



# Submission

July 2021

## ASIC Consultation Paper 343: Crypto-assets as underlying assets for ETPs and other investment products

Holon Global Investments Limited provides the following submission to ASIC regarding its 'Consultation Paper 343 (CP343): crypto-assets as underlying assets for ETPs and other investment products' responding to the 'List of Proposals and Questions' (page 39-46 of the CP343).

### About Holon

Holon Global Investments Limited (Holon) is a next generation fund manager designing the core investment portfolios and platforms of the future. A different wealth creation strategy and a different business model to create and protect wealth is needed at a time when the pace of change is astonishing.

Holon currently manages the Holon Photon Fund, appointed by the Responsible Entity, One Investment Group. For more information, visit <http://www.holon.investments>.

### Introduction

Holon is making this submission as a proposed licensee and a Responsible Entity of a range of crypto-asset funds.

Holon does not believe that crypto assets should be specifically regulated as an underlying asset class, particularly when there are a range of ETPs where the underlying asset class is not independently regulated. Given the robust regulatory framework that already applies to ETP issuers and operators, perhaps a more equitable stance would be for ASIC to keep its proposals as guidance (not requirements) and should be asset agnostic. This is to ensure that ETP operators are able to operate within their existing regulatory frameworks that are more conducive to dynamic investment within broad regulated parameters and does not create perverse outcomes that undermine market efficiency and competition.

Holon believes that regulating underlying crypto assets too prescriptively could lead to regulatory asymmetry. That is, there should not be an undue burden on ETPs investing in crypto assets when it is possible for investors to go directly to some crypto markets that are not regulated at all, that is, there should be proportionality and keep ETPs open as a desirable investment vehicle.

Specifically capturing crypto assets as an asset class on AFSLs but only limiting that to Bitcoin and Ether may produce a gap in relation to ETPs that will invest in other crypto assets but that are not otherwise covered by a defined asset class.



## ASIC Proposal – B1

- B1** We propose to work with Australian market licensees to establish the following factors as the basis to identify particular crypto-assets that may be appropriate underlying assets for an ETP:
- (a) high level of institutional support and acceptance of the crypto-asset being used for investment purposes;
  - (b) the availability and willingness of service providers (including custodians, fund administrators, market makers and index providers) to support ETPs that invest in, or provide exposure to, the crypto-asset;
  - (c) a mature spot market for the crypto-asset;
  - (d) a regulated futures market for trading derivatives linked to the crypto-asset; and
  - (e) the availability of robust and transparent pricing mechanisms for the crypto-asset, both throughout the trading day and to strike a daily net asset valuation (NAV) price.

### Holon's Feedback

- B1Q1** Do you consider that crypto-asset ETPs should be available to retail investors through licensed Australian markets? Please provide details, including data on investor demand where available.

Holon believes that crypto-asset ETPs should be available to retail investors through licensed Australian markets. Investors, including many relatively new to investing, are participating in an unregulated environment.

Those investors with a financial adviser aren't able to access advice in relation to their crypto asset exposures as these assets are currently not covered under the realms of an Australian Financial Services License. If crypto assets were to be covered under advisers' businesses, it would be at an incremental risk to the adviser's business as there is currently no practical way for an adviser to incorporate trading, settlement, custody and reporting on crypto assets.

Crypto asset ETPs or even unlisted Managed Investment Schemes would facilitate bringing crypto assets into the regulated and advised environment of Australian Financial Services and allow for the regulation of these products by ASIC and the relevant exchange in the case of a listed product. Further, it would allow for the inclusion of these assets on Investor Directed Portfolio Services and within Superannuation services. This would facilitate the delivery of a total portfolio advice solution, including management of relevant risk profiles, overall portfolio volatility as well as efficient management of overall tax positions and tax reporting.

Holon currently manages a Managed Investment Scheme that is designed to solve for Australian investors typically material underweight exposure to global companies that are benefitting from rapid technological innovation. The Holon team are regularly involved in discussions with financial advisers relating to crypto assets which stem from a portfolio position in a US listed company, Microstrategy. Microstrategy has all of its treasury reserves in Bitcoin.

Advisers have a thirst for knowledge relating to crypto assets, and are being asked for advice from their clients who are either currently direct market participants or are contemplating the markets.

Allowing the issue of crypto asset ETPs would facilitate the regulation, consumer protection, asset protection of participants in these markets. The risk in not allowing and regulating crypto asset ETPs is that Australian retail investors continue to grow their exposure to these assets in an unadvised environment and continue to be subject to the trading, custody and liquidity risks to which they are currently exposed.

