

EXPOSURE DRAFT

1  
2  
3  
4  
5  
6  
7

Inserts for  
**Treasury Laws Amendment Bill 2025:**  
**Digital asset, and tokenised custody,**  
**platforms**

| Commencement information |   |              |
|--------------------------|---|--------------|
| Column 1                 | Column 2  | Column 3     |
| Provisions               | Commencement  | Date/Details |
| 1.                       |   |              |
| 2. Schedule 1            | The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent. |              |
| 3.                       |   |              |

# EXPOSURE DRAFT

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## Contents

|  |           |
|--|-----------|
| <b>Schedule 1—Digital asset platforms and tokenised custody platforms</b>  | <b>7</b>  |
| <b>Part 1—Core concepts</b>  | <b>7</b>  |
| Division 1—Main amendments   | 7         |
| <i>Corporations Act 2001</i>   | 7         |
| <b>1 After section 761GA</b>   | <b>7</b>  |
| 761GB Meaning of <i>digital token</i> .....  | 7         |
| 761GC Meaning of <i>digital asset platform</i> .....   | 8         |
| 761GD Meaning of <i>tokenised custody platform</i> .....   | 8         |
| <b>2 After paragraph 764A(1)(l)</b>  | <b>9</b>  |
| <b>3 At the end of Division 3 of Part 7.1</b>  | <b>9</b>  |
| <b>Subdivision E—Related matters</b>   | <b>9</b>  |
| 765E Disregard redemption rights when working out whether digital tokens etc. are financial products.....  | 9         |
| <b>4 Division 4 of Part 7.1 (after the heading)</b>  | <b>10</b> |
| <b>Subdivision A—General meanings</b>  | <b>10</b> |
| <b>5 After paragraph 766C(1)(c)</b>  | <b>10</b> |
| <b>6 Subsection 766D(2)</b>  | <b>10</b> |
| <b>7 After paragraph 766E(3)(ca)</b>   | <b>10</b> |
| <b>8 At the end of Division 4 of Part 7.1</b>  | <b>11</b> |
| <b>Subdivision B—Specific limitations</b>  | <b>11</b> |
| 766K Conduct relating to certain platforms is a financial service only if engaged in by, or on behalf of, a constitutionally-covered corporation ..... | 11        |
| <b>Subdivision C—Related matters</b>   | <b>11</b> |
| 766M Certain services must be provided by constitutionally-covered corporations.....   | 11        |
| <b>9 Division 5 of Part 7.1 (after the heading)</b>  | <b>12</b> |
| <b>Subdivision A—General meaning</b>   | <b>12</b> |
| <b>10 At the end of subsection 767A(1)</b>   | <b>12</b> |
| <b>11 At the end of subsection 767A(2)</b>   | <b>13</b> |
| <b>12 At the end of section 767A</b>   | <b>13</b> |
| <b>13 After section 767A</b>   | <b>13</b> |
| <b>Subdivision B—Extensions to the meaning of financial market</b>   | <b>13</b> |
| 767B Extension—certain digital asset platforms providing a market for digital tokens that are not financial products.....                              | 13        |
| <b>Subdivision C—Exemptions to the meaning of financial market</b>   | <b>15</b> |

---

# EXPOSURE DRAFT

---

|    |           |  |           |
|----|-----------|--|-----------|
| 1  | 767C      | Exemption—certain digital asset platforms are not financial                |           |
| 2  |           | markets for certain financial products .....                               | 15        |
| 3  | <b>14</b> | <b>Division 6 of Part 7.1 (after the heading)</b>                          | <b>17</b> |
| 4  |           | <b>Subdivision A—General meaning</b>                                       | <b>17</b> |
| 5  | <b>15</b> | <b>At the end of subsection 768A(1) (after the examples)</b>               | <b>17</b> |
| 6  | <b>16</b> | <b>At the end of subsection 768A(2)</b>                                    | <b>17</b> |
| 7  | <b>17</b> | <b>At the end of section 768A</b>  | <b>17</b> |
| 8  | <b>18</b> | <b>After section 768A</b>  | <b>18</b> |
| 9  |           | <b>Subdivision B—Extensions to the meaning of clearing and</b>             |           |
| 10 |           | <b>settlement facility</b>   | <b>18</b> |
| 11 | 768B      | Extension—certain digital asset platforms providing a                      |           |
| 12 |           | clearing and settlement mechanism for digital tokens that are              |           |
| 13 |           | not financial products .....   | 18        |
| 14 |           | <b>Subdivision C—Exemptions to the meaning of clearing and</b>             |           |
| 15 |           | <b>settlement facility</b>   | <b>20</b> |
| 16 | 768C      | Exemption—certain digital asset platforms are not clearing                 |           |
| 17 |           | and settlement facilities for certain financial products .....             | 20        |
| 18 |           | Division 2—Related amendments  | 22        |
| 19 |           | <i>Corporations Act 2001</i>   | 22        |
| 20 | <b>19</b> | <b>Section 9 (paragraph (a) of the definition of <i>clearing and</i></b>   |           |
| 21 |           | <b><i>settlement facility</i>)</b>   | <b>22</b> |
| 22 | <b>20</b> | <b>Section 9 (after paragraph (d) of the definition of <i>client</i>)</b>  | <b>22</b> |
| 23 | <b>21</b> | <b>Section 9</b>   | <b>22</b> |
| 24 | <b>22</b> | <b>Section 9 (definition of <i>custodian</i>)</b>                          | <b>22</b> |
| 25 | <b>23</b> | <b>Section 9</b>   | <b>22</b> |
| 26 | <b>24</b> | <b>Section 9 (definition of <i>financial market</i>)</b>                   | <b>23</b> |
| 27 | <b>25</b> | <b>Section 9 (after paragraph (mb) of the definition of <i>managed</i></b> |           |
| 28 |           | <b><i>investment scheme</i>)</b>   | <b>23</b> |
| 29 | <b>26</b> | <b>Section 9 (definition of <i>operator</i>)</b>                           | <b>23</b> |
| 30 | <b>27</b> | <b>Section 9 (definition of <i>possession</i>)</b>                         | <b>24</b> |
| 31 | <b>28</b> | <b>Section 9</b>   | <b>24</b> |
| 32 | <b>29</b> | <b>Subsection 761E(3) (at the end of the table)</b>                        | <b>24</b> |
| 33 | <b>30</b> | <b>After paragraph 761E(3A)(d)</b>   | <b>24</b> |
| 34 | <b>31</b> | <b>At the end of subsection 791D(1)</b>                                    | <b>24</b> |
| 35 | <b>32</b> | <b>At the end of subsection 820D(1)</b>                                    | <b>25</b> |
| 36 | <b>33</b> | <b>Paragraph 963B(2)(a)</b>  | <b>25</b> |
| 37 | <b>34</b> | <b>Subsection 1317E(3) (after the table item dealing with</b>              |           |
| 38 |           | <b>subsection 728(4))</b>  | <b>25</b> |
| 39 |           | Part 2—Australian financial service licences                               | 26        |

---

# EXPOSURE DRAFT

|    |   |           |
|----|---|-----------|
| 1  | Division 1—Minimum standards, platform rules and prohibitions for |           |
| 2  | licensees   | 26        |
| 3  | <i>Corporations Act 2001</i>                                      | 26        |
| 4  | <b>35 Section 9</b>   | <b>26</b> |
| 5  | <b>36 After Subdivision A of Division 3 of Part 7.6</b>           | <b>26</b> |
| 6  | <b>Subdivision AA—Specific obligations for financial services</b> |           |
| 7  | <b>businesses involving certain digital platforms</b>             | <b>26</b> |
| 8  | 912BA Scope of this Subdivision .....                             | 26        |
| 9  | 912BB Compliance with standards.....                              | 26        |
| 10 | 912BC Having adequate platform rules.....                         | 27        |
| 11 | 912BD Compliance with declaration prohibiting transactions etc.   |           |
| 12 | involving certain financial products through digital platforms    |           |
| 13 | .....   | 27        |
| 14 | 912BE Asset-holding standards.....                                | 27        |
| 15 | 912BF Transactional and settlement standards .....                | 28        |
| 16 | 912BG Platform rules of a digital asset platform or tokenised     |           |
| 17 | custody platform.....   | 29        |
| 18 | 912BH Prohibition by the Minister—transactions etc. involving     |           |
| 19 | certain financial products must not happen through digital        |           |
| 20 | asset platforms or tokenised custody platforms .....              | 31        |
| 21 | 912BI Prohibition by the Minister—matters to which the Minister   |           |
| 22 | has regard .....  | 32        |
| 23 | <b>37 Paragraph 912D(3)(a)</b>                                    | <b>33</b> |
| 24 | <b>38 Subsection 1317E(3) (after the table item dealing with</b>  |           |
| 25 | <b>subsection 912A(5A))</b>                                       | <b>33</b> |
| 26 | Division 2—Other matters  | 33        |
| 27 | <i>Corporations Act 2001</i>                                      | 33        |
| 28 | <b>39 At the end of subsection 921C(1)</b>                        | <b>33</b> |
| 29 | <b>40 After subsection 926A(5)</b>                                | <b>34</b> |
| 30 | <b>41 At the end of section 926B</b>                              | <b>34</b> |
| 31 | Part 3—Financial services disclosure, financial product           |           |
| 32 | disclosure, and design and distribution requirements              |           |
| 33 | etc.  | 35        |
| 34 | <i>Corporations Act 2001</i>                                      | 35        |
| 35 | <b>42 Section 9</b>   | <b>35</b> |
| 36 | <b>43 After subsection 952E(4)</b>                                | <b>35</b> |
| 37 | <b>44 At the end of section 952G</b>                              | <b>35</b> |
| 38 | <b>45 After subsection 953B(6)</b>                                | <b>36</b> |
| 39 | <b>46 Paragraph 994B(1)(b)</b>                                    | <b>36</b> |
| 40 | <b>47 Section 1010B (heading)</b>                                 | <b>36</b> |

