

**To:** Bermuda Monetary Authority  
BMA House  
43 Victoria Street  
Hamilton  
HM12

**Date:** 9 December 2024

Coinbase Global, Inc. (together with Coinbase Bermuda Limited, Coinbase Bermuda Services Limited, and its other subsidiaries, "**Coinbase**") appreciates the opportunity to respond to the Proposed Amendments to the Digital Asset Business Act 2018 ("**DABA**") and the Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018 ("**Consultation**") published by the Bermuda Monetary Authority ("**BMA**").

Coinbase started in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the United States and provide a trusted and easy-to-use platform that millions of verified users in over 100 countries rely on to access the crypto economy.

Coinbase appreciates the BMA's continued effort to develop the legislative and regulatory framework for digital asset businesses ("**DABs**") to support responsible innovation. Protecting users and maintaining market confidence are integral as digital asset adoption grows, and we applaud the BMA for taking critical steps to meet these goals.

At the same time, we encourage the BMA to continue to apply the principle of proportionality to regulation to ensure that its regulation remains fit-for-purpose and encourages innovation. We look forward to supporting the BMA in this important work.

Yours sincerely,



Tom Duff Gordon, Vice President,  
International Policy, Coinbase



Scott Bauguess, Vice President,  
Global Regulatory Policy, Coinbase

## Introduction

Coinbase welcomes the opportunity to respond to the Consultation. We commend the BMA for continuing to be a leader in digital asset regulation and for its thoughtful approach to a rapidly-evolving, unique sector. We encourage the BMA to continue taking an incremental approach to DAB regulation, to use experience and evolution of practices as the basis for updates to DABA, and to engage stakeholders through a public consultative process.

The core requirements proposed in the Consultation—asset segregation, appropriate liquidity, capital requirements, accurate marketing, and wind-down planning for DABs—are fundamental to maintaining a trusted and robust digital asset sector in Bermuda. Customer trust is of the utmost importance, and we applaud the BMA for taking steps to ensure that customers are protected and that the DABs that service them are able to weather a variety of scenarios.

As the BMA implements the proposed changes, we support a proportional approach that strikes the critical balance between the appropriate risk-management requirements of a given business model with the ability of that business to continue to offer innovative products to Bermuda customers. We offer more detailed comments below and look forward to continuing to work with the BMA on these issues.

## Amendments to DABA

### *Definition of "Control of Assets"*

**Question 3 – Do you have any comments in relation to the Authority's intention to clarify expectations of the licensees who control client assets by defining 'control of assets' and expanding the scope of sections 17 and 18 of DABA?**

Coinbase already complies with the DABA custodial requirements applicable to our exchanges and we are grateful that the BMA is clarifying the scope of custodial obligations to ensure that customers are protected no matter where in Bermuda they trade. The protection of customer assets is the bedrock component of any effective regulatory regime, and we applaud the BMA for ensuring that customers come first.

**Question 4 – Do you agree with the proposed 'control of assets' definition?**

Yes. The definition helps to clarify the scope of custodial obligations across DABs. Over time, more specific guidance may be required to understand how the definition is intended to operate in the context of new products (such as tokenisation of securities) in this evolving space.

**Question 5 – Do you have any comments in relation to the proposal to introduce additional rule-making powers for the Authority to effectively administer the Act?**

The BMA suggests giving itself rule-making authority over capital and solvency, a wind-down plan, net assets, and liquidity for DABs. Coinbase agrees that the BMA should have rule-making authority over these critical areas so that DABs are well-prepared to weather a variety of events. We look forward to further public engagement with the BMA on the specific rules it intends to apply in these areas and encourage the BMA to continue to be guided by its “proportionality principle”<sup>1</sup> so that requirements are appropriately applied to the operations and complexity of each DAB’s business.

We caution that one-size-fits-all requirements may stifle innovation in Bermuda. Most responsible DABs will gladly fund capital, liquidity, and insolvency planning requirements. Appropriately tailored requirements, then, will help to avoid unnecessarily diverting resources away from innovation.

### *Requirement for a Wind-Down Plan*

**Question 6 – Do you agree with the requirement for all DABs to prepare and maintain a wind-down plan to facilitate their orderly exit from the market in the case of an adverse event, insolvency, crisis, or a decision to cease operations? Are there any foreseeable challenges in relation to this proposed requirement? Please elaborate.**

Coinbase agrees with the requirements for DABs to maintain a wind-down plan. Wind-down plans help minimise the impact on customers from a DAB’s failure by making sure that customers’ assets can be returned in a timely manner and that businesses have appropriate resources and preparatory measures in place beforehand to manage this process smoothly. In stressed scenarios, an orderly wind-down pursuant to an ex-ante plan may also help to signal confidence to the broader market and thereby mitigate contagion. The existence of a wind-down plan may also provide a degree of comfort to DAB customers in Bermuda as well.