**B1Q2 Do you consider that crypto-asset ETPs should be cleared and settled through licensed Australian clearing and settlement facilities? Please provide details.**

Yes, we consider that a fund holding crypto should be cleared and settled using existing exchange clearing and settlement infrastructure.

**B1Q3 If you are a clearing participant, would you be willing to clear crypto-asset ETPs? Please provide your reasons.**

Holon is not a clearing participant.

**B1Q4 If you are a trading participant, would you be willing to trade crypto-asset ETPs? Please provide your reasons.**

Holon is not a trading participant.

**B1Q5 Do you agree with our approach to determining whether certain crypto-assets are appropriate underlying assets for ETPs on Australian markets? If not, why not?**

Holon agrees with your approach to determining whether certain crypto-assets are appropriate underlying assets for ETPs on Australian markets with the exception of the requirement for broad institutional adoption. Holon believes that broad adoption should suffice whether that be institutional or otherwise.

Crypto-assets and their markets are evolving rapidly, and Holon believes that ASIC should not be prescriptive in defining the crypto-assets that can be underlying assets for ETPs, rather, rely on the proposed factors presented in proposal B1 which Holon believes to be appropriate.

ETP issuers and operators are best placed to determine what an appropriate underlying asset is for their fund. Therefore, ASIC guidance should be principles based and reflect good guidance, not requirements or prescriptions. The market for crypto-assets is dynamic and regularly shifting which requires a dynamic response from market participants, principles based guidance will facilitate the required market responses.

Holon believes that there are a number of crypto-assets that may not necessarily be appropriate as underlying assets for ETPs but would be appropriate assets to be held in a Managed Investment Scheme. As the relevant crypto-asset matures and the relevant market develops, it could then be considered as an appropriate asset for an ETP and the Managed Investment Scheme could become an ETP.

**B1Q6 Do you have any suggestions for additions or modifications to the factors in proposal B1? Please provide details.**

Holon agrees with your approach to determining whether certain crypto-assets are appropriate underlying assets for ETPs on Australian markets with the exception of the requirement for broad institutional adoption. Holon believes that broad adoption should suffice whether that be institutional or otherwise.

**B1Q7 Do you have any suggestions for alternative mechanisms or principles that could achieve a similar outcome to the approach set out in proposal B1? Please provide details.**

The proposed principles and mechanisms are likely to be appropriate.

## ASIC Proposal – B2

- B2** We propose to work with Australian market licensees to establish a new category of permissible underlying asset for crypto-assets in their regulatory frameworks that, at a minimum, is consistent with the factors set out in proposal B1.

### Holon's Feedback

- B2Q1** Do you agree that a new category of permissible underlying asset ought to be established by market operators for crypto assets? If not, why not?

Holon agrees that a new category of permissible underlying asset ought to be established by market operators for crypto assets.

## ASIC Proposal – B3

- B3** For crypto-assets, we propose the following good practices in relation to demonstrating a robust and transparent pricing mechanism:

- (a) The basis of the pricing mechanism for crypto-assets held by an ETP should be an index published by a widely regarded provider that:
- (i) reflects a substantial proportion of trading activity in the relevant pair(s), in a representative and unbiased manner;
  - (ii) is designed to be resistant to manipulation;
  - (iii) complies with recognised index selection principles such as the International Organization of Securities Commission (IOSCO) Principles for financial benchmarks, the EU Benchmarks Regulation, or other internationally recognised index selection principles; and
- (b) Pricing mechanisms which rely on a single crypto-asset spot market would be unable to achieve robust and transparent pricing.

### Holon's Feedback

- B3Q1** Do you agree with the good practices in proposal B3 with respect to the pricing mechanisms of underlying crypto-assets? If not, why not?

Yes, we agree with the good practices in proposal B3 with respect to the pricing mechanisms of underlying crypto-assets.

- B3Q2** Are there any practical problems associated with this approach? If so, please provide details.

We don't foresee any practical problems associated with this approach.

- B3Q3** Do you think crypto-assets can be priced to a robust and transparent standard? Please explain your views.

Yes, the major crypto-assets can be priced to a robust and transparent standard.

