

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Oztures Trading Pty Ltd trading as Binance Australia Derivatives [2026] FCA 509

File number: VID 1381 of 2024

Judgment of: **MOSHINSKY J**

Date of judgment: 27 March 2026

Date of publication of reasons: 24 April 2026

Catchwords: **CORPORATIONS** – financial products – Product Disclosure Statements – target market determinations – where defendant contravened provisions of the *Corporations Act 2001* (Cth) by failing to give Product Disclosure Statements to retail clients before offering and issuing financial products – where the defendant contravened the *Corporations Act* by failing to make target market determinations – where the defendant admitted the contraventions – where the parties jointly proposed declarations and a civil penalty of \$10 million – proposed declarations and orders made

Legislation: *Corporations Act 2001* (Cth), ss 9, 761D, 761E, 761G, 761GA, 764A, 766C, 912A, 994A, 994B, 1011B, 1012B, 1317E, 1317G
Financial Corporations Act 1974 (Cth)
Corporations Regulations 2001 (Cth)

Cases cited: *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68
Australian Building and Construction Commissioner v Pattinson [2022] HCA 13; 274 CLR 450
Australian Competition and Consumer Commission v Cement Australia Pty Ltd [2017] FCAFC 159; 258 FCR 312
Australian Competition and Consumer Commission v Honda Australia Pty Ltd [2023] FCA 1602
Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3) [2020] FCA 208; 275 FCR 57
Australian Securities and Investments Commission v AMP

Financial Planning Pty Ltd [2022] FCA 1115; 164 ACSR 64

Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2) [2020] FCA 69; 377 ALR 55

Australian Securities and Investments Commission v Bit Trade Pty Ltd (No 2) [2024] FCA 1422

Australian Securities and Investments Commission v Firstmac Ltd (Penalty Hearing) [2025] FCA 12

Australian Securities and Investments Commission v Lanterne Fund Services Pty Ltd [2024] FCA 353

Australian Securities and Investments Commission v MLC Ltd [2023] FCA 539; 168 ACSR 122

Australian Securities and Investments Commission v One Tech Media Ltd (No 6) [2020] FCA 842

Australian Securities and Investments Commission v RI Advice Group Pty Ltd (No 3) [2022] FCA 84; 158 ACSR 321

Australian Securities and Investments Commission v Westpac Securities Administration Ltd [2019] FCAFC 187; 272 FCR 17

Australian Securities and Investments Commission v Westpac Securities Administration Ltd [2021] FCA 1008; 156 ACSR 614

Forster v Jododex Australia Pty Ltd [1972] HCA 61; 127 CLR 421

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Counsel for the Plaintiff:	Mr PH Solomon KC with Mr P Annabell
Solicitor for the Plaintiff:	Clayton Utz

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Solicitor for the Defendant: Gilbert + Tobin

ORDERS

VID 1381 of 2024

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Plaintiff

AND: **OZTURES TRADING PTY LTD TRADING AS BINANCE
AUSTRALIA DERIVATIVES (ACN 142 898 324)**
Defendant

ORDER MADE BY: **MOSHINSKY J**

DATE OF ORDER: **27 MARCH 2026**

THE COURT DECLARES THAT:

1. In the period 7 July 2022 to 21 April 2023 (**Offer Period**), the defendant contravened s 1012B(3)(a)(i) of the *Corporations Act 2001* (Cth) (**Corporations Act**) each time it failed to give a Product Disclosure Statement to any of the 524 clients who were not exempt from acquiring the following financial products as a “retail client” pursuant to s 761G of the Corporations Act (a **Retail Client**), prior to offering those products:
 - (a) Futures-UM or USD-M Futures: perpetual or delivery contracts for difference that were quoted, collateralised and settled in USDT (Tether - an Ethereum United States Dollar backed stablecoin) or BUSD (Binance United States Dollar backed stablecoin);
 - (b) Futures-CM or Coin-M Futures: perpetual or delivery contracts for difference that were quoted, collateralised and settled in cryptocurrency other than stablecoins, including (but not limited to) Bitcoin, Ethereum and Binance Coin (BNB); and
 - (c) Options: cryptocurrency options contracts that were quoted and settled in USDT,(each, an **Oztures Product**, and together, the **Oztures Products**).

2. In the period 8 July 2022 to 21 April 2023 (**Issue Period**), the defendant contravened s 1012B(3)(a)(iii) of the Corporations Act each time it failed to give a Product Disclosure Statement to a Retail Client prior to issuing an Oztures Product to that client, in circumstances where it had reasonable grounds to believe that the client had not been given a Product Disclosure Statement for the Oztures Product.
3. During the Issue Period, the defendant contravened s 994B(1) and (2)(a) of the Corporations Act each time it failed to make a target market determination in respect of each of the Oztures Products prior to issuing the Oztures Products to Retail Clients.
4. During the Issue Period, the defendant contravened s 912A(1)(a) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by its Australian Financial Services Licence were provided efficiently, honestly and fairly, by failing to have adequate systems and processes in place to ensure, in its classification of clients as a “wholesale client” or “sophisticated investor”, that errors did not occur that were:
 - (a) widespread;
 - (b) significant;
 - (c) repeated; or
 - (d) systematic,or otherwise prevent such errors from occurring.
5. During the Offer Period, the defendant contravened s 912A(1)(b) of the Corporations Act by failing to comply with Condition 3 of its Australian Financial Services Licence numbered 425165, by failing to establish and maintain compliance measures that ensured, as far as reasonably practicable, that the defendant complied with the provisions of the financial services laws.
6. During the Issue Period, the defendant contravened s 912A(1)(f) of the Corporations Act by failing to ensure that its employees were:
 - (a) adequately trained to provide the financial services provided by the defendant;
 - (b) competent to provide the financial services provided by the defendant.

7. During the Issue Period, the defendant contravened s 912A(1)(g)(i) of the Corporations Act by failing to have an internal dispute resolution system that complied with the standards and requirements made or approved by the plaintiff in accordance with s 912A(2) of the Act.

THE COURT ORDERS THAT:

8. The defendant pay to the Commonwealth an aggregate pecuniary penalty of \$10,000,000 in respect of its contraventions of ss 912A, 994B and 1012B(3) of the Corporations Act the subject of declarations 1 to 4 and 6 to 7 above.
9. The defendant pay the plaintiff's costs of the proceeding, fixed in the sum of \$200,000.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MOSHINSKY J:

Introduction

- 1 This proceeding, which has been commenced by the Australian Securities and Investments Commission (ASIC), concerns conduct by Oztures Trading Pty Ltd trading as Binance Australia Derivatives (**Oztures**) during the period 7 July 2022 to 21 April 2023 (the **Offer Period** and the **relevant period**). During that period, Oztures offered cryptocurrency derivative products (the **Oztures Products**) to customers. At all material times prior to 6 April 2023, Oztures was the holder of an Australian Financial Services Licence (AFSL).
- 2 During the Offer Period, 524 of Oztures' 611 clients did not provide sufficient information as part of the onboarding process for Oztures to confirm that they were not "retail clients" pursuant to s 761G of the *Corporations Act 2001* (Cth). Further, during the period 8 July 2022 to 21 April 2023 (the **Issue Period**), 437 of those clients were issued with one or more Oztures Products.
- 3 Following the issuing of statutory notices by ASIC on 13 December 2022, Oztures identified a breach, or likely breach, of a number of obligations under the *Corporations Act* arising from the misclassification of the "retail clients". On 24 February 2023, Oztures notified a reportable situation to ASIC in relation to this issue. In February 2023, Oztures commenced offboarding the "retail clients" from the Binance platform. By 25 February 2023, all affected customers had been suspended from using the Binance platform (after having been provided with notice). On 5 April 2023, Oztures voluntarily applied to ASIC to cancel its AFSL. That cancellation took effect on 6 April 2023. Oztures subsequently paid approximately \$13.1 million in compensation to remediate the "retail clients" for losses and fees (including interest).
- 4 In this proceeding, ASIC alleges that, by its conduct, Oztures contravened the following provisions of the *Corporations Act*:
 - (a) s 1012B(3)(a)(i) – which required Oztures to give a Product Disclosure Statement when it *offered* financial products to a person as a retail client;
 - (b) s 1012B(3)(a)(iii) – which required Oztures to give a Product Disclosure Statement when it *issued* financial products to a person as a retail client, in circumstances where

there were reasonable grounds to believe the person had not been given a Product Disclosure Statement for the product;

