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Our Ref: CRS:MK:HA: 2022/7652

31 January 2023

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Dear Directors

FINANCIAL PRODUCT ADVICE – 11::11 COIN, HYBX TOKEN AND ALLTRA TOKEN

1. INTRODUCTION

We refer to your instructions to advise Ozz Metals Co Pty Ltd (**Ozz Metals**) concerning whether the 11::11 Coin (**11::11**), HYBX Token (**HYBX**), and the ALLTRA Token (**ALLTRA**) are financial products, as defined by the *Corporations Act 2001* (Cth) (the **Act**).

For the reasons set out below, as at the date of this letter, 11::11 and HYBX are likely not financial products under the Act and thus, Ozz Metals does not require an Australian Financial Services Licence (**AFSL**) in relation to the issuance of, and dealing with, 11::11 and HYBX. However, the issuance of and dealing with ALLTRA may require that Ozz Metals hold an AFSL due to the manner in which it is intended to be used in conjunction with the ALLTRA wallet.

2. EXECUTIVE SUMMARY

Based on the documents provided, namely those entitled “*Private Digital Token Offer*”, “*Executive Summary 11::11 Fractionalised Distribution of Gold Project 11::11/HYBX Crowdsale/ICO*” and “*HYBX Trade Rules*” (including other documents provided) (**Supporting Documentation**), we do not consider 11::11, HYBX or ALLTRA to be financial products as, by the rights and structure of these digital assets in isolation, they are not:

- (a) with reference to section 763B of the Act – a facility through which a person makes a financial investment;
- (b) with reference to section 763C of the Act – a facility through which a person manages financial risks;
- (c) with reference to section 763D of the Act – a facility through which a person makes non-cash payments; or
- (d) with reference to section 764A of the Act – a security, interest in a managed investment scheme, derivative or any other specific financial product as contemplated by the section.

3. OUR UNDERSTANDING

The advice contained within this letter has been provided based upon the following facts. If our understanding is incorrect in any way, please let us know as our advice may change.

OFFICE LOCATIONS

AUS - Brisbane, Gold Coast, Kununurra, Melbourne, Perth, Sunshine Coast, Sydney UK - Scotland US - Los Angeles

Ozz Metals owns the crypto code, payments software and intellectual property required to market the sale of fractional ownership of tangible gold. Ozz Metals Ltd is a wholly owned subsidiary of Ozz Metals which issues 11::11, HYBX, and ALLTRA.

Ozz Metals Ltd has entered in to forward contracts for the forward purchase of fine gold. The business' purpose is to allow trades through blockchain technology to deliver fractional ownership of gold.

Specifically, we are instructed that the business involves:

- (a) utilising digital ledger technology coupled with the smart contracts made up of 11::11, HYBX, and ALLTRA to form a "Micro Economic Ecosystem";
- (b) an overall project which reflects a barter exchange community-based marketing platform, ecommerce marketplace, mobile and card enabled transaction gateways incorporated with decentralised and centralised cryptocurrency exchanges; and
- (c) a Hyper-Barter Exchange Community as a membership-based network that helps new product launches and provides access to new markets in any commercial business model by leveraging extra capacity or downtime. The model can be applied to local councils, villages, and/or individual consumers.

Concerning 11::11, we have been instructed that it:

- (a) is a native stable coin backed by forward purchased gold agreements that is delivered as bullion from mining operations;
- (b) is an ERC-20 Token;
- (c) represents 1/1000 of 1 ounce of gold;
- (d) can be purchased with AUD/USD, Eth, Bitcoin, and xemxlink; and
- (e) can be redeemable, tradable, swappable, stakeable, fudgeable, and/or redeemable.

Concerning HYBX, we have been instructed that it:

- (a) is a utility token;
- (b) can be used stake liquidity in decentralised finance (**DeFi**) pools;
- (c) can be used to earn fees;
- (d) can be traded for non-fungible tokens;
- (e) can be swapped for other tokens; and
- (f) can be used to purchase 11::11

Concerning ALLTRA, we have been instructed that it:

- (a) is a transaction currency;
- (b) has an interest free overdraft equal to the total dollar value of the user's 11::11 wallet;
- (c) is equal to AUD\$1.00;
- (d) can be used to transact B2B, B2C, and P2P; and
- (e) can be used to purchase HYBX.