# EXPOSURE DRAFT

---

|    |   |  |           |
|----|---|--|-----------|
| 1  | 1010B   | Part does not apply to financial products in some                          |           |
| 2  |   | circumstances .....  | 37        |
| 3  | <b>48</b>   | <b>At the end of section 1010B</b>   | <b>37</b> |
| 4  | <b>49</b>   | <b>After Division 5C of Part 7.9</b>                                       | <b>37</b> |
| 5  | <b>Division 5D—Disclosure framework for digital asset platforms</b> |  |           |
| 6  | <b>and tokenised custody platforms</b>                              |  | <b>38</b> |
| 7  | 1020AM  | Scope of this Division .....   | 38        |
| 8  | 1020AN  | Giving a DAP/TCP Guide before issuing a platform.....                      | 38        |
| 9  | 1020AO  | Content of a DAP/TCP Guide .....   | 39        |
| 10 | 1020AP  | Having and administering a platform voting policy .....                    | 41        |
| 11 | 1020AQ  | Content of a platform’s voting policy .....                                | 41        |
| 12 | 1020AR  | Disclosure obligations for underlying assets etc. of platforms             |           |
| 13 |   | .....  | 42        |
| 14 | <b>50</b>   | <b>At the end of section 1020D</b>   | <b>44</b> |
| 15 | <b>51</b>   | <b>Subsection 1317E(3) (after the table item dealing with</b>              |           |
| 16 |   | <b>subsection 1020A(5))</b>  | <b>44</b> |
| 17 | <b>Part 4—Product intervention orders</b>                           |  | <b>45</b> |
| 18 |   | <i>Corporations Act 2001</i>   | <i>45</i> |
| 19 | <b>52</b>   | <b>Section 1023B</b>   | <b>45</b> |
| 20 | <b>53</b>   | <b>At the end of section 1023B</b>   | <b>45</b> |
| 21 | <b>Part 5—Market misconduct rules</b>                               |  | <b>46</b> |
| 22 |   | <i>Corporations Act 2001</i>   | <i>46</i> |
| 23 | <b>54</b>   | <b>At the end of Division 1 of Part 7.10</b>                               | <b>46</b> |
| 24 | 1040C   | How this Part applies in relation to digital asset platforms               |           |
| 25 |   | and tokenised custody platforms .....                                      | 46        |
| 26 | <b>Part 6—Exemptions</b>  |  | <b>47</b> |
| 27 |   | <i>Corporations Act 2001</i>   | <i>47</i> |
| 28 | <b>55</b>   | <b>Section 9</b>   | <b>47</b> |
| 29 | <b>56</b>   | <b>Section 9 (before paragraph (n) of the definition of <i>managed</i></b> |           |
| 30 |   | <b><i>investment scheme</i>)</b>   | <b>47</b> |
| 31 | <b>57</b>   | <b>Section 9</b>   | <b>48</b> |
| 32 | <b>58</b>   | <b>Before section 742</b>  | <b>48</b> |
| 33 | 741A  | Fundraising offers through a digital asset platform or                     |           |
| 34 |   | tokenised custody platform.....  | 48        |
| 35 | 741B  | Fundraising exemptions relating to digital asset platforms                 |           |
| 36 |   | and tokenised custody platforms .....                                      | 49        |
| 37 | <b>59</b>   | <b>After paragraph 765A(1)(p)</b>  | <b>49</b> |
| 38 | <b>60</b>   | <b>After paragraph 765A(1)(x)</b>  | <b>49</b> |
| 39 | <b>61</b>   | <b>After paragraph 768A(2)(h)</b>  | <b>49</b> |

---

# EXPOSURE DRAFT

|    |  |           |
|----|--|-----------|
| 1  | <b>62 Subsection 791C(7) (heading)</b>                             | <b>50</b> |
| 2  | <b>63 After paragraph 911A(2)(j)</b>                               | <b>50</b> |
| 3  | <b>64 After subsection 911A(4A)</b>                                | <b>50</b> |
| 4  | <b>65 Subsection 911A(5)</b>                                       | <b>51</b> |
| 5  | <b>66 Paragraph 911A(5)(a)</b>                                     | <b>51</b> |
| 6  | <b>67 Subsection 911A(6)</b>                                       | <b>51</b> |
| 7  | <b>68 After section 992AA</b>                                      | <b>51</b> |
| 8  | 992AB Exemptions relating to digital asset platforms and tokenised |           |
| 9  | custody platforms .....  | 51        |
| 10 | <b>Part 7—Amendment of the ASIC Act</b>                            | <b>53</b> |
| 11 | <i>Australian Securities and Investments Commission Act 2001</i>   | 53        |
| 12 | <b>69 After paragraph 12BAA(7)(la)</b>                             | <b>53</b> |
| 13 | <b>70 Subsection 12BAB(1AA)</b>                                    | <b>53</b> |
| 14 | <b>71 After paragraph 12BAB(7)(c)</b>                              | <b>53</b> |
| 15 | <b>72 After paragraph 12BAB(14)(c)</b>                             | <b>53</b> |
| 16 | <b>73 After section 12BAB</b>                                      | <b>53</b> |
| 17 | 12BAC Conduct relating to certain digital platforms is a financial |           |
| 18 | service only if engaged in by, or on behalf of, a                  |           |
| 19 | constitutionally-covered corporation .....                         | 53        |
| 20 | <b>74 At the end of subsections 12BF(1), (2A) and (2C)</b>         | <b>54</b> |
| 21 | <b>75 At the end of section 12BF</b>                               | <b>54</b> |
| 22 | <b>76 At the end of section 12BLC</b>                              | <b>54</b> |
| 23 | <b>77 At the end of subsection 12DK(6)</b>                         | <b>55</b> |
| 24 | <b>78 At the end of section 14</b>                                 | <b>55</b> |
| 25 | <b>79 After subsection 41(2)</b>                                   | <b>55</b> |
| 26 | <b>Part 8—Application and transitional provisions</b>              | <b>57</b> |
| 27 | <i>Corporations Act 2001</i>                                       | 57        |
| 28 | <b>80 In the appropriate position in Chapter 10</b>                | <b>57</b> |
| 29 | <b>Part 10.83—Transitional provisions relating to the Treasury</b> |           |
| 30 | <b>Laws Amendment Act 2025</b>                                     | <b>57</b> |
| 31 | 1730 Definitions .....   | 57        |
| 32 | 1731 Application of amendments to financial services—general       | 58        |
| 33 | 1732 Transitional—delay in how amendments apply for AFSLs          | 58        |
| 34 | 1733 Application of amendments otherwise than in connection        |           |
| 35 | with financial services .....                                      | 59        |
| 36 | 1734 Acquisition of property .....                                 | 59        |
| 37 | 1735 Regulations .....   | 59        |

# EXPOSURE DRAFT

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## Schedule 1—Digital asset platforms and tokenised custody platforms

### Part 1—Core concepts

#### Division 1—Main amendments

#### *Corporations Act 2001*

#### 1 After section 761GA

Insert:

#### **761GB** Meaning of *digital token*

- (1) A digital object is a ***digital token*** if one or more persons are capable of controlling the digital object.
- (2) A person is capable of controlling the digital object if the person is capable of:
  - (a) excluding others from controlling the digital object; and
  - (b) using, transferring or otherwise disposing of the digital object; and
  - (c) identifying themselves as capable of doing the things in paragraphs (a) and (b).
- (3) In working out whether a person is capable of doing a thing in paragraph (2)(a), (b) or (c):
  - (a) have regard to what the person is capable of doing as a matter of fact rather than law; and
  - (b) it does not matter if another person is also capable of doing the thing.
- (4) A person ***possesses*** a digital token if the person is capable of controlling the digital object that is the digital token unless:
  - (a) the person can only do so with the cooperation of one or more other persons; and
  - (b) one of those other persons is unilaterally capable of controlling the digital object.
- (5) In this section:

# EXPOSURE DRAFT

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*digital object* includes:

- (a) an electronic record; and
- (b) an intangible thing (including a notional thing), information about which is recorded in an electronic record.

## 761GC Meaning of *digital asset platform*

- (1) A *digital asset platform* is a non-transferable facility under which a person (the *operator*) possesses one or more digital tokens (the *underlying assets*) in trust for, or on behalf of, either:
- (a) another person (the *client*); or
  - (b) another person nominated by the client (the *client nominee*).

Note: The operator is the *issuer* of the platform (see section 761E).

- (2) The facility may also authorise the operator or one or more other persons to engage in conduct in relation to an underlying asset for, or on behalf of, the client or the client nominee.

## 761GD Meaning of *tokenised custody platform*

- (1) A *tokenised custody platform* is a non-transferable facility under which:
- (a) a person (the *operator*) identifies one or more assets (the *underlying assets*); and
  - (b) for each underlying asset:
    - (i) the operator creates a single digital token; and
    - (ii) possessing the digital token confers a right to redeem, or direct the delivery of, the underlying asset; and
  - (c) the operator holds each underlying asset in trust for, or on behalf of, each person who possesses the digital token.

Note: The operator is the *issuer* of the platform (see section 761E).

- (2) The facility may also authorise the operator or one or more other persons to engage in conduct in relation to an underlying asset for, or on behalf of, a person who:
- (a) possesses the digital token; and
  - (b) is a client of the facility.

Note: If the facility is an arrangement, a person who is not the first to possess the digital token can become a client by entering into the arrangement (see item 5 of the table in subsection 761E(3)).

- (3) In this section:

# EXPOSURE DRAFT

---

*asset* includes a digital token.

Note: As well as a digital token, an underlying asset could, for example, be a legal right or interest, or an equitable right or interest in another asset (see the definition of *asset* in section 9AB).

*holds*: for an underlying asset of a facility that is a digital token, the operator of the facility *holds* that digital token if the operator possesses that digital token.

## 2 After paragraph 764A(1)(l)

Insert:

- (la) a digital asset platform, or a tokenised custody platform, unless the platform is a managed investment scheme;

## 3 At the end of Division 3 of Part 7.1

Add:

## Subdivision E—Related matters

### 765E Disregard redemption rights when working out whether digital tokens etc. are financial products

(1) If:

- (a) a digital token is created in relation to an asset (the *related asset*) under:
- (i) a tokenised custody platform; or
  - (ii) a similar facility, in a case where subsection (2) applies to the facility and the related asset; and
- (b) possessing the digital token confers a right (the *redemption right*) to redeem, or direct the delivery of, the related asset; and
- (c) where the related asset is a financial product—a person who possesses the digital token has the same rights as if they held the related asset directly;

then disregard the redemption right when working out whether the digital token is, or rights or interests attached to the digital token are, a financial product.

(2) This subsection applies to a facility and the related asset if:

- (a) the related asset is another digital token, or is rights or interests attached to another digital token; and

# EXPOSURE DRAFT

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- (b) the facility would be a tokenised custody platform if the following things done under the facility:
- (i) creating the digital token mentioned in subsection (1);
  - (ii) holding the related asset;
- were not required by subsection 761GD(1) to be done by an operator of the facility.

