

STATEMENT OF LEGAL SUPPORT

INVESTMENT FUND TARGET MARKET DETERMINATION (REFERENCE: CAS-105545-Q5B4S9)

The Statement of Legal Support relates to the review of the Target Market Determinations issued by Holon in relation to:

1. Holon Bitcoin Fund ARSN 659 090 294;
2. Holon Ethereum Fund ARSN 659 090 516; and
3. Holon Filecoin Fund ARSN 659 090 614 (together the **Funds**).

DESIGN AND DISTRIBUTION OBLIGATIONS: Part 7.8A of the Corporations Act

The Design and Distribution Obligations (**DDO**) were introduced as Part 7.8A of the *Corporations Act 2001* (Cth) to assist consumers in obtaining financial products appropriate for them. This is achieved through the preparation and issue of a Target Market Determination (**TMD**) for a retail financial product under that Part.

The stated underlying principles of the DDO obligations include that they should be:

- flexible and scalable
- not inhibit product innovation and access
- avoidance unnecessary regulatory costs.

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill Explanatory Memorandum paragraphs 3.34-3.38

The below summary points are in support of the submissions made by Holon Investments Australia Limited (**Holon**).

1. THE DESIGN OF HOLON'S FUNDS WERE EFFECTED WITH THE TARGET MARKET AND REGULATORY PROTECTION IN MIND

The DDO obligations confirm ASIC's expectation that financial service providers will embed improved consumer outcomes at the centre of all products and services. Indeed, Holon's approach in designing each of the Funds was to make crypto currency and related products accessible within a regulated environment.

Currently, ASIC reports that 44% of Australian investors invest in unregulated crypto assets, with no protection of any kind. In designing their products, Holon have sought to make this asset class accessible within a regulated environment, and on a cost effective basis.

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Holon has spent considerable resources in doing so, and in building managed investment structures which are compliant with the requirements of the Corporations Act. This includes the substantial expenditure and capital investment required for obtaining their own Responsible Entity Australian Financial Services Licence.

2. IT IS APPROPRIATE FOR HOLON AS ISSUER TO CONSIDER THAT THE INVESTMENT WILL BE PART OF A BALANCED PORTFOLIO

“Whether a product is appropriate is determined by reference to whether it is likely to be consistent with the likely objectives, financial situation and needs of the retail clients. Again, this formulation provides flexibility to an issuer in determining the appropriate target market for a product. For example, it would enable an issuer to conclude that it is appropriate for a product to be issued to an investor as part of balanced portfolio, even if it would not otherwise be appropriate for the investor-paragraph 994B(8)(b) of the Corporations Act”. Explanatory Memorandum paragraph 1.55

In preparing the TMDs, Holon has taken into account the fact that a crypto or related asset would be unlikely to be the sole financial asset of an investor. Nor would an investor likely have the same risk and return profile across their portfolio.

For example, the component relating to a satellite component would be reasonably expected to have a higher risk and return profile than the core of the investor’s portfolio.

To make this explicit, a warning note has been added to the proposed amended TMD to draw investors’ attention to this issue where applying a consistent risk test across their portfolio, and to make it clear that the Funds would not be appropriate for use by them.

Note, the issuer is not required to consider the individual circumstances of each investor:

“The design and distribution obligations do not equate to an individualized product suitability test that requires assessment of each individual’s personal circumstances at point-of-sale. Instead the obligations require issuers and distributors to develop and maintain effective product governance arrangements across the life cycle of financial products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.” RG 274 Product design and distribution obligations, paragraph 6.

As the primary distribution channel is financial planning, the majority of investors will be advised within the context of a ‘whole of view’ portfolio.

3. COMPLIANCE WITH AN INDUSTRY STANDARD TEMPLATE TO PROMOTE CONSISTENCY & THE EFFICIENT EXCHANGE USE OF DATA IN THE INDUSTRY

“Without significant engagement across the industry we would expect that achieving consistency will be extremely difficult. Key risks include sharing of human-readable rather than machine-readable data, inconsistent data, unclear definitions, and inconsistent data filters applied by different participants. This could be significant if you consider each issuer, distributor and product will have TMD, sales, complaint and other data; each of which could vary by product, distributor and/or distribution channel.” EY October 2022, FSC Policy Briefing

In preparing the TMD for each Fund, Holon reasonably implemented the TMD as the FSC industry standard in light of the considerable industry consultation which occurred including with ASIC, as well as obtaining external legal sign off from their counsel. Counsel also had representation on the Committee formulating the template.

Holon now proposes to step outside the FSC template to address ASIC’s concerns.

4. KNOCKOUT QUESTIONS ARE ROBUST AND EFFECTIVE AND ASSIST IN ENSURING THE FUNDS ARE DISTRIBUTED TO THE APPROPRIATE TARGET MARKET

ASIC states that the new regime requires ‘issuers and distributors [to] implement and maintain robust and effective product governance arrangements to ensure that they comply with the design and distribution obligations’: RG274.32

Holon has designed and implemented a series of knock out questions, which in accordance with the DDO obligations and RG 274 are:

‘Robust and effective’:

- Documented
- Fully integrated in daily business
- Include adequate systems to administer the funds, handle complaints

Supporting processes to manage issues/breaches:

- Include controls to identify and report issues and breaches
- Include effective complaints handling procedures
- Outline responsibility and accountability across the lifecycle of the Funds
- Are regularly monitored and reviewed to ensure the product is not distributed outside of the target market

It should be noted that the knock-out questions have been crafted with a particular focus on identifying customers in the ‘negative target market’ (or those who are excluded from the target market).

KING IRVING - 24 October 2022

