

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/07/2022 9:42:19 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID379/2022
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v LANTERNE FUND SERVICES PTY LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 6/07/2022 10:00:28 AM AEST

Registrar

Important Information

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

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Originating Process

No. of 2022

Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF LANTERNE FUND SERVICES PTY LIMITED (ACN 098 472 587)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

LANTERNE FUND SERVICES PTY LIMITED (ACN 098 472 587)
Defendant

A. DETAILS OF APPLICATION

This application is made under ss 19, 21, 23 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), and ss 1101B, 1317E, 1317G and 1317J(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the Corporations Act, a pecuniary penalty order, ancillary orders and a costs order.

On the facts stated in the accompanying Concise Statement dated 6 July 2022, the Plaintiff seeks:

DECLARATIONS

Risk management systems

1. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that during the period 13 March 2019 to 5 October 2021 (**the Relevant Period**), Lanterne Fund Services Pty Limited (**Lanterne**) breached its obligation to have adequate risk management systems, and thereby contravened ss 912A(1)(h) and 912A(5A) of the Corporations Act by:
 - (a) failing to identify and assess the risks faced by its business, including the risks relating to its corporate authorised representatives (**CARs**) and authorised representatives (**ARs**);

Filed on behalf of (name & role of party)	The Plaintiff (Australian Securities and Investments Commission)
Prepared by (name of person/lawyer)	Georgina Thomas
Law firm (if applicable)	Australian Securities and Investments Commission
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Email	georgina.thomas@asic.gov.au / nicki.gunn@asic.gov.au
Address for service	Level 7, 120 Collins Street, Melbourne VIC 3000



- (b) failing to document any identification or assessment of the risks faced by its business, including failing to have a risk management framework and basic risk management tools;
- (c) relying on initial due diligence of directors of potential CARs and pro forma monthly compliance self-assessments by the CARs to monitor the CARs and ARs and identify risks associated with their conduct;
- (d) failing to have an adequate compliance management system having regard to the nature, scale and complexity of its business and instead relying on a compliance manual which was out of date, inapplicable to its business, and omitted regulatory and compliance obligations of CARs, ARs and Lanterne;
- (e) failing to have any employees or officers with appropriate risk management expertise and failing to engage external consultants with risk management expertise for the purpose of risk management;
- (f) failing to have any independent oversight or monitoring of its risk management systems; and
- (g) otherwise failing to have systems, processes or controls to manage or mitigate risks, including failing to have an incident management process.

Organisational competence

2. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that, during the Relevant Period, Lanterne breached its obligation to do all things necessary to maintain competence to provide the financial services covered by its financial services licence, and thereby contravened ss 912A(1)(e) and 912A(5A) of the Corporations Act, by:
 - (a) failing to have responsible managers with sufficient time to effectively conduct their roles;
 - (b) failing to have a sufficient number of responsible managers with appropriate knowledge and skills across the financial services offered by Lanterne's CARs and in the industries and businesses operated by Lanterne's CARs; and
 - (c) failing to have any processes for ensuring it had appropriately qualified managers.

Training of representatives

3. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that during the Relevant Period, Lanterne breached its obligation to ensure that its representatives were adequately trained and competent to provide the financial services covered by its financial services licence, and thereby contravened ss 912A(1)(f) and 912A(5A) of the Corporations Act by:



- (a) failing to assess the skill and competency requirements of its ARs, and failing to take any or adequate steps to address those requirements;
- (b) failing to provide or arrange any or adequate training, professional development or other instructional programs for its CARs and ARs; and
- (c) relying only on monthly self-assessment compliance reports to satisfy itself that ARs had undertaken training, and not requesting, obtaining and inspecting CARs or ARs' training records or other evidence of relevant training.

Ensure representatives comply with financial services laws

4. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that during the Relevant Period, Lanterne breached its obligation to take reasonable steps to ensure that its representatives complied with the financial services laws, and thereby contravened ss 912A(1)(ca) and 912A(5A) of the Corporations Act by:
- (a) failing to have a documented and rigorous due diligence and background check process for prospective CARs and ARs, and failing to conduct ongoing checks to ensure ARs remained appropriate;
 - (b) failing to provide clear and practical guidance to CARs and ARs about the nature, extent and discharge of their obligations under the financial services laws;
 - (c) failing to have a systematic and documented audit process, and failing to conduct regular audits of the CARs and ARs;
 - (d) failing to document the matters the subject of its informal discussions with the ARs;
 - (e) relying on pro forma monthly compliance self-assessments by the CARs to monitor the CARs and ARs and identify risks associated with their conduct;
 - (f) failing to record or follow up any exceptions noted in the compliance self-assessments; and
 - (g) failing to conduct regular performance reviews of its employees, management or responsible manager.