But, as with all requirements, we urge the BMA to take a proportional approach to ensure that a DAB’s policies, controls, and plans are commensurate with the nature, scale, and complexity of its businesses. One-size-fits-all rules should be avoided.

We also urge the BMA to recognise that DABs may be part of a larger corporate family that already maintains or will be required to maintain wind-down plans. In such

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<sup>1</sup> E.g., BMA, *The Insurance Code of Conduct (Revised)*, sec. 3, “Proportionality Principle” (Aug. 2022) (“...the Authority will assess the insurer’s adherence to the Code proportionately relative to its nature, scale and complexity. These elements will be considered collectively rather than individually...”); see also, DABA, sec. 12(6)(e) (“...an application fee which shall be an amount determined by the Authority commensurate to the nature, scale and complexity of the digital asset business...”); and DABA, Schedule 1, sec. 2(6) (“A licensed undertaking...shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of its digital asset business or has implemented such other risk mitigation measures as the Authority may agree”).

circumstances, the BMA should recognise that a DAB’s existing wind-down plan prepared for a DAB’s affiliate or parent entity may already or better satisfy the BMA’s expectations and requirements. In these circumstances, substitutive compliance rather than requiring a DAB wind-down on a standalone basis could be a better approach. This would be well aligned with the BMA’s supervisory objective “to ensure that adverse impacts on client interests and the digital asset market are minimised in the event of an exit from the market”<sup>2</sup> without placing duplicative operational burdens on businesses looking to operate in Bermuda.

**Question 7 – Do you have any comments in relation to the proposal to replace certain civil penalties with late fees for those who fail to file prudential and other returns or fail to provide a required notification to the Authority within a prescribed timeframe?**

Coinbase supports the BMA’s proposal to replace certain civil penalties with late fees for licensees who fail to file prudential and other returns or fail to provide a required notification to the BMA within a prescribed timeframe. As the Consultation recognises, late fees are more proportionate and dissuasive than civil penalties for such breaches.<sup>3</sup>

Civil penalties applied for these activities are too punitive for DABs, imposing stringent legal liability for compliance. Late fees, on the other hand, provide a more congruent framework for licensees that allow them to conduct business while also staying within the bounds of their responsibilities.

**Other Amendments to the Act**

We appreciate the opportunity to provide feedback on amendments to other parts of DABA.

**Question 8 – Do you have any comments in relation to the amendments being proposed to enhance the Authority’s enforcement power regarding the winding up of a licensed undertaking?**

Section 25 of DABA states that the BMA must petition the Court with respect to an entity whose license is to be revoked, and the Court can only agree to do so if it is “just and equitable.”<sup>4</sup> The BMA proposes to expand its enforcement power under Section 25 to present a petition to the Court for a winding up of an entity that has operated in contravention of *any* part of DABA, not just when the BMA petitions for a license to be revoked.<sup>5</sup>

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<sup>2</sup> Consultation at 6.

<sup>3</sup> Id.

<sup>4</sup> DABA sec. 25(1).

<sup>5</sup> Consultation at 8.

We urge the BMA to take a significantly more transparent, limited, and predictable approach to this amendment, and to commit publicly to exercising appropriate restraint when exercising its enforcement powers.

We propose that this enhanced authority only apply where a licensed undertaking is currently operating in contravention of material provisions of DABA, where such action is necessary to protect customers, and in accordance with clear standards that are consistently applied.

A petition to wind up an entity is an extreme measure and should only be exercised where no other options remain to protect customers, and certainly should not come as a significant surprise to market participants. Where the trigger for considering the winding up of an entity is a violation of the DABA, we urge the BMA to exhaust all other avenues that are reasonable under the circumstances prior to petitioning the Court for a wind up, for example, by first issuing a cease and desist order to the DAB. Petitioning for a wind up can have extremely adverse and irreversible effects on a business, triggering defaults under agreements and severely eroding customer trust, such that it should always be considered a last resort.

In light of these considerations, we fail to see why *any* violation of DABA should form the basis for such an extreme action or why it would be appropriate for the BMA to have such authority in respect of past violations. Instead, we encourage the BMA to take a more principled approach and identify the material breaches of the DABA that would lead the BMA to exercise its rights to petition a court to wind up a DAB.

**Question 9 – How important do you think it is to improve communication with the Authority by appointed persons? Not important, somewhat important, or very important?**

Ensuring open and effective two-way communication with the BMA is very important to Coinbase, and we greatly appreciate the efforts made by the BMA in this regard. Indeed, the BMA's willingness to engage in constructive dialogue with industry on matters of regulatory compliance and policy significantly contributes to Bermuda's position as a leader in digital asset regulation.

