



ASIC

Australian Securities & Investments Commission

ASIC update: Initial coin offerings and cryptocurrency

*A speech by John Price, Commissioner,
Australian Securities and Investments Commission*

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CHECK AGAINST DELIVERY

Thank you all for coming along tonight – I know the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Taxation Office (ATO) will agree that it's fantastic to have both technology developers and industry in the room tonight, as well as others from the sector.

I want to say thank you to our host Tyro FinTech Hub for providing the venue. And I also want to thank Adriana Belotti and Jason Williams from the Sydney Blockchain Professionals Meetup group and Kim Heras of the Sydney Fintech Startups Meetup group for helping us coordinate this event and get the word out to your group members.

I wanted to begin by highlighting that building trust is a key challenge we all face in promoting fintech.

This includes building trust in the infrastructure, as those working on blockchain solutions are well aware, as well as trust in people.

Scams are corrosive when it comes to building any form of trust, and we all have a role to play in making sure they don't happen.

Tonight, I'll be focusing on how ASIC is engaging with initial coin offerings (ICOs) and cryptocurrencies – including resources we have developed to assist you, how best to engage with us and a few things we want everyone to be very mindful of regarding misleading or otherwise inappropriate activity.

Firstly, as we have a few regulators in the room tonight, I'll spend a moment explaining where ASIC fits into Australia's financial regulatory framework.

ASIC is Australia's corporate, markets and financial services regulator.

We contribute to Australia's economic reputation and wellbeing by ensuring that Australia's financial markets are fair and efficient, supported by confident and informed investors and consumers.

We are determined – as are you – to see Australia's innovative fintech and regtech flourish in the right regulatory environment, and that means maintaining an open mind when it comes to new technologies and 'early-days' business models.

But – and this is an important 'but' – ASIC must be focused on both protecting Australian consumers and facilitating innovation across the financial services industry.

When it comes to cryptocurrencies and our engagement with ICOs, this position is no different and we believe that this aligns with the industry's interests to build a more mature sector that can sustain longer term public confidence.

If you are acting with someone else's money, or selling something to someone, you have obligations placed upon you.

This includes when individuals seek to raise funds via the issuance of digital tokens or coins.

These obligations will depend on the precise nature of the undertaking, and the type of token issued. But, whatever the structure, there is a basic obligation not to mislead or deceive through any offers or marketing.

What is ASIC doing?

There's been a lot of talk about ICOs and cryptocurrencies in recent times, so I'm sure you are all very keen to learn exactly what is being done at present by regulators.

At ASIC we are addressing interest from consumers, investors, entities, advisers, service providers and intermediaries – over the past year, we have engaged with more than 200 businesses or people on ICOs or cryptocurrencies either through our [Innovation Hub](#) or related business units.

Still on the engagement front, we are working and sharing information with other domestic and overseas regulators as they clarify how cryptocurrency is regulated across taxation, anti-money laundering, payment systems and financial services.

We have worked closely with the Australian Competition and Consumer Commission (ACCC) to deliver a delegation of power that allows ASIC to take action if there are allegations of conduct that contravenes the Australian Consumer Law, regardless of whether a financial product or service is involved.

Now, obviously this is a complex regulatory topic and there are a few moving parts at the moment, so I wanted to spend some time explaining the practical resources ASIC has developed for those of you looking to enter this area.

Last year we released [Information Sheet 225](#) *Initial coin offerings*, which provides guidance for entities considering an ICO.

It explains that the legal status of an ICO is dependent on the circumstances of the ICO, such as how it is structured and operated as well as the rights attached to the token.

Regardless of the structure, however, there is one law that will always apply – you can't make misleading or deceptive statements about the product. This is going to be a key focus for us going forward.

The information sheet further explains that where a token offered through an ICO is a financial product, additional laws may apply. For example, an ICO could be:

- a *managed investment scheme*, where the value of the digital coins acquired is affected by the pooling of funds from contributors or they are arranged to be collectively managed
- an *offer of shares*, where the rights attached to the token are similar to those attached to a share, such as ownership of the body, voting rights or rights to participate in the profit
- an *offer of a derivative*, where the token is priced based on factors such as an underlying market or asset price, and price movements resulted in a payment obligation
- a *non-cash payment facility*, where there is an arrangement for payments to be made to a number of payees in this form.

It is also important to mention that platforms that enable trading in tokens that are financial products may well be financial markets.

I wanted to flag to you all this evening that we will be making some updates to the information sheet in the coming weeks.

We will include questions that we feel should be explained to all potential investors, consumers or users.

These questions are also intended to encourage sound business decision making.

We will also expand the scope of the information sheet to include more on cryptocurrencies.

We will highlight that Australian corporate and consumer law might apply – even if the ICO is created and offered from overseas. This is an important point given the international nature of this sector.

Finally, we will also highlight information on how Australian law prohibiting misleading or deceptive conduct will apply in this space. As I said before, I think you can expect a strong focus from us in this area.

Some things to consider

The development of innovative technologies like blockchain and ICOs has the potential to revolutionise how our society engages with financial products and services, but with revolution comes risk, and I wanted to take some time now to talk about a few concerns that we need to address collectively:

- There is a certain level of opportunism – including businesses or people looking to undertake an ICO because it is seen as an easy, low regulation and low cost option which could lead to immature businesses coming to market. The stories that come out about these businesses are, and will continue to have, a negative impact on investor confidence over time.
- There exists a perception that Australian regulations don't apply or can be avoided by engaging in an activity from overseas. I cannot stress enough that if you are doing business here and selling something to Australians – including issuing securities or tokens to Australian consumers – our laws here can apply.
- There are also risks relating to poor governance or business practices around the sale of tokens and manipulation of prices.
- And risks also exist if poor levels of information are given to investors before or after token sales.
- Finally, it's not directly related to ASIC, but traceability in relation to anti-money laundering/know your customer (AML/KYC) is something that we'll hear more about tonight.

These concerns undermine the market integrity of token-based products and services, and can ultimately impact on the attractiveness of the sector and affect its credibility within the broader financial system.

To avoid them, I strongly encourage you to consider our guidance and also to seek proper advice on your business.

Engaging with ASIC

I urge you all to read our updated information sheet on ICOs and cryptocurrencies as a starting point, and get in touch with us via your existing contacts at ASIC or through our [Innovation Hub](#), to talk about your business model as early in your business planning process as possible.

We do ask however that you consider your own obligations before you get in touch so that we have the right level of information to offer some informal assistance. This could be by seeking advice or doing your own research.

Things to consider include the nature of the ICO or cryptocurrency, as well as the information provided to investors.

ASIC cannot provide formal legal advice, but the Innovation Hub can help by providing pointers and identifying things that you might need to consider from a regulatory perspective.

I want to end things tonight by reiterating that ASIC will continue to be proactive and forward looking when it comes to innovation.

But, if there is one main thing I need you all to take away from ASIC tonight, it is we are dealing with real people's money and ASIC's support cannot come at the expense of basic consumer protection and the necessity to prevent investors and their funds being unfairly parted.

On that note, I'll wrap things up and see you at the end for questions.