- (c) ss 994B(1) and (2)(a) – which required Oztures to make a target market determination in respect of the Oztures Products prior to engaging in retail product distribution conduct;
- (d) s 912A(1)(a) – which required Oztures, as an AFSL holder, to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly;
- (e) s 912A(1)(b) – which required Oztures to comply with the conditions of its AFSL;
- (f) s 912A(1)(f) – which required Oztures to ensure its representatives were adequately trained and competent to provide financial services; and
- (g) s 912A(1)(g) – which required Oztures to have a compliant internal dispute resolution system if financial services were provided to retail clients.

5 Oztures has admitted that it contravened each of the above provisions.

6 The parties have reached agreement as to the terms on which they seek the resolution of this proceeding, and propose that the Court make declarations to reflect Oztures' admitted contraventions of the *Corporations Act*. In addition, the parties propose that a pecuniary penalty of \$10 million be imposed in respect of its contraventions of ss 1012B(3)(a)(i), 1012B(3)(a)(iii), 994B(1) and 994B(2)(a), 912A(1)(a), 912A(1)(f) and 912A(1)(g) of the Act. No pecuniary penalty is sought in respect of s 912A(1)(b), as contravention of that sub-section does not attract a pecuniary penalty: s 912A(5A). It is also proposed that there be an order that Oztures pay ASIC's costs of the proceeding fixed in the sum of \$200,000.

7 The parties have prepared a statement of agreed facts dated 31 July 2025 (**SOAF**). The parties also filed a joint written submission on penalty dated 12 December 2025. These reasons are substantially based on the parties' joint written submission.

8 At the hearing of this matter on 23 December 2025, I raised a concern with counsel for both parties that the SOAF did not contain a sufficiently detailed explanation of how the contraventions came about. I indicated that I considered such an explanation to be necessary to enable me to determine whether the penalty proposed by the parties was sufficient to achieve the objects of general and specific deterrence. The parties were given leave to file further material. Subsequently, Oztures filed an affidavit of Cheung Yin Pok dated 20 March 2026.

Mr Cheung holds the position of Money Laundering Reporting Officer / Compliance Officer for the Binance Holdings (AP) Limited group of companies (**Binance Group**) and is based in Abu Dhabi, United Arab Emirates. Mr Cheung was not required for cross-examination and ASIC indicated in an email to my chambers dated 25 March 2026 that it did not intend to file any affidavit material or further submissions. I took this to mean that ASIC continued to consider the proposed declarations and orders to be appropriate.

- 9 Having considered the affidavit of Mr Cheung (in addition to the earlier material), I was satisfied that it was appropriate to make the proposed declarations and orders. On 27 March 2026, I made declarations and orders substantially in the terms proposed by the parties, and said that I would provide my reasons later. The following are my reasons for making those declarations and orders.

Factual Background

- 10 I accept the matters set out in the SOAF and make findings to that effect. I also accept the matters set out in Mr Cheung's affidavit.

Oztures

- 11 On 7 April 2022, Binance Capital Management Co Ltd purchased Rosherville Asset Management Pty Ltd (**Rosherville Entity**). On 8 April 2022, Binance Capital Management Co Ltd registered the Rosherville Entity as "Oztures Trading Pty Ltd".
- 12 During the period 7 July 2022 to 6 April 2023, Oztures was the holder of an AFSL. Oztures' AFSL permitted it to deal in a financial product by issuing, applying for, acquiring, varying or disposing of a financial product in respect of the class of financial products, being derivatives. Condition 3 of Oztures' AFSL provided as follows:

The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

- 13 During the Offer Period, Oztures offered the following products to its clients (referred to in these reasons as the "Oztures Products"):
- (a) Futures-UM or USD-M Futures: perpetual or delivery contracts for difference that were quoted, collateralised and settled in USDT (Tether - an Ethereum United States Dollar backed stablecoin) or BUSD (Binance United States Dollar backed stablecoin);

- (b) Future-CM or Coin-M Futures (from 18 August 2022 onwards): perpetual or delivery contracts for difference that were quoted, collateralised and settled in cryptocurrency other than stablecoins, including (but not limited to) Bitcoin, Ethereum and BNB; and
- (c) Options (from 30 December 2022 onwards): cryptocurrency options contracts that were quoted and settled in USDT.

The wholesale assessment process

- 14 In or around April 2022, Oztures decided that it would limit its offering of derivatives to *wholesale clients* and *sophisticated investors*. Following that decision, Oztures implemented a process by which customers were to be onboarded and offered derivatives products only if they were assessed to be wholesale clients or sophisticated investors. For this reason, Oztures did not implement processes intended to comply with regulatory obligations applicable when offering products to “retail clients”, including by not making a target market determination or preparing Product Disclosure Statements for the products.
- 15 To acquire the Oztures Products, a prospective client was required to undertake the following steps:
- (a) open an account with Investbybit Pty Ltd trading as Binance Australia (**IBB**), into which the prospective client could deposit Australian Dollars;
 - (b) undertake an assessment (the **Wholesale Assessment**) as to whether financial products were to be provided to the prospective client as a “retail client” or a “wholesale client” or a “sophisticated investor”, pursuant to ss 761G and 761GA of the *Corporations Act*;
 - (c) then be assessed, pursuant to the Wholesale Assessment, to be a “wholesale client” or “sophisticated investor”; and
 - (d) open a “derivatives trading account” with Oztures.
- 16 During the Offer Period, Oztures took the following steps to assess whether a client should be classified as a “retail client” or a “wholesale client” or a “sophisticated investor” (the **Onboarding Procedures**):
- (a) the prospective client was directed to a webpage, which, among other things, included warnings as to the risks involved with over-the-counter derivatives products and the Oztures Products, and required the customer to acknowledge that they would not be

able to receive services unless they met the definition of “wholesale client” under the *Corporations Act*;

- (b) if the client submitted the required acknowledgments, they were then presented with an explanation of the five relevant sub-categories of “wholesale client” or “sophisticated investor”, being: (i) High Net Worth Individual or Controlled Entity; (ii) Professional Investor; (iii) Large Business; (iv) Sophisticated Investor; and (v) Related Body Corporate. The client was required to select one of the categories and tick a box to certify that they satisfied the criteria described;
- (c) a client seeking to be classified as a “sophisticated investor” was required to complete a knowledge test to assess their trading experience and professional knowledge. The client was required to achieve a mark of at least 80% and was able to attempt the test an unlimited number of times, with the same questions being asked each time;
- (d) the client was then required to sign and submit an acknowledgment to the effect that the information provided by the prospective client was true, and that the Oztures Products would be provided to the prospective client as a “wholesale client”;
- (e) the client was required to submit certain supporting documentation, depending upon the category of “wholesale client” or “sophisticated investor” selected;
- (f) the supporting documentation provided by a prospective client during the application process was manually checked by a member of Oztures’ compliance team;
- (g) a client who did not complete any of the above steps (including because Oztures’ compliance team determined that the supporting documentation was insufficient) was not onboarded as a client of Oztures;
- (h) if a prospective customer was assessed as a “retail client”, they could not acquire the Oztures Products unless they requested that their application access be reset and this request was then approved by Oztures; and
- (i) if the compliance officer approved the prospective client’s application after their manual review, the client was able to open an account and commence trading with Oztures.