## **4 Division 4 of Part 7.1 (after the heading)**

Insert:

### **Subdivision A—General meanings**

## **5 After paragraph 766C(1)(c)**

Insert:

- (ca) in relation to a digital asset platform or a tokenised custody platform—any conduct of a client under the platform (after the platform has been issued to the client);

## **6 Subsection 766D(2)**

Repeal the subsection, substitute:

- (2) Paragraph (1)(a) does not apply to a person stating prices at which the person proposes to acquire or dispose of financial products if:
- (a) the person is the issuer of the products, and the products are:
    - (i) superannuation products; or
    - (ii) managed investment products; or
    - (iii) financial products referred to in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes); or
    - (iv) foreign passport fund products; or
  - (b) the person is the issuer of a tokenised custody platform, and the person is stating prices for the purposes of holding, redeeming or directing the delivery of the financial products under the platform.

## **7 After paragraph 766E(3)(ca)**

Insert:

- (cb) dealing in a digital asset platform, or the possessing of digital tokens under such a platform;

# EXPOSURE DRAFT

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(cc) dealing in a tokenised custody platform, or the holding  
(within the meaning of section 761GD) of assets or digital  
tokens under such a platform;

## 8 At the end of Division 4 of Part 7.1

Add:

### Subdivision B—Specific limitations

#### 766K Conduct relating to certain platforms is a financial service only if engaged in by, or on behalf of, a constitutionally-covered corporation

Despite anything in Subdivision A, conduct that:

- (a) relates to a digital asset platform, or a tokenised custody platform, that is a financial product only because of paragraph 764A(1)(la); and
- (b) would, apart from this section, be a financial service; is a *financial service* only if the conduct is engaged in by, or on behalf of, a constitutionally-covered corporation.

### Subdivision C—Related matters

#### 766M Certain services must be provided by constitutionally-covered corporations

*Person providing service directly, and not through a representative etc.*

(1) A person contravenes this section if:

- (a) the person is providing a service (the *applicable service*), but not as an agent or representative of any other person; and
- (b) the person uses a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution) to provide all or part of the applicable service; and
- (c) the applicable service would be a financial service involving:
  - (i) providing financial product advice relating to a digital asset platform or a tokenised custody platform; or
  - (ii) dealing in a digital asset platform or a tokenised custody platform; or

# EXPOSURE DRAFT

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(iii) engaging in conduct relating to a digital asset platform, or a tokenised custody platform, that is conduct of a kind prescribed for the purposes of paragraph 766A(1)(f);

if the person were a constitutionally-covered corporation; and

(d) the person is not a constitutionally-covered corporation.

Note: This section is a civil penalty provision (see section 1317E).

*Person providing service through a representative etc.*

(2) A person contravenes this section if:

(a) another person is providing a service (the ***applicable service***) as an agent or representative of the first-mentioned person; and

(b) the other person uses a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution) to provide all or part of the applicable service; and

(c) the applicable service would be a financial service involving:

(i) providing financial product advice relating to a digital asset platform or a tokenised custody platform; or

(ii) dealing in a digital asset platform or a tokenised custody platform; or

(iii) engaging in conduct relating to a digital asset platform, or a tokenised custody platform, that is conduct of a kind prescribed for the purposes of paragraph 766A(1)(f);

if the first-mentioned person were a constitutionally-covered corporation; and

(d) the first-mentioned person is not a constitutionally-covered corporation.

Note: This section is a civil penalty provision (see section 1317E).

## **9 Division 5 of Part 7.1 (after the heading)**

Insert:

### **Subdivision A—General meaning**

## **10 At the end of subsection 767A(1)**

Add:

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# EXPOSURE DRAFT

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Note 1: A digital asset platform can be a financial market in either or both of the following ways:

- (a) if this subsection applies to it;
- (b) if it is declared under subsection 767B(1), in which case it is a financial market in relation to the digital tokens specified in the declaration (see subsection (6) of this section).

Note 2: A digital asset platform that is a financial market is not also a financial product (see subparagraph 765A(1)(i)).

## 11 At the end of subsection 767A(2)

Add:

Note: For further exemptions, see Subdivision C.

## 12 At the end of section 767A

Add:

### *Digital asset platforms*

- (6) If a declaration is in force under subsection 767B(1) for a digital asset platform in relation to one or more classes of digital tokens:
  - (a) the platform is a **financial market** to the extent that the platform relates to the digital tokens; and
  - (b) the digital tokens are **financial products** to the extent that the digital tokens are related to the platform.

## 13 After section 767A

Insert:

### **Subdivision B—Extensions to the meaning of financial market**

#### **767B Extension—certain digital asset platforms providing a market for digital tokens that are not financial products**

##### *Minister may extend the meaning of financial market*

- (1) The Minister may, by legislative instrument, declare that a digital asset platform is a financial market if:
  - (a) the platform would be a facility to which subsection 767A(1) applies in relation to one or more specified classes of digital tokens if those digital tokens were financial products; and
  - (b) the platform is operated by, or on behalf of, a constitutionally-covered corporation.

# EXPOSURE DRAFT

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Note 1: While the declaration is in force, the platform is a financial market to the extent that it relates to the digital tokens (see subsection 767A(6)).

Note 2: In making a declaration, the Minister must have regard to the matters in subsection (5).

Note 3: The declaration may declare a class of digital asset platforms (see subsection 13(3) of the *Legislation Act 2003*).

(2) The declaration may apply:

- (a) unconditionally or subject to specified conditions; and
- (b) for a specified period or indefinitely (the ***extension duration***).

*Varying or revoking an extension*

(3) The Minister may, at any time by legislative instrument:

- (a) vary a declaration given under subsection (1) to:
  - (i) impose conditions, or additional conditions, on the declaration; or
  - (ii) vary or revoke any of the conditions on the declaration; or
  - (iii) extend or shorten the extension duration (including as affected by any variation from a previous operation of this subparagraph); or
- (b) revoke a declaration given under subsection (1).

(4) However, the Minister may only take action under subsection (3) after:

- (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each facility known by the Minister to be covered by the declaration; and
- (b) both:
  - (i) the Minister has caused a notice to be published on ASIC's website allowing a reasonable period within which the operator of each facility covered by the declaration may make submissions on the proposed action; and
  - (ii) that period has ended; and
- (c) having regard to the matters in paragraphs (1)(a) and (b) and (5)(a) to (e).

# EXPOSURE DRAFT

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*Matters relevant to giving an extension etc.*

- (5) In considering whether to make a declaration under subsection (1), the Minister must have regard to the following:
- (a) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system;
  - (b) any impact on competition in the operation of financial markets or on the provision of digital asset platforms;
  - (c) the likely regulatory impact;
  - (d) whether each facility that could be covered by the declaration has a material connection with this jurisdiction;
  - (e) any relevant advice the Minister has received under subsection (6).

The Minister may also have regard to any other matters that the Minister considers relevant.

*ASIC, APRA or Reserve Bank may advise the Minister*

- (6) ASIC, APRA or the Reserve Bank may (on its own initiative) and must (at the request of the Minister):
- (a) consider whether a declaration should be made, varied or revoked under this section; and
  - (b) advise the Minister accordingly.

## **Subdivision C—Exemptions to the meaning of financial market**

### **767C Exemption—certain digital asset platforms are not financial markets for certain financial products**

*Minister may exempt certain digital asset platforms from the meaning of **financial market***

- (1) The Minister may, by legislative instrument, declare that a digital asset platform is not a **financial market** in relation to one or more specified financial products.

Note 1: In making a declaration, the Minister must have regard to the matters in subsection (5).

Note 2: The declaration may declare one or more classes of digital asset platforms or specify one or more classes of financial products (see subsection 13(3) of the *Legislation Act 2003*).

- (2) The declaration may apply:

# EXPOSURE DRAFT

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- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the *exemption duration*).

## *Varying or revoking an extension*

- (3) The Minister may, at any time by legislative instrument:
  - (a) vary a declaration given under subsection (1) to:
    - (i) impose conditions, or additional conditions, on the declaration; or
    - (ii) vary or revoke any of the conditions on the declaration; or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoke a declaration given under subsection (1).
- (4) However, the Minister may only take action under subsection (3) after:
  - (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each platform known by the Minister to be covered by the declaration; and
  - (b) both:
    - (i) the Minister has caused a notice to be published on ASIC's website allowing a reasonable period within which the operator of each platform covered by the declaration may make submissions on the proposed action; and
    - (ii) that period has ended; and
  - (c) having regard to the matters in paragraphs (5)(a) to (d).

## *Matters relevant to giving an exemption etc.*

- (5) In considering whether to make a declaration under subsection (1), the Minister must have regard to the following:
  - (a) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system;
  - (b) any impact on competition in the operation of financial markets or on the provision of digital asset platforms;
  - (c) the likely regulatory impact;

# EXPOSURE DRAFT

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(d) any relevant advice the Minister has received under subsection (6).

The Minister may also have regard to any other matters that the Minister considers relevant.

*ASIC, APRA or Reserve Bank may advise the Minister*

(6) ASIC, APRA or the Reserve Bank may (on its own initiative) and must (at the request of the Minister):

(a) consider whether a declaration should be made, varied or revoked under this section; and

(b) advise the Minister accordingly.

## 14 Division 6 of Part 7.1 (after the heading)

Insert:

### Subdivision A—General meaning

## 15 At the end of subsection 768A(1) (after the examples)

Add:

Note 1: A digital asset platform can be a clearing and settlement facility in either or both of the following ways:

(a) if this subsection applies to it;

(b) if it is declared under subsection 768B(1), in which case it is a clearing and settlement facility in relation to the digital tokens specified in the declaration (see subsection (5) of this section).

Note 2: A digital asset platform that is a clearing and settlement facility is not also a financial product (see subparagraph 765A(1)(i)(ii)).

## 16 At the end of subsection 768A(2)

Add:

Note: For further exemptions, see Subdivision C.

## 17 At the end of section 768A

Add:

*Digital asset platforms*

(5) If a declaration is in force under subsection 768B(1) for a digital asset platform in relation to one or more classes of digital tokens:

(a) the platform is a ***clearing and settlement facility*** to the extent that the platform relates to the digital tokens; and

# EXPOSURE DRAFT

- 
- (b) the digital tokens are *financial products* to the extent that the digital tokens are related to the platform.

