



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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FTX Australia Pty Ltd ACN 129 217 812

Attention: Messrs Rahul Goyal, Scott David Harry
Langdon and John Mouawad
Administrators
KordaMentha

By email

"Private and confidential"

14 November 2022

Dear Sirs

FTX Australia Pty Ltd – Notice of Suspension of Australian Financial Services Licence

As delegate of the Australian Securities & Investments Commission, I have decided to suspend the Australian financial services licence number numbered 323193 (Licence) held by FTX Australia Pty Ltd ACN 129 217 812 until 14 May 2023.

I enclose by way of service, a written notice of the suspension of the Licence dated 14 November 2022. The suspension of the Licence takes effect when the written notice is given to you.

I also enclose a statement of reasons for suspending the Licence.

FTX Australia Pty Ltd has certain rights in respect of this decision. Information on its rights is set out in the enclosed information sheet – "ASIC decisions - your rights".

Yours faithfully

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Delegate
Australian Securities & Investments Commission

NOTICE OF SUSPENSION OF AUSTRALIAN FINANCIAL SERVICES LICENCE

To: **FTX Australia Pty Ltd ACN 129 217 812**

Under section 915B(3) of the *Corporations Act 2001* (the Act), the Australian Securities and Investments Commission (ASIC) hereby suspends Australian financial services licence number 323193 (the Licence) held by FTX Australia Pty Ltd ACN 129 217 812 (the Licensee) until 14 May 2023.

Under section 915H of the Act, ASIC specifies that the Licence continues in effect, while suspended, as though the suspension had not happened:

- a. until 19 December 2022 for the purposes of Chapter 7 of the Act, but only in relation to the provision of financial services to persons who are clients of FTX Australia Pty Ltd as at 14 November 2022;
- b. s912A(1)(g) of the Act to the extent that it requires the Licensee to have a dispute resolution system complying with s912A(2)(c), which requires the Licensee to be a member of the AFCA scheme;
- c. s912B and regulations 7.6.02AAA and 7.6.02AA of the *Corporations Regulations 2001*, which requires the Licensee to have arrangements for compensating retail clients including maintaining professional indemnity cover;
- d. Chapter 7 of the Act for the Licence to provide financial services that would enable clients to effect the orderly closing out of open positions without the Company actively soliciting those clients to transfer existing open positions to, or to establish new open positions with, its related entities; and
- e. s912C of the Act which requires the Licensee to respond to a direction from ASIC to provide a written statement.

Dated this 14th day of November 2022

Signed:  s 22

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Delegate of the
Australian Securities and Investments Commission.

Private and Confidential

**In the matter of s915B of the *Corporations Act 2001*
and
FTX Australia Pty Ltd ACN 129 217 812**

Date of decision: 14 November 2022

Delegate:

s 22

Decision

That Australian financial services licence number 323193 held by FTX Australia Pty Ltd ACN 129 217 812 be suspended under s915B(3) of the *Corporations Act 2001* until 14 May 2023.

Statement of reasons**Overview**

1. FTX Australia Pty Ltd ACN 129 217 812 was incorporated on 14 January 2008 as an Australian proprietary company under its previous name Forex Financial Services Pty Ltd. On 21 December 2020, the company changed its name to IFS Markets Pty Ltd and on 24 December 2021 the company again changed its name to FTX Australia Pty Ltd.
2. ASIC's registers show that FTX Australia Pty Ltd's ultimate holding company is FTX Trading Limited (NONC, incorporated in Antigua and Barbuda) ACN 654 073 113, with an address of Level 23, 1 Farrer Place Sydney NSW 2000. ASIC's registers also show that Samuel Benjamin Bankman-Fried is the controlling entity of FTX Australia Pty Ltd.
3. FTX Australia Pty Ltd was granted AFS licence number 323193 (the Licence) on 1 July 2008 under its previous name Forex Financial Services Pty Ltd. On 4 January 2022 ASIC issued the latest version of the Licence. The authorisations under the Licence allow FTX Australia Pty Ltd to carry on a financial services business to provide general financial product advice, deal in and make a market for, foreign exchange contracts and derivatives to retail and wholesale clients.
4. FTX Australia Pty Ltd entered voluntary administration on 11 November 2022. The company appointed Rahul Goyal, Scott David Harry Langdon and John Mouawad of KordaMentha as joint and several administrators.