Misclassification of Retail Clients

- 17 During the Offer Period, 611 persons held or opened accounts with Oztures (**Clients**). Of those persons, 524 Clients did not provide sufficient information to confirm that they were not “retail

clients” under s 761G or 761GA of the *Corporations Act*. Accordingly, those clients were “retail clients” within the meaning of s 761G(1) of the *Corporations Act* (the **Retail Clients**).

18 In particular:

- (a) none of the Clients who sought to be classified as a “Related Body Corporate” provided sufficient information to satisfy the test under s 761G(4A) of the *Corporations Act* as modified by reg 7.6.02AD of the *Corporations Regulations 2001* (Cth) (the **Related Body Corporate Test**);
- (b) none of the Clients who sought to be classified as a “Large Business” provided sufficient information to satisfy the test under s 761G(7)(b) and (12) of the *Corporations Act* (the **Large Business Test**);
- (c) none of the Clients who sought to be classified as “High Net Worth Individuals”, before the provision of any financial product or service, provided a valid accountant’s certificate within the preceding six months, as required by s 761G(7)(c) of the *Corporations Act* (the **Individual Wealth Test**);
- (d) none of the Clients who sought to be classified as “Professional Investors” provided sufficient evidence to meet any of the criteria in s 761G(7)(d) or in the definition of “professional investor” in s 9 of the *Corporations Act* (the **Professional Investor Test**); and
- (e) of the 460 Clients who sought to be classified as “sophisticated investors”:
 - (i) none were provided with a written statement setting out Oztures’ reasons for being satisfied that the client had the requisite experience, as required under s 761GA(e) of the *Corporations Act*; and
 - (ii) Oztures did not determine whether those clients otherwise satisfied the requirements of s 761GA of the *Corporations Act* (the **Sophisticated Investor Test**).

19 Despite Oztures’ Onboarding Procedures, of the 524 Retail Clients who were onboarded with Oztures:

- (a) approximately 460 were incorrectly classified as meeting the Sophisticated Investor Test;
- (b) approximately 33 were incorrectly classified as meeting the Individual Wealth Test;

- (c) approximately 26 were incorrectly classified as meeting the Professional Investor Test;
- (d) approximately 4 were incorrectly classified as meeting the Related Body Corporate Test; and
- (e) approximately 1 was incorrectly classified as meeting the Large Business Test.

20 Some of the Retail Clients who were assessed as meeting the Sophisticated Investor Test were assessed by Oztures as meeting the test notwithstanding that:

- (a) the Client undertook a “Sophisticated Investor Knowledge Test” that did not adequately test whether the prospective client had previous experience in financial services and investing sufficient to assess the matters in s 761GA of the *Corporations Act*;
- (b) the Client had not provided any (or adequate) evidence of trading experience; and/or
- (c) the Client had provided details of previous employers in the “Sophisticated Investor Certification” form which did not appear to be connected to derivatives trading.

21 Clients assessed as meeting the Individual Wealth Test were onboarded despite not providing a valid accountant’s certificate.

22 Clients assessed as meeting the Professional Investor Test were onboarded despite failing to provide adequate evidence or incorrectly certifying themselves as exempt public authorities.

23 Clients assessed as meeting the Related Body Corporate Test were onboarded despite failing to provide adequate evidence of meeting the test.

24 The Client assessed as meeting the Large Business Test was onboarded despite failing to provide adequate evidence of meeting the test.

25 During the relevant period, approximately 1,100 applicants applied to be onboarded as customers of Oztures. More than 500 of those applications were rejected.

Compliance personnel and processes

26 During the relevant period, the compliance organisation at Oztures was as follows:

- (a) Between 6 June 2022 and 31 March 2023, Oztures employed a full-time compliance officer (the “Compliance Lead”). The first Compliance Lead was employed from 6 June 2022 to 22 August 2022. They were then replaced by a new Compliance Lead who was employed from 1 August 2022 until 31 March 2023 (the “second Compliance Lead”). At the time of their appointment, the second Compliance Lead was already

employed by Binance Australia as Director of Risk & Compliance. The second Compliance Lead had two local direct reports – a Compliance Analyst and a Compliance Admin – who were responsible for performing anti-money laundering / counter-terrorism financing and risk-related tasks. Both of the Compliance Leads were based locally in Australia.

- (b) The Compliance Lead also relied on support from individuals in the Binance Global Compliance team to help discharge Oztures’ obligations locally, including two analysts responsible for the classification of clients during the client onboarding process (eg identifying whether a client was a high net worth individual, professional investor etc). These analysts had a dotted reporting line to the second Compliance Lead. They also maintained an active internal communication channel for escalating queries and issues to the Compliance Lead for advice and guidance as part of the client classification and onboarding process. The Compliance Lead also oversaw periodic reviews of Oztures’ client onboarding process.

27 In June 2022, Oztures introduced a policy that outlined its procedures for the classification of clients during the client onboarding process (**Binance Australia Derivatives Wholesale Clients Policy**). This policy was intended to assist Oztures’ compliance staff to assess prospective clients during the onboarding process and determine if those clients were wholesale clients or sophisticated investors. It set out the eligibility tests for High Net Worth Individuals, Professional Investors, Large Businesses and Sophisticated Investors. The policy also listed the documents which each of the categories of wholesale clients and sophisticated investors were required to submit to Oztures during the onboarding process to prove their status as a “wholesale client” or “sophisticated investor”.

28 On 17 June 2022, Binance Australia’s Director of Risk & Compliance delivered training to the Compliance staff responsible for the backend assessment of clients before onboarding (the **Compliance Backend Team**). The Compliance Backend Team was a global team, but the training included Australian staff. The purpose of the training was to: (a) familiarise the Compliance Backend staff with the guidelines on assessing client classifications; (b) gain fundamental knowledge on client classification and documentation requirements; (c) provide insights on assessing the completeness of the provided documentation; and (d) gain familiarity with general onboarding flow and escalation points. The backend assessment process was

designed to operationalise the classification requirements detailed in the Binance Australia Derivatives Wholesale Clients Policy.

29 The first Compliance Lead’s employment was terminated in August 2022 and they are no longer employed by the Binance Group. Following the identification of the issues which are the subject of this proceeding, the second Compliance Lead’s employment was terminated and they are no longer employed by any Binance Group entity. Accordingly, Mr Cheung has been unable to make enquiries of those individuals and has relied on the available business records in preparing his affidavit.

The internal dispute resolution process

30 During the Issue Period, Oztures’ internal dispute resolution procedure was contained in the policy entitled “Complaints Handling Policy”. Relevantly, for the reasons set out below, the “Complaints Handling Policy” did not comply with the applicable standards and requirements made or approved by ASIC in relation to the provision of financial services to “retail clients”.