## 18 After section 768A

Insert:

### Subdivision B—Extensions to the meaning of clearing and settlement facility

#### 768B Extension—certain digital asset platforms providing a clearing and settlement mechanism for digital tokens that are not financial products

*Minister may extend the meaning of clearing and settlement facility*

- (1) The Minister may, by legislative instrument, declare that a digital asset platform is a clearing and settlement facility if:
- (a) the platform would be a facility to which subsection 768A(1) applies in relation to one or more specified classes of digital tokens if those digital tokens were financial products; and
  - (b) the platform is operated by, or on behalf of, a constitutionally-covered corporation.
- Note 1: While the declaration is in force, the platform is a clearing and settlement facility to the extent that it relates to the digital tokens (see subsection 768A(5)).
- Note 2: In making a declaration, the Minister must have regard to the matters in subsection (5).
- Note 3: The declaration may declare a class of digital asset platforms (see subsection 13(3) of the *Legislation Act 2003*).
- (2) The declaration may apply:
- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the *extension duration*).

*Varying or revoking an extension*

- (3) The Minister may, at any time by legislative instrument:
- (a) vary a declaration given under subsection (1) to:
    - (i) impose conditions, or additional conditions, on the declaration; or

# EXPOSURE DRAFT

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- 1 (ii) vary or revoke any of the conditions on the declaration;  
2 or  
3 (iii) extend or shorten the extension duration (including as  
4 affected by any variation from a previous operation of  
5 this subparagraph); or  
6 (b) revoke a declaration given under subsection (1).
- 7 (4) However, the Minister may only take action under subsection (3)  
8 after:  
9 (a) giving notice, and an opportunity to make submissions on the  
10 proposed action, to the operator of each facility known by the  
11 Minister to be covered by the declaration; and  
12 (b) both:  
13 (i) the Minister has caused a notice to be published on  
14 ASIC's website allowing a reasonable period within  
15 which the operator of each facility covered by the  
16 declaration may make submissions on the proposed  
17 action; and  
18 (ii) that period has ended; and  
19 (c) having regard to the matters in paragraphs (1)(a) and (b) and  
20 (5)(a) to (e).

21 *Matters relevant to giving an extension etc.*

- 22 (5) In considering whether to make a declaration under subsection (1),  
23 the Minister must have regard to the following:  
24 (a) the likely effect on the Australian economy, and on the  
25 efficiency, integrity and stability of the Australian financial  
26 system;  
27 (b) any impact on competition in the operation of clearing and  
28 settlement facilities or on the provision of digital asset  
29 platforms;  
30 (c) the likely regulatory impact;  
31 (d) whether each facility that could be covered by the declaration  
32 has a material connection with this jurisdiction;  
33 (e) any relevant advice the Minister has received under  
34 subsection (6).

35 The Minister may also have regard to any other matters that the  
36 Minister considers relevant.

# EXPOSURE DRAFT

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*ASIC, APRA or Reserve Bank may advise the Minister*

- (6) ASIC, APRA or the Reserve Bank may (on its own initiative) and must (at the request of the Minister):
- (a) consider whether a declaration should be made, varied or revoked under this section; and
  - (b) advise the Minister accordingly.

## **Subdivision C—Exemptions to the meaning of clearing and settlement facility**

### **768C Exemption—certain digital asset platforms are not clearing and settlement facilities for certain financial products**

*Minister may exempt certain digital asset platforms from the meaning of **clearing and settlement facility***

- (1) The Minister may, by legislative instrument, declare that a digital asset platform is not a **clearing and settlement facility** in relation to one or more specified financial products.

Note 1: In making a declaration, the Minister must have regard to the matters in subsection (5).

Note 2: The declaration may declare one or more classes of digital asset platforms or specify one or more classes of financial products (see subsection 13(3) of the *Legislation Act 2003*).

- (2) The declaration may apply:
- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the **exemption duration**).

*Varying or revoking an extension*

- (3) The Minister may, at any time by legislative instrument:
- (a) vary a declaration given under subsection (1) to:
    - (i) impose conditions, or additional conditions, on the declaration; or
    - (ii) vary or revoke any of the conditions on the declaration; or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoke a declaration given under subsection (1).

# EXPOSURE DRAFT

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- 1 (4) However, the Minister may only take action under subsection (3)  
2 after:  
3 (a) giving notice, and an opportunity to make submissions on the  
4 proposed action, to the operator of each platform known by  
5 the Minister to be covered by the declaration; and  
6 (b) both:  
7 (i) the Minister has caused a notice to be published on  
8 ASIC's website allowing a reasonable period within  
9 which the operator of each platform covered by the  
10 declaration may make submissions on the proposed  
11 action; and  
12 (ii) that period has ended; and  
13 (c) having regard to the matters in paragraphs (5)(a) to (d).

14 *Matters relevant to giving an exemption etc.*

- 15 (5) In considering whether to make a declaration under subsection (1),  
16 the Minister must have regard to the following:  
17 (a) the likely effect on the Australian economy, and on the  
18 efficiency, integrity and stability of the Australian financial  
19 system;  
20 (b) any impact on competition in the operation of clearing and  
21 settlement facilities or on the provision of digital asset  
22 platforms;  
23 (c) the likely regulatory impact;  
24 (d) any relevant advice the Minister has received under  
25 subsection (6).  
26 The Minister may also have regard to any other matters that the  
27 Minister considers relevant.

28 *ASIC, APRA or Reserve Bank may advise the Minister*

- 29 (6) ASIC, APRA or the Reserve Bank may (on its own initiative) and  
30 must (at the request of the Minister):  
31 (a) consider whether a declaration should be made, varied or  
32 revoked under this section; and  
33 (b) advise the Minister accordingly.

# EXPOSURE DRAFT

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## Division 2—Related amendments

### *Corporations Act 2001*

#### **19 Section 9 (paragraph (a) of the definition of *clearing and settlement facility*)**

Omit “section 768A”, substitute “Division 6 of Part 7.1”.

#### **20 Section 9 (after paragraph (d) of the definition of *client*)**

Insert:

- (e) of a digital asset platform—has the meaning given by subsection 761GC(1); and
- (f) of a tokenised custody platform—means a person who is a client of the platform as described in item 5 of the table in subsection 761E(3).

#### **21 Section 9**

Insert:

*constitutionally-covered corporation* means:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) a body that is a corporation within the meaning of this Act as originally enacted (see section 57A).

#### **22 Section 9 (definition of *custodian*)**

Repeal the definition, substitute:

*custodian*:

- (a) of a digital asset platform or tokenised custody platform, means a person who possesses an underlying asset of the platform; or
- (b) of a registrable superannuation entity, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

#### **23 Section 9**

Insert:

*digital asset platform* has the meaning given by section 761GC.

*digital object* has a meaning affected by subsection 761GB(5).

# EXPOSURE DRAFT

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*digital token* has the meaning given by section 761GB.

## 24 Section 9 (definition of *financial market*)

Omit “section 767A”, substitute “Division 5 of Part 7.1”.

## 25 Section 9 (after paragraph (mb) of the definition of *managed investment scheme*)

Insert:

(mc) a digital asset platform if, under the platform:

- (i) clients of the platform have the right to redeem, or direct the delivery of, the underlying assets of the platform; and
- (ii) the operator of the platform acts only on lawful client instructions in relation to any decisions about the acquisition, disposal or use of the underlying assets; and
- (iii) the operator cannot negotiate or determine, to a material extent, any rights of the clients relating to the underlying assets;

(md) a tokenised custody platform if, under the platform:

- (i) clients of the platform have the right to redeem, or direct the delivery of, the underlying assets of the platform; and
- (ii) the operator of the platform acts only on lawful client instructions in relation to any decisions about the acquisition, disposal or use of the underlying assets; and
- (iii) the operator cannot negotiate or determine, to a material extent, any rights of the clients relating to the underlying assets; and
- (iv) all of the underlying assets must belong to the same class of asset; and
- (v) the digital token created for an underlying asset can only be divisible to the same extent that the underlying asset is reasonably capable of being divisible in a way that each part can be physically delivered;

## 26 Section 9 (definition of *operator*)

Repeal the definition, substitute:

*operator*:

- (a) of a digital asset platform—has the meaning given by subsection 761GC(1); or

# EXPOSURE DRAFT

- 
- (b) of a passport fund—means the entity that is the operator of the fund under the Passport Rules for this jurisdiction; or
- (c) of a tokenised custody platform—has the meaning given by subsection 761GD(1).

## 27 Section 9 (definition of *possession*)

Repeal the definition, substitute:

### *possession:*

- (a) of a digital token—has the meaning given by subsection 761GB(4); and
- (b) otherwise—has a meaning affected by section 86.

## 28 Section 9

Insert:

*tokenised custody platform* has the meaning given by section 761GD.

### *underlying asset:*

- (a) of a digital asset platform—has the meaning given by subsection 761GC(1); or
- (b) of a tokenised custody platform—has the meaning given by paragraph 761GD(1)(a).

## 29 Subsection 761E(3) (at the end of the table)

Add:

| 5   | a facility that is:          | the person:   |
|-----|------------------------------|---|
| (a) | a digital asset platform; or | (a) if the facility is an arrangement—enters into the arrangement as a client of the facility; or |
| (b) | a tokenised custody platform | (b) otherwise—becomes a client of the facility  |

## 30 After paragraph 761E(3A)(d)

Insert:

- (da) any conduct of the client under a digital asset platform or a tokenised custody platform (after the platform has been issued to the client);

## 31 At the end of subsection 791D(1)

Add:

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# EXPOSURE DRAFT

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1 ; or (c) is covered by a declaration in force under subsection 767B(1)  
2 (about certain digital asset platforms).

3 **32 At the end of subsection 820D(1)**

4 Add:

5 ; or (c) is covered by a declaration in force under subsection 768B(1)  
6 (about certain digital asset platforms).

7 **33 Paragraph 963B(2)(a)**

8 Omit “custodian in relation to”, substitute “custodian of”.

9 **34 Subsection 1317E(3) (after the table item dealing with**  
10 **subsection 728(4))**

11 Insert:

|                                |  |               |
|--------------------------------|--|---------------|
| subsections 766M(1) and<br>(2) | certain services must be provided<br>by constitutionally-covered<br>corporations | uncategorised |
|--------------------------------|--|---------------|

# EXPOSURE DRAFT

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## Part 2—Australian financial service licences

### Division 1—Minimum standards, platform rules and prohibitions for licensees

#### *Corporations Act 2001*

#### **35 Section 9**

Insert:

*asset-holding standards* means standards in force under section 912BE.

*platform rules*, of a digital asset platform or tokenised custody platform, means any rules (however described) that are made by the issuer of the platform, or contained in the issuer's constitution, and that deal with the activities or conduct of persons in relation to the platform.

Note: For the content of the rules, see section 912BG.

*transactional and settlement standards* means standards in force under section 912BF.

