

## NOTICE OF FILING

### Details of Filing

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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
FINDER WALLET PTY LTD (ACN 149 012 653)  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



## Concise Statement

No. of 2022

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

### Australian Securities and Investments Commission

Plaintiff

### Finder Wallet Pty Ltd (ACN 149 012 653)

Defendant

#### A. The important facts giving rise to the claim

1. The Defendant, Finder Wallet Pty Ltd (**Finder Wallet**) offered a product to consumers known as “Finder Earn”. By this proceeding, the plaintiff (**ASIC**) contends that Finder Earn amounts to a “debenture” for the purposes of the *Corporations Act 2001* (Cth) (the **Act**), such that there are a number of requirements of the Act with which Finder Wallet did not comply.
2. Between about late February 2022 and 10 November 2022 (**Relevant Period**), Finder Wallet offered Finder Earn to consumers. The Finder Earn product was first offered in November 2021, however this proceeding relates to the Relevant Period only.
3. The Finder Earn product was marketed on the “Finder.com.au” website. According to the website, Finder Earn was “*a way for you to earn a return by becoming a lender yourself, with our company as the borrower*”. The product had “terms of service” (the **Terms**). The Terms have been amended from time to time, but ASIC contends that the key features have relevantly remained the same since about February 2022. The effect of the Terms is that the consumer, in acquiring, investing in or using Finder Earn, deposited with or lent money to Finder Wallet, and Finder Wallet undertook to repay that money as a debt.
4. Finder Earn was marketed as making use of a cryptocurrency called “TrueAUD” (**TAUD**), which was described on the website as a “*stablecoin*”, “*pegged*” against the “*currency or asset which it aims to reflect, digitised in the blockchain ecosystem*” (in TAUD’s case, the relevant currency is Australian dollars). The Terms described cryptocurrency as

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having “*a high level of risk*” and as being a “*volatile asset*”, but stablecoins were said to be “*generally less volatile*” than other categories of cryptocurrency.

5. For a consumer to acquire, invest in or use the Finder Earn product in the Relevant Period, he or she required an account with Finder Wallet into which he or she had deposited with (or lent to) Finder Wallet Australian dollars or another government issued currency (which the Terms describe as “fiat”, but which for present purposes are described as Australian dollars or AUD).
6. After depositing AUD, the consumer, using the website or in the “Finder App” during the Relevant Period, selected “Wallet”, then selected “Transfer”. The consumer was then provided with an opportunity to read the Terms and select “Understood”, then choose the amount of deposited AUD he or she wished to transfer, then select “Transfer and Convert”. By selecting “Transfer and Convert”, the AUD was said to be “converted” into TAUD and “allocated” to the “Cryptocurrency Earn Option”. This was done by Finder Wallet updating an internal ledger. There was no mechanism for the consumer to convert AUD to TAUD then withdraw or retain that TAUD. The conversion from AUD to TAUD and allocation of the TAUD to Finder Wallet occurred simultaneously when the customer selected “Transfer and Convert”.
7. Once an “allocation” was made, the Terms provided that ownership of the allocation passed to Finder Wallet and would be held by Finder Wallet (or a third party); that the consumer did not maintain a legal interest in it; that the allocation may be pooled with the allocation of other persons and Finder Wallet’s own property; and that the allocation could be used by Finder Wallet without limitation including to generate value for Finder Wallet.
8. The Terms also provided that Finder Wallet had no obligation to own or control an amount of cryptocurrency that was equivalent to the allocation; that Finder Wallet may use or invest the allocation at its own risk in its sole discretion; and that the consumer’s only right in relation to the allocation during the Earn Term was a contractual right to an amount of cryptocurrency equal to the allocation and any “return” at the end of the Earn Term.
9. Once an allocation was made, there was an “Earn Term”, during which the consumer earned a “return”, being 4.01% p.a. (or a promotional rate of 6.01% p.a.).
10. During the Relevant Period, the Terms provided for various ways in which the Earn Term could come to an end (which are unrelated to the performance of the TAUD). The Terms stated that, when the Earn Term came to an end, Finder Wallet would return an amount of cryptocurrency that is equivalent to the allocation plus the accrued return, then convert that cryptocurrency into AUD in the consumer’s account. That is, the consumer

had the right, which is a chose in action, to repayment of the amount deposited into the account or lent to Finder Wallet, or held from time to time in the consumer's account with Finder Wallet.