2. IS 11::11, HYBX OR ALLTRA A FINANCIAL PRODUCT UNDER THE ACT?

It is important to note that the regulatory landscape relating to digital assets is constantly evolving due to greater regulatory understanding and mainstream adoption. In considering whether 11::11, HYBX or ALLTRA is a financial product, we have limited our analysis to the webpage and information provided.

In determining whether 11::11, HYBX or ALLTRA is a financial product, there are two factors that must be considered:

- (a) whether 11::11, HYBX or ALLTRA falls within the general definition of a financial product; and
- (b) whether 11::11, HYBX or ALLTRA falls within the definition of a specific product that is deemed a financial product under the Act.

Definition of a financial product, facility and arrangement

Section 762A of the Act sets out an overview of the approach to defining a financial product. It states the following:

- (1) *Subdivision B sets out the general definition of a financial product. Subject to subsections (2) and (3) a facility is a financial product if it falls within that definition.*
- (2) *Subdivision C identifies, or provides for the identification of, kinds of facilities that, subject to subsection (3), are financial products (whether or not they are within the general definition).*
- (3) *Subdivision D identifies, or provides for the identification of, kinds of facilities that are not financial products. These facilities are not financial products:*
 - (a) *even if they are within the general definition; and*
 - (b) *even if they are within a class of facilities identified as mentioned in subsection (2).*

The general definition of a 'financial product' is set out in section 763A of the Act. The section provides as follows:

- (1) *For the purposes of this Chapter, a financial product is a facility through which, or through the acquisition of which, a person does one or more of the following:*
 - (a) *makes a financial investment (see section 763B);*
 - (b) *manages financial risk (see section 763C);*
 - (c) *makes non-cash payments (See section 763D).*

A 'facility' is defined in section 762C of the Act as including:

- (a) *intangible property; or*
- (b) *an arrangement or a term of an arrangement (including a term that is implied by law or that is required by law to be included); or*
- (c) *a combination of intangible property and an arrangement or term of an arrangement.*

An 'arrangement' is defined in section 761A of the Act to mean:

A contract, agreement, understanding, scheme or other arrangement (as exists from time to time):

- (a) *whether formal or informal, or partly formal and partly informal; and*
- (b) *whether written or oral, or partly written and partly oral; and*
- (c) *whether or not enforceable, or intended to be enforceable, by legal proceedings and whether or not based on legal or equitable rights.*

Is 11::11, HYBX or ALLTRA a facility through which a person makes a financial investment?

Section 763B of the Act provides that a person (the investor) will make a 'financial investment' if:

- (a) *the investor gives money or money's worth (the contribution) to another person and any of the following apply:*
 - (i) *the other person uses the contribution to generate a financial return, or other benefit, for the investor;*
 - (ii) *the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated);*
 - (iii) *the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated); and*
- (b) *the investor has no day-to-day control over the use of the contribution to generate the return or benefit.*

11::11

We are instructed that 11::11 is a 'stable coin' tethered to the spot price value of 1/1000 of 1 ounce of gold. Primarily, its aim is to stabilise the volatile nature of cryptocurrency by binding its market value to the Australian Market spot price of Gold (**Spot Price**). In these circumstances, we do not consider 11::11 to be a financial investment as the funds are not used by Ozz Metal to generate a financial return or other benefit for the purposes of section 763B of the Act.

Ozz Metals does not use 11::11 to generate a financial return, or other benefit, for the customer simply because the customer purchased the token at the Spot Price. Essentially, the value of the token itself varies at the same rate as gold; it is not generated by Ozz Metals for the benefit of the customer. Furthermore, section 763B of the Act explains that the definition of 'financial investment' does not capture a person purchasing bullion even though it may generate a return, it is not a return generated by the use of the purchase money by another person. That is, even though the customer may be purchasing ownership of fractionalised gold (reflected in 11::11), Ozz Metals is not intending to use that money to generate a financial return. Ozz Metals is merely allowing a customer access to fractionalised ownership of gold.

HYBX

HYBX is a token which allows customers to trade off the value of their gold investment (which is conducted through 11::11). HYBX is issued when customers purchase 11::11 and can be obtained or claimed through an airdrop. In practice, HYBX could only exist if the customer has purchased 11::11.

Once obtained by a customer, HYBX acts as a utility token which is utilised on an open exchange. The Supporting Documentation makes references to HYBX being swappable with 11::11.

Therefore, we consider that Ozz Metals does use, or intend to use, the contribution by the customer to generate a financial return, or other benefit. HYBX is designed to be a utility token used to:

- (a) buy 11::11;

- (b) stake in DeFi Pools;
- (c) earn fees;
- (d) trade NFT's; and
- (e) swap for other tokens.