#### **36 After Subdivision A of Division 3 of Part 7.6**

Insert:

#### **Subdivision AA—Specific obligations for financial services businesses involving certain digital platforms**

##### **912BA Scope of this Subdivision**

This Subdivision applies in relation to:

- (a) a financial services licensee; and
  - (b) a digital asset platform or a tokenised custody platform;
- to the extent that one or more of the financial services authorised by the licence relate to the issuing of the platform.

##### **912BB Compliance with standards**

The licensee must comply with the following standards to the extent that the standards relate to the financial services:

- (a) the asset-holding standards;

# EXPOSURE DRAFT

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(b) the transactional and settlement standards.

Note 1: This section is a civil penalty provision (see section 1317E).

Note 2: For the making of these standards, see sections 912BE and 912BF.

## 912BC Having adequate platform rules

The licensee must have platform rules for the platform that comply with subsection 912BG(1).

Note: This section is a civil penalty provision (see section 1317E).

## 912BD Compliance with declaration prohibiting transactions etc. involving certain financial products through digital platforms

The licensee must comply with a prohibition in force under section 912BH relating to the financial services and the platform.

Note: This section is a civil penalty provision (see section 1317E).

## 912BE Asset-holding standards

(1) ASIC may, by legislative instrument, make standards (the *asset-holding standards*) that deal with the following in relation to each digital asset platform or tokenised custody platform issued by one or more financial services licensees:

- (a) the activities or conduct of the licensees, or of the authorised representatives of the licensees, in relation to:
  - (i) possessing and safeguarding the underlying assets of the platforms; or
  - (ii) recordkeeping, reconciliation and reporting for the underlying assets of the platforms; or
  - (iii) using the underlying assets of the platforms;
- (b) the provision by the licensees of supplementary services relating to the underlying assets of the platforms, including services concerning fund accounting, compliance monitoring, performance reporting, and tax.

Note 1: An asset includes a right (see section 9AB).

Note 2: Different standards may apply to different classes of assets (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(2) In considering whether to make a standard under subsection (1), ASIC must be reasonably satisfied that the proposed standard:

# EXPOSURE DRAFT

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- (a) is adequate, effective and appropriate for all digital asset platforms and tokenised custody platforms, including by being reasonably proportionate for differences in the size, scale or nature of such platforms; and
- (b) requires any client money held under a digital asset platform or tokenised custody platform (that is not an underlying asset of the platform) to be:
- (i) held in trust for, or on behalf of, the client; and
  - (ii) dealt with in a similar way to a way required by any standard of a similar nature referred to in paragraph (a); and
- (c) does not prohibit a licensee who issues a digital asset platform or tokenised custody platform from:
- (i) providing particular services; or
  - (ii) arranging for particular services to be provided; to clients of the platform; and
- (d) does not prohibit a licensee who issues a digital asset platform, or a tokenised custody platform, from possessing digital tokens, or holding assets, under the platform:
- (i) in one address or location on public digital token infrastructure or similar infrastructure; or
  - (ii) in one wallet;
- if the licensee's internal accounting system identifies the digital tokens or assets as the client's; and
- (e) includes any requirement or limitation, or achieves any outcome, prescribed by the regulations for the purposes of this paragraph.

## 912BF Transactional and settlement standards

- (1) ASIC may, by legislative instrument, make standards (the *transactional and settlement standards*) dealing with the conduct of persons in relation to the underlying assets of:
- (a) digital asset platforms; or
  - (b) tokenised custody platforms;
- issued by financial services licensees.
- (2) For the purposes of (but without limiting) subsection (1), the conduct the standards can deal with includes the following:

# EXPOSURE DRAFT

- 
- 1 (a) facilitating acquisitions, disposals, encumbrances or  
2 settlements of the underlying assets of a digital asset platform  
3 or tokenised custody platform;  
4 (b) matched principal trading and other execution models that  
5 involve the intermediary facilitation of such transactions;  
6 (c) handling, prioritising and executing the instructions of a  
7 client of such a platform (including across different business  
8 models such as market operation, market making, liquidity  
9 provision, brokerage, or dealing);  
10 (d) the conduct of persons engaged by the issuer of such a  
11 platform in relation to the performance of a function in any  
12 of the above paragraphs (including the conduct of authorised  
13 representatives, agents and subcontractors).
- 14 (3) In considering whether to make a standard under subsection (1),  
15 ASIC must be reasonably satisfied that the proposed standard:  
16 (a) is adequate, effective and appropriate for all digital asset  
17 platforms and tokenised custody platforms, including by  
18 being reasonably proportionate for differences in the size,  
19 scale or nature of such platforms; and  
20 (b) allows for a client of such a platform to direct the exercise,  
21 for or on the client's behalf, of specified rights that:  
22 (i) relate to the underlying assets of the platform; and  
23 (ii) are provided under the platform; and  
24 (c) requires the issuer of such a platform to:  
25 (i) enter into an enforceable written arrangement with each  
26 person providing liquidity to, or pursuing  
27 market-making strategies through, the platform; and  
28 (ii) monitor the activities or conduct of that person under  
29 the arrangement; and  
30 (iii) enforce the arrangement; and  
31 (d) includes any requirement or limitation, or achieves any  
32 outcome, prescribed by the regulations for the purposes of  
33 this paragraph.

## 34 **912BG Platform rules of a digital asset platform or tokenised** 35 **custody platform**

### 36 *Content of the platform rules*

- 37 (1) The platform rules of a digital asset platform or tokenised custody  
38 platform issued by a financial services licensee must include:
-

# EXPOSURE DRAFT

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- (a) transparent and non-discriminatory eligibility criteria for identifying who can become a client of the platform; and
- (b) any ongoing obligations of a client of the platform; and
- (c) the method (the ***settlement method***) for executing client instructions to execute and settle transactions involving the acquisition or disposal of underlying assets of the platform; and
- (d) a requirement for the licensee to disclose to a potential client of the platform:
- (i) the settlement method for transactions involving the acquisition or disposal of underlying assets of the platform; and
  - (ii) whether external liquidity sources will be used in relation to such transactions and, if so, the extent to which the licensee remains responsible for the execution and settlement of such transactions; and
  - (iii) who bears any counterparty or operational risk during execution and settlement of such transactions; and
  - (iv) how any changes to the settlement method will be communicated to clients; and
  - (v) whether and how a client's acquisition of an underlying asset of the platform will be recorded in any legal or technical register; and
  - (vi) any other matter prescribed by the regulations for the purposes of this subparagraph; and
- (e) information about the types of assets that are or will be available as underlying assets of the platform; and
- (f) the method for how the licensee, or any custodian of the platform, will determine what assets are or will be available as underlying assets of the platform; and
- (g) the arrangements for depositing, redeeming and directing the delivery of underlying assets in their actual form (rather than their money's worth); and
- (h) any other rules prescribed by regulations made for the purposes of this subsection.

Note: The licensee must comply with this provision as it is part of the financial services law (see paragraph 912A(1)(c)).

## *Legal effect of the platform rules*

- (2) The platform rules of a digital asset platform or tokenised custody platform have effect as a contract under seal:
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# EXPOSURE DRAFT

- 
- (a) between the licensee and each client of the platform; and
  - (b) if, under the platform, clients can have dealings with each other—between a client of the platform and each other client of the platform;

under which each of those persons agrees to observe the platform rules to the extent that they apply to the person and to engage in conduct that the person is required by the platform rules to engage in.

Note: A failure to comply with the platform rules may be a breach of an implied warranty (see section 12ED of the ASIC Act.)

- (3) However, if there is an inconsistency between the platform rules of the platform, and any of the following other instruments:
  - (a) the transactional and settlement standards;
  - (b) an instrument of a kind prescribed by the regulations for the purposes of this paragraph;those other instruments prevail over the platform rules to the extent of the inconsistency.

## **912BH Prohibition by the Minister—transactions etc. involving certain financial products must not happen through digital asset platforms or tokenised custody platforms**

### *Prohibition*

- (1) The Minister may, by legislative instrument, declare that conduct involving a specified financial product must not happen through:
  - (a) a specified digital asset platform; or
  - (b) a specified tokenised custody platform;if one or more of the financial services authorised by an Australian financial services licence relate to the issuing of the platform.

Note 1: Such a licensee must comply with this prohibition (see section 912BD).

Note 2: The Minister could, for example, declare that a particular class of financial products must not be held as underlying assets of a particular digital asset platform or tokenised custody platform.

Note 3: A declaration may:

- (a) declare one or more classes of conduct; or
- (b) specify one or more (or all) classes of financial products or platforms;

(see subsection 13(3) of the *Legislation Act 2003*).

# EXPOSURE DRAFT

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Note 4: In making a declaration, the Minister must have regard to the matters in subsection 912BI(1).

- (2) The prohibition may apply:
- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the *prohibition duration*).

*Varying or revoking a prohibition*

- (3) The Minister may, at any time by legislative instrument, make a declaration:
- (a) varying a prohibition declared under subsection (1) to:
    - (i) impose conditions, or additional conditions, on the prohibition; or
    - (ii) vary or revoke any of the conditions on the prohibition; or
    - (iii) extend or shorten the prohibition duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoking a prohibition declared under subsection (1).
- (4) However, the Minister may only take action under subsection (3) after:
- (a) giving notice, and an opportunity to make submissions on the proposed action, to each financial services licensee known by the Minister to be covered by the prohibition; and
  - (b) both:
    - (i) the Minister has caused a notice to be published on ASIC's website allowing a reasonable period within which each financial services licensee covered by the prohibition may make submissions on the proposed action; and
    - (ii) that period has ended.

**912BI Prohibition by the Minister—matters to which the Minister has regard**

- (1) In considering whether to make a declaration under subsection 912BH(1) or (3) prohibiting conduct in relation to one or more financial products, the Minister must have regard to:

# EXPOSURE DRAFT

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- (a) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
- (b) any impact on the provision of digital asset platforms or tokenised custody platforms (as applicable); and
- (c) the likely regulatory impact; and
- (d) whether the conduct or financial products have resulted, or will or are likely to result, in significant consumer detriment; and
- (e) any relevant advice the Minister has received under subsection (3).

- (2) The Minister may also have regard to any other matters that the Minister considers relevant.

*ASIC, APRA or Reserve Bank may advise the Minister*

- (3) ASIC, APRA or the Reserve Bank may (on its own initiative) and must (at the request of the Minister):
- (a) consider whether a declaration under subsection 912BH(1) or (3) should be made; and
- (b) advise the Minister accordingly.

## **37 Paragraph 912D(3)(a)**

Omit “or 912B”, substitute “, 912B, 912BB, 912BC or 912BD”.