Permitting Retail Clients to open accounts with Oztures

31 During the Issue Period, Oztures issued one or more of the Oztures Products to 437 of the Retail Clients.

32 In being permitted to open accounts with Oztures, those Retail Clients were not afforded the consumer protections required by the *Corporations Act* to be given to “retail clients” within the meaning of s 761G of the Act. In particular, Oztures did not:

- (a) during the Offer Period, provide a Product Disclosure Statement to any of the Retail Clients to whom it offered or issued the Oztures Products at the time it offered, or prior to the issue of, an Oztures Product to the Retail Client;
- (b) during the Issue Period, make a target market determination in respect of each of the Oztures Products prior to the issue of that Oztures Product to any of the Retail Clients; and
- (c) during the Issue Period, have an internal dispute resolution system that complied with the applicable standards required when providing financial services to “retail clients”.

33 During the Issue Period, there were reasonable grounds for Oztures to believe that the Retail Clients to whom one or more Oztures Products were issued had not previously been provided with a Product Disclosure Statement for the relevant Oztures Product.

Affected customers and harm caused

34 Certain affected customers paid fees to Oztures. In addition, certain customers incurred trading losses through investments in one or more of the Oztures Products. Those fees and trading losses are summarised in the table below.

Category	Number of Customers Affected	Total Trading Losses	Total Fees Paid to Oztures	Total
Sophisticated Investor	460	US\$1,047,125.14	US\$1,525,989.40	US\$2,573,114.54
Individual Wealth	33	US\$3,040,422.37	US\$430,024.44	US\$3,470,446.81
Professional Investor	26	US\$1,554,667.16	US\$578,244.33	US\$2,132,911.49
Related Body Corporate	4	US\$208.42	US\$9.18	US\$217.60
Large Business	1	-	-	-
Total	524	US\$5,642,423.09	US\$2,534,267.35	US\$8,176,690.44

35 The table below contains the currency conversions of the figures in the table above from USD to AUD as at 30 July 2025 (being the day before the SOAF was filed).

Category	Number of Customers Affected	Total Trading Losses	Total Fees Paid to Oztures	Total
Sophisticated Investor	460	\$1,608,240.12	\$2,343,709.72	\$3,951,949.84
Individual Wealth	33	\$4,669,670.36	\$660,458.36	\$5,330,128.72
Professional Investor	26	\$2,387,754.81	\$888,103.72	\$3,275,858.53
Related Body Corporate	4	\$320.10	\$14.10	\$334.20
Large Business	1	-	-	-
Total	524	\$8,665,985.39	\$3,892,285.90	\$12,558,271.29

36 Oztures received fees paid by customers who were onboarded and subsequently traded in the Oztures Products. The amount of those fees is set out in the tables above.

37 As set out below, Oztures has since remediated all Retail Clients under a \$13.1 million remediation program and has compensated each of the Retail Clients for the full amount of any trading losses they incurred and the fees they paid to Oztures (including interest).

Reporting to ASIC and cancellation of AFSL

- 38 On 13 December 2022, ASIC issued statutory notices to Oztures requesting information about the Oztures Products and other matters.
- 39 In or around January 2023, while it was obtaining information to answer ASIC’s notices, Oztures identified that some applicants who had been onboarded as wholesale clients or as sophisticated investors did not satisfy the relevant tests (or had not provided information sufficient to support that classification).
- 40 On 24 February 2023, Oztures notified a reportable situation to ASIC in relation to the misclassification of Retail Clients. Oztures lodged further breach reports on 2 March 2023, 20 March 2023 and 11 September 2023.
- 41 On 5 April 2023, Oztures applied to ASIC to cancel its AFSL. That cancellation took effect on 6 April 2023.
- 42 Oztures is no longer trading and has not traded since around April 2023. The staff who were responsible for the Oztures Products are no longer employed by Oztures or the Binance Group.
- 43 Since that time, no other entity within the Binance Group has offered or presently offers any other products or services in Australia (whether under an AFSL or otherwise).
- 44 The Binance Group has one other Australian entity, IBB. IBB is not a subsidiary of Oztures and Oztures is not a subsidiary of IBB. IBB is a subsidiary of Binance Holdings (AP) Limited.
- 45 IBB provides (and provided during the Offer Period) cryptocurrency exchange services and is enrolled with AUSTRAC as a digital currency exchange.
- 46 IBB did not and does not hold an AFSL or offer financial products or services under an AFSL. However, between 29 June 2022 and 6 April 2023, IBB was a corporate authorised representative of Oztures with respect to its AFSL.

Reasons for the misclassification of the Retail Clients

- 47 Mr Cheung states in his affidavit that, from his review of materials for this proceeding, he understands that the misclassification of the Retail Clients arose from “weaknesses in the onboarding process”.

48 Mr Cheung states in his affidavit that, based on his review of Oztures' breach reports, he understands that the misclassification of the Retail Clients was broadly due to the following reasons:

- (a) the design of Oztures' onboarding processes meant that aspects of the wholesale assessment process did not comply with the relevant statutory requirements. Oztures did not provide the 460 clients who it classified as 'sophisticated investors' with a written statement of reasons outlining why it was satisfied that the client was a sophisticated investor. This is a requirement under s 761GA(e) of the *Corporations Act* for such clients to be deemed a "sophisticated investor" and therefore failure to provide this statement meant each of the 460 clients were in fact "retail clients";
- (b) during their manual review of the supporting documentation which certain prospective clients submitted during the onboarding processes, the Oztures compliance team failed to identify that the supporting documentation provided by some of those clients:
 - (i) did not satisfy the requirements of Oztures' onboarding processes;
 - (ii) did not provide sufficient evidence that the prospective client was a "wholesale client" within the meaning of the *Corporations Act*; and/or
 - (iii) did not bear a clear connection on the face of the document to the prospective client.

49 Following the identification of the misclassification issue in January 2023, members of Oztures' compliance and legal team conducted a review of all customers who had been onboarded onto Oztures' platform to determine whether those clients had been properly classified as "wholesale clients" or "sophisticated investors". That review identified that 524 of those clients had been misclassified as "wholesale clients" or "sophisticated investors" during the Offer Period.

50 For the purpose of preparing his affidavit, Mr Cheung reviewed samples of the customer files for some of the 524 misclassified clients. His affidavit includes examples purporting to explain why certain customers were misclassified:

- (a) Customers 1 and 2 each declared they were a "sophisticated investor" to Oztures. In accordance with the requirements of Oztures' onboarding processes, they were therefore required to submit trading statements to demonstrate that they had placed a minimum of 60 trades during four out of the past eight quarters with a notional value

of more than \$1 million in leveraged derivatives products, or alternatively, provide an executed Sophisticated Investor Certificate confirming that they held a professional role which provided the customer with satisfactory investment trading or investment managing experience for the past 12 months. However, the trading statements submitted by each customer did not span a two-year period and were therefore not compliant with Oztures' onboarding requirements. This deficiency was identified as part of the compliance review in 2023. From his review of the files, Mr Cheung was unable to determine why those clients were onboarded as wholesale clients or sophisticated investors without submitting trading statements that complied with Oztures' onboarding requirements. Further, Oztures did not provide each of these clients with a written statement of reasons outlining why it was satisfied that the client was a sophisticated investor (as required under s 761GA(e) for clients to be deemed a "sophisticated investor").

- (b) Customers 3, 4 and 5 each declared that they were a "High Net Worth Individual" to Oztures. In accordance with the requirements of Oztures' onboarding processes, they were therefore required to provide a qualified accountant's certificate given within the preceding two years which confirmed that the applicant either had net assets of \$2.5 million or gross income of at least \$250,000 for each of the last two financial years. However, the accounting certificates provided by these Retail Clients were insufficient for various reasons, including because the certificate did not include the accountant's membership designation number, their firm address and/or their certificate issuance date. These deficiencies were identified as part of the compliance review in 2023. From his review of the files, Mr Cheung was unable to determine why those deficiencies were not identified prior to the clients being onboarded. He also could not determine whether the accountants' certificates were in fact genuine.
- (c) Customers 6, 7, 8 and 9 each declared that they were a "Professional Investor" to Oztures. In accordance with the requirements of Oztures' onboarding processes, they were therefore required to provide evidence of at least \$10 million gross assets in their control (or at least \$10 million net assets for a corporate trustee of a superannuation fund), an AFSL, Australian Prudential Regulation Authority registration, registration under the *Financial Corporations Act 1974* (Cth) or ASX registration or other registration for the official list of a financial market. However:

- (i) Customers 6 and 7 provided financial statements, but the financial statements submitted on their face did not bear a clear connection to those customers and therefore failed to confirm that each of the customers had at least \$10 million gross assets in their control. These deficiencies were identified as part of the compliance review in 2023. From his review of the files, Mr Cheung was unable to determine why those clients were onboarded, despite supplying financial statements which were not in compliance with Oztures' onboarding requirements. He also could not determine whether the financial statements did in fact relate to financial assets held by or for the customers.
- (ii) Customer 8 submitted a signed "Wholesale Client Acknowledgement Statement" and a declaration which claimed that they were a "Professional Investor" on the basis of being an "exempt public authority". However, the customer named in these documents was an individual, not a corporate body. These deficiencies were identified as part of the compliance review in 2023. From his review of the files, Mr Cheung was unable to determine why the lack of supporting documentation to prove that this customer was a "professional investor" was not identified prior to the client being onboarded.
- (iii) Customer 9 submitted a signed "Wholesale Client Acknowledgment Statement" and a declaration certifying that they fell within the category of "Professional Investor" because they held an AFSL. However, this customer did not provide a copy of their AFSL to support this assertion and it appears that Oztures did not check the publicly accessible ASIC register to verify whether the customer was an AFSL holder. These deficiencies were identified as part of the compliance review in 2023. From his review of the files, Mr Cheung was unable to determine why these issues arose.
- (iv) Customer 10 declared that they were a "Large Business" to Oztures and as part of its onboarding processes was required to provide a statement executed by the directors of their business to confirm the number of employees employed by the business. However, this customer had provided a statement of an individual account, which did not provide the role of the prospective client within the business, and was therefore not compliant with Oztures' onboarding requirements. This deficiency was identified as part of the compliance review

in 2023. From his review of the files, Mr Cheung was unable to determine why the issue was not identified prior to the client being onboarded.

51 In his affidavit, Mr Cheung states that, although he cannot determine from his review of the above customers' files why these issues were not identified during the client onboarding process, they most likely resulted from insufficient knowledge and experience on the part of the reviewers and a failure to follow the guidelines and policy when reviewing a client's submitted evidential proof of eligibility as a wholesale client or sophisticated investor. Assuming this to be the case, it suggests to me that Oztures' management did not take seriously enough the company's obligations to comply with the provisions of the *Corporations Act* relating to the marketing and distribution of financial products.

Remediation process

52 In February 2023, Oztures commenced offboarding the Retail Clients from the Binance platform after providing notification to the Retail Clients. By 25 February 2023, all affected customers had been suspended from using the Binance platform.

53 After Oztures became aware of the misclassification of Retail Clients, Oztures paid approximately \$13.1 million in compensation to Retail Clients for aggregated losses and fees (including interest).

54 The remediation program was overseen by ASIC and was consistent with Regulatory Guide RG277 – Consumer Remediation (**RG277**).

55 The methodology that underpinned the remediation program was designed to provide full compensation by placing the Retail Clients in the same position as if they had never been onboarded as a client and traded derivatives on the Binance platform. The remediation program was independently reviewed by KordaMentha.

The Contravening Conduct

Section 1012B(3)(a)(i) and (iii) – Product Disclosure Statement

56 During the relevant period, s 1012B of the *Corporations Act* relevantly provided:

- (3) A regulated person must give a person a Product Disclosure Statement for a financial product if:
 - (a) the regulated person:
 - (i) offers to issue the financial product to the person; or

- (ii) offers to arrange for the issue of the financial product to the person; or
 - (iii) issues the financial product to the person in circumstances in which there are reasonable grounds to believe that the person has not been given a Product Disclosure Statement for the product; and
- (b) the financial product is, or is to be, issued to the person as a retail client.

The Product Disclosure Statement must be given at or before the time when the regulated person makes the offer, or issues the financial product, to the person and must be given in accordance with this Division.

Note: If a Product Disclosure Statement is given when the offer is made, it will not need to be given again when the product is issued to the person (see subsection 1012D(1)) unless the Product Disclosure Statement that was given is no longer up to date.

...

- (6) A person contravenes this subsection if the person contravenes this section.

Note: This subsection is a civil penalty provision (see section 1317E).

57 Oztures was a “regulated person” within the meaning of s 1011B of the *Corporations Act*, which provided that a “regulated person” in relation to a financial product included, among other things, “an issuer of the financial product” and “any financial services licensee”.

58 Each of the Oztures Products was a derivative within the meaning of s 761D of the *Corporations Act*. Accordingly, they are deemed to be “financial products” by reason of s 764A(1)(c) of the *Corporations Act*. A derivative is issued to a person when the person enters into the legal relationship that constitutes the financial product: s 761E(1), (3) (item 3) of the *Corporations Act*.

59 During the Offer Period, a total of 524 Retail Clients were offered Oztures Products. None of those Retail Clients were provided with a Product Disclosure Statement at the time they were offered Oztures Products. Accordingly, during the Offer Period, Oztures contravened s 1012B(3)(a)(i) each time it offered an Oztures Product to a Retail Client.

60 Of the 524 Retail Clients that were offered Oztures Products, 437 Retail Clients were subsequently issued with one or more Oztures Products. None of those Clients were provided with a Product Disclosure Statement at the time they were issued with Oztures Products. In each case, Oztures had reasonable grounds to believe that those Retail Clients had not previously been provided a Product Disclosure Statement for the relevant Oztures Product.

Accordingly, during the Issue Period, Oztures contravened s 1012B(3)(a)(iii) each time it issued an Oztures Product to a Retail Client.

Sections 994B(1) and (2)(a) – target market determination

61 During the relevant period, s 994B of the *Corporations Act* relevantly provided:

- (1) Subject to subsection (3), a person must make a target market determination for a financial product if:
 - (a) under Part 6D.2, the person is required to prepare a disclosure document for the product; or
 - (b) under Part 7.9, the person is required to prepare a Product Disclosure Statement for the product; or
 - (ba) the product is covered by paragraph 994AA(1)(b) (about the extended operation of this Part) and:
 - (i) the person issues the product to another person as a retail client; or
 - (ii) the person sells the product under a regulated sale; or
 - (c) regulations made for the purpose of this paragraph require the person to make a target market determination for the product.
- (2) A person required by subsection (1) to make a target market determination for a financial product must do so before:
 - (a) if paragraph (1)(a), (b) or (ba) applies—any person engages in retail product distribution conduct in relation to the product; or
 - (b) if paragraph (1)(c) applies:
 - (i) the time or event specified in regulations made for the purposes of that paragraph; or
 - (ii) if there is no time or event so specified—any person engages in retail product distribution conduct in relation to the product.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

62 The section applied to Oztures because Pt 7.9 required Oztures to prepare a Product Disclosure Statement for the Oztures Products (see s 994B(1)(b)).

63 As a result, it was required to make a target market determination before any person engaged in product distribution conduct in relation to the Oztures Products.

64 The expression “retail product distribution conduct” is defined in s 994A of the *Corporations Act* as follows:

retail product distribution conduct, in relation to a financial product, means any of the following:

- (a) dealing in the product in relation to a retail client;
- (b) under Part 6D.2, giving a disclosure document in relation to an offer of the product to a retail client;
- (c) under Part 7.9, giving a Product Disclosure Statement for the product to a retail client;
- (d) providing financial product advice in relation to the product to a retail client.

65 Pursuant to s 766C of the *Corporations Act*, “dealing” includes issuing a financial product. As set out above, each of the Oztures Products was a derivative within the meaning of s 761D and the Oztures Products are deemed to be “financial products” by reason of s 764A(1)(c). Oztures was accordingly engaging in “retail product distribution conduct” when it issued those products to Retail Clients.

66 Accordingly, pursuant to s 994B, Oztures was required to make a target market determination in respect of each of the Oztures Products before issuing the Oztures Products to any of the Retail Clients. It did not do so and therefore contravened s 994B of the *Corporations Act*.

Section 912A(1)(a) – all things necessary to ensure financial services provided efficiently, honestly and fairly

67 Section 912A(1)(a) of the *Corporations Act* required Oztures, as a financial services licensee, to:

do all things necessary to ensure that the financial services covered by [its] licence are provided efficiently, honestly and fairly ...

68 The standard imposed by s 912A(1)(a) of the *Corporations Act* has been considered in a number of cases, including *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* [2019] FCAFC 187; 272 FCR 170 at [169]-[175] per Allsop CJ, at [286], [289] per Jagot J, at [421]-[427] per O’Byrne J; and *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; 275 FCR 57 (***AGM Markets***) at [505]-[528] per Beach J. While these decisions were determined prior to s 912A(1) becoming a civil penalty provision (by the insertion of s 912A(5A)), it has been held that there is no good reason why they should not continue to be followed: *Australian Securities*

and Investments Commission v Lanterne Fund Services Pty Ltd [2024] FCA 353 (*Lanterne*) at [89] per McEvoy J.

69 Relevantly, the words “efficiently, honestly and fairly” connote a requirement of competence in providing advice and in complying with relevant statutory obligations. While the expression is generally understood to be compendious, and is interpreted in that way (see *Lanterne* at [89]-[90]), the word “efficient” refers in particular to a person who performs his duties efficiently, meaning the person is adequate in performance, produces the desired effect, is capable, competent and adequate. Inefficiency may be established by demonstrating that the performance of a licensee’s functions falls short of the reasonable standard of performance that the public is entitled to expect: *AGM Markets* at [507]-[508] per Beach J.

70 The requirement in s 912A(1)(a) extends to having in place adequate systems and measures to ensure that the financial services are provided efficiently, honestly and fairly.

71 In the present case, Oztures failed to do all things necessary to ensure that the financial services it was providing were provided efficiently, honestly and fairly because the systems and processes it had in place were not adequate to prevent widespread, significant, repeated or systemic errors in classification of Clients as Retail Clients. Although Oztures’ Onboarding Procedures were designed to filter out applicants who did not satisfy the “wholesale client” or “sophisticated investor” tests, Oztures did not ensure that those systems were adequate or that those systems were followed in practice.

Section 912A(1)(b) – compliance with AFSL conditions

72 Section 912A(1)(b) of the *Corporations Act* required Oztures, as a financial services licensee, to “comply with the conditions on the licence”.

73 Condition 3 of Oztures’ AFSL provided as follows:

The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

74 Although Oztures implemented compliance measures, those compliance measures were inadequate to ensure that Oztures complied with the provisions of the financial services laws. During the relevant period, Oztures repeatedly failed to comply with the provisions of the financial services laws, being ss 1012B(3)(a)(i), 1012B(3)(a)(iii), 994B, 912A(1)(a), 912A(1)(f) and 912A(1)(g).

Section 912A(1)(f) - adequacy of training and competence

75 Section 912A(1)(f) of the *Corporations Act* required Oztures, as a financial services licensee, to:

ensure that its representatives are adequately trained (including by complying with the CPD provisions), and are competent, to provide those financial services ...

76 Oztures did not ensure that its representatives (which included employees pursuant to s 9 of the *Corporations Act*) were adequately trained to provide financial services. The inadequacy of training is demonstrated by the following matters:

- (a) when conducting their manual review for the 524 Retail Clients, Oztures' compliance team members did not identify the insufficiency of the supporting documents submitted by the Retail Clients to allow the reviewers to form the view that the Clients met the relevant wholesale client category;
- (b) there was no monitoring by more senior compliance staff of the manual review conducted by compliance team members before or after a Client was onboarded; and
- (c) the only policy document relevant to the Wholesale Assessment was the Binance Australia Derivatives Wholesale Clients Policy. This document recorded the "eligibility tests" for the categories of wholesale investors, documents required to meet the tests, and records which must be kept. There are no (or insufficient) records as to how this policy was used by Oztures, who it was provided to, and any training on this policy.

Section 912A(1)(g) – dispute resolution system

77 Section 912A(1)(g) of the *Corporations Act* required Oztures, as a financial services licensee, to:

- (g) if those financial services are provided to persons as retail clients:
 - (i) have a dispute resolution system complying with subsection (2); and
 - (ii) give ASIC the information specified in any instrument under subsection (2A) ...

78 Section 912A(2) provided:

To comply with this subsection, a dispute resolution system must consist of:

- (a) an internal dispute resolution procedure that:
 - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this

subparagraph; and

(ii) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence; and

(c) membership of the AFCA scheme.

79 By reason of the misclassification of Retail Clients, Oztures' financial services were provided to persons who had been classified as wholesale clients or sophisticated investors, and who were in fact Retail Clients.

80 The relevant standards and requirements made or approved by ASIC were contained in:

(a) Regulatory Guide RG271 – Internal Dispute Resolution (**RG271**), issued by ASIC on 2 September 2021; and

(b) Australian Standard AS/NZS 10002:2014 Guidelines for complaint management in organizations (**AS/NZS 10002:2014**).

81 As set out above, Oztures' internal dispute resolution procedure was contained in a document titled "Complaints Handling Policy". During the Issue Period, the policy:

(a) did not adopt the precise definition of "complaint" set out in AS/NZS 10002:2014, and defined a complaint as "any expression of dissatisfaction made to Binance related to its product(s) or service(s), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected". This differed from the AS/NZS 10002:2014 definition, which extended to expressions of dissatisfaction "about" an organisation. The note to [28] of RG271 provides that in relation to the definition of "complaint" above:

Note: We interpret the words 'or about an organization' in the definition to cover expressions of dissatisfaction made on social media in accordance with RG 271.32(a). We do not require these words to be read any more broadly than this.

(b) provided that one of the channels through which a user could submit complaints was "Binance's social media channels";

(c) did not provide that Oztures would acknowledge receipt of each complaint within 24 hours (or one business day) of receiving it, or as soon as practicable. Instead, it stated that Binance would endeavour to ensure complaints were addressed in a prompt and efficient manner and, as a part of this, would acknowledge complaints on the same day they were made or within 48 hours (two business days);

- (d) did not provide that Oztures would provide a written communication of the final outcome of the complaint within 30 calendar days of receipt. Instead, it stated that a final response would be provided within 35 business days, or within a reasonable period (generally not exceeding 60 business days), depending on the nature of the complaint;
- (e) did not require Oztures to inform the complainant of their right to pursue unresolved complaints with the Australian Financial Complaints Authority (AFCA) if the complaint remained unresolved at the completion of the internal dispute resolution process or may not be resolved within the relevant maximum timeframe; and
- (f) did not require Oztures to provide the complainant with details about how to access AFCA in such circumstances.

82 Oztures was a member of AFCA. After Oztures had identified that the Retail Clients had been incorrectly classified as “wholesale clients” or “sophisticated investors”, it provided details about how the clients could access the AFCA scheme in communications sent to those clients.

Declarations

Applicable principles

83 During the relevant period, s 1317E(1) of the *Corporations Act* provided that if a Court was satisfied that a person has contravened a “civil penalty provision”, the Court must make a declaration of contravention.

84 Section 1317E(2) relevantly provided:

The declaration must specify the following:

- (a) the Court that made the declaration;
- (b) the civil penalty provision that was contravened;
- (c) the person who contravened the provision;
- (d) the conduct that constituted the contravention ...

85 The principles applicable to the making of declarations of contravention, including declarations by consent, are well established: see, eg, *Australian Securities and Investments Commission v MLC Ltd* [2023] FCA 539; 168 ACSR 122 (*MLC*) at [75]-[79].

86 In *Forster v Jododex Australia Pty Ltd* [1972] HCA 61; 127 CLR 421, Gibbs J stated (at 437-438) that before the making of declarations three requirements should be satisfied:

- (a) the question must be a real and not a hypothetical or theoretical one;

- (b) the applicant must have a real interest in raising it; and
- (c) there must be a proper contradictor.

Appropriateness of declaratory relief

87 The parties submit that each of the preconditions for the making of declaratory relief are met:

- (a) the question whether Oztures contravened the provisions is a real and not hypothetical one;
- (b) the applicant, ASIC, as the regulator, has a real interest in raising the question; and
- (c) there is a proper contradictor (notwithstanding that Oztures has admitted the contraventions) (see, eg, *Australian Competition and Consumer Commission v Honda Australia Pty Ltd* [2023] FCA 1602 at [133]).

88 Further, I am satisfied that the form of the proposed declarations complies with the formal requirements of s 1317E(2).

Civil Penalties

Applicable principles

89 Section 1317G(1) of the *Corporations Act* provides that the Court may make an order that a person pay to the Commonwealth a pecuniary penalty if, inter alia, a declaration of contravention of a civil penalty provision by the person has been made under s 1317E.

90 Throughout the relevant period, the maximum penalty for a body corporate for each contravention was provided by s 1317G(4):

Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate

- (4) The pecuniary penalty applicable to the contravention of a civil penalty provision by a body corporate is the greatest of:
 - (a) 50,000 penalty units; and
 - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
 - (c) either:
 - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - (ii) if the amount worked out under subparagraph (i) is greater

than an amount equal to 2.5 million penalty units—2.5 million penalty units.

91 During the relevant period, the value of a penalty unit was:

- (a) \$222 between 1 July 2020 and 31 December 2022; and
- (b) \$275 between 1 January 2023 and 30 June 2023.

92 The principles applicable to the determination of pecuniary penalties are well established: see, eg, *MLC* at [83]-[91].

Maximum penalty

93 It is common ground, and I accept, that the maximum penalty per contravention in this case is 50,000 penalty units. Accordingly, the maximum penalty per contravention is \$11.1 million prior to 31 December 2022, and \$13.75 million from 1 January 2023 onwards.

94 The parties are unable to identify the precise number of contraventions of the *Corporations Act*. However, they jointly submit as follows:

- (a) there were at least 524 contraventions of s 1012B(3)(a)(i), as a contravention of the section occurred each time an Oztures Product was offered to a Retail Client without a Product Disclosure Statement, and 524 Retail Clients were offered Oztures Products;
- (b) there were at least 437 contraventions of s 1012B(3)(a)(iii), as a contravention of the section occurred each time an Oztures Product was issued to a Retail Client without a Product Disclosure Statement, in circumstances where Oztures had reasonable grounds to believe the person had not previously been given a Product Disclosure Statement, and 437 Retail Clients were issued one or more Oztures Products;
- (c) there were at least 437 contraventions of s 994B(1), as Oztures was required to make a target market determination for a financial product before engaging in retail product distribution conduct in relation to the Client, which included the issuing of any of the Oztures Products to any of the Retail Clients; and
- (d) there was at least one contravention of each of s 912A(1)(a), 912A(1)(f) and 912(1)(g)(i).

95 In *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 the Court said at [143]:

In Australian Competition and Consumer Commission v Coles Supermarkets Australia

Pty Ltd [2015] FCA 330; 327 ALR 540, Allsop CJ imposed pecuniary penalties in respect of multiple contraventions of ss 18(1), 29(1)(a) and s 33 of the Australian Consumer Law arising from misleading representations made in advertisements concerning bread products sold in the respondent's stores. His Honour imposed a single penalty of \$2.5 million. Importantly, however, it is clear that the joint position of the parties was that there were so many contraventions that it was not helpful to seek to make a finding as to the precise number of contraventions, or to calculate a maximum aggregate penalty by reference to such a number: see [18]. The applicant had estimated that there may have been some 85 million contraventions. His Honour accepted that the potential aggregate maximum penalty from the "vast number of contraventions" was a number well beyond what the Court would ever impose: see [82]. A similar approach was taken in the recent Full Court decision in *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181 at [139]-[145].

96 For the same reasons, it is unhelpful to make a finding as to the precise number of contraventions or to calculate an aggregate maximum penalty in this case.

Course of conduct

97 In *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 274 CLR 450, the plurality recognised (at [45]) that principles relating to totality, parity and course of conduct may assist as analytical tools in determining civil penalties.

98 The course of conduct principle was considered by the Full Court of this Court in *Australian Competition and Consumer Commission v Cement Australia Pty Ltd* [2017] FCAFC 159; 258 FCR 312 at [421]-[428]; see also *Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd* [2022] FCA 1115; 164 ACSR 64 at [109]-[112].

99 In this case, the parties submit, and I accept, that Oztures' contraventions of the civil penalty provisions constituted four courses of conduct:

- (a) Oztures' contraventions of ss 1012B and 994B (failure to provide Product Disclosure Statements and target market determinations);
- (b) Oztures' contraventions of s 912A(1)(a) (failure to do all things necessary to ensure the financial services covered by its AFSL were provided efficiently, honestly and fairly);
- (c) Oztures' contraventions of s 912A(1)(f) (failure to ensure its representatives were adequately trained and competent); and
- (d) Oztures' contraventions of s 912A(1)(g) (failure to have a compliant internal dispute resolution system).

100 As to Oztures' contraventions of ss 1012B and 994B of the *Corporations Act*, there is considerable overlap between the legal and factual elements of Oztures' contraventions of these

provisions. Each contravention arose from Oztures' failure to identify, through its internal processes, that Clients that it had categorised as "wholesale clients" or "sophisticated investors" were in fact not exempt from acquiring financial products as "retail clients".

101 In respect of Oztures' contraventions of s 912A(1)(a) and (f), these both arise from the failure to put in place adequate systems and training to prevent misclassification of Retail Clients. This is not a case, like that considered by McEvoy J in *Lanterne* at [188], where the similarity of the conduct "stems from its extent and the comprehensiveness of the relevant failures" or where the contravenor was "[d]oing little (if anything) to comply with the obligations of an AFSL holder". ASIC accepts that Oztures did have a process for assessing and classifying clients and that the contraventions were not deliberate. The contraventions arose because Oztures' process was inadequate and not properly implemented.

102 The contravention of s 912A(1)(g) is a distinct breach by which Oztures failed to have an internal dispute resolution system that complied with the applicable standards and requirements made or approved by ASIC when providing financial services to "retail clients" in accordance with s 912A(2).

Consideration

103 The parties jointly propose that an aggregate penalty of \$10 million be imposed for Oztures' breaches of the *Corporations Act*. The parties submit, and I accept, that the sum is appropriate to achieve the objects of specific and general deterrence.

104 The significance of specific deterrence is lessened in this case because, since 6 April 2023, Oztures' AFSL has been cancelled by ASIC. Accordingly, general deterrence is of much greater relevance.

105 Set out below is a consideration of the key matters relevant to the issue of penalty.

Nature and extent of the contraventions

106 Oztures' conduct resulted in 524 Retail Clients being able to trade on Oztures' platform in circumstances where they should not have been able to do so. As a result, retail customers were able to access high-risk products without the benefit of consumer protections in circumstances where they should not have been able to do so.

107 The conduct spanned a period of approximately nine months.

108 Although Oztures implemented the Onboarding Procedures, those procedures were inadequate or not followed. For example:

- (a) the “Sophisticated Investor Knowledge Test” did not adequately test whether the prospective client had previous experience in financial services and investing sufficient to assess the matters in s 761GA of the *Corporations Act*. It was a multiple-choice test with 10 questions. Prospective clients were permitted to attempt it an unlimited number of times and the same questions were asked on each attempt;
- (b) none of the Clients originally classified as “sophisticated investors” were provided with a written statement as required by s 761GA(e) of the *Corporations Act*; and
- (c) a number of the Retail Clients passed the Professional Investor Test having certified they were a public authority or instrument or agency of the Crown in right of the Commonwealth, a State or a Territory despite being natural persons.

109 The purpose of the design and distribution obligations in Pt 7.8A of the *Corporations Act* (of which s 994B forms part) is to help consumers to obtain appropriate financial products by requiring issuers and distributors to take a “customer-centric approach” to the design, marketing and distribution of financial products: Revised Explanatory Memorandum to the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019 (Cth) at [1.2] to [1.7]; see also *Australian Securities and Investments Commission v Bit Trade Pty Ltd (No 2)* [2024] FCA 1422 at [4]-[5] per Nicholas J and *Australian Securities and Investments Commission v Firstmac Ltd (Penalty Hearing)* [2025] FCA 12 at [16] per Downes J.

110 Similarly, the purpose of Div 2 of Pt 7.9 of the *Corporations Act* (of which 1012B forms part) is to provide consumers with sufficient information to make informed decisions in relation to the acquisition of financial products, including the ability to compare a range of products: Revised Explanatory Memorandum to the Financial Services Reform Bill 2001 (Cth) at [14.18]. The requirement to provide Product Disclosure Statements is designed to facilitate informed investment decisions and investments effected with proper protection: *Australian Securities and Investments Commission v One Tech Media Ltd (No 6)* [2020] FCA 842 at [22] per Davies J.

Loss or damage caused

111 Customers paid AU\$3,892,285.90 in fees to Oztures. Certain customers also incurred trading losses totalling AU\$8,665,985.39.

112 In addition, all customers were exposed to the risk of harm from trading, which is itself a recognised form of harm: *Australian Securities and Investments Commission v Westpac Securities Administration Ltd* [2021] FCA 1008; 156 ACSR 614 (*Westpac*) at [66] per O'Bryan J.

Benefit to Oztures

113 Oztures received fees paid by customers who were onboarded and who subsequently traded in the Oztures Products. As set out above, the fees received by Oztures totalled AU\$3,892,285.90. Under Oztures' remediation program, all fees (including interest) have been paid back to the Retail Clients.

Remediation

114 Oztures' customers have been compensated in full. Oztures implemented a remediation program, under which it paid approximately \$13.1 million to customers for aggregated losses and fees (including interest). The remediation program was overseen by ASIC and was consistent with RG277. The remediation program was also independently reviewed by KordaMentha.

115 The remediation of affected customers is relevant to the assessment of penalty: *Westpac* at [78] per O'Bryan J.

Whether contravenor previously engaged in similar conduct

116 Oztures has not previously been found by a Court to have engaged in a breach of the *Corporations Act*.

Size and resources of the contravener

117 The financial position of Oztures is summarised in the SOAF. In the 2023 financial year, Oztures had net assets of AU\$5,113,770, revenue of AU\$5,918,021 and incurred a pre-tax loss of AU\$5,031,271 (taking into account AU\$9,320,500 paid in customer compensation and related legal fees). In the period 1 January 2024 to 31 December 2024, it had net assets of AU\$718,204.05, and made a net loss of AU\$521,881.03.

118 In addition, Oztures is part of a group of companies which together operate the world’s largest centralised digital asset exchange. IBB, which shares the same parent company as Oztures, recorded net assets of approximately AU\$200 million, and income of AU\$51 million in the period 1 January 2024 to 31 December 2024.

119 The size of a corporate group of which the contravenor forms part has been found to be relevant to the issue of penalty: *Westpac* at [80]-[84] per O’Byrne J; *Australian Securities and Investments Commission v RI Advice Group Pty Ltd (No 3)* [2022] FCA 84; 158 ACSR 321 at [45] and *Australian Securities and Investments Commission v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; 377 ALR 55 at [183]-[185] per Lee J.

Deliberateness of the conduct

120 There is no suggestion that Oztures’ conduct was deliberate. Although Oztures’ Onboarding Procedures miscarried, Oztures nonetheless implemented an onboarding process intended to filter out applicants who did not satisfy the “wholesale client” or “sophisticated investor” tests.

121 Oztures also published disclosures to clients which included warnings as to the risks involved with over-the-counter derivatives products and the Oztures Products, and required the customer to acknowledge that they would not be able to receive services unless they met the definition of “wholesale client” or “sophisticated investor” under the *Corporations Act*.

Role of senior management

122 Oztures’ compliance team, which was responsible for the implementation and oversight of the Wholesale Assessment and Onboarding Procedures, included senior managers. There is no suggestion that any of Oztures’ senior managers were aware of (or condoned) any of the contraventions. However, as stated above, the partial explanation that has been provided in Mr Cheung’s affidavit suggests to me that Oztures’ management did not take seriously enough the company’s obligations to comply with the provisions of the *Corporations Act* relating to the marketing and distribution of financial products.

Corporate culture

123 Oztures’ processes were ineffective, as is demonstrated by the fact that the Wholesale Assessment was inadequate and/or not followed in practice.

124 In addition to implementing the Onboarding Procedures, which were designed to filter out “retail clients”, Oztures took steps to report the contraventions to ASIC after it identified the

issue (after statutory notices were issued by ASIC on 13 December 2022). Oztures also implemented a voluntary remediation process, which was overseen by ASIC.

Co-operation

- 125 Oztures has cooperated with ASIC both in respect of the investigation and this proceeding.
- 126 In February 2023, following the issuing of statutory notices by ASIC, Oztures notified ASIC of the potential breaches of the *Corporations Act*. The parties agree, and I accept, that Oztures:
- (a) cooperated during ASIC’s investigation;
 - (b) has admitted the majority of the alleged contraventions pleaded by ASIC; and
 - (c) has cooperated fully with ASIC during the course of this proceeding.

Conclusion on penalty

- 127 This is a case where the harm caused by the conduct was substantial, but the company has fully remediated the damage caused by the contraventions and cooperated fully with the regulator. I regard the contraventions as serious and calling for a substantial penalty to achieve the object of deterrence. In this case, general deterrence is more relevant than specific deterrence, as the company has ceased trading.
- 128 Having regard to the above matters, I am satisfied that the proposed penalty of \$10 million is appropriate and that it is sufficient to serve the object of deterrence.

Conclusion

- 129 For these reasons, I made the declarations and orders proposed by the parties.

I certify that the preceding one hundred and twenty-nine (129) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Moshinsky.

Associate:



Dated: 24 April 2026