Furthermore, the fact that HYBX may be swapped for 11::11 does not mean of itself that it is intended by Ozz Metals to generate a financial return for the holder. It is merely suggesting that HYBX can be utilised to gain more 11::11 which in turn allows the holder to obtain further ownership of fractionalised gold not intended to be derived as a financial benefit by Ozz Metals.

Please note that, concerning the staking and earning fees feature of HYBX, there has been recent regulatory activity in relation to crypto earn products. The Australian Securities and Investments Commission (**ASIC**) have recently commenced proceedings against several crypto providers concerning their respective earn products. ASIC is claiming that these providers have breached the financial services licensing provisions of the Act, namely that they amount to financial investments or debentures.

Our scope of works does not extend to the provision of advice in relation to this issue. Accordingly, please let us know if you require our advice.

ALLTRA

ALLTRA is merely a transaction currency to be used by customers to barter on a marketplace for goods and services. Ozz Metals does not receive money or money's worth, nor does it use any such money to generate a financial return.

Is 11::11, HYBX or ALLTRA a facility through which a person manages financial risk?

Section 763C of the Act provides that a person 'manages financial risk' when they:

- (a) *manage the financial consequences to them of particular circumstances happening; or*
- (b) *avoid or limit the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices and interest rates).*

Note 1(a) to section 763C provides examples of actions that constitute managing a financial risk and includes:

- (a) *taking out insurance; or*
- (b) *hedging a liability by acquiring a futures contract or entering into a currency swap.*

The examples as provided for in note 1(a) to section 763C, contemplate the taking out of a separate financial product to manage the risk of a particular situation. This also follows the case law in this area, and we note the prevailing decisions where:

- (a) a separate litigation funding agreement was initially held to manage the financial consequence of an adverse litigation decision but was subsequently overturned on appeal after being categorised as an exempt credit facility;¹ and
- (b) where a website that gave advice on investments in US stocks was held to go beyond what was ordinarily necessary and determined to manage the financial consequence of a price fluctuation in the price of particular US investments.²

¹ *International Litigation Partners Pte Ltd v Chameleon Mining NL* [2011] NSWCA 50.

² *ASIC v Online Investors Advantage Inc & Anor* (2005) 23 ACLC 1.

11::11

11::11 does not manage the financial consequence of a particular circumstance happening.

The customer's purchase, or ownership of fractionalised gold via 11::11, is not utilised as managing the fluctuation in the value of gold. The fact that Ozz Metals enters into forward purchase contracts with other parties for the purchase of gold has no direct connection to how the customer utilises the 11::11 token. Any managed financial risk is addressed well before, and distinctly separate from, the customer purchasing 11::11.

HYBX

HYBX does not manage the financial consequence of a particular circumstance happening.

The customer's accumulation of HYBX is a by-product of the purchase of 11::11. It does no more than give its holder the ability to transact on an exchange using the token itself.

Is 11::11, HYBX or ALLTRA a facility through which a person makes a non-cash payment?

Pursuant to the Act, a 'non-cash payment' is defined in section 763D as:

- (1) *For the purposes of this Chapter, a person makes non-cash payments if they make payments, or cause payments to be made, otherwise than by the physical delivery of Australian or foreign currency in the form of notes and/or coins.*

The section provides examples of actions that may constitute a non-cash payment and includes:

- (a) *Making payments by means of a facility for direct debit of a deposit account; or*
- (b) *Making payments by means of a facility for the use of cheques; or*
- (c) *Making payments by means of a purchased payment facility within the meaning of the Payment Systems (Regulation) Act 1998, such as a smart card; or*
- (d) *Making payments by means of traveller's cheques (whether denominating in an Australian currency or a foreign currency).*

11::11

11:11 is not a facility through which a person makes a non-cash payment. 11:11 does not afford the holder any rights to make payments using the digital currency or cause fiat payments to be made.

HYBX

HYBX is not a facility through which a person makes a non-cash payment. HYBX does not afford the holder any rights to make payments using the digital currency or cause fiat payments to be made.

ALLTRA

Whilst we do not consider ALLTRA to be a financial product in isolation, we do consider it may be part of an arrangement whereby non-cash payments could be made via the ALLTRA wallet.

