

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/08/2021 4:11:11 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID1315/2019
File Title:	ISIGNTHIS LIMITED & ORS v ASX LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 31/08/2021 4:58:17 PM AEST

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

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 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.



~~Second~~ ~~Third~~ Fourth ~~Further~~ Amended Statement of Claim

No. VID1315/2019

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

iSignthis Limited (ACN 075 419 715) & Ors
(according to the attached Schedule)

Applicants

ASX Limited (ACN 008 624 691)

Respondent

A. Background

1. The **First** Applicant (**ISX**):

- (a) is, and was at all material times, a company incorporated pursuant to the provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) is, and has been since 22 December 2014, known as iSignthis Limited;
- (c) was until about March 2015 allocated ASX Code “OTE”;
- (d) is, and has been since March 2015, listed on the Australian Securities Exchange under the ASX Code “ISX”;
- (e) is, and at all material times has been, a leading eMoney, payments and identity technology company listed on the Australian Securities Exchange and the Frankfurt Stock Exchange; and

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- (f) predominantly provides services in Europe which include remote identity verification, payment processing, card acquiring, settlement, IBAN bank accounts, SEPA transfers and eMoney issuance services; and
- (g) is the ultimate holding company of, among others:
 - (i) the Second Applicant (**iSignthis eMoney**) which is, and was at all material times, a company incorporated in the Republic of Cyprus; and
 - (ii) the Third Applicant (**Probanx**) which is, and was at all material times, a company incorporated in the Republic of Cyprus; and
 - (iii) the Fourth Applicant, Authenticate Pty Ltd, which is, and was at all material times, a company incorporated pursuant to the provisions of the Corporations Act.

2. The Respondent (**ASX**):

- (a) is, and was at all material times, a company incorporated pursuant to the provisions of the Corporations Act;
- (b) is, and has been since 8 March 2002, the holder of the Australian Market Licence (Australian Stock Exchange Limited) 2002, as varied on 11 March 2004 and 4 December 2006 (**Market Licence**);
- (c) is, pursuant to the Market Licence, permitted to operate the financial market that:
 - (i) is a continuation of the market that, immediately before 5 December 2006, was operated in accordance with the operating rules of Australian Stock Exchange Limited; and
 - (ii) is operated in accordance with the operating rules of ASX Limited;
- (d) is, and at all material times has been, by reason of the matters in paragraphs (b) and (c) above, a market licensee for the purposes of Part 7.2, Division 3, of the Corporations Act; and
- (e) is, pursuant to section 792A(a) of the Corporations Act, to the extent that it is reasonably practicable to do so, required to do all things necessary to ensure that the market is a fair, orderly and transparent market.

B. Agreement between ASX and ISX

3. By an agreement entered into between ASX and ISX, it was agreed that ISX would comply with ASX's Listing Rules in force from time to time (**Listing Rules**) and ASX would quote the shares of ISX on the Australian Securities Exchange in accordance with the Listing Rules.

PARTICULARS

The agreement was in writing. It was constituted by:

- (a) Appendix 1A (ASX Listing Application and Agreement), executed by ISX and accepted by ASX on or about 15 March 2015, in order for the shares already listed under the name Otis Energy Limited to be quoted under the new name iSignthis Limited and to give effect to the resolutions passed by the shareholders of the company on 22 December 2014, which were the subject of the Notice of Meeting and Explanatory Memorandum dated 17 November 2014 and Prospectus dated 22 December 2014 (**Prospectus**). It superseded the original Appendix 1A (General admission application and agreement) which was lodged by the company (at the time known as Telco Australia Limited) and accepted by ASX Limited (at the time known as Australian Stock Exchange Limited) in or about November 1998.
 - (b) The Australian Stock Exchange listing rules in force from time to time.
4. There were terms of the agreement, among others, that:
- (a) in exercising its powers under the Listing Rules, ASX would act:
 - (i) in good faith;
 - (ii) honestly and fairly; and/or
 - (iii) reasonably,
 including, in exercising its power to suspend from quotation the shares of ISX and/or to compel ISX to produce confidential information and documents;

- (b) in exercising its powers under the Listing Rules, ASX would accord procedural fairness to ISX, including in exercising its power to suspend from quotation the shares of ISX; and
- (c) ASX would do all that is necessary to enable ISX to have the benefit of the agreement.

PARTICULARS

The terms were implied by operation of law.

5. Further, by reason of the matters set out in paragraph 4 above, ASX's power to suspend the shares of ISX from quotation on the Australian Securities Exchange:
 - (a) was, and is, to be exercised for the purpose of ensuring current compliance with the Listing Rules so that the market is being operated in accordance with its operating rules; and
 - (b) was, and is, not to be exercised for the purpose of punishing ISX in respect of alleged historical compliance issues;
 - (c) was, and is, not to be exercised without sufficient evidence;
 - (d) was, and is, not to be exercised based on mere suspicion; and
 - (e) was, and is, not to be exercised so that the Australian Securities & Investments Commission (ASIC) has time to decide whether to commence a formal investigation into a company and, if it did so, time to conduct that investigation.

C. Suspension of ISX's shares from quotation

5A. Between 9:00am and about 9:40am on 1 October 2019, representatives of ASIC and representatives of ASX attended a telephone conference in relation to ISX during which:

- (a) Tom Veidners (Senior Manager Market Surveillance) of ASIC:
 - (i) said that they were looking at the "veracity of the revenue figure for the 2018 financial year upon which the performance shares vested";

- (ii) said that they had reviewed “work done by ASIC’s financial reporting and accounts team to ensure that they were not duplicating work or seeking the same information”;
- (iii) said that “upon revisiting these ISX documents already in ASIC’s possession, it did not reveal a ‘smoking gun’”;
- (iv) said that “ASIC was not in possession of the ultimate source documents to verify”; and
- (v) asked “whether a suspension is something that ASX has considered”;
- (b) Kevin Lewis (at that time, Chief Compliance Officer) of ASX said that:
 - (i) “we have considered it but we don’t have hard evidence”;
 - (ii) “as much as we would like to suspend, unless ASIC gives a direction, at the current juncture we do not have sufficient evidence”; and
 - (iii) “it grates to come to that conclusion”;
- (c) Calissa Aldridge (Senior Executive Leader Market Supervision) of ASIC asked if there was information that ASIC could share with ASX which would facilitate a decision to suspend such as the documents from the financial reporting group and Kevin Lewis said that “certainly it would assist”;
- (d) a representative of ASIC said that a “package of its observations from the review undertaken in the financial reporting group” could be provided to ASX;
- (e) a representative (alternatively, various representatives) of ASX said that they were “spitballing” and that ASX would like to see a “suspension pending enquires by ASX and ASIC”;
- (f) Colin Luxford (Investigator) of ASIC said that he was “reluctant to involve ASIC”;
- (g) a representative (alternatively, various representatives) of ASX said:
 - (i) ASX would be “suspending without sufficient basis”;
 - (ii) ASX “will go well beyond powers”;

- (iii) there is a “major litigation risk” to ASX as there is the “precedent of NSX being sued”; and
- (iv) ASX “would like to reference a joint effort due to the NSX precedent”;
- (h) a representative (alternatively, various representatives) of ASIC:
 - (i) said that they will discuss internally “with Karen Chester and others”; and
 - (ii) asked “if they don’t achieve that outcome what will ASX do”;
- and
- (i) Kevin Lewis said that ASX would determine its next steps when ASIC advises of its view.

PARTICULARS

- A. The telephone conference was attended by:
 - (i) Kevin Lewis, David Barnett, James Gerraty and Clare Porta of ASX; and
 - (ii) Tom Veidners, Colin Luxford, Calissa Aldridge, James Nguyen and Gallant Chiu of ASIC.
- B. The statements made during the telephone conference are recorded in a handwritten note (ASX.010.001.0001) and a typed file note discovered by ASX (ASX.002.001.0862).

5B. Further, during the telephone conference on 1 October 2019, a representative of ASIC said, in relation to ISX, that “the share price is stabilising”.

PARTICULARS

The Applicants refer to and repeat the particulars under paragraph 5A above

5C. In the circumstances set out in paragraphs 5A and 5B above, as at about 9:40am on 1 October 2019, ASX had no justifiable basis to suspend the shares of ISX from quotation on the Australian Securities Exchange.

5D. Between 8:30am and about 9:00am on 2 October 2019, representatives of ASIC and representatives of ASX attended a telephone conference during which Colin Luxford of ASIC said that:

- (a) he had “made some advances in thinking in relation to the discussion about a joint release with ASIC”;
- (b) “ASIC is comfortable with a draft which describes ASIC’s involvement and concerns”;
- (c) “ASIC haven’t commenced a formal investigation yet; it was pending a final decision by ASIC”; and
- (d) it was “ok” for ASX to refer to “enquires” in the “release”.

PARTICULARS

A. The telephone conference was attended by:

- (i) Kevin Lewis, David Barnett, James Gerraty and Clare Porta of ASX; and