## **38 Subsection 1317E(3) (after the table item dealing with subsection 912A(5A))**

Insert:

|               |   |               |
|---------------|---|---------------|
| section 912BB | complying with standards                        | uncategorised |
| section 912BC | having adequate platform rules                  | uncategorised |
| section 912BD | licensee must comply with declared prohibitions | uncategorised |

## **Division 2—Other matters**

### ***Corporations Act 2001***

## **39 At the end of subsection 921C(1)**

Add:

# EXPOSURE DRAFT

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- 1                   ; (d) the relevant financial products are digital asset platforms or  
2                   tokenised custody platforms that:  
3                   (i) are financial products only because of  
4                   paragraph 764A(1)(la); and  
5                   (ii) are not operated by constitutionally-covered  
6                   corporations.

## 40 After subsection 926A(5)

8                   Insert:

- 9                   (5A) Despite paragraph (2)(c), a declaration under that paragraph has no  
10                  effect to the extent that it relates to:  
11                  (a) a digital asset platform or a tokenised custody platform; or  
12                  (b) a platform in a class of digital asset platforms or tokenised  
13                  custody platforms;  
14                  in circumstances where:  
15                  (c) a provision resulting from the declaration does not relate to  
16                  the platform in connection with a financial service; and  
17                  (d) the platform:  
18                      (i) is a financial product only because of  
19                      paragraph 764A(1)(la); and  
20                      (ii) is not operated by a constitutionally-covered  
21                      corporation.

## 41 At the end of section 926B

23                  Add:

- 24                  (6) Despite paragraph (1)(c), a regulation made for the purposes of that  
25                  paragraph has no effect to the extent that it relates to:  
26                  (a) a digital asset platform or a tokenised custody platform; or  
27                  (b) a platform in a class of digital asset platforms or tokenised  
28                  custody platforms;  
29                  in circumstances where:  
30                  (c) a provision resulting from the regulation does not relate to  
31                  the platform in connection with a financial service; and  
32                  (d) the platform:  
33                      (i) is a financial product only because of  
34                      paragraph 764A(1)(la); and  
35                      (ii) is not operated by a constitutionally-covered  
36                      corporation.

# EXPOSURE DRAFT

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## Part 3—Financial services disclosure, financial product disclosure, and design and distribution requirements etc.

### *Corporations Act 2001*

#### 42 Section 9

Insert:

*DAP/TCP Guide* means a guide required to be given under section 1020AN.

*voting policy*, for a digital asset platform or tokenised custody platform, means a policy required under section 1020AP.

#### 43 After subsection 952E(4)

Insert:

(4A) A person does not contravene subsection (1) or (2) to the extent that the disclosure document or statement:

- (a) is a Financial Services Guide, Supplementary Financial Services Guide or website disclosure information; and
- (b) relates to a digital asset platform or tokenised custody platform; and
- (c) is defective in a part of the disclosure document or statement:
  - (i) for which another financial services licensee states it is responsible in the disclosure document or statement; and
  - (ii) that relates to the financial services that are to be or are likely to be performed by that other financial services licensee.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

#### 44 At the end of section 952G

Add:

- (11) A person does not contravene subsection (2), (4) or (6) to the extent that the disclosure document or statement:
- (a) is a Financial Services Guide, Supplementary Financial Services Guide or website disclosure information; and

# EXPOSURE DRAFT

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- (b) relates to a digital asset platform or tokenised custody platform; and
- (c) is defective in a part of the disclosure document or statement:
- (i) for which another financial services licensee states it is responsible in the disclosure document or statement; and
  - (ii) that relates to the financial services that are to be or are likely to be performed by that other financial services licensee.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

## 45 After subsection 953B(6)

Insert:

- (6A) A person is not liable under subsection (2) in a situation described in paragraph (1)(b) or (ba) to the extent that the disclosure document or statement:
- (a) is a Financial Services Guide, Supplementary Financial Services Guide or website disclosure information; and
  - (b) relates to a digital asset platform or tokenised custody platform; and
  - (c) is defective in a part of the disclosure document or statement:
    - (i) for which another financial services licensee states it is responsible in the disclosure document or statement; and
    - (ii) that relates to the financial services that are to be or are likely to be performed by that other financial services licensee.

## 46 Paragraph 994B(1)(b)

Repeal the paragraph, substitute:

- (b) under Part 7.9, the person is required to prepare:
  - (i) a Product Disclosure Statement for the product; or
  - (ii) a DAP/TCP Guide for the product; or

## 47 Section 1010B (heading)

Repeal the heading, substitute:

# EXPOSURE DRAFT

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## 1010B Part does not apply to financial products in some circumstances

### 48 At the end of section 1010B

Add:

*Digital asset platforms and tokenised custody platforms*

(3) A person who:

(a) is the operator of a digital asset platform or tokenised custody platform; or

(b) is otherwise involved in the operation or promotion of such a platform;

does not have to comply with Division 2 for a recommendation situation, an issue situation or a sale situation if the financial product for that situation is:

(c) the platform; or

(d) an equitable right or interest in another financial product arising because of a holding, or an offer to hold or arrange for the holding of, the other financial product through the platform.

Note: Disclosure obligations for these platforms are set out in Division 5D.

(4) A person does not have to comply with the designated provisions for a financial product if, because of subsection (3), the person does not have to comply with Division 2 for the financial product.

(5) In this section:

*designated provisions* are the following provisions of this Part:

(a) Divisions 3 to 5C (other than section 1017E);

(b) Division 6 (other than sections 1020D, 1020F and 1020G);

(c) Division 7 (other than section 1021O).

### 49 After Division 5C of Part 7.9

Insert:

# EXPOSURE DRAFT

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## Division 5D—Disclosure framework for digital asset platforms and tokenised custody platforms

### 1020AM Scope of this Division

This Division applies in relation to a digital asset platform or tokenised custody platform only if the platform is issued, or will be issued, by a financial services licensee in the course of a financial services business.

### 1020AN Giving a DAP/TCP Guide before issuing a platform

*Giving the Guide before issuing a digital asset platform or tokenised custody platform to a person as a retail client*

- (1) The licensee must, before issuing a digital asset platform or tokenised custody platform to a person as a retail client for the platform, give the person a DAP/TCP Guide that:
- (a) includes the information required by section 1020AO for the platform; and
  - (b) is written and presented in a clear, concise and effective manner.

Note 1: The Guide can consist of 2 or more documents if they are presented and given in a way that satisfies paragraphs (a) and (b).

Note 2: This subsection is a civil penalty provision (see section 1317E).

*Guide is no longer accurate*

- (2) However, the licensee must not give a person a DAP/TCP Guide if the licensee becomes aware that:
- (a) a material change has occurred to the information in it; or
  - (b) it has become misleading or deceptive or likely to mislead or deceive.

Note: This subsection is a civil penalty provision (see section 1317E).

*Circumstances affecting accuracy of Guides that have been given*

- (3) If:
- (a) the licensee gives a person a DAP/TCP Guide (the ***existing Guide***) in accordance with subsection (1); but

# EXPOSURE DRAFT

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- 1 (b) a new circumstance later arises so that the Guide no longer  
2 includes the information required by section 1020AO about  
3 the platform;  
4 the licensee must, as soon as practicable after the new  
5 circumstance arises, give the person:  
6 (c) updated information to enable the person to again readily  
7 have the information required by section 1020AO about the  
8 platform; and  
9 (d) objective advice about whether the updated information is,  
10 when compared with the information in the existing Guide,  
11 materially adverse to a retail client of the platform.
- 12 Note 1: The updated information could take the form of a “Supplementary  
13 DAP/TCP Guide”, and could include information about how to readily  
14 access particular information on a website.
- 15 Note 2: For paragraph (b), examples of a new circumstance include the  
16 licensee becoming aware of the matters in paragraph (2)(a) or (b).
- 17 Note 3: This subsection is a civil penalty provision (see section 1317E).

## 18 1020AO Content of a DAP/TCP Guide

- 19 (1) A DAP/TCP Guide must include all information a person would  
20 reasonably require for the purposes of making a decision, as a retail  
21 client, whether to become a client of the platform, including such  
22 information that the person would reasonably require to:  
23 (a) understand the nature of the platform and any risks  
24 associated with participation in the platform; and  
25 (b) identify:  
26 (i) the licensee (as the issuer of the platform); and  
27 (ii) any custodians of the platform; and  
28 (iii) the nature of the responsibilities of the issuer and of any  
29 custodians, and of the relationships between them; and  
30 (c) understand the method and extent of all charges associated  
31 with the platform, including any right of the issuer or any  
32 other person to recoup expenses from a client’s assets; and  
33 (d) understand any differences between the rights of a client and  
34 the rights of others under the platform, including information  
35 on:  
36 (i) cooling-off rights; and  
37 (ii) voting rights; and  
38 (iii) withdrawal rights; and

# EXPOSURE DRAFT

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- 1 (e) understand how and to whom a client may make a complaint  
2 in relation to:  
3 (i) the operation of the platform; and  
4 (ii) the underlying assets of the platform (where this is  
5 possible); and  
6 (iii) financial product advice provided to the client in  
7 relation to the platform that is not provided by or on  
8 behalf of the licensee; and  
9 (f) understand how the licensee, or any custodians of the  
10 platform, determine what is or will be available as underlying  
11 assets of the platform; and  
12 (g) understand any other matters prescribed by regulations made  
13 for the purposes of this paragraph.
- 14 (2) A DAP/TCP Guide must also include:  
15 (a) a statement that copies of the platform's voting policy are  
16 available free on request; and  
17 (b) a statement to the effect that the total fees and expenses  
18 payable by a client will include the costs of the platform; and  
19 (c) a statement to the effect that the fees and expenses for any  
20 conduct that:  
21 (i) can be engaged in under the platform; and  
22 (ii) is chosen by the client to be engaged in;  
23 will be in addition to the fees charged for the platform; and  
24 (d) examples, based on estimates, of the fees and expenses  
25 referred to in paragraphs (b) and (c), that satisfy any  
26 requirements prescribed by regulations made for the purposes  
27 of this paragraph; and  
28 (e) anything else prescribed by regulations made for the  
29 purposes of this paragraph.
- 30 (3) Despite subsection (1), that subsection does not require a  
31 DAP/TCP Guide to include publicly-available information,  
32 provided that the DAP/TCP Guide:  
33 (a) refers to the information; and  
34 (b) includes sufficient details about the information to enable a  
35 person to easily identify and locate it; and  
36 (c) states that the information can be obtained free from the  
37 licensee on request; and
-

# EXPOSURE DRAFT

- 
- (d) if any of the information is about any significant benefits to which a person will or may become entitled under the platform—includes a summary of that information; and
  - (e) if any of the information is about any significant risks associated with the platform—includes a summary of those risks.