The facility through which, or through the acquisition of which, a person makes a non-cash facility payment (**NCP Facility**) is the financial product regulated under the Act per section 763D. Section 762C of the Act defines 'facility' and includes intangible property, an arrangement (or one of its terms) or a combination of these things. An arrangement includes a contract, agreement, understanding or scheme and can be in writing or oral. An arrangement does not have to be enforceable or contained in a formal document as per section 761A of the Act.

An arrangement (or term of an arrangement) may be an NCP Facility if it:

- (a) enables a non-cash payment to be made and the facility is intended to be used to make such a payment; or
- (b) facilities of that kind are commonly used to make a non-cash payment, as per section 763A(2) of the Act.

The intention element of section 763A(2) of the Act is the relevant factor in determining whether the facility operates as an NCP Facility under an arrangement. For example, if Ozz Metals intends to hold ALLTRA on behalf of customers and to distribute ALLTRA upon each customer providing goods and services, then the arrangement may have the requisite intention. The question therefore is whether each customer has to purchase ALLTRA using physical fiat currency which would ultimately decide whether the ALLTRA token is an NCP Facility for the purposes of the Act.

As presently drafted, it is unclear whether section 763D of the Act extends to arrangements that do not involve the use of fiat currency. Notably, 763D of the Act makes express reference to the use of Australian or foreign currency other than in the form of notes or coins. The ALLTRA wallet does not facilitate the transfer of Australian or foreign currency. It facilitates the transfer of a token that is equivalent to the value of \$1AUD, but it is not redeemable for AUD.

It appears that ASIC has identified the interpretation issue and seeks clarification from the Courts by commencing proceedings against BPS Financial Pty Ltd (**BPS Financial**) alleging that the Qoin Facility is an NCP Facility. The basis for the claim relates to BPS Financial promoting Qoin tokens to retail consumers and business owners as a method of making payment for goods and services offered by Qoin merchants. In the case, ASIC alleges that the facility that was being used to make non-cash payments was the associated digital wallet. If the Court in these proceedings finds that the Qoin wallet is an NCP Facility, then the ALLTRA wallet will very likely also be an NCP Facility.

Since the proceedings against BPS Financial is listed for hearing from 31 July 2023, we recommend that Ozz Metals utilise ASIC's conditional class order relief to persons providing financial services that are 'low value non-cash payment facilities'. This is otherwise an exception to section 763A(1)(c) of the Act.

To be eligible for the relief, the following test must be satisfied:

- (a) the total amount available for the making of non-cash payments under all facilities of the same class held by any one client does not exceed \$1000 at any one time;
- (b) the total amount available for making non-cash payments under all facilities of the same class does not exceed \$10 million at any time; and
- (c) the facility is not part of another financial product.

In order for Ozz Metals to be granted relief from any licensing requirements, it will have to:

- (a) cap each accounts of the holders of ALLTRA to \$1000 at any one time;
- (b) cap the total amount of transactions that the holders of ALLTRA make to \$10 million at any time; and
- (c) make sure that the facility in which ALLTRA is transacted is not another financial product in itself.

Provided the elements of the relief are consistently being met, the relief itself will persist in its application.

Whether this is a viable commercial option is for Ozz Metals to consider. Our position is that the regulations are robust and whether or not Ozz Metals limits ALLTRA's use to fall within the relief granted by ASIC, anything which exceeds the requirements for relief may be subject to licensing constraints.

It is also worth noting that in Australia the Reserve Bank of Australia regulates the payment system and oversees the stability of the financial system as a whole. Section 763D(1)(c) of the Act refers to a payment system called a 'purchased payment facility' (**PPF**), which is considered a method of making a non-cash payment. Effectively, a PPF is a facility whereby a holder of stored value makes payment to another person on behalf of the user of the facility. For example, smart cards, digital cash, and traveller's cheques can be considered to be PPFs (PayPal is a practical example of a PPF Provider).

It could be argued that the ALLTRA token may fall within the definition of a PPF, and therefore be subject to regulation. However, any advice concerning this fall outside of our agreed scope of works and will require further funds in trust to advise you on this. Should you require further advice, please provide us with instructions and we will provide you with our scope of works to carry out our assessment.

Is 11::11, HYBX or ALLTRA a specific financial product?

Section 764A of the Act identifies products that will be considered financial products under the Act, regardless of the general definition of whether the product is a facility that allows a person to make a financial investment, manage financial risks or makes a non-cash payment.

