx’s business.

ABOUT SWYFTX

Swyftx is Australia’s leading cryptocurrency broker, established in 2018 with a focus on providing Australian consumers with a secure, reliable, transparent, and customer-focused solution for their cryptocurrency trading needs.

Swyftx is Australian owned and operated, and provides Australian consumers with features that foster trust in the reliability and security of their chosen platform in a nascent industry. A key feature of Swyftx’s focus on customers is its Australian-based customer support function, enabling customers to interact live and directly with Swyftx employees to resolve questions and concerns. The Company currently has over 300,000 verified customers.

Swyftx currently employs over 100 staff in Australia, in high-skilled jobs, and is continuing to grow at a rapid pace. As the blockchain and digital asset technology space develops, and cryptocurrencies mature as an asset class for both retail and institutional investors, Swyftx is focused on delivering a world-class user experience for Australian consumers and continuing to innovate to ensure that Australians have safe, secure and reliable access to the cryptocurrency space without having to rely on foreign providers.

SWYFTX BUSINESS MODEL

Swyftx allows customers to trade a range of cryptocurrencies through its mobile app and online platform. Swyftx customers can establish an account through the app or web platform, and their identity is then verified in accordance with AML and KYC best practices. After verification, a customer

can fund their account through a number of mechanisms, including bank transfer, POLi, PayID and credit/debit cards, and transfer of cryptocurrency assets. Once their account is funded, a customer can buy or sell cryptocurrencies, as well as access other portfolio management tools online.

Swyftx includes a multitude of features to assist customers, including a demo mode allowing customers to utilise the platform to practise and learn without risking real funds.

APPROACH TO REGULATION

As a business founded on the principle of operating with integrity, doing the right thing, and being singularly focused on our customers' experience, Swyftx is supportive of a robust regulatory regime for digital assets in Australia that provides clarity and certainty while at the same time recognizing and adapting to the unique and newly-emerging attributes of cryptocurrencies. As our peers across the digital assets industry and the broader FinTech sector have all stated, Australia's approach to regulation must be to foster innovation rather than stifle it. As demonstrated by the number and growth of Swyftx's customer base, Australian consumers are demanding access to the digital asset industry – it should be the government's aim to facilitate this access under a regulatory regime that balances competing interests but recognizes that bringing digital assets inside a tailored and sensible regulatory perimeter is a far better solution than forcing consumers to operate outside of it with unregulated, foreign providers. In addition, Australia's entrepreneurs have leapt to the forefront of the global development of blockchain technology and associated crypto-asset fields, and are leaders in many areas. This technological leadership can translate into high-skilled jobs and an area for growth-oriented investment, if the right balance is struck by government in approaching regulation.

There is clear impetus around the world to recognize the emergence of digital assets as a true asset class that has real world applications, and which is not simply going to disappear. Therefore, countries across the globe are grappling with the best approach to regulation. These global approaches recognize that there is nothing inherently subversive or nefarious about cryptocurrencies or their applications. As with any new technology, there are bad actors who will seek to exploit it for their own purposes. This does not mean that the technology itself requires some form of super-regulation, or constraint. Rather, what is needed is a clear regime that allows compliant operators to continue to address the growing demand from consumers while ensuring both a level-playing field and that bad actors are identified and their activities curtailed.

The European Commission in its legislative draft on Markets in Crypto-Assets (MiCA), as part of their Digital Finance package, set out the principles for a digital asset regulatory regime:

*A dedicated and harmonised framework is therefore necessary ... to provide specific rules for crypto-assets and related activities and services and to clarify the applicable legal framework...Such a framework should **support innovation and fair competition**, while ensuring a **high level of consumer protection and market integrity** in crypto-asset markets. A clear framework should enable crypto-asset service providers to scale up their business on a cross-border basis and should **facilitate their access to banking services** to run their activities smoothly.*

The Senate Committee has specifically stated that it will be reviewing the approach of other jurisdictions to this issue of digital asset regulation. We submit that there is a commonality in general approach around the globe, at least at a high level. Regulatory regimes aim to cover two broad areas:

- a. Banking and payment systems and access: a key aspect of this regulatory regime is to ensure that digital asset service providers comply with AML/CTF rules and to ensure the integrity of the banking and payment systems.

- b. Investment dealing and consumer protection regulation: this aspect of regulation, including the applications of securities and financial markets laws, has been defined by each jurisdiction's approach to categorizing digital assets as certain types of financial instruments in order to fit them within existing regulatory frameworks.

In reviewing Australia's approach to these two areas, we submit that rather than requiring wholesale change that risks imposing a regime that stifles innovation, Australia's approach should be to provide clarity, while ensuring innovation is allowed to flourish and fair access is granted to new digital asset service providers to grow their businesses in a manner which is also fair to consumers.

SPECIFIC REGULATORY ISSUES

1. De-banking

The unwillingness of traditional banks to facilitate digital asset businesses by refusing to do business with them has introduced an unnecessary and significant risk to both the growth and innovation of the digital asset businesses and also to Australian consumers.

Cryptocurrency markets and products have developed at an extremely rapid pace, and the infrastructure to support the trading and transfer of these assets has developed into a sophisticated and robust ecosystem. However, it remains the fact that the intersection of this cryptocurrency ecosystem with the traditional financial system is fragile and in urgent need of remediation.