Taking bitcoin as an example, in 2019 Bitwise Asset Management, in their presentation to SEC, provided clear evidence supporting the argument. As bitcoin is a globally fungible commodity with low transaction costs, near-zero transportation costs and low-to-zero storage costs. As a result, you would expect the bitcoin market to be uniquely orderly and efficient, with tight spreads and nearly perfect arbitrage. If you exclude exchanges that are conducting "non-economic or fake volumes" for mainly marketing purposes,

you find this is the case. The top 10 exchanges have demonstrated a history of tight trading, indicating a uniform, highly connected market. Average deviations from the aggregate price for the top 10 exchanges was also well within the expected arbitrage band when you account for exchange-level fees (~30 basis points), volatility and hedging costs. Indicating arbitrage was effective and operating well. Since then (over 2 years ago), a further tightening and maturing of the market due to size (bitcoin exceeded US\$1 trillion in network value during 2021 at one point) and adoption (Visa, MasterCard, Paypal providing access, etc.) is likely.

**B3Q4** Do you consider that a more robust and transparent pricing standard is achievable in relation to crypto-assets? For example, by using quoted derivatives on a regulated market. Please explain and provide examples where possible.

Regulated derivative exchanges add a valuable source of independent pricing. Futures exchanges such as the CME Group in collaboration with CF Benchmarks have developed standardised reference rate (RR) and spot price index (RTI) for Bitcoin and Ether. Each reference rate and real time index represent transparent indicators with independent governance and oversight. CME Indices have been generating RR and RTI rates since November 2016 (for Bitcoin) with several exchanges and trading platforms providing pricing data, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. As a result, we agree that indices quoted by regulated Futures exchanges can be useful in providing a more robust and transparent pricing mechanism. Holon has also invested in a Regulated Derivatives Exchange (Harbour Asset Management/GFX-O) to be licenced by the FCA out of the United Kingdom. Like the CME, GFX-O will be offering cash settled futures in Bitcoin and Ether. Holon will be working with GFX-O to understand their independent pricing and governance process here as well.

## ASIC Proposal – B4

**B4** We propose not to include any further expectations in INFO 230 in relation to cryptoasset ETPs.

### Holon's Feedback

**B4Q1** Are there any other good practice expectations in INFO 230 that need to be clarified or modified to accommodate cryptoasset ETPs?

There aren't any good practice expectations in INFO 230 that need to be clarified or modified.

## ASIC Proposal – C1

**C1** We propose the following good practices for REs in relation to the custody of crypto-assets:

- (a) The chosen custodian has specialist expertise and infrastructure relating to crypto-asset custody.
- (b) The crypto-assets are segregated on the blockchain. This means that unique public and private key(s) are maintained on behalf of the RE so that the scheme assets are not intermingled with other crypto asset holdings.
- (c) The private keys used to access the scheme's crypto-assets are generated and stored in a way that minimises the risk of unauthorised access. For example:
  - (i) solutions that hold private keys in hardware devices that are physically isolated with no connection to the internet (cold storage) are preferred. Private keys should not be held on internet-connected systems or networked hardware (hot storage) beyond what is strictly necessary for the operation of the product; and
  - (ii) the hardware devices used to hold private keys should be subject to robust physical security practices.
- (d) Multi-signature or sharding-based signing approaches are used, rather than 'single private key' approaches.

- (e) Custodians have robust systems and practices for the receipt, validation, review, reporting and execution of instructions from the RE.
- (f) REs and custodians have robust cyber and physical security practices with respect to their operations, including appropriate internal governance and controls, risk management and business continuity practices.
- (g) The systems and organisational controls of the custodian are independently verified to an appropriate standard—for example, through a SOC 2 Type II or equivalent report.
- (h) REs and custodians have an appropriate compensation system in place in the event a crypto-asset held in custody for REs is lost
- (i) If an external or sub-custodian is used, REs should have the appropriate competencies to assess the custodian's compliance with RG 133.

## Holon's Feedback

**C1Q1** Do you agree with our proposed good practices in relation to the custody of crypto assets? If not, why not? Please provide any suggestions for good practice in the custody of crypto-assets.

Holon agrees with your proposed good practices in relation to the custody of crypto-assets. ASIC should be mindful that this is an evolving space. Therefore, the factors should be guidelines as to how REs can determine appropriate custody solutions. As is the case with other risk management practices, REs should retain discretion to select an appropriate custody solution.

**C1Q2** Are there any practical problems associated with this approach? If so, please provide details.

We don't foresee any practical problems associated with this approach.

**C1Q3** Do you consider there should be any modifications to the set of good practices? Please provide details.

We do not consider that there should be any modifications to the set of good practices.