Of specific relevance to 11::11, HYBX or ALLTRA are the following financial products:

- (a) Security as per section 764A(1)(a) of the Act;
- (b) An interest in a scheme (Managed Investment Scheme) per section 764A(1)(b) and 764(1)(ba) of the Act; and
- (c) Derivatives as per section 764A(1)(c) of the Act.

Security

In isolation, 11::11, HYBX, and ALLTRA are not securities as the rights, structure and utility of 11::11, HYBX, and ALLTRA do not mirror that of a security. Specifically, 11::11, HYBX, and ALLTRA token:

- (a) do not provide its holders with any voting rights at meetings of Ozz Metal's directors or shareholders;
- (b) does not provide its holders with any right to participate in any dividends declared by Ozz Metal or an associated entity;
- (c) does not provide its holders with any entitlement to payment of any capital or surplus assets of Ozz Metal or an associated entity in the event of it being wound up in the same way as a shareholder in that company may be entitled to;
- (d) does not derive its value directly from the value of any particular projects or activities of Ozz Metal or an associated entity;
- (e) does not represent an interest in any activities and projects of whatsoever nature from Ozz Metal or an associated entity; and
- (f) has not been issued with any promise of a particular rate of return.

With regard to 11::11, it is instructed that each time a customer deposits the tokens into their wallet, 10% of that total deposited into the wallet will be deposited into the community pool of 11::11 tokens. Consequently, all wallet holders are then given the ability to vote on which

community project to engage in (which include, community building projects, support for the elderly, education, etc.). The customers do not vote on the direction of the company using the 11::11, notwithstanding that 11::11, of itself, does not reflect traditional shares which attach voting rights.

To avoid any doubt, 11::11, HYBX, and ALLTRA are not intended to be shares in Ozz Metal, debentures in Ozz Metal, legal or equitable rights or interests in shares of debentures, and options to acquire, by way of an issue, a security of this type. 11::11, HYBX, and ALLTRA and Ozz Metal, as a company, are mutually exclusive to the extent that a holder of 11::11, HYBX, and ALLTRA possess no rights in Ozz Metals, as opposed to Ozz Metal's members or its actual shareholders.

Managed Investment Scheme

A managed investment scheme is a form of collective investment vehicle. It is defined in section 9 of the Act as having three elements:

- (a) people contribute money or assets (such as digital assets) to acquire rights (interests) to benefits produced by the scheme;
- (b) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the members) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); and
- (c) the contributors do not have day to day control over the operation of the scheme but, at times, may have voting rights or similar rights.

11::11

The elements of a managed investment scheme are akin to making a financial investment; however, this section of the Act does not include the element of intention, and therefore, it has a broader application.

We are satisfied that 11::11 does not fall under the definition of a managed investment scheme. Holders who have contributed their funds to acquire 11::11 are not pooling their contributions in a scheme to derive any financial benefit.

The 11::11 which is pooled together to give access to holders to vote on community-based projects does not sufficiently meet the definition of a managed investment scheme. That is, there is no financial benefit which is acquired by the holders.

HYBX

We are satisfied that HYBX does not satisfy the elements to meet the definition of a managed investment scheme. Holding HYBX does not give its holders the ability to pool their contributions to derive a financial benefit.

Derivative

A derivative is defined in section 761D of the Act and regulation 7.1.04 of the *Corporations Regulations 2001* (Cth) (**Regulations**). Section 761D(1) of the Act states:

- (1) *For the purposes of this Chapter, subject to subsections (2), (3) and (4), a derivative is an arrangement in relation to which the following conditions are satisfied:*
 - (a) *under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and*
 - (b) *that future time is not less than the number of days, prescribed by regulations made for the purposes of this paragraph, after the day on which the arrangement is entered into; and*

- (c) *the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:*
- (i) *an asset;*
 - (ii) *a rate (including an interest rate or exchange rate);*
 - (iii) *an index;*
 - (iv) *a commodity.*

11::11

11::11 is not a derivative as consideration is provided at the time that 11::11 is purchased. Further, the value of the arrangement is not determined by the amount of gold at a future point in time.

HYBX

HYBX does not derive its value from the price of an underlying commodity, security, currency, cash flow or index. It is merely a utility token and has no characteristics which would otherwise meet the definition of derivatives.

ALLTRA

ALLTRA does not derive its value from the price of an underlying commodity, security, currency, cash flow or index. It has no characteristics which would otherwise meet the definition of derivatives.

Is 11::11, HYBX and ALLTRA a product that is specifically excluded as a financial product under the Act?

