

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 18/12/2024 9:12:58 AM AEDT  
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File Number: VID1381/2024  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
OZTURES TRADING PTY LTD TRADING AS BINANCE AUSTRALIA  
DERIVATIVES (ACN 142 898 324)  
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



*Sia Lagos*

Registrar

### Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



**Form 2**

**Originating process**  
(rules 2.2 and 15A.3)

No. VID

of 2024

**Federal Court of Australia**  
**District Registry: Victoria**  
**Division: General**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

and

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

**A. DETAILS OF APPLICATION**

This application is made under sections 912A(1), 1012B(3), 994B(1), 1101B, 1317E and 1317G of the *Corporations Act 2001 (Cth)* (**Corporations Act**).

The nature of the proceeding is an application for:

- (a) declarations of contravention of civil penalty provisions against the Defendant;
- (b) orders that the Defendant pay to the Commonwealth a pecuniary penalty.

In this Originating Process, terms which are defined in the Statement of Claim dated 18 December 2024 have the same meaning as they do in that document unless otherwise indicated.

This proceeding concerns the failure of the Defendant to identify that a large proportion of the clients it had identified as "wholesale clients" or "sophisticated investors" were in fact not exempt from acquiring financial products as "retail clients". As a financial services licence holder, which offered the products described in the associated Statement of Claim, the Defendant was required to assess whether prospective clients were "wholesale clients" or "sophisticated investors". The Defendant's failure to adequately do so exposed the misclassified clients to significant risk of financial loss by allowing the misclassified clients to access its platform and be issued with financial products without the appropriate protections.



In this proceeding, the Plaintiff alleges that the Defendant, in respect of the misclassified clients, failed to provide a product disclosure statement; make a target market determination; do all things necessary to ensure the financial services were provided efficiently, honestly and fairly; comply with the conditions on its licence; ensure its representatives were adequately trained and competent and have a compliant dispute resolution system in contravention of ss 1012B(3), 994B(1), 912A(1)(a), 912A(1)(b), 912A(1)(f) and 912A(1)(g) of the Act.

On the facts stated in the Statement of Claim, the Plaintiff claims:

## **DECLARATIONS**

- 1 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that the Defendant contravened s 1012B(3) of the Corporations Act by failing to give a Product Disclosure Statement to its Retail Clients on each occasion it:
  - (a) in the period 7 July 2022 to 21 April 2023, offered one or more of the Oztures' Products to a Retail Client;
  - (b) in the period 8 July 2022 to 21 April 2023, issued one or more of the Oztures' Products to a Retail Client.
- 2 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that during the period 8 July 2022 to 21 April 2023, the Defendant contravened s 994B(1) of the Corporations Act by failing to make a Target Market Determination in respect of each of the Oztures' Products prior to the first issue of that Oztures' Product to one of its Retail Clients.
- 3 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that during the period 8 July 2022 to 21 April 2023, the Defendant contravened s 912A(1)(a) of the Corporations Act by failing to have adequate systems and processes in place to ensure, in its classification of Clients as "wholesale clients" or "sophisticated investors", that errors did not occur that were:
  - (a) widespread;



(b) significant;

(c) repeated; or

(d) systemic,

or otherwise prevent such errors from occurring.

- 4 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that during the period 7 July 2022 to 13 April 2023, the Defendant contravened condition 3 of the Defendant's Australian Financial Services Licence numbered 425165 and accordingly s 912A(1)(b) of the Corporations Act by failing to establish and maintain compliance measures that were adequate to ensure that the Defendant did not repeatedly, or for an extended period, fail to comply with the provisions of the financial services laws.
- 5 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that during the period 8 July 2022 to 21 April 2023, 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.
- 6 A declaration, under s 1317E, or further or alternatively s 1101B, of the Corporations Act, that during the period 8 July 2022 to 21 April 2023, the Defendant contravened s 912A(1)(g) of the Corporations Act by failing to have an internal dispute resolution system that complied with the applicable standards.

### **PECUNIARY PENALTIES**

- 7 An order, pursuant to s 1317G of the Corporations Act, that the Defendant pay to the Commonwealth such pecuniary penalty, or pecuniary penalties, as the Court determines to be appropriate in respect of the Defendant's conduct declared to be in contravention of the Corporations Act.



**ADVERSE PUBLICITY ORDER**


8 An order pursuant to s 1101B(1)(a)(i) of the Corporations Act requiring the Defendant to publish, within 30 days and at its own expense, a notice stating the findings and orders made in this proceeding and leave the notice in place for a specified period, in a manner and form approved by the Court.

**OTHER ORDERS**

9 An order that the Defendant pay the Plaintiff's costs.

10 Such other orders as the Court deems appropriate.

Dated: 18 December 2024

  
.....  
Signed by Fred Prickett  
Solicitor for the Plaintiff

This application will be heard by the Federal Court of Australia at 305 William Street, Melbourne at ..... \*am/\*pm on .....



## B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: Oztures Trading Pty Ltd ACN 142 898 324  
 Level 16, 175 Pitt Street  
 Sydney NSW 2000

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:

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*Registrar*

This originating process is filed by Fred Prickett for the Plaintiff.

## D. SERVICE

The Plaintiff's address for service is:

Fred Prickett, Clayton Utz  
 Level 18, 333 Collins Street, Melbourne VIC 3000  
 Email: fprickett@claytonutz.com; jmuckersie@claytonutz.com  
 It is intended to serve a copy of this originating process on the defendant