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Senate Standing Committees on Economics
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SUBMISSION TO DIGITAL ASSETS (MARKET REGULATION) BILL 2023

BTC Markets welcomes the opportunity to comment on the Digital Assets (Market Regulation) Bill 2023 ('the Bill'). We broadly support licensing for digital assets, including exchanges and custody services, and believe that it is important that regulation balances the requirements of investor protection without smothering or otherwise, stifling innovation.

We support the overarching move towards regulation in the cryptocurrency space and appreciate that this move follows in the footsteps of the Markets in Cryptoassets (MiCA) Regulation which has recently undergone adoption in the European Union. Over the last couple of years, the European Union has been working towards its market and crypto asset regulation which will come into effect in 2024 and 2025. Their pragmatic approach states an intent to not regulate innovation out, but rather, they are going to regulate innovation in. We are of the belief that the same mindset should be adopted and applied here in Australia.

<u>Digital Asset Licenses.</u>

BTC Markets agrees with the stated outcomes of a licensing regime – "a fair, orderly and transparent" digital asset market. Similarly, we agree in theory with a minimum capital amount; the regulation of exchange participant conduct and protection; market monitoring; asset segregation; and reporting and disclosure obligations. As a currently operating business, however, we need further clarity as to the exact details of this proposal. For instance, the specific minimum capital requirements; potential uplift needed on market monitoring; the nature of the reporting etc.

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In relation to Digital Asset Custody

BTC Markets believe that custodial services, or the safeguarding of assets, is a core tenet of the digital asset industry. While the outcome is the same, we believe the execution differs in the digital assets space versus in traditional finance. Primarily, the reality that the holder of the key controls the digital asset versus centralised registrars recording ownership of traditional securities. There is also an option of self-custody with digital assets that provides clients with alternative solutions. Regulation may need to consider an education requirement for clients to understand the differing risk profiles of each solution.

We agree with the need to segregate client assets; adhere to prudent capital requirements; and currently submit ourselves to regular auditing. We fundamentally agree that the key persons with custody over Australian client assets, needs to be based within Australia. Recent and repeated examples have demonstrated that need along with real impacts in cases where there was insufficient duty of care.

Currently, a majority of centralised digital asset exchanges also operate as custodian (versus non-custodial option.) Therefore, if there was a requirement for a custodial license, exchanges would require a grace period to determine the next course of action. The question would also include the timings involved – how long it may take to apply for a custodial license and what would happen to their crypto custody in that time frame; do they integrate with a third-party custodial partner on the promise of their potentially successful application; do they become non-custodial as a business model. In the BTC Markets experience, the technical process of integrating with an external custodial partner can be lengthy. While the draft regulation allows for 9 months (6 months post Royal Assent, 3 months transition) this may not be enough time in our view.

MiCA provides a timeline for license applications to be processed (3 months) which gives all stakeholders clear expectation management. Helpful for business planning, helpful for end clients, and helpful for regulators to apply appropriate resources. The question is whether Australia can follow suit to remain internationally competitive to our peers.

There are also considerations around client education as, inevitability, regulation will increase operational costs for a service that is currently integrated in client fees.

There is also a question of whether local custodian requirements would extend to brokers who purchase and have custody arrangements via international exchanges. Will they be required to disclose where their assets are held for instance?

Powers Vested to ASIC

Eventually digitisation will impact all industries and sectors, with digital assets as a biproduct. If ASIC becomes the regulator of all trading in digital assets, it may need to reconsider the characteristics of the target market it is serving. This may have policy implications for the shape, size, and resourcing of the ASIC's remit, as the size of the digital asset market and transferability of digital assets exponentially grows. This also begs the question of whether regulators from traditional finance backgrounds have the means to oversee this large of a market, or if it warrants a new body of regulators altogether.

As an organisation, we are committed to supporting the growth of digital finance in Australia. BTC Markets would welcome the opportunity to discuss any of the points raised in more detail.

Yours sincerely,

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CEO, BTC Markets.