Entry to and exit from the cryptocurrency ecosystem is reliant on fiat-to-crypto / crypto-to-fiat transactions. That is, the exchange of cryptocurrencies for fiat currencies and vice versa is an integral part of any customer's commercial need when considering involvement in cryptocurrencies; put simply, a consumer requires the ability to (i) enter the cryptocurrency market by exchanging their existing fiat funds to buy cryptocurrencies, and (ii) exit the ecosystem by withdrawing their fiat funds from their digital asset service provider. This necessarily requires the interaction of the customer's traditional bank and the digital asset service provider:

- Customers must be able to transfer funds from their authorised deposit taking institution (ADI) to their digital asset service provider; and
- Digital asset service providers must have a functional business account and relationship with an ADI in order to receive fiat funds from customers through the Australian payments system and to send fiat funds to customers' bank accounts when the customer requests a withdrawal of their funds.

While Swyftx and its peers have created systems that allow such fiat/crypto exchanges (including transfers to and from customers' bank accounts), the vast majority of customer complaints and issues relate to this process (including delays in the funds transfer process and stopping of transfers altogether). Almost all of these issues are out of the control of the digital assets platform operators, and instead lie with the traditional banking system. These issues undermine consumer confidence in the digital assets industry because customers fear that they are being denied access to their fiat funds as a result of some form of "scam" on the part of the digital asset service provider; the consumer is unable to determine why the transfer of funds is being delayed or stopped, and their only interaction is with their digital asset service provider, not with their bank. Australia has a world-class electronic payments system which should be available to all legitimate business operators.

The number of ADIs in Australia willing to bank digital asset companies is unsustainably small. This concentrates the risk of failure of the entire industry to almost a single point, which is

unacceptable from a consumer's point of view. Protection of Australians requires that the traditional banking system provide its services (which constitute critical infrastructure) to digital asset service providers in a fair manner.

The basis for traditional banks unwillingness to bank digital assets companies to date, which have relied on some arbitrary and ill-advised notion of "increased risk" related to digital assets is no longer an acceptable or good faith approach, and is beginning to look like anti-competitive behaviour born of self-interest and at the expense of consumer confidence and protection.

A clear regulatory regime is needed which provides for government to prevent traditional banks withholding services to digital asset service providers (acting as unauthorised gatekeepers to the system), but which also establishes clear and robust registration and licensing requirements for digital asset service providers to assuage both consumer and bank concerns around the particular risks posed by individual digital asset service providers.

2. A Digital Asset Regulatory Regime

Clearly, with the development of the digital asset sector and the enormous growth in consumer demand for digital asset services, combined with the gaps in existing regulation, there is a need for ensuring that the regulatory regime is clarified in its application to digital asset service providers in order to foster confidence in the industry, to protect consumers, to encourage innovation and therefore jobs growth in Australia and to prevent illegal and anti-social practices.

a. AML-CTF

As with any financial services business that allows the transfer of financial assets, whether in the traditional finance system or in digital assets, there is a need for a strong anti-money laundering and counter-terrorism financing regime. Australia has already implemented a specific category of business (digital currency exchanges (DCE)) that is statutorily within Australia's AML/CTF framework. Swyftx is registered with AUSTRAC as a DCE and is committed to complying with the existing regime and implementing best practices to ensure it is meeting its obligations.

In our submission, there is scope for the registration process, and the on-going review process of registered entities, to be enhanced and strengthened to ensure a level of confidence that registered entities have met and continue to meet the standards expected of them. A cornerstone of many of the overseas jurisdictions' approaches has been to recognize digital asset service providers as a specific category of "money transfer"-like business and to provide for a rigorous registration process for them.

b. Licenced Financial Services

Any regulatory regime for digital asset service providers must bring clarity to the question of requirements for the provision of digital asset services as they pertain to investment dealing and consumer protection. As consideration is given to how to categorize digital assets, and how to apply the existing legal framework, the legislature needs to ensure that a broad strokes application of existing rules does not "legislate out" innovation for no incremental benefit to consumers.

In addition, as is the case with de-banking by the traditional banking providers, consideration must be given to ensuring a level playing field for digital asset service providers. For example, any application of the existing financial services regulatory regime to digital asset businesses that would require compulsory professional indemnity insurance should take into account the current lack of availability of such insurance for

digital asset service providers. That is, implementation of a regulatory regime where compliance is not possible, has the same effect as an outright ban on the activities.

By definition, digital asset service providers want to innovate and deliver new products and services to Australian consumers who are demanding them. In addition, Swyftx and its peers are seeking, and are willing to operate under, a regulatory regime which both protects consumers and facilitates growth and business development.

Digital assets are undoubtedly here to stay, and countries around the world are coming to grips with the regulatory implications. Australian consumers are demanding access to cryptocurrencies and associated services, and they deserve that access to be provided safely, securely and reliably. Australia is a leader in the technological areas of this space, but we also have an opportunity to implement a regulatory regime that allows Australia to lead from a commercial and business development perspective. This requires a regulatory approach that provides certainty and clarity – the essential foundations for any business environment.

Swyftx appreciates the opportunity to make this submission, and we would welcome the opportunity to provide more information or assistance to the Committee, as required.

Yours sincerely

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