**C1Q4** Do you consider that crypto-assets can be held in custody, safely and securely? Please provide your reasons.

Holon has undertaken due diligence on specialist custody service providers. Holon has reviewed the service offering of specialist custody service providers and their ability to meet the requirements of RG133.

Holon is partnering with Avanti Bank in Wyoming USA to provide a compliant bridge between digital assets and the U.S. dollar payments system, and as a custodian of digital assets that can meet the strictest level of institutional custody standards.

On 28 October 2020, Avanti's bank charter was granted by 8-0 vote of the State Banking Board. Avanti intends to offer custody services for digital assets; API-based online banking services where customer deposits must be 100% backed by reserves; and prime services for digital assets. As a bank, Avanti will fully comply with all applicable Bank Secrecy Act, anti-money laundering and OFAC-related laws, rules and regulations.

**C1Q5** Do you have any suggestions for alternative mechanisms or principles that could replace some or all of the good practices set out in proposal C1? Please provide details

Holon does not have any suggestions for alternative mechanisms or principles for the good practices set out in proposal C1.

**C1Q6** Should similar requirements to proposal C1 also be imposed through a market operator's regulatory framework for ETPs? If so, please provide reasons and how it could work in practice

Holon does not have a view on market operator's regulatory framework for ETPs.

## ASIC Proposal – C2

**C2** We propose the following good practices in relation to the risk management systems of REs that hold crypto-assets:

- (a) If the RE undertakes trading activity in crypto-assets, it should do so on legally compliant and regulated crypto-asset trading platforms. For this proposal, we consider an appropriate baseline level of regulation to be know your customer (KYC) and anti-money laundering and counter-terrorism financing (AML/CTF) obligations.
- (b) The RE should ensure that authorised participants, market makers and other service providers that trade crypto-assets in connection with the product do so on crypto-asset trading platforms that meet the same standard as in proposal C2(a).
- (c) The RE is responsible for ensuring its risk management systems appropriately manage all other risks posed by crypto assets.

### Holon's Feedback

**C2Q1** Do you agree with our proposed good practices in relation to risk management systems for REs that hold crypto assets? If not, why not?

Holon agrees with your proposed good practices in relation to risk management systems for REs that hold crypto assets.

**C2Q2** Are there any other regulations (other than KYC and AML/CTF) that should form part of an appropriate baseline level of regulation for crypto-asset trading platforms used by REs and connected service providers? Please provide details.

The CME's choice of trading venues or eligible Constituent Exchanges is of particular interest in this regard. The CME sets out of the following criteria:

1. The venue's Relevant Pair spot trading volume for an index must meet the minimum thresholds as detailed below for it to be admitted as a constituent Exchange: The average daily volume the venue would have contributed during the observation window for the Reference Rate of the Relevant Pair exceeds 3% for two consecutive calendar quarters.
2. The venue has policies to ensure fair and transparent market conditions at all times and has processes in place to identify and impede illegal, unfair or manipulative trading practices.
3. The venue does not impose undue barriers to entry or restrictions on market participants, and utilizing the venue does not expose market participants to undue credit risk, operational risk, legal risk or other risks.
4. The venue complies with applicable law and regulation, including, but not limited to capital markets regulations, money transmission regulations, client money custody regulations, know-your-client (KYC) regulations and anti-money laundering (AML) regulations.
5. The venue cooperates with inquiries and investigations of regulators and the Administrator upon request and must execute data sharing agreements with CME Group

Holon would recommend crypto asset trading platforms meeting criteria 2 through to criteria 5. For other connected service providers, the custody provider is key, which is covered above.

**C2Q3** Are there any practical problems associated with this approach? If so, please provide details.

Holon does not foresee any practical problems associated with this approach.

**C2Q4** Are there any other matters related to holding crypto-assets that ought to be recognised in the risk management systems of REs and highlighted through ASIC good practice information? Please provide details and any specific proposals.

We don't believe that there are any other matters that ought to be recognised.

**C2Q5** Should similar requirements to proposal C2 also be imposed through a market operator's regulatory framework for ETPs? If so, please provide reasons and outline how it could work in practice.

Holon does not have a view on the market operator's regulatory framework for ETPs.

## ASIC Proposal – C3

**C3** We propose the following good practices regarding the RE's disclosure obligations in relation to a PDS for a registered managed investment scheme that holds crypto-assets:

(a) The RE should consider disclosing information about the unique characteristics of crypto-assets.

This may include:

- (i) the technologies that underpin crypto-assets, such as blockchains, distributed ledger technology, cryptography and others;
- (ii) how crypto-assets are created, transferred and destroyed;
- (iii) how crypto-assets are valued and traded; and
- (iv) how crypto-assets are held in custody.

