HIGH COURT OF AUSTRALIA

## NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 12 Mar 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

### Details of Filing

| | |
|---|---|
| File Number: | S136/2025 |
| File Title: | Australian Securities and Investments Commission v. Web3 Ve |
| Registry: | Sydney |
| Document filed: | Form 27F - Respondent's outline of oral submissions |
| Filing party: | Respondent |
| Date filed: | 12 Mar 2026 |

### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. 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 and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA S136 of 2025

SYDNEY REGISTRY

BETWEEN:

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Appellant

and

**WEB3 VENTURES PTY LTD ACN 655 090 869**

Respondent

# OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

## Part I: Certification

1 This outline is in a form suitable for publication on the internet.

## Part II: Propositions to be advanced in oral argument

2 Pathway to resolution. The appeal will be dismissed if the Respondent succeeds on: NOA [1] (s 763A, B), *and any one of* (i) NOC [2] (credit facility exclusion), (ii) NOC [1(b)] (not a derivative because consideration did not relevantly vary by reference to something else); (iii) NOC [1(a)] (not a derivative because contract for future provision of services), or (iv) NOA [2] (not a derivative if Exchange not part of the arrangement).

3 As in *Chameleon* [22] JBA 9/243, if the credit facility exclusion (s 765A(1)(h) JBA 150) applies, all derivatives issues become moot. (But not NOA [1]: r. 7.1.06(1)(iv) JBA 179).

**NOA [1] - s 763A, B: the general definition where a person "makes a financial investment"**

4 The core error of ASIC's case on NOA [1] is to consider the Respondent's "business model" for the purposes of testing whether the respondent issued a financial product. The statutory scheme does not set the inquiry at that level of generality.

5 Whilst s 911A JBA 159 requires an AFSL for a person who "carries on a financial services business", the statutory scheme calibrates that concept to "financial products", specific conduct, and specific types of services (ss 761A, C JBA 121, 131; 766A JBA 154; s 19). Relevantly, Chapter 7.1 calibrates the inquiry of whether a person *deals* in a financial product to precise conduct vis-à-vis a "financial product" (s 766A(1)(b), 766C).

6 Within this scheme, the general definition of a "financial product" (s 763A JBA 143) tests whether a "facility" is a financial product.

(a) "*Facility*" is a core concept, given content by (i) ss 762C JBA 143, 761A JBA 114, 761B JBA 131, (ii) the pleading in a civil penalty case, and (iii) the evidence where there is dispute about the elements pleaded.

(b) *Interaction of 763A, B*. The metes and bounds of the relevant facility, not a person's overall business activities or "business model", supply the facts to which the s 763A inquiry, including the definitional provisions to which it refers (s 763B, C, D JBA 143-146), are applied. **RS [7], [21], [24]-[32], [39]-[40]**.

(c) *This construction is supported by*: (i) the chapeau to s 763A(1) **RS [24]-[25]**; (ii) the apt definition "contribution" in s 763B read with the elements of s 763B **RS [24]-[25]**; (iii) the examples in Note 1 to s 763B and *Archibald Howie* JBA

9/217 at CLR 152-154 **RS [32]**; (iv) the ordinary meaning of "for" relied on by ASIC **RS [37]**; (v) the Object of Chapter 7 (s 760A JBA 112); and (vi) *ASIC v Secure Investments* JBA 16/426 at [49]-[66] **RS [30]-[31]**.

(d) Consequently, the relevant inquiry under s 763A(1) read with 763B(a)(i) has the four steps identified in **RS [26]**. Step 4 (day-to-day control) not in dispute.

7 ASIC's further construction error is its reliance on extrinsic materials (AS[32]-[35]) to supplant statutory text and/or attribute subjective intention not supported by the text. (i) The task is not to assign a label (e.g., "interest earning product": **AS [28]**) as the general definition does not take a taxonomical approach: **RS [43]**. (ii) The legislative intention was to capture "bank-deposit products" within a single licensing and disclosure regime (achieved through s 764A(1)(i)) **RS [44]**, but not to capture all credit facilities or loan agreements within the general definitions (CLERP 6 Consultation Paper JBA 26/992 at 1010, 1012; CLERP 6 Commentary on FSI Bill JBA 27/1149 at 1165; Revised EM JBA 28/1370 at 1413-1414 [6.89]-[6.92] (extracted at *Chameleon* [23]-[24] JBA 9/243): **RS [46]**. (iii) The EM referring to "deposit products" simply got the law wrong: **RS[45]**.