Resources

5. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that during the Relevant Period, Lanterne breached its obligation to have available adequate resources (including financial, technological and human resources) to provide the financial services covered by its financial services licence, and thereby contravened ss 912A(1)(d) and 912A(5A) of the Corporations Act, by:



- (a) failing to have adequately trained and skilled compliance and risk management personnel, (particularly to undertake audits and reviews of CARs and ARs);
- (b) failing to have an adequate information technology capability, an adequate financial management capability and any human resources capability having regard to the nature and scale of Lanterne's business;
- (c) failing to have a human resources plan or process to establish and maintain the adequacy of Lanterne's human resources;
- (d) failing to have staff training, development plans or reviews;
- (e) failing to have plans for the temporary or permanent absence of its only operational responsible manager who also held the position of managing director;
- (f) failing to have a technology resourcing plan or an up-to-date disaster recovery plan, and relying on outdated back up processes;
- (g) failing to update its hardware and software to meet the needs of a business of its nature, scale and risk profile;
- (h) relying on paper files and records and failing to use a suitable software system in its monitoring and supervision of CARs and ARs; and
- (i) failing to consider and assess the financial resources it required to provide the financial services covered by its licence and carry out supervisory arrangements.

Provide financial services efficiently, honestly and fairly

6. A declaration, under s 21 of the FCA Act and s 1317E of the Corporations Act, that, during the Relevant Period, by the conduct alleged in:
- (a) paragraphs 1(a) to (g);
 - (b) paragraph 2(a) to (c);
 - (c) paragraphs 3(a) to (c);
 - (d) paragraphs 4(a) to (g); and/or
 - (e) paragraphs 5(a) to (i),

together, or in any combination, Lanterne breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.



PENALTY

7. An order pursuant to s 1317G of the Corporations Act that, within 30 days of the order, Lanterne pay to the Commonwealth of Australia such pecuniary penalty as the Court determines to be appropriate in respect of Lanterne's conduct declared to be in contravention of s 912A(5A) of the Corporations Act.

COMPLIANCE ORDERS

8. An order pursuant to s 1101B(1)(a)(i) of the Corporations Act that Lanterne:
 - (a) engage an independent expert within 30 days of the order, the identity of whom is to be agreed between the parties, and in the absence of agreement, to be determined by the Court (**Independent Expert**), who will be required to, within 4 months of the order:
 - i. review Lanterne's systems, processes and controls so as to report on the adequacy of those systems, processes and controls for the purpose of ensuring compliance with ss 912A(a), (ca), (d), (e), (f) and (h) of the Corporations Act;
 - ii. where any aspect of Lanterne's systems, processes and controls is considered to be inadequate, make recommendations as to the steps which should be taken to make the relevant systems, processes and controls adequate; and
 - iii. prepare a written report setting out the results of the review and recommendations referred to above, and deliver a copy of the report to the Plaintiff and Lanterne (**compliance report**);
 - (b) within two months of receipt of the compliance report, establish a risk management and compliance program and take any other necessary steps, including implementation of any recommendations in the compliance report, to ensure Lanterne's systems, processes and controls are adequate to secure compliance with ss 912A(a), (ca), (d), (e), (f) and (h) of the Corporations Act;
 - (c) engage the Independent Expert to, within three months of the receipt by the Plaintiff and Lanterne of the compliance report, prepare a short written report opining on the adequacy of Lanterne's implementation of the recommendations in the compliance report (**implementation report**) and deliver a copy of the implementation report to the Plaintiff and Lanterne; and
 - (d) pay the costs of the Independent Expert.

OTHER ORDERS

9. An order that Lanterne pay the Plaintiff's costs of and incidental to the proceeding.
10. Such further or other orders as the Court considers appropriate.



Date: 6 July 2022

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Georgina Thomas
Australian Securities and Investments Commission
Lawyer for the Plaintiff

This application will be heard by at the Owen Dixon
Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000 at
*am/*pm on

B. NOTICE TO DEFENDANT

TO: Lanterne Fund Services Pty Limited
Suite 305, 26 Ridge St, North Sydney NSW 2060

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: 6 July 2022

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Registrar



This originating process is filed by Georgina Thomas for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Australian Securities and Investments Commission

Attention: Georgina Thomas

Level 7, 120 Collins Street, Melbourne VIC 3000

It is intended to serve a copy of this originating process on the defendant.