

Haydar Tuncer

From: s 22
Sent: Wednesday, 16 November 2022 7:07 PM
To: s 22
Cc: s 22
Subject: File note of call with s 22, Assistant Treasurer's office - 16 November 2022
 [SEC=OFFICIAL:Sensitive]

Hi s 22

Here is a file note of the call you arranged at s 22 request today.

Call with s 22 Assistant Treasurer's office
 16 November 2022 at 12.30-1.10pm

s 22 **asked what financial services FTX Australia could continue to offer while its AFSL was suspended**

I explained that:

- Direct crypto asset purchases or trades were not regulated under the AFSL.
- The AFSL only relates to FTX Australia's offers/trading in derivatives that reference crypto assets with customers, which was only part of the client base and trading by Australian customers with the FTX group.
- FTX acquired a licensed company (then known as IFM Markets, and later renamed to FTX Australia) in around September 2021, bypassing the AFS licence application process. It re-commenced operating in around March 2022, offering a range of derivatives over crypto assets to retail and wholesale clients.
- There are approximately 50-60 companies with licence authorisations permitting dealing, issuing and making a market in derivatives to retail clients. Most offer contracts for difference and ASIC used its product intervention power to restrict CFD leverage and require negative balance protection for retail clients, among other protections.
- ASIC closely scrutinises licence applications of this kind due to the risks to consumers.
- AFS licensees must notify ASIC of a change of control, but we cannot prevent the sale/transfer and may only suspend or cancel a licence if there are grounds to do so (e.g. if we have evidence that the licensee has or is likely to fail to comply with financial services laws, if the licensee is in external administration, etc).
- Importantly, the suspension prohibits FTX Australia from issuing any new derivatives to customers (among other financial services), and the conditions on the suspension permit the administrators to allow customers to terminate any open derivative positions. We commonly include such a condition if we suspend or cancel a licence held by a derivative issuer to allow clients to close derivative positions.
- However, the administrators have confirmed that FTX Australia and FTX Express do not control the FTX global trading platform, that the platform is closed and customers are unable to do any trading in crypto assets or financial products, including to close out any derivative positions.
- For trading in crypto assets (separate from the derivatives), the legal documents set out that for Australian customers who wished to use fiat currency (e.g. AUD) to buy crypto assets, FTX Express Pty Ltd would use the money to buy a stablecoin to be held by FTX Trading Limited in the Bahamas and credited to the customer's trading account with FTX Trading, which could then be traded for other crypto assets (which would be held by FTX Trading).
- The administrators are investigating whether and how that occurred in practice and are working to identify and secure assets of the companies and customers.

s 22 **asked about the number of clients affected and the size of client losses**

I advised that:

- The administrators said there were approximately 29,000 Australian customers of FTX Australia and FTX Express. The administrators had written to these customers.
- There are possibly another 15,000-20,000 customers who dealt with FTX Trading directly without any dealings with the Australian companies (i.e. those customers who transferred crypto assets to FTX Trading for trading).

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- The value of Australian customer losses is unknown at this time. The administrators are seeking access to the trading platform from the administrators of FTX Trading to identify the holdings and positions of Australian customers. They have, but do not wish to share, the directors' estimates of customer holdings for the time prior to the appointment of the administrators, because the value of crypto assets is volatile, with significant price falls for many having the effect that the estimates are no longer current or accurate.
- Also, the value of asset recoveries by the administrators will also affect the value of losses ultimately suffered by customers.
- The administrators have secured approximately \$42m in cash in bank accounts in Australia.
- ASIC will seek an update in a call with the administrators this afternoon.
- A long process will follow (likely involving Courts in Australia and offshore) for the administrators to identify and secure the assets of the companies here and offshore, determine the claims of creditors on those assets and determine the distribution of those assets.

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ASIC