As digital asset adoption grows, we expect more entities will choose to register with the BMA. We encourage the BMA to continue to prioritise communication with appointed persons and to ensure that it has appropriate funding and staff to manage the increased volume of communication that we expect will be needed to effectively regulate this growing sector.

**Question 10 – Do you have any comments in relation to the proposal to prohibit DABs from publishing any advertisement that is misleading as it relates to their assets, financial standing, or any other material information?**

We strongly agree that DABs should be prohibited from publishing any advertisements that are misleading regarding a DAB’s assets, financial standing, or any other material information. However, we urge the BMA to clarify that this standard only applies to material information pertaining to the exchange itself and its operations, but not to information about the listed assets. Regarded as one of the most trusted exchanges globally, we seek to always be truthful and not misleading in our advertising. However, we do not think legal liability should attach to good faith statements made about assets trading on our exchange. The BMA should unambiguously clarify how the proposed requirement differs from or interacts with the existing DABA advertising requirements so that DABs have clarity in marketing their products and services.

**Question 11 – Do you have any comments in relation to the proposed amendments to enhance the Authority’s rule-making powers, including an expressed requirement for licensees to maintain minimum net assets, capital and liquidity in accordance with the prudent operation of the business?**

The BMA suggests an amendment to include an express requirement for licensees to maintain minimum net assets, capital, and liquidity in accordance with the prudent operation of the business. Consistent with our views regarding a wind-down plan, minimum licensing criteria for DABs should be based on the nature of the specific business or licensee rather than implementing one standard for all types of DABs. There are many factors that are relevant in determining the required level of net assets, including the nature, scale, complexity, and overall risk profile of a DAB.

For example, single currency pegged stablecoin issuers that limit backing assets to high qualified liquid assets and otherwise limit the amount of credit exposure to traditional (fractional reserve) bank intermediaries in their reserve management, have minimal financial risk. In this scenario, a lower level of net assets is required, with capital requirements primarily focused on operational risk.<sup>6</sup> Coinbase has done an extensive analysis of the capital requirements for stablecoins, finding that a capital buffer of a well-structured and properly regulated stablecoin on the order of one percent of the total amount of stablecoins outstanding should be sufficient to protect against financial and operational risks for an issuer that maintains a reasonably effective risk management program.<sup>7</sup>

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<sup>6</sup> Coinbase response to BMA, [Digital Asset Business Single Currency Pegged Stablecoins](#) at 12 (16 Jul. 2024).

<sup>7</sup> Coinbase response to UK FCA, [DP23/4 - Regulating Crypto Assets Phase 1: Stablecoins](#) at 54 (6 Feb. 2024).

Similarly, for perpetual futures and spot exchanges, the minimum licensing criteria must fit the operations and potential risks of futures and spot trading. Attaining minimum net assets of 12 months' operating expenses reduces the risk of insolvency in periods of high market volatility and decreases potential loss of a highly leveraged perpetual contract. Minimum liquidity should be sized to ensure the exchange is able to meet daily margin and payment obligations during a wide range of scenarios. Both of these are necessary to ensure that the exchange is not reliant on customers' margin funds to operate.

**Question 12 – How important do you think the proposed twelve-month transitional period is for licensed undertakings to align their operations with newly stipulated requirements? Not important, somewhat important, or very important?**

Coinbase believes that it is important for licensed undertakings to have an adjustment or transitional period to adequately meet the newly imposed requirements for controlling assets and formulating a wind-down strategy. It is integral that licensees will be afforded a timeline to align their operations with these stipulated requirements. A twelve month period generally allows licensees enough time to evaluate their own operations and produce a wind-down plan.

However, if the BMA chooses to issue more prescriptive regulations for the aforementioned requirements, twelve months may not be sufficient to complete the adequate filings. We look forward to further engagement with the BMA on the specific rules it intends to apply for transitional periods.

## **Amendments to the Annual Return**

**Question 23 – Are there any foreseeable delays or challenges that might impact your ability to complete and submit the proposed DAB Annual Return (alongside supporting documentation) by the required deadlines?**

There are no foreseeable delays or challenges impacting Coinbase's ability to complete and submit the proposed DAB Annual Return alongside supporting documentation. We appreciate the importance of regulatory reporting and are keen to ensure that BMA has the necessary visibility into these core areas. Nonetheless, these requirements require substantial effort to accurately complete, and the requirement to submit this Prudential Annual Return would mean that, by the end of April 2025, a DAB must submit: the Annual Return; the Annual Cyber Risk Return; the DABA Year End filing; as well as audited financial statements and certificate of compliance. Accordingly, we urge the BMA to continue to look for ways to streamline DABs' reporting obligations.