11. During the Relevant Period, there was no mechanism to exit the product by withdrawing TAUD itself. There was a required "conversion" back into AUD. That is, just as the customer started with AUD deposited into their account with Finder Wallet upon entry into the Finder Earn product, the customer also received AUD back into their account when they exited the Finder Earn product. Part of the undertaking to repay involved repaying the AUD which was deposited by the customer.
12. Finder Wallet no longer offers the Finder Earn product. When Finder Wallet ceased offering the Finder Earn product on 24 November 2022, it transferred all TAUD balances out of Finder Earn, converted the TAUD balances 1:1 into AUD and added the AUD to users' Finder Wallet accounts.
13. Finder Wallet did not lodge a disclosure document with ASIC prior to offering the Finder Earn product to consumers.
14. Finder Wallet offered the Finder Earn product to consumers without an accompanying disclosure document.
15. Finder Wallet did not make a target market determination for Finder Earn.
16. Finder Wallet made the following and other similar statements to consumers through its website:
  - a. "Finder Earn lets you earn a competitive return on your capital";
  - b. "Finder Earn is a convenient way to get a better return on your capital"; and
  - c. "Until now, loan issuance has been a method used to earn returns reserved primarily for big banks and commercial institutions. Finder Earn flips the industry on its head. Using stablecoins and blockchain technology, we've created a way for you to earn a return by becoming a lender yourself, with our company as the borrower. Finder Earn opens up a new way for you to put your capital to work and earn a fixed return. All without needing to worry about the price fluctuations associated with stocks or other cryptocurrencies".

**B. The relief sought from the Court**

17. The relief sought by ASIC is set out in the accompanying Originating Process. In summary, in circumstances where ASIC alleges that during the Relevant Period Finder

Earn was a debenture, ASIC seeks declarations of contravention and orders for pecuniary penalties with respect to:

- a. the making of an offer of a debenture that needs disclosure to investors under Part 6D.2, without lodging a disclosure document with ASIC, for the purposes of sub-sections 727(1) and 727(6) of the Act;
- b. the making of an offer of a debenture that needs disclosure to investors under Part 6D.2, without an accompanying disclosure document, for the purposes of sub-sections 727(2) and 727(6) of the Act;
- c. a failure to make a target market determination as required by sub-section 994B(1) of the Act before engaging in retail product distribution conduct, for the purposes of sub-section 994B(2) of the Act; and
- d. the carrying on of a financial services business (where there is dealing in a financial product, and, or alternatively, the provision of financial product advice) without holding an Australian financial services licence covering the provision of the financial services, for the purposes of sub-sections 911A(1) and 911A(5B) of the Act.

**C. The primary legal grounds for the relief sought**

18. The definition of “debenture” at s 9 of the Act includes as follows:

*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.*

19. ASIC contends that during the Relevant Period the Finder Earn product was a debenture of Finder Wallet for the purposes of that statutory definition. ASIC contends that there was a chose in action; there was money deposited with (or alternatively lent to) Finder Wallet by the consumer; and the chose in action includes an undertaking by Finder Wallet to repay that money as a debt.
20. ASIC contends that, on the basis that Finder Earn was a debenture during the Relevant Period, Finder Wallet:
- a. contravened sub-sections 727(1) and 727(6) of the Act by offering Finder Earn without having lodged a disclosure document with ASIC;
  - b. contravened sub-sections 727(2) and 727(6) of the Act by offering Finder Earn without an accompanying disclosure document; and
  - c. contravened sub-section 994B(2) of the Act because it failed to make a target market declaration for Finder Earn before it engaged in retail product distribution conduct.

21. ASIC also contends that during the Relevant Period Finder Wallet contravened sub-sections 911A(1) and 911A(5B) of the Act, because it carried on a financial services business without holding an Australian financial services licence. The financial services business was:
- a. dealing in a financial product, being the issuing of the Finder Earn product which was a debenture; and
  - b. further or alternatively, the provision of financial product advice with respect to the Finder Earn product, in the form of the statements referred to in paragraph 16 above.

**D. The alleged harm suffered**

22. The requirements of the Act which ASIC contends have been contravened by Finder Wallet are directed at the protection of investors in the context of corporate fundraising via debentures. By Finder Wallet's failure to provide those protections, consumers were exposed to risk and made uninformed (or inadequately informed) investments, exposing them to a risk of loss in a manner inconsistent with the provisions of the Act. In particular, investors were at risk of making unsuitable investments and incurring potential losses on those investments given that they did not have the benefit of the regulatory regime (including the design and distribution obligations and adequate risk disclosure).
23. As ASIC understands it, as at 30 September 2022, Finder Wallet owed AUD20.8 million to consumers in respect of the Finder Earn product, being an amount (plus returns) borrowed from consumer investors in the absence of compliance with legislative protections.

This Concise Statement was prepared by Jeremy Giles SC and Emma Beechey of Counsel.

**Certificate of lawyer**

I, Anna Ross, certify to the Court that, in relation to the concise statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 15 December 2022



Signed by Anna Ross

Lawyer for the Plaintiff