(b) The RE should consider providing appropriate disclosure of the following and other risks:

- (i) market risk—historically, cryptoassets have demonstrated that their investment performance can be highly volatile and there is a risk that they could have little to no value in the future;
- (ii) pricing risk—it may be difficult to value crypto-assets accurately and reliably given the nature of their trading and difficulty in identifying fundamentals;
- (iii) immutability—most crypto-assets are built on immutable blockchains, meaning that an incorrect or unauthorised transfer cannot be reversed and can only be undone by the recipient agreeing to return the crypto-assets in a separate transaction;
- (iv) increased regulation risk—both crypto-assets and their spot markets are largely unregulated at this moment. This may change in the future;
- (v) custody risk—the private keys may be lost or compromised, resulting in crypto-assets being inaccessible or accessed by unknown third parties without authorisation;
- (vi) cyber risk—the nature of crypto assets may mean they are more susceptible to cyber risks; and
- (vii) environmental risk—crypto-assets, especially those based on proof-of work consensus mechanisms, by design require significant amounts of energy to operate.

## Holon's Feedback

**C3Q1** Do you agree with our proposed expectations regarding disclosure obligations for registered managed investment schemes that hold crypto-assets? If not, please explain why not.

Holon agrees with your proposed expectations regarding disclosure obligations for registered managed investment schemes that hold crypto-assets. However, there may be other risks that ASIC has not



identified. Therefore, it might be the case that ETP issuers are best placed to determine the appropriate risks that should be included in a disclosure document and that these should be seen as illustrative examples of good disclosure rather than minimum requirements.

**C3Q2 Are there any practical problems associated with this approach? If so, please provide details.**

Holon does not foresee any practical problems associated with this approach.

**C3Q3 Are there any additional categories of risks that ought to be specified by ASIC as good practice for disclosure in relation to registered managed investment schemes that hold crypto-assets?**

The proposed approach to risk and disclosure is appropriate.

## ASIC Proposal – C4

**C4 We propose not to issue any additional expectations about how the design and distribution obligations (DDO) can be met for investment products that invest in, or provide exposure to, crypto-assets.**

### Holon's Feedback

**C4Q1 Are there any aspects of the DDO regime that need to be clarified for investment products that invest in, or provide exposure to, cryptoassets?**

The DDO regime is appropriately broad to allow for investment products that invest in, or provide exposure to crypto assets and as such there are no aspects of the DDO regime that require clarification.

## ASIC Proposal – D1

**D1 We propose to work with market operators to establish that:**

- (a) the approach used to determine and classify appropriate crypto-assets for investment entities is the same as that set out in Section B for ETPs;
- (b) in respect of the admission process, to be considered to have a structure and operations that are appropriate for a listed entity, a LIC that invests a material amount in crypto-assets is expected to:
  - (i) have a custody solution for its crypto-assets that is consistent with the expectations for custody set out in proposal C1;
  - (ii) ensure it only trades crypto-assets on crypto-asset markets that are regulated in a manner consistent with proposal C2; and
  - (iii) value crypto-assets held by the LIC using an approach that is consistent with expectations for pricing set out in proposal B3;
- (c) in respect of the admission process, to be considered to have a structure and operations that are appropriate for a listed entity, a LIT that invests a material amount in crypto-assets should value crypto-assets held by the LIT using an approach that is consistent with expectations for pricing set out in proposal B3; and
- (d) the expectations for the admission of LICs and LITs set out in subparagraphs (b) and (c) above should also be ongoing requirements of listing (e.g. they should be imposed as a condition of listing).

Note: Listed investment entities must also provide adequate disclosure at the time of listing (see paragraphs 69–75) and will be subject to DDO (see paragraphs 76–81).

## Holon's Feedback

**D1Q1** Do you agree that crypto-assets are capable of being appropriate assets for listed investment entities on Australian markets? If not, why not?

Holon agrees that crypto-assets are capable of being appropriate assets for listed investment entities on Australian markets.

**D1Q2** Do you agree with our proposed expectations for LICs and LITs that invest in crypto-assets to ensure equivalent standards are applied by market operators? If not, why not?

Holon agrees with your proposed expectations for LICs and LITs that invest in crypto-assets to ensure equivalent standards are applied by market operators.

**D1Q3** Are there any practical problems associated with this approach? If so, please provide details.

Holon does not foresee any practical problems associated with this approach.