8 The s 763A(1)(a)/763B(a)(i) case referable to fixed interest received by customers, fails because the fixed interest obligation/receipts are not part of a facility through which a customer receives a "return, or other benefit" generated by Block Earner's "use" of a "contribution" made by the customer. ASIC impermissibly uses facts about Block Earner's overall "business model" and its discretionary activities, involving arrangements external to the relevant facility and which it entered into with third parties to make money for itself: NOA [1], CS [19], [21B] ABFM 11, 12. **RS [15], [34]**. FC[90] correctly found ASIC failed to prove the s 763B elements having regard to the terms of the actual facility in issue. **RS [11], [13], [16], [27]-[34], [37]-[38], [42]-[43]**

9 The s 763A(1)(a)/763B(a)(i) case referable to any increase in the AUD value of cryptocurrency whilst in Earner is a new case. If entertained, it fails because ASIC did not establish that any fluctuation in value of the cryptocurrency was referable to any *use* of it by Block Earner. Further, Exchange is not part of the "facility". **RS [28], [47]**

10 The s 763A(1)(a)/B(a)(iii) case impermissibly advances a subjective intention contrary to unchallenged evidence of Mr Karaboga and express Terms: FC [93], [99]. **RS[13], [15]**

**NOC [2]: s 765A(1)(h)(i) and reg 7.1.06 (credit facility exclusion)**

11 If NOA [1] fails, s 765A(1)(h) JBA 150 operates to exclude Earner from the definition of a "financial product" because it is a "credit facility within the meaning of the regulations",

specifically reg 7.1.06(1)(a) JBA 179. The key issue is whether Earner was an arrangement for credit (as defined in (3)). It was, because whether Earner is characterised as including the Exchange service, Earner meets the credit concept of involving "financial accommodation" (r 7.1.06(3)(b)(i) JBA 180). **RS [54]-[55]**

12 *Chameleon* [26]-[28] JBA 9/ 243-244: satisfaction of (3)(b)(i) is sufficient; the expression "is of considerable width of denotation". See also at [43] ("In ordinary usage, 'accommodation' means anything which supplies a want"). *Chameleon* [29]-[32] is a useful illustration, as is *Bit Trade* JBA 12/343 [41]. Cf *Joffe* JBA 19/532 [103]-[109].

13 Block Earner's business required cryptocurrency to on-lend. The Earner arrangement supplied that want. **Reply [13]** is not credible having regard to: (i) as to the existence of a 'want' - the findings at PJ [20], [28]; (ii) as to it being *financial* accommodation – recall this issue only arises because ASIC seeks to label Earner a *financial* product; (iii) as to evidence of cryptocurrency being financial – the evidence (and finding at PJ [7] CAB 9) was that cryptocurrency "can be used to make payments"; and (iv) as to deployment – the statutory criterion is "accommodation", which includes guarantees and overdraft facilities (*Chameleon* [28] JBA 9/244), such that "accommodation" is not limited to payments.

14 Further, if Exchange part of Earner, each of (3)(b)(i), (ix) and 3(a) are satisfied. **RS [54]**

**NOC [1(b)], [1(a)] and NOA [2]: Earner not a derivative**

15 Section 761D(1)(a) JBA 132 requires identification of the "consideration of a particular kind or kinds" that is required to be provided at some future time. This uses "consideration" in a conveyancing sense (the "money or value passing": *Archibald Howie* JBA 8/226 (77 CLR 152) per Dixon J). It is that concept to which the words "the amount of the consideration" in 761D(1)(c) refer, and that which must, to give rise to a derivative, vary etc by reference to "something else": *Chameleon NSWCA* JBA 18/466 [236], [238], [131]; *cf* [52]-[54], [64]-[66]. Here, the value passing was a set amount of crypto: **RS [51]-[52]**; cf *Joffe* [105] JBA 19/533. **Reply [12]** concedes the "particular kind" of consideration required on termination was cryptocurrency. It did not relevantly vary.

16 Alternatively: (i) properly understood, Exchange is not part of Earner for the reasons at FC [133]-[138], which is an alterative (and complete) answer to the derivatives case: **RS [49]-[50]**; (ii) per **Reply [12]**, even if viewed as forming part of Earner, the exchange obligation has the character of a (future) conversion service, and s 761D(3)(b) JBA 133 thus carves out the contract from being a derivative: **RS [53].**

**12 March 2026** **Fiona Roughley**