

STATEMENT OF CONCERNS

Grounds for hearing under section 994J of the Corporations Act 2001

HOLON INVESTMENTS AUSTRALIA LIMITED

Holon Bitcoin Fund

I. BACKGROUND

1. Holon Investments Australia Limited ACN 648 884 164 (**Holon**) holds Australian financial services licence number 532 669. Holon is the responsible entity of the registered managed investment scheme Holon Bitcoin Fund ARSN 659 090 294 (the **Fund**). The Fund provides investors with an exposure to the value of bitcoin through an institutional fund platform.
2. Holon issued a PDS for the Fund on 10 June 2022 (**PDS**) (**Attachment B**).
3. Holon has also issued a Target Market Determination (**TMD**) for the Fund dated 8 June 2022 (**Attachment A**). The TMD is available on Holon's website at <https://holon.investments/bitcoin-fund/> (direct link: <https://holon.investments/wp-content/uploads/2022/06/Holon-Bitcoin-Fund-TMD-08062022.pdf>).
4. The TMD set out the target market of the Fund in a table within a section called "Description of Target Market". Sub-sections provide details on the target market (i.e. "Consumer Attributes" sub-sections) and information on how to interpret these details. For example, the use of green/amber/red categories, which is explained in the "TMD Key Indicator" subsection as:

The Consumer Attributes for which the product is likely to be appropriate have been assessed using a red/amber/green rating methodology with appropriate colour coding:

Green: in target market

Amber: potentially in target market

Red: not considered in target market

and in the "Instructions" subsection as:

Generally, a consumer is unlikely to be in the target market for the product if:

- *one or more of their Consumer Attributes correspond to a red rating, or*
- *three or more of their Consumer Attributes correspond to an amber rating.*

5. Under the heading "Investment Products and Diversification", the TMD provides further information about the application of the TMD to an investment in the Fund:

A consumer (or class of consumer) may intend to hold a product as part of a diversified portfolio (typically with an intended product use of satellite/small allocation or core component). In such circumstances, the product should be

assessed against the consumer's attributes for the relevant portion of the portfolio, rather than the consumer's portfolio as a whole. For example, a consumer may seek to construct a conservative portfolio with a satellite/small allocation to growth assets. In this case, it may be likely that a product with a High or Very High risk/return profile is consistent with the consumer's objectives for that allocation notwithstanding that the risk/return profile of the consumer as a whole is Low or Medium. In making this assessment, distributors should consider all features of a product (including its key attributes).

6. Further, under the section titled 'Appropriateness', the TMD on page 3 outlines that:

The Issuer has assessed the product and formed the view that the product, including its key attributes, is likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market as described above, as the features of this product in Column 3 of the table above are likely to be suitable for consumers with the attributes identified with a green TMD Indicator in Column 2.

The Issuer considers that the distribution conditions below will make it likely that the investors who acquire units in the Fund are in the target market because of the following:

- *The Fund's advertisements and website content is directed towards consumers in the Fund's target market.*
- *The online and paper application forms for the Fund include filtering questions and alerts.*
- *The distributor's past performance for the distribution of financial products, about which the Issuer is aware.*
- *Any other relevant information about a distributor, about which the Issuer is aware.*

7. ASIC has reviewed the TMD and considers that the TMD contravenes paragraph 994B(8)(b) of the *Corporations Act 2001* (the Act), because:

- a) the TMD indicates that investors with a "medium" risk/return profile are potentially in the target market for the Fund and investors with a "high" risk/return profile are in the target market for the Fund when the Fund is not appropriate for investors with these attributes.
- b) the risk/return profile, as defined in the TMD, does not give sufficient regard to other important parameters that should define the "Very High" risk/return profile of an investor that is in the target market for the Fund; and
- c) the inclusion of an investor that intends to use the Fund as a "Satellite/Small Allocation (<25% of their investable assets)" or a "Solution/Standalone (75-100% of their investable assets)" in the target market is inappropriate.

8. The reasons for ASIC's concerns are set out in Part III of this Statement of Concerns.

II. RELEVANT LAW

9. Unless otherwise specified, statutory references in this document are to the Act.
10. Subsections (1) and (2) of s 994J of the Act relevantly provide:
 - (1) *This section applies if ASIC is satisfied that a provision of Division 2, or section 994E, has been contravened in relation to a financial product.*
 - (2) *ASIC may order, in writing, that specified conduct in relation to retail clients in respect of the financial product (except excluded conduct) must not be engaged in while the order is in force. The order is not a legislative instrument.*
11. “Division 2” means Division 2 of Part 7.8A of the Act. A “financial product” is defined in section 764A of the Act to include an interest in a managed investment scheme. For the purposes of Chapter 7 of the Act, a financial product or a financial service is provided to a person as a retail client unless subsection (5), (6), (6A) or (7) of section 761G or section 761GA, provides otherwise.
12. Subsection 994B(8) of the Act relevantly provides:

A target market determination for a financial product must be such that it would be reasonable to conclude that, if the product were to be issued, or sold in a regulated sale:

 - (a) *to a retail client in accordance with the distribution conditions—it would be likely that the retail client is in the target market.*
 - (b) *to a retail client in the target market--it would likely be consistent with the likely objectives, financial situation and needs of the retail client.*
13. “Target market determination” means a determination that is made as required by section 994B and meets the requirements of subsections 994B(5) and (8). A “regulated sale” means a sale in relation to which a Product Disclosure Statement must be given under subsection 1012C(5), (6) or (8). A “target market” for a financial product means the class of retail clients described in the target market determination for the product under paragraph 994B(5)(b).

III. ASIC’S CONCERNS IN RELATION TO THE TMD

14. ASIC considers that the TMD contravenes provisions of Division 2 of Part 7.8A of the Act (in particular, paragraph 994B(8)(b)), given it cannot reasonably be concluded that, if the product were to be issued or sold in a regulated sale to a retail client in the target market, it would likely be consistent with the likely objectives, financial situation and needs of the retail client.
 - A. That the target market potentially includes investors with a risk and return profile of “Medium” and includes investors with a risk and return profile of “High”**

15. In the “Consumer Attributes” section of the TMD under the heading “Consumer’s Risk (ability to bear loss) and Return profile” (Attachment A, page 3) (the **risk/return profile**), Holon has determined that investing in the Fund would likely be consistent with the likely objectives, financial situation and needs of a class of investors whose risk/return profile is “High” or “Very high” (by using a “Green TMD indicator”) and would potentially be consistent with the likely objectives, financial situation and needs of a class of investors whose risk/return profile is “Medium” (by using an “Amber TMD indicator”).

16. The TMD defines these risk/return profiles on page 6 as follows:

“Medium: The consumer is moderate or medium risk in nature, seeks to minimise potential losses (e.g. has the ability to bear up to 4 negative returns over a 20 year period (SRM 3 to 5)) and comfortable with a moderate target return profile.

Consumer typically prefers a balance of growth assets such as shares, property and alternative assets and defensive assets such as cash and fixed income.”

“High: The consumer is higher risk in nature and can accept potential losses (e.g. has the ability to bear up to 6 negative returns over a 20 year period (SRM 6)) in order to target a higher target return profile. Consumer typically prefers predominantly growth assets such as shares, property and alternative assets with only a smaller or moderate holding in defensive assets such as cash and fixed income.

Very high: The consumer has a more aggressive or very high risk appetite, seeks to maximise returns and can accept higher potential losses (e.g. has the ability to bear 6 or more negative returns over a 20 year period (SRM 7) and possibly other risk factors such as leverage). Consumer typically prefers growth assets such as shares, property, alternative assets and cryptocurrency.”

17. Holon has also included the following “Product Description” with respect to the risk and return profiles of investors as set out in the TMD on page 3:

“The Fund aims to target a higher target return profile with an aim to provide investors with a return that tracks the performance (before fees and expenses) of the Bitcoin price through an institutional quality fund platform. However, the returns from the Fund are not guaranteed and there is a high risk of short-term loss compared to other investment types but with the potential to deliver higher investment returns over the minimum suggested investment timeframe of 5 years. The key risks of the Fund include market risk and strategy risk. The Fund has a risk band of 6 (High) and may experience up to 6 negative returns over a 20-year period.”

18. The PDS, on page 3, discloses “Digital asset risk” as one of the significant risks of investing in the Fund:

“An investment in digital assets may be affected by unexpected changes in the digital asset’s operations and software development. The underlying protocol may fail to function and/or may be attacked and rendered inoperable. Digital assets are subject to extreme price volatility, being a significant, unstable rise in the value of the digital

asset. As a result, the underlying asset of the Fund could face a loss or lose all their value.”

19. The PDS also notes, on page 4, the “market risk” of investing in the Fund:

“The value of Fund assets and the performance of the Fund will be affected by the performance of cryptocurrency and other investment markets generally. The value of Bitcoin may go up or down in line with market movements. You may lose money on your investment in the Fund due to decreases in the price of Bitcoin held by the Fund or periods of below-average performance in cryptocurrency or other markets.”

20. The Fund invests up to 100% of its assets in bitcoin which is subject to extreme volatility and has the potential for severe negative returns. Specifically:

- a) Since 2014 to date (i.e. an 8-year investment horizon), bitcoin has experienced four periods where annual returns have been of negative returns.
- b) Additionally, during these 12-month periods of negative returns, bitcoin’s price declines have been very deep, with the largest decline being 75% between December 2017 and December 2018.