**D1Q4** Are there additional standards which ought to apply via market operators to LICs or LITs that invest in crypto-assets? If so, what are these expectations and why should they apply?

Holon does not have a position in relation to this question.

**D1Q5** Should LICs and LITs only be able to invest significant funds in crypto-assets if this is either set out in their investment mandate or with member approval? If not, why not?

LICs and LITs should only be able to invest significant funds in crypto-assets if this is either set out in their investment mandate or with member approval.

**D1Q6** For the purposes of this proposal, we consider a material investment is where an entity invests or plans to invest more than 5% of its funds in crypto-assets. Should another materiality threshold apply?

Holon believes that 5% is a reasonable materiality threshold.

## ASIC Proposal – E1

**E1** We propose to establish a new asset kind that can be selected when applying for a new AFS licence, or a variation to an existing AFS licence, to operate a registered managed investment scheme which holds a particular kind of asset. This asset kind will cover crypto-assets.

## Holon's Feedback

**E1Q1** Do you agree with our proposal to establish a new asset kind that will cover crypto-assets?

Holon believes that in the interests of clarity and for those AFSL holders that are already Licensed for "types" of schemes, it is appropriate to establish a new asset kind that will cover crypto assets.

Some crypto assets are already captured under current asset types (eg, financial products). However, establishing a new asset class that captures crypto assets will help provide certainty in the market when defining these instruments. This should, however, have a clear and comprehensive definition of crypto assets so there is understanding of what is intended to be captured (particularly given the inference of

exclusions other than Bitcoin and Ether at this stage) and so they can be compared against other asset types.

**E1Q2 Do you consider that crypto-assets may be captured by the existing asset kinds? If so, please explain.**

Retail investment funds are already captured, generally irrespective of whether the underlying assets are independently regulated. In relation to scheme assets that are listed on an AFSL, it is possible for crypto assets to be captured by an existing class. For example, crypto assets may be derivatives, real property interests, financial assets (eg securities or fund interests) and mortgages.

If ASIC introduces a new asset class that is specific to crypto assets, it should clarify how it will treat those assets that are crypto assets and securities (for example), or clarify that assets of the nature described in CP343 (described as "crypto assets") captures those such assets that do not otherwise fall in an already defined class (like derivatives or MIS interests).

## ASIC Proposal – E2

**E2 When granting an AFS licensee's authorisation to operate a registered managed investment scheme which holds crypto-assets, we will restrict the crypto-assets the registered managed investment scheme can hold by reference to the factors set out in proposal B1. Accordingly, at this point in time, we consider that such authorisations could only be given to operate registered managed investment schemes that hold bitcoin or ether.**

### Holon's Feedback

**E2Q1 Do you agree with our approach to restrict the crypto-assets a registered managed investment scheme is authorised to hold (e.g. to bitcoin or ether)?**

Holon agrees with your approach in relation to the principles for restricting crypto-assets as a registered managed investment scheme is authorised to hold. Holon does not agree with the approach being so prescriptive to only include bitcoin and ether. If a crypto-asset evolves sufficiently to meet the requirements outlined in the principles proposed in B1, then a registered managed investment scheme should be able to hold that asset.

Product issuers are best placed to determine what crypto assets to invest in and provide clients exposure to (based on a range of factors such as investment mandate, client types and investment objectives). This is consistent with ASIC not being a merit based regulator and the overall comment that ASIC should treat these practices as guidelines (not requirements) that are asset agnostic, as is the case with other ETPs that invest in generally unregulated assets. Unless ASIC is seeking to specifically regulate crypto assets irrespective of whether they form part of an ETP's asset basket, it follows that it should likely not restrict crypto asset types in this way, particularly where they already meet the criteria established in B1. Further, the definition should not operate such that crypto assets that fall with another already defined class are excluded from being held.

**E2Q2 Do you consider there are any other aspects of the AFS licensing regime that need to be clarified or modified to accommodate investment products that invest in, or provide exposure to, crypto-assets?**

We do not consider that there are any other aspects of the AFS licensing regime that need to be clarified or modified to accommodate investment products that invest in or provide exposure to crypto-assets.

We understand that a lot of businesses have found it difficult to acquire adequate professional indemnity insurance where the business relates to crypto assets. Therefore, ASIC should provide some guidance as to what it considers to be a reasonable compensation solution.

If ASIC is to introduce a new type of AFS License that specifically covers crypto assets, it would likely be useful for ASIC to provide commentary as to what it considers appropriate experience in crypto assets in the context of maintaining organisational competence.