

## Memo

TO: s 22

CC: s 22, Group Senior Manager, Market Supervision  
s 22, Senior Manager, Market Supervision  
s 22, Senior Specialist, Market Supervision

FROM: s 22, Analyst, Market Supervision

RE: FTX AUSTRALIA PTY LTD

FILE REF: CAS-112132-S3D4Q4

DATE: 11/11/2022

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The Australian Securities and Investments Commission (**ASIC**) is seeking an immediate suspension of FTX Australia Pty Ltd (in EXAD) (ACN: 129 217 812) (the **Company**) Australian Financial Services (**AFS**) licence number 323193 under s915B of the *Corporations Act 2001* (Cth) (the **Act**), specifically:

- The Company has enlivened s915B(3)(b) of the Act, in that it has entered external administration.

## Background

1. The Company was incorporated on 14 January 2008 as an Australian proprietary company under its previous name Forex Financial Services Pty Ltd (Form 201 attached). On 21 December 2020, the Company changed its name to IFS Markets Pty Ltd (Form 205A attached) and on 24 December 2021 the Company again changed its name to FTX Australia Pty Ltd (Form 205A attached).
2. ASIC's registers show that the Company'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 (Form 484 attached). ASIC's registers also show that Samuel Benjamin Bankman-Fried is the controlling entity of the Company (Form FS20 attached).
3. The Company was granted AFS licence number 323193 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 the Company 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, a copy of the AFSL is attached.

4. The Company 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. As such, the Company is required to be a holder of an AFS licence with appropriate authorisations.
5. 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).
6. The Company entered voluntary administration on 11 November 2022. The Company appointed KordaMentha as joint and several administrators. Further details of the appointment are set out below.
7. In a call with the external administrators on 11 November 2022, shortly after their appointment, the external administrators advised ASIC that they would seek to stop the Company (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 the Company had ceased.

### **Confirmation that s915B (3) (b) has been enlivened**

8. ASIC may suspend or cancel an AFS licence held by a body corporate by giving written notice to the body if, the body becomes a Chapter 5 body corporate.
9. Chapter 5 body corporate means a body corporate:
  - a. that is being wound up; or
  - b. in respect of property of which a receiver, or a receiver and manager has been appointed (whether or not by a court) and is acting; or
  - c. that is under administration; or
  - d. that has executed a deed of company arrangement that has not yet terminated; or
  - e. that has entered into a compromise or arrangement with another person the administration of which has not been included.
10. On 11 November 2022 Rahul Goyal (Liquidator number 323696), Scott David Harry Langdon (Liquidator number 414793) and John Mouawad (Liquidator number 526812) lodged with ASIC a Form 505 'External Administration or Controllership Appointment of an administrator or

controller' notifying ASIC of their appointment as external administrators (a copy of which is attached).

11. For the reason in paragraph 10, I submit that the Company has become a Chapter 5 body corporate as per s915(3)(b) of the Act.

### **Recommendation to suspend the AFS licence of the Company**

12. I recommend that you make an order suspending the AFS licence of the Company.

### **Recommended period for suspension**

13. In the circumstances, a suspension period of 6 months is recommended.

### **Recommendation for inclusion of s915H specifications for a suspension**

14. If you decide to a suspension of the Company's AFS licence, I recommend that, under s915H of the Act, ASIC specifies that the Licence continues in effect until [6 weeks from the date of the suspension], while suspended, as though the suspension had not happened for the purposes of Chapter 7 regarding the provision of a financial service to a person as a retail client or wholesale client if that person was a client immediately prior to the suspension taking effect and if the financial service relates to the termination of an existing arrangement with a client.
15. Further, under s915H of the Act, I recommend that ASIC specifies that the Licence continues in effect, while suspended, as though the suspension had not happened for the purposes of:
- a. 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;
  - b. 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;
  - c. 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
  - d. s912C of the Act which requires the Licensee to respond to a direction from ASIC to provide a written statement.