Section 765A of the Act outlines specific products that are, for the purposes of the Act, excluded as a financial product.

Some examples of excluded products include:

- (a) excluded securities;
- (b) an undertaking by a body corporate to pay money to a related body corporate;
- (c) health insurance provided as part of a health insurance business; and
- (d) insurance provided by the Commonwealth.

For completeness, 11::11, HYBX, and ALLTRA are not financial products that would be deemed to be excluded financial products under this section.

Conclusion

Based on the current general definition of a financial products and analysis of specific financial products as outline above, we do not consider 11::11, HYBX and ALLTRA to be financial products. This position is supported by ASIC, as will be outlined below.

3. CURRENT REGULATORY POSITION

In December 2014, ASIC provided a submission to the Senate inquiry into digital currency outlining their position on Bitcoin and digital currencies.

In its submission, ASIC made the following comments:

- (a) *“It is our view that digital currencies themselves do not fit within the current legal definitions of a ‘financial product’. This means that a person does not need:*
- (a) an Australian market licence to operate a digital currency trading platform; and*
 - (b) an Australian financial services (AFS) licence in order to:*
 - (i) trade in digital currency;*
 - (ii) hold a digital currency on behalf of another person;*
 - (iii) provide advice in relation to digital currency; and*
 - (iv) arrange for others to buy and sell digital currency.”*
- (b) *“ASIC notes that there are conceptual differences between digital currencies and ‘financial products’ regulated under the Corporations Act and the ASIC Act. Many of the obligations under the legislation ASIC administers apply to the issuers of financial products, who are responsible for the obligations to product holders under the terms of the product. On the other hand, digital currencies do not have an identifiable ‘issuer’, as there is no centralised authority responsible for their creation or any obligations owed to digital currency holders.”*
- (c) *“ASIC view is that digital currencies themselves do not fall within the current legal definition of a financial product. ASIC has communicated this view to industry participants.”*

The position communicated by ASIC has not to date changed since its 2014 submission. We note ASIC’s view in relation to digital currencies is based upon coins and tokens that do not have an identifiable issuer and that there is no centralised authority responsible for their creation or any obligations owed to digital currency holders. The position of 11::11, HYBX, and ALLTRA differs slightly as it can be said that there is an identifiable issuer and centralised authority unlike decentralised digital currencies such as Bitcoin.

Furthermore, following the highly-documented collapse of FTX, ASIC has been proactive in pursuing various exchanges for breaches of the Act, namely for dealing in financial products without the requisite licence.

On October 2022, ASIC commenced proceedings against BPS Financial for, among other things, allegedly engaging in unlicensed conduct concerning a non-cash payment facility which involved its crypto-asset, called Qoin.

In late-November 2022, ASIC commenced proceedings against Web3 Ventures Pty Ltd (trading as Block Earner) for allegedly engaging in unlicensed conduct concerning its stake-to-earn product, and that it operated an unregistered managed investment scheme. Block Earner offered a range of fixed-yield earning products based on several crypto-assets (**Earner Product**). The process of the transaction involved the consumer depositing AUD into the Block Earner platform which was then exchanged into the consumer’s chosen crypto-asset, the crypto-asset was then lent to Block Earner. Once the consumer’s crypto-asset was lent, it was entitled to any yield earned at the rate of an annualised percentage. ASIC contends that the Earner Product was a managed investment scheme, a financial investment, and a derivative, respectively defined in the Act.

On November 2022, ASIC commenced proceedings against Finder Wallet Pty Ltd for allegedly providing unlicensed financial services. Among other things, ASIC contends that the Finder Earn product was, in substance, a debenture requiring an AFSL to be held.

We note that the law could be changed to govern and accommodate digital assets within the existing regulatory framework. Where there is a change in the law or to the classification of digital assets, Ozz Metals would need to seek further legal advice as our advice would likely change.

4. DISCLAIMER

Please note that the advice provided in this letter is reflective of the law as at the date of this letter and limited to Australian law, as we cannot advice on the laws of other jurisdictions. The digital asset legal and regulatory landscape is constantly evolving and as such, we are unable to provide any warranties or assurances that this legal advice will continue to be accurate in the future. We recommend that Ozz Metals instructs us to provide an updated advice in the future, where there is any material change in the legal or regulatory landscape relating to digital assets.

Should you have any questions or concerns, please do not hesitate to contact our Mr Cliff Savala or our Mr Matt Krog.

Yours faithfully,

SALERNO LAW



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