21. The Fund is also subject to the unique market and digital asset risks of bitcoin (e.g. cyber security, custody risk) that are addressed in the TMD and PDS and can affect movements in the price of bitcoin.

22. Given these historical returns and risk characteristics of bitcoin, an investment in the Fund is incompatible with an investor who has a “Medium” risk and return profile (being an investor who seeks to minimise potential losses and has the ability to bear up to 4 negative returns over a 20 year period) and a “High” risk and return profile (being an investor who has the ability to bear up to 6 negative returns over a 20 year period).

23. Therefore, ASIC considers the Fund’s investments in bitcoin are such that it would not be appropriate for investors with either a risk and return profile of “Medium” or High” to invest in the Fund.

24. Based on the above, ASIC is concerned that it would not be reasonable to conclude that, if the product were to be sold to a retail client in the target market as described in the TMD, being a retail client with risk and return profiles of “Medium” or “High”, that investment in the product would likely be consistent with the likely objectives, financial situation and needs of the retail client.

B. The Fund is not suitable for an investor with a ‘Very High’ risk and return profile as defined by the TMD

25. Please refer to paragraphs 15 to 17 for the relevant references to the PDS and TMD.

26. The TMD uses the ‘Standard Risk Measure’ (SRM) exclusively to define the risk and return profiles of investors who comprise the target market for the Fund. In respect of the risk and return profiles, Holon has included the following commentary on page 6 of the TMD:

“The Issuer has adopted the Standard Risk Measure (SRM) to calculate the likely number of negative annual returns over a 20-year period, using the guidance and methodology outlined in the Standard Risk Measure Guidance Paper for Trustees. The assessment has been undertaken assuming likely returns after fees and costs but before taxes. SRM is not a complete assessment of risk and potential loss. For example, it does not detail important issues such as the potential size of a negative return or that a positive return could still be less than a consumer requires to meet their investment objectives/needs.”

27. On page 3 of the Standard Risk Measure Guidance Paper for Trustees, it is noted that when disclosing an assessment based on the SRM, trustees should still consider other factors in relation to the risks of an investment option, including but not limited to the size of any potential negative return, market risk and other specific risks associated with each investment strategy (direct link: https://www.superannuation.asn.au/ArticleDocuments/359/FSC-ASFA_StandardRiskMeasures_July2011.pdf.aspx?Embed=Y).
28. The SRM indicates the number of years that an investor could expect to see negative returns, however it fails to consider the severity of losses in those years and the volatility of returns from an investment. ASIC considers that these risk characteristics of an investment are important considerations with respect to an assessment of whether an investment in bitcoin is suitable for an investor, because:
 - a) bitcoin has historically experienced very deep negative returns in periods of price declines (see paragraph 20 above); and
 - b) bitcoin has experienced significant price volatility over the last decade. Based on the standard deviation of monthly returns (annualised) over the last 8 years, bitcoin recorded a volatility level of 83%.
29. Given these significant risk characteristics of bitcoin, ASIC considers that an investment in the Fund is unlikely to be consistent with the objectives, financial situations and needs of an investor who has “Very High” risk and return profile, since this risk and return profile is solely defined by a limited measure of the Fund’s SRM based on a rating of 7 (i.e. the ability to bear 7 or more negative returns over a 20 year period). To satisfactorily define the risk and return profile of an investor who is in the target market for the Fund, ASIC is of the view that adequate consideration should be given to the investor’s ability to bear the potential depth of negative returns and volatility of an investment in bitcoin. There are investors included in the target market for the Fund that may fall within Holon’s limited definition of a “Very High” risk and return profile, but because of the significant volatility and deep negative returns in a given year, the Fund would not be suitable for them.
30. Based on this analysis, ASIC is concerned that it would not be reasonable to conclude that, if the product were to be sold to a retail client in the target market described in the TMD (being a retail client with a “Very High” Risk and Return Profile), that investment

in the product would likely be consistent with the likely objectives, financial situation and needs of the retail client and is therefore in breach of s994B(8)(b).

C. Retail clients that intend to use the product as a “Satellite/Small Allocation (<25% of their investable assets)” in their investment portfolio

