

Article Information

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Finder triumphs, as Court finds Earn product is not a debenture

Michael Bacina, Steven Pettigrove and Jake Huang of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Justice Markovic of the Federal Court handed down [judgment](#) today finding that Finder Wallet's Earn product was not a debenture as alleged by the Australian Securities and Investments Commission (**ASIC**) and ordering ASIC to pay costs. The judgment is a sweeping win for Finder Wallet which had defended allegations brought by ASIC that its Earn product was a debenture under Section 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

ASIC had [commenced civil penalty proceedings in the Federal Court of Australia](#) against Finder Wallet in December 2022. The [Finder.com](#) subsidiary was alleged to have provided unlicensed financial services, breaching product disclosure requirements, and failing to comply with design and distribution obligations in connection with the Finder Earn product. Finder Wallet defended the matter which [went to trial in the Federal Court in October last year](#).

The Finder product allowed users to transfer cash, purchase True AUD stablecoins and be paid a fixed return for giving Finder the use of the stablecoins. Customers were paid in AUD on a compounding return of either 4.01% or in some cases 6.01% with a nifty little second by second counter showing the interest clocking up.

ASIC alleged that this was a debenture under Section 9 of the Corporations Act and that it should have been offered under a financial services licence. A debenture is defined as follows under the Corporations Act:

debenture of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a security interest over property of the body to secure repayment of the money.

In his judgment, Markovic J held:

- While it was not disputed that Finder Wallet's users held a chose in action for return of their funds at common law, this alone did not make the product a debenture;
- Funds deposited in fiat currency were not in the nature of a deposit or for the purpose of raising capital;
- Accordingly, the funds were not deposited or lent to Finder in the way envisaged in the definition of a debenture in Section 9;
- The funds were not given to Finder Wallet for working capital purposes, but *"to promote the growth and use of the Finder App which offered a range of services as well as giving customers an opportunity to sell their cryptocurrency to Finder Wallet and earn a return"*;
- Accordingly, there was no undertaking by Finder Wallet to repay those sums as a debt within the meaning of the definition in Section 9;
- Rather, there was a contractual promise to return to the customer the TrueAUD allocated by the customer to Finder Wallet together with the return earned on that allocation over the Earn Term, which was also paid in TrueAUD.

It follows that the Court found that the product did not meet the definition of a debenture, being in effect a contractual arrangement between Finder and its users that created a contractual obligation to repay the TrueAUD allocated by the customer with a return.

It is notable in this case that ASIC had proceeded with its case only on the basis that the Finder Earn product was in the form of a debenture. In a [similar recent case involving Block Earner, ASIC alleged that two yield bearing products also involving cryptocurrency related offerings](#) were in the form of a managed investment scheme, financial investment or derivative. The Court in this case was not required to address these matters based on ASIC's pleaded case.

The decision and adverse costs order is a significant set back for ASIC, which has recently [indicated its intention to test its regulatory perimeter](#) in relation to cryptocurrency related offerings. It also follows a partial win in the Block Earner case, in which [ASIC failed to establish that Block Earner's access product was a financial product](#).

Similarly, in the United States, the SEC has suffered several legal setbacks in taking enforcement action in relation to crypto-related offerings, underlining the risks of a "regulation by enforcement" approach and the importance of enacting fit for purpose legislation and industry guidance in relation to digital asset offerings.

Finder Wallet's Global CEO and Co-Founder, [Frank Restuccia, heralded the decision](#) on their website:

We are delighted with this outcome, which confirms that Finder was compliant with our regulatory obligations in offering Finder Earn to our customers. We understand and respect the importance of good regulation to protect consumers and we engaged openly and proactively with ASIC from the outset

ASIC has indicated that they are [carefully reviewing the judgment](#) and have 28 days to lodge an appeal.

As Australia continues to move towards a regulatory framework for licensing of digital asset exchanges with strong industry engagement, this will help further define the regulatory perimeter in relation to cryptocurrency related offerings, and provide a clear framework for industry and enhanced consumer protections for users.

You can find the full judgment [here](#).