## 1020AP Having and administering a platform voting policy

- (1) The licensee must, before issuing a digital asset platform or tokenised custody platform to a person as a retail client for the platform, ensure that there is a policy (the *voting policy*) for the platform that:
  - (a) deals with the exercise of any voting or governance rights arising for:
    - (i) the underlying assets of the platform; and
    - (ii) any other asset that is otherwise held or possessed through the platform; and
  - (b) includes the information required by section 1020AQ for the platform; and
  - (c) is written and presented in a clear, concise and effective manner.

Note: This subsection is a civil penalty provision (see section 1317E).

- (2) The licensee must ensure that the voting policy:
  - (a) is kept accurate; and
  - (b) is administered for the platform by the licensee or by a custodian of the platform.

Note: This subsection is a civil penalty provision (see section 1317E).

## 1020AQ Content of a platform's voting policy

A platform's voting policy must:

- (a) identify any rights a client of the platform will have in relation to any voting or governance rights arising for:
    - (i) each underlying asset of the platform; and
    - (ii) any other asset that is otherwise held or possessed through the platform;
- for the client (whether directly or through a nominee); and

# EXPOSURE DRAFT

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- (b) state whether a client of the platform may instruct the licensee, or a custodian of the platform, (the *authority*) about the exercise of any such voting or governance rights; and
- (c) if the client may give such instructions:
- (i) require the authority to vote only when, and as, instructed by the client (including under a standing instruction); and
  - (ii) require clients to be given, as soon as practicable, copies of any relevant information received by the licensee or a custodian in relation to the assets that are the subject of the voting or governance rights; and
  - (iii) identify how copies of this relevant information are to be given to clients; and
  - (iv) identify the steps that are to be taken after voting instructions have been communicated by a client to the authority; and
  - (v) identify whether any costs are to be charged to the client for exercising voting or governance rights; and
- (d) if the client may not give such instructions—require the authority not to exercise any such voting or governance rights.

## **1020AR Disclosure obligations for underlying assets etc. of platforms**

### *Giving copies of communications about related assets*

- (1) If:
- (a) a financial product, or a prescribed digital token, (the *asset*):
    - (i) is an underlying asset of a digital asset platform or tokenised custody platform; or
    - (ii) is otherwise held or possessed through such a platform; for a client of the platform (whether directly or through a nominee); and
  - (b) communications are required by law to be given to the person who holds or possesses the asset (including communications required to be given on request);
- the licensee who issues the platform must, on request, ensure the client is given a copy of such communications as soon as practicable after the communications are received by the licensee or by a custodian of the platform.

# EXPOSURE DRAFT

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Note 1: The platform needs to be one that is issued, or will be issued, by a financial services licensee in the course of a financial services business (see section 1020AM).

Note 2: This subsection is a civil penalty provision (see section 1317E).

- (2) The client's request may be for a particular communication, or may be a standing request for one or more classes of such communications.

*Disclosure requirements relating to acquisitions of prescribed digital tokens*

- (3) Regulations made for the purposes of this subsection may prescribe disclosure obligations before an acquisition of a prescribed digital token, by way of issue or sale, happens because of an instruction given:

- (a) under a digital asset platform or tokenised custody platform; and
- (b) by a client of the platform (whether directly or through a nominee).

- (4) Without limiting subsection (3), such obligations could be imposed on one or more of the following:

- (a) the licensee who issues the platform;
- (b) a custodian of the platform;
- (c) a person who is to issue or sell the prescribed digital token.

Note: The platform needs to be one that is issued, or will be issued, by a financial services licensee in the course of a financial services business (see section 1020AM).

- (5) A person must comply with an obligation imposed on the person by regulations made for the purposes of subsection (3).

Note: This subsection is a civil penalty provision (see section 1317E).

*Definitions*

- (6) In this section:

***prescribed digital token*** means a digital token that:

- (a) is not a financial product; and
- (b) is of a class prescribed by regulations made for the purposes of this paragraph.

1 **50 At the end of section 1020D**  
2 Add:  
3 ; or (c) if the acquisition occurs in circumstances in which the party  
4 is required by Division 5D to have been given a DAP/TCP  
5 Guide for the product—taken to have notice of any contract,  
6 document or matter not specifically referred to in:  
7 (i) a DAP/TCP Guide given to the party; or  
8 (ii) any information or advice given under subsection  
9 1020AN(3) to the party.

10 **51 Subsection 1317E(3) (after the table item dealing with**  
11 **subsection 1020A(5))**

12 Insert:

|                      |  |               |
|----------------------|--|---------------|
| subsection 1020AN(1) | giving a DAP/TCP guide                           | uncategorised |
| subsection 1020AN(2) | not giving a DAP/TCP guide if no longer accurate | uncategorised |
| subsection 1020AN(3) | giving updated information or advice             | uncategorised |
| subsection 1020AP(1) | having a platform voting policy                  | uncategorised |
| subsection 1020AP(2) | administering an accurate platform voting policy | uncategorised |
| subsection 1020AR(1) | disclosing copies of communications              | uncategorised |
| subsection 1020AR(5) | complying with disclosure obligations            | uncategorised |

# EXPOSURE DRAFT

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## Part 4—Product intervention orders

### *Corporations Act 2001*

#### **52 Section 1023B**

Before “In”, insert “(1)”.

#### **53 At the end of section 1023B**

Add:

- (2) However, in this Part *financial product* includes a digital asset platform or a tokenised custody platform only to the extent that:
- (a) the platform is a financial product (within the meaning of Division 3 of Part 7.1) otherwise than because of paragraph 764A(1)(la); or
  - (b) the platform is, or is likely to be, available for acquisition by issue, or for regulated sale:
    - (i) by, or on behalf of, a constitutionally-covered corporation; or
    - (ii) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

# EXPOSURE DRAFT

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## Part 5—Market misconduct rules

### *Corporations Act 2001*

#### **54 At the end of Division 1 of Part 7.10**

Add:

#### **1040C How this Part applies in relation to digital asset platforms and tokenised custody platforms**

This Part applies in relation to a digital asset platform or a tokenised custody platform only to the extent that:

- (a) the platform is a financial product otherwise than because of paragraph 764A(1)(la); or
- (b) the platform is a financial product that is issued by, or on behalf of, a constitutionally-covered corporation; or
- (c) the platform is a financial product, and that any prohibited conduct (see Division 2) engaged in in relation to the platform is engaged in:
  - (i) by, or on behalf of, a constitutionally-covered corporation; or
  - (ii) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

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## Part 6—Exemptions

### *Corporations Act 2001*

#### 55 Section 9

Insert:

*intermediated staking arrangement*, for a digital asset platform, means an arrangement that:

- (a) is entered into by the operator of the platform and by a client of the platform (whether directly or through a nominee); and
- (b) is entered into through the facility that constitutes the platform; and
- (c) permits the operator to allow one or more of the underlying assets possessed under the platform for the client (whether directly or through a nominee) to be used for activities (*staking activities*) described in paragraph (b) of the definition of *public digital token infrastructure* if:
  - (i) the client; or
  - (ii) the nominee;expressly authorises the operator to do so; and
- (d) ensures that rewards from the staking activities, after deducting any fees and charges, are passed on to the client (whether directly or through a nominee); and
- (e) benefits the client in one or more of the following ways:
  - (i) by allowing the underlying assets to be returned earlier than if the client had participated in staking activities directly;
  - (ii) by allowing the underlying assets to be used in staking activities if the client would otherwise have insufficient assets to be able to participate in staking activities directly;
  - (iii) by protecting the client from, or by compensating the client for, any losses arising from the operation of public digital token infrastructure in relation to the underlying assets.

#### 56 Section 9 (before paragraph (n) of the definition of *managed investment scheme*)

Insert:

# EXPOSURE DRAFT

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(me) so much of a digital asset platform as relates to one or more intermediated staking arrangements, if the issuer of the platform holds an Australian financial services licence authorising the provision of financial services relating to the issuing of the platform;

(mf) public digital token infrastructure;

## 57 Section 9

Insert:

***public digital token infrastructure*** means any software, hardware, or combination of software or hardware, (the ***infrastructure***) if:

- (a) the infrastructure is used for transmitting, processing, or recording data relating to digital tokens; and
- (b) any person may contribute to the integrity, functionality and reliability of the infrastructure by transmitting, processing and recording such data transmitted by others without requiring permission from any person or persons; and
- (c) neither the use nor functionality of the infrastructure substantially depends on the actions or influence of any person or persons; and
- (d) the infrastructure is not set up so as to enable a person or group of persons to unilaterally control all the digital tokens maintained by the infrastructure; and
- (e) the infrastructure is not subject to rules governing its operation or use that can be unilaterally altered by a person or group of persons.

## 58 Before section 742

Insert:

### 741A Fundraising offers through a digital asset platform or tokenised custody platform

- (1) A person who makes an offer of securities:
- (a) under a digital asset platform or tokenised custody platform; and
  - (b) that needs disclosure to investors under Part 6D.2; and
  - (c) that results in the person lodging a disclosure document with ASIC;
- must promptly notify the operator of the platform, and each custodian for the platform, if any of the following events happens:

# EXPOSURE DRAFT

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- (d) a supplementary or replacement document is lodged with ASIC in relation to the disclosure document;
  - (e) the person is prohibited under Division 1 of Part 6D.3 from making offers of securities under the disclosure document;
  - (f) the disclosure document is withdrawn before the expiry date specified in the disclosure document.

(2) Nothing in Part 6D.2 or 6D.3 requires a disclosure document for offers of securities under a digital asset platform or tokenised custody platform to include information about:

- (a) the platform; or
- (b) the rights attached to the securities to the extent these rights differ from the rights that a person would have if they acquired the securities directly.

## **741B Fundraising exemptions relating to digital asset platforms and tokenised custody platforms**

A person who:

- (a) is the operator of a digital asset platform or of a tokenised custody platform; or
- (b) is otherwise involved in the operation or promotion of such a platform;

is exempt from Parts 6D.2 and 6D.3 in relation to an offer to issue equitable rights or interests in securities arising because of an offer to hold, or arrange for the holding of, the securities through the platform.

## **59 After paragraph 765A(1)(p)**

Insert:

- (pa) so much of a digital asset platform as relates to one or more intermediated staking arrangements, if the issuer of the platform holds an Australian financial services licence authorising the provision of financial services relating to the issuing of the platform;

## **60 After paragraph 765A(1)(x)**

Insert:

- (xa) public digital token infrastructure;

## **61 After paragraph 768A(2)(h)**

Insert:

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# EXPOSURE DRAFT

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(ha) conducting activities described in paragraph (b) of the definition of *public digital token infrastructure* (that paragraph describes staking activities);

## 62 Subsection 791C(7) (heading)

Repeal the heading, substitute:

*Exemption of classes of financial markets and persons*

## 63 After paragraph 911A(2)(j)

Insert:

(ja) the service is the issue of a digital asset platform if:

- (i) no financial products are held under any digital asset platform (a *relevant platform*) issued by a member of the person's closely-related group; and
- (ii) the total market value of transactions in the last 12 months through all relevant platforms does not exceed \$10 million; and
- (iii) whenever a digital token begins to be an underlying asset of a relevant platform for a client (whether directly or through a nominee), the total of the entry values of all underlying assets of all relevant platforms for the client does not exceed \$5,000; and
- (iv) the person has lodged with ASIC, in the prescribed form, notice that the person intends to rely on the exemption in this paragraph for digital asset platforms;

(jb) the service consists only of either or both of the following:

- (i) advising another person about the existence of a digital asset platform or tokenised custody platform;
- (ii) arranging for another person to use a digital asset platform or tokenised custody platform;

and when the person provides the service:

- (iii) the person does so in the ordinary course of the person's business; and
- (iv) such services are not a significant part of the person's business;

## 64 After subsection 911A(4A)

Insert:

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# EXPOSURE DRAFT

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(4B) An amount in the exemption under paragraph (2)(ja) is taken to be replaced by any higher amount prescribed in, or worked out using a method prescribed in, regulations made for the purposes of this subsection.

## 65 Subsection 911A(5)

Omit “(2)(k) or (l)”, substitute “(2)(ja), (k) or (l)”.

## 66 Paragraph 911A(5)(a)

Omit “(2)(k)”, substitute “(2)(ja) or (k)”.

## 67 Subsection 911A(6)

Insert:

***closely-related group***: a person’s ***closely-related group*** has the following members:

- (a) the person;
- (b) each associated entity of the person;
- (c) each entity for whom the person is an associated entity;
- (d) each entity who is connected with the person;
- (e) each entity that the person is connected with.

***entry value***, of a digital token that is an underlying asset of a digital asset platform, means the market value of the digital token when it begins to be an underlying asset of the platform.

## 68 After section 992AA

Insert:

### 992AB Exemptions relating to digital asset platforms and tokenised custody platforms

A person who:

- (a) is the operator of a digital asset platform or of a tokenised custody platform; or
- (b) is otherwise involved in the operation or promotion of such a platform;

is exempt from the other provisions of this Division in relation to an offer, request or invitation relating to a financial product that is:

- (c) the platform; or

# EXPOSURE DRAFT

- 
- 1 (d) an equitable right or interest in another financial product
  - 2 arising because of a holding, or an offer to hold or arrange for
  - 3 the holding of, the other financial product through the
  - 4 platform.

# EXPOSURE DRAFT

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## Part 7—Amendment of the ASIC Act

### *Australian Securities and Investments Commission Act 2001*

#### **69 After paragraph 12BAA(7)(la)**

Insert:

(lb) a digital asset platform or a tokenised custody platform;

#### **70 Subsection 12BAB(1AA)**

After “a financial product”, insert “(other than a digital asset platform, or a tokenised custody platform, that is a financial product only because of paragraph 12BAA(7)(lb))”.

#### **71 After paragraph 12BAB(7)(c)**

Insert:

(ca) in relation to a digital asset platform or a tokenised custody platform—any conduct of a client under the platform (after the platform has been issued to the client);

#### **72 After paragraph 12BAB(14)(c)**

Insert:

(ca) dealing in a digital asset platform, or the possessing of digital tokens under such a platform;

(cb) dealing in a tokenised custody platform, or the holding (within the meaning of section 761GD of the Corporations Act) of assets or digital tokens under such a platform;

#### **73 After section 12BAB**

Insert:

#### **12BAC Conduct relating to certain digital platforms is a financial service only if engaged in by, or on behalf of, a constitutionally-covered corporation**

Despite anything in section 12BAB, conduct that:

(a) relates to a digital asset platform, or a tokenised custody platform, that is a financial product only because of paragraph 12BAA(7)(lb); and

(b) would, apart from this section, be a financial service;

# EXPOSURE DRAFT

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is a *financial service* only if the conduct is engaged in by, or on behalf of, a constitutionally-covered corporation.

## 74 At the end of subsections 12BF(1), (2A) and (2C)

Add:

Note: Not all contracts that are digital asset platforms or tokenised custody platforms will be covered by this subsection (see subsection (9)).

## 75 At the end of section 12BF

Add:

(9) A reference in this section to a contract that is a financial product includes a digital asset platform or a tokenised custody platform only to the extent that the platform:

- (a) is a financial product otherwise than because of paragraph 12BAA(7)(1b); or
- (b) is issued:
  - (i) by, or on behalf of, a constitutionally-covered corporation; or
  - (ii) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

## 76 At the end of section 12BLC

Add:

(3) If:

- (a) a financial services licensee is a party to a contract with one or more other persons; and
- (b) either:
  - (i) some or all of the contract exists because of the platform rules of a digital asset platform or tokenised custody platform operated by the licensee; or
  - (ii) the licensee is the issuer of a digital asset platform or a tokenised custody platform;

this Subdivision does not apply to so much of the contract as exists in order for the licensee to comply with section 912BB of the Corporations Act.

Note 1: Section 912BB of the Corporations Act requires compliance with standards relating to such a platform.

# EXPOSURE DRAFT

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Note 2: Such a standard could require the contract to include a particular term, in which case this subsection means that this Subdivision does not apply to that term of the contract.

## 77 At the end of subsection 12DK(6)

Add:

- ; and (d) a reference to a financial product includes a facility that:
- (i) is a digital asset platform or tokenised custody platform; and
  - (ii) is a financial product only because of paragraph 12BAA(7)(lb); only to the extent that the platform is operated, or is likely to be operated:
  - (iii) by, or on behalf of, a constitutionally-covered corporation; or
  - (iv) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

## 78 At the end of section 14

Add:

- (5) Paragraph (2)(j) applies in relation to a facility that:
- (a) is a digital asset platform or tokenised custody platform; and
  - (b) is a financial product only because of paragraph 12BAA(7)(lb); only to the extent that the conduct referred to in paragraph (2)(j) is engaged in:
  - (c) by, or on behalf of, a constitutionally-covered corporation; or
  - (d) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

## 79 After subsection 41(2)

Insert:

- (2A) Subsection (2) applies in relation to a person and a facility that:
- (a) is a digital asset platform or tokenised custody platform; and
  - (b) is a financial product only because of paragraph 12BAA(7)(lb); only to the extent that:
  - (c) the person is a constitutionally-covered corporation; or

EXPOSURE DRAFT

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- (d)

the person acquired or disposed of the platform using a

postal, telegraphic, telephonic or other like service (within

the meaning of paragraph 51(v) of the Constitution); or

(e)

if there is another person as described in subsection (2)—the

other person is a constitutionally-covered corporation.

# EXPOSURE DRAFT

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## Part 8—Application and transitional provisions

### *Corporations Act 2001*

#### 80 In the appropriate position in Chapter 10

Insert:

## Part 10.83—Transitional provisions relating to the Treasury Laws Amendment Act 2025

### 1730 Definitions

(1) In this Part:

*AFSL* means an Australian financial services licence.

*amended Corporations Act* means this Act as in force on commencement.

*commencement* means the day Schedule 1 to the *Treasury Laws Amendment Act 2025* commences.

Note: This is the day after the end of the 12-month period beginning on the day that Act receives the Royal Assent.

*DAP/TCP amendments* means the amendments made by Schedule 1 to the *Treasury Laws Amendment Act 2025*.

*DAP/TCP financial service* means a financial service relating to:

- (a) a digital asset platform; or
- (b) a tokenised custody platform.

*first transition period* means the 6-month period starting on commencement.

*second transition period* means:

- (a) the 12-month period starting on commencement; or
- (b) any longer period determined under subsection (2).

(2) The Minister may, by legislative instrument, determine a transition period that ends after the 12-month period starting on commencement.

# EXPOSURE DRAFT

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## 1731 Application of amendments to financial services—general

The DAP/TCP amendments apply in relation to a DAP/TCP financial service to the extent that the service is provided on or after commencement.

## 1732 Transitional—delay in how amendments apply for AFSLs

- (1) Despite section 1731, the DAP/TCP amendments do not apply in relation to the provision of a DAP/TCP financial service at any time during the first transition period while the following person (the *responsible person*):
- (a) if the person providing the service is doing so not as an agent or representative of any other person—the person providing the service;
  - (b) otherwise—the person on whose behalf the service is being provided;
- does not hold an AFSL that is subject to a condition authorising the provision of the service.

Note: This subsection applies if the responsible person:

- (a) does not hold an AFSL at all; or
- (b) holds an AFSL that authorises only the provision of other services.

- (2) However:

- (a) during the first transition period, the responsible person may apply under the amended Corporations Act for ASIC to decide whether or not to:
  - (i) grant the responsible person an AFSL that is subject to a condition authorising the provision of the service; or
  - (ii) vary the conditions on the responsible person's AFSL to authorise the provision of the service; and
- (b) ASIC may make such a decision under the amended Corporations Act in response to the application.

- (3) Despite section 1731, if the responsible person applies as described in paragraph (2)(a) of this section, the DAP/TCP amendments do not apply until the earliest of the following:

- (a) the day (if any) that ASIC makes the decision described in that paragraph in response to the application;
- (b) the day after the end of the second transition period.

# EXPOSURE DRAFT

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Note: If the responsible person fails to apply during the first transition period, then the DAP/TCP amendments will start to apply immediately after the first transition period.

## **1733 Application of amendments otherwise than in connection with financial services**

If a provision of the amended Corporations Act:

- (a) relates to a digital asset platform or tokenised custody platform; but
- (b) does not relate to the platform in connection with a financial service;

then the DAP/TCP amendments of that provision apply in relation to the platform only if the platform is, or is to be, issued on or after commencement.

## **1734 Acquisition of property**

- (1) Despite section 1350, sections 1731 to 1733 do not apply, and are taken never to have applied, to the extent that their operation would result in an acquisition of property from a person otherwise than on just terms.
- (2) In subsection (1), *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

## **1735 Regulations**

- (1) The regulations may make provisions of a transitional, application or saving nature relating to this Part and the amendments and repeals made by the amending Schedule.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.