31. The “Description of Target Market” section of the TMD under the heading “Consumer’s intended product use (% of Investable Assets)” includes within the target market investors seeking the Fund to form a part of a “Satellite/Small allocation (less < 25%)”, “Core Component (25-75%)”, or “Solution/Standalone (75-100%)” of their investment portfolio.
32. Holon in the TMD defines these intended product uses as (Attachment A, page 6):
 - “Solution/Standalone (75-100%): The consumer intends to hold the investment as either a part or the majority (up to 100%) of their total investable assets (see definition below). The consumer typically prefers exposure to a product with at least High portfolio diversification (see definitions below).*
 - Core Component (25-75%): The consumer intends to hold the investment as a major component, up to 75%, of their total investable assets (see definition below). The consumer typically prefers exposure to a product with at least Medium portfolio diversification (see definitions below).*
 - Satellite (<25%): The consumer intends to hold the investment as a smaller part of their total portfolio, as an indication it would be suitable for up to 25% of the total investable assets (see definition below). The consumer is likely to be comfortable with exposure to a product with Low portfolio diversification (see definitions below).”*
33. The term “Investable Assets” is defined as: “Those assets that the investor has available for investment, excluding the residential home.”
34. The portfolio diversification is categorised and defined by Holon in the TMD as:
 - “Low: Single asset class, single country, low or moderate holdings of securities - e.g. high conviction Aussie equities.*
 - Medium: 1-2 asset classes, single country, broad exposure within asset class, e.g. Aussie equities ‘All Ords’.*
 - High: Highly diversified across either asset classes, countries or investment managers, e.g. Australian multi-manager balanced fund or global multi-asset product (or global equities).”*
35. The TMD indicates that investors seeking a product as a “Satellite (<25%)” allocation of their investable assets are in the target market by using the green-coloured TMD indicator.

36. Section 5 of the PDS for the Fund describes the “Risk level of the Fund” as “High” in that “there is a risk that investors may lose some or all of their investment”. Section 4 of the PDS also notes the risk that the “concentration of investments in the Fund will reduce the potential benefit of diversification”, with “diversification having the potential benefit of reducing volatility of investment”.
37. In respect of the “Satellite” category, ASIC considers that the inclusion in the target market, via the green TMD-coloured indicator, of a retail client who seeks to allocate up to 25% of their investment portfolio in the Fund will mean that the Fund would not be likely to be consistent with the likely objectives, financial situation and needs of this retail client. A portfolio allocation of up to 25% into the Fund is likely to be an inappropriately high investment concentration in a single very high risk asset (i.e. bitcoin) for a retail investor, given that bitcoin is highly speculative, subject to extreme price volatility and deep negative returns compared to other high risk assets (see paragraphs 20 and 26 above). Even where the Fund is held by an investor with a “Very High” risk and return profile, ASIC maintains that an allocation of up to 25% is inappropriately high, since it would expose the investor’s portfolio to a level of risk that is significantly disproportionate to the potential diversification and growth benefits of bitcoin.
38. Based on the above, ASIC is concerned that it would not be reasonable to conclude that, if the product were issued or sold to a retail client in the target market, being an investor who looks to allocate up to 25% of their investment portfolio in the Fund, would be likely to be consistent with the likely investment objectives, financial situation and needs of the retail client. Therefore, ASIC considers that the TMD contravenes s994B(8)(b) of the Act.

D. Retail clients that intend to use the Fund as a “Solution/Standalone Allocation (75-100% of their investable assets)” of their investment portfolio are in the target market

39. The TMD states on page 3 under the heading “Product description including key attributes’ with respect to the “Consumer’s intended product use (% of Investable Assets)” that:
- “Investors should use the Fund as a Solution/Standalone allocation”.*
40. ASIC notes that this is inconsistent with the red “TMD indicator” that is given to the “Solution/Standalone (75-100%)” in respect of the “Consumer’s intended product use (% of Investable Assets)”.
41. The use of “Solution/Standalone allocation” indicates suitability of a product for an investor that intends to invest up to 100% of their total investable assets in that product and that typically prefers exposure to a product with at least “High portfolio diversification”. “High portfolio diversification” is defined to mean a fund that is “highly diversified across either asset classes, countries or investment managers, e.g. Australian

multi-manager balanced fund, global multi-asset product (or global equities or cryptocurrency)” (see page 5 of the TMD).

42. ASIC is concerned that the TMD indicates the Fund is suitable for an investor that intends to use it as “Solution/Standalone allocation” for their portfolio. The Fund is significantly concentrated in bitcoin investments and reduces, rather than increases, the potential benefit of diversification for an investor’s portfolio. This ‘concentration risk’ is noted on page 3 of the PDS for the Fund.
43. ASIC is concerned that it would not be reasonable to conclude that, if the product were issued or sold to a retail client in the target market, being an investor who looks to allocate 75 % to 100 % of their investment portfolio in the Fund, would be likely to be consistent with the likely investment objectives, financial situation and needs of the retail client. Therefore, ASIC considers that the TMD contravenes s994B(8)(b) of the Act.

IV. CONCLUSIONS IN RELATION TO THE TMD

44. Based on the concerns outlined in Part III above, ASIC is concerned that the TMD contravenes paragraph 994B(8)(b) of the Act.

Phillip Mines

As a delegate of the Australian Securities and Investment Commission

10 October 2022

Annexure A – Links to documents

Attachment A – [Target Market Determination for the Holon Bitcoin Fund dated 8 June 2022](#)

Attachment B – [PDS for the Holon Bitcoin Fund dated 10 June 2022](#)