5. Accordingly, since 11 November 2022, FTX Australia Pty Ltd has been a body corporate that is under administration and, therefore a '*Chapter 5 body corporate*' as defined in s9.¹
6. Under s915B(3), ASIC may suspend or cancel an Australian financial services licence held by a body corporate, by giving written notice to the body, if the body becomes a Chapter 5 body corporate.
7. By reason of FTX Australia Pty Ltd being a Chapter 5 body corporate, ASIC's power to suspend or cancel the Licence under s915B(3) has been enlivened.
8. The issue before me is whether the Licence should be cancelled or suspended. If I am satisfied that suspension rather than cancellation is appropriate, a further question arises, namely, for how the Licence ought to be suspended.

What are the current circumstances of FTX Australia Pty Ltd?

9. In determining whether the Licence should be cancelled or suspended, it is necessary to first consider the circumstances of FTX Australia Pty Ltd.
10. FTX Australia Pty Ltd operates a business of offering trading in crypto asset derivatives, including perpetual futures over crypto assets, leveraged crypto asset tokens, and volatility option type products over crypto assets.
11. A related company, FTX Express Pty Ltd ACN 657 907 894 (in EXAD) offers spot crypto trading (digital currency exchange (DCE) services) and is a registered DCE with AUSTRAC (DCE number 100794294-001).
12. On 11 November 2022, shortly after their appointment, the external administrators advised ASIC that they would seek to stop FTX Australia Pty Ltd (and FTX Express Pty Ltd) from trading, however, they advised that these companies do not control the trading platform through which users place trades in derivatives and other assets and that they were yet to verify that trading in derivatives and other assets by FTX Australia Pty Ltd had ceased.

Should the Licence be cancelled or suspended?

13. In *Sovereign Capital Ltd v Australian Securities and Investments Commission*,² the Administrative Appeals Tribunal said that the power to suspend or cancel an AFS licence "*must be exercised having regard to the purposes of the regulatory regime*".³ Although the Tribunal's decision dealt with ASIC's power under s915C to suspend or cancel a licence after a hearing, the principles discussed in that decision can also be applied to suspensions or cancellations under s915B.
14. In considering the regulatory regime, it is significant that s915B provides for ASIC to suspend or cancel an AFS licence where the licensee has become a Chapter 5 body corporate. Parliament has decided that, as a matter of public policy,

¹ References to legislation are to legislation are to the *Corporations Act 2001* (the Act). Expressions that are used have the same meaning as in the Act.

² [2008] AATA 901

³ [2008] AATA 901 at [81]

a licensee that is under administration is liable to have its AFS licence suspended or cancelled – nothing more is required. It is also significant that the power can be exercised without affording the licensee a hearing.

15. Consideration of the regulatory regime entails that regard be had to the objects of the legislative scheme for financial services. Under s1(2) of the *Australian Securities and Investments Commission Act 2001*, ASIC must strive to promote the confident and informed participation of investors and consumers in the financial system. Further, under s760A, in addition to promoting fairness, honesty and professionalism by those who provide financial services, the main object of Chapter 7 includes to promote confident and informed decision making by consumers of financial products and services.
16. I am satisfied, having regard to the regulatory regime and to the objects of the legislative scheme for financial services that it is appropriate for ASIC to exercise its power under s915B to cancel or suspend the Licence. As to whether it is appropriate to cancel or suspend the Licence, I am mindful that, the Administrators will need time to investigate the affairs of the company and in doing so, they may need the Licence to terminate the trading activity of existing clients of FTX Australia Pty Ltd.
17. I am satisfied that it is appropriate to suspend, rather cancel, the Licence at this time having regard to the current circumstances of FTX Australia Pty Ltd.
18. I have considered the effect of this decision on competition, and I am satisfied that, as FTX Australia Pty Ltd is under administration, the suspension of the Licence will not have an adverse impact on competition in the financial services industry.

For how long should the Licence be suspended?

19. As to the length of the period of suspension, given that the Administrators have only been appointed for a very short time, I am satisfied that it is appropriate to suspend the Licence for a period of six months. This will allow time for the Administrators to consider FTX Australia Pty Ltd's future. If by the end of the suspension period, FTX Australia Pty Ltd is in a position to recommence its financial services business, consideration will be given to cancelling the suspension of the Licence. If not, it may be appropriate at that time to extend the suspension period, or, to cancel the Licence.
20. In the circumstances, I am satisfied that it is appropriate for the Licence to be suspended until 14 May 2023.
21. The suspension of the Licence ought not adversely affect clients of FTX Australia Pty Ltd, both in the short term and for the duration of the suspension period. Accordingly, the suspension of the Licence will be subject to a specification that it continues in effect as though the suspension had not happened:

- a. until 19 December 2022 for the purposes of Chapter 7 of the Act, but only in relation to the provision of financial services to persons who are clients of FTX Australia Pty Ltd as at 14 November 2022;
- b. s912A(1)(g) of the Act to the extent that it requires the Licensee to have a dispute resolution system complying with s912A(2)(c), which requires the Licensee to be a member of the AFCA scheme;
- c. s912B and regulations 7.6.02AAA and 7.6.02AA of the Corporations Regulations 2001, which requires the Licensee to have arrangements for compensating retail clients including maintaining professional indemnity cover;
- d. Chapter 7 of the Act for the Company to provide financial services that would enable clients to effect the orderly closing out of open positions without the Company actively soliciting those clients to transfer existing open positions to, or to establish new open positions with, its related entities; and
- e. s912C of the Act which requires the Licensee to respond to a direction from ASIC to provide a written statement.

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Delegate of the Australian Securities and Investments Commission

ASIC decisions: Your rights

ASIC makes many decisions about corporations, securities and financial products and services that might affect you. If we have made a decision that directly affects you, you may have rights connected with the decision. This information sheet sets out an overview of your rights and how to exercise them. You may have other rights in addition to those discussed here.

Note: Under certain circumstances ASIC can waive late lodgement fees. If your inquiry is about withdrawing a late lodgement fee, you can find more details in the information sheet, [Fee waivers](#) (INFO 87).

What can you find out from us?

Talk to us about the decision

ASIC decision maker—If you need to clarify anything relating to the decision, you may find it helpful to discuss it with the ASIC staff member who made the decision.

Administrative Law Team—You can also contact the Senior Manager - Administrative Law Team by email to senior.manager.alt@asic.gov.au or by mail to:
Senior Manager, Administrative Law Team
Australian Securities & Investments Commission
GPO Box 9827
SYDNEY NSW 2001

The Senior Manager - Administrative Law Team can explain how to exercise the rights set out in this information sheet. It would be best to do this promptly because there is a 28-day time limit on some applications.

Get our reasons in writing

If we have not told you why we made the decision when we notified you about it, you may be entitled to ask for a written statement of reasons.

How to apply

You must write to the person who made the decision within 28 days of being told about the decision.

Ask for access to other documents

You may seek access to documents about the decision under the *Freedom of Information Act 1982*.

How to apply

You must apply to ASIC in writing stating clearly which documents you want to obtain. You may send your application by email to FOIrequest@asic.gov.au or by mail to:
Senior Manager, Administrative Law Team

Australian Securities & Investments Commission
GPO Box 9827
SYDNEY NSW 2001

Charges may be imposed for the time spent in searching for and retrieving relevant documents, decision-making time, photocopying and postage.

For more information contact the Administrative Law Team at FOIrequest@asic.gov.au.

Can you get an independent review?

You may have a right to seek review of the decision by the Administrative Appeals Tribunal (AAT). The AAT is an independent body which can review some of ASIC's decisions. The AAT can, among other things:

- confirm our decision;
- vary our decision; or
- set our decision aside and replace it with its own decision.

How to apply to the AAT

In writing	You must apply to the AAT for review in writing. This can be done via letter or email. Alternatively, the AAT has an application form which you may choose to use. The AAT website contains further details on how to apply to the AAT for review of a decision.
In time	You must apply for the review within 28 days of being told why the decision was made.
Pay the fee	<p>You must enclose the \$952 application fee with your application.</p> <p>If you want to apply for the application fee to be reduced or waived you can obtain the application form from the AAT.</p>

We have also published Regulatory Guide 57 *Notification of rights of review* ([RG 57](#)) which gives more detail about your rights of review. You can also contact the Administrative Law Team to obtain a copy.

If you have any questions about the AAT's procedures and requirements, see

www.aat.gov.au, call the AAT on 1300 366 700 or write to the AAT at GPO Box 9955 in your capital city.

If you are unhappy with how we handled your matter

Talk to us	If you have a complaint about the way we have handled a matter, you may wish to bring your concerns to the attention of a more senior ASIC staff member than the officer with whom you have been dealing.
Take it further	You may also have the right to complain to the Commonwealth Ombudsman. However, the Ombudsman usually prefers that you discuss your complaint with ASIC first. There is an office of the Commonwealth Ombudsman in each capital city: see your local <i>White Pages</i> . For further information call 1300 362 072 or visit www.ombudsman.gov.au .

Where can I get more information?

- ASIC on 1300 300 630
- Administrative Appeals Tribunal website at www.aat.gov.au
- Commonwealth Ombudsman website at www.ombudsman.gov.au
- Office of the Australian Information Commissioner website at www.oaic.gov.au

This is **Information Sheet 9 (INFO 9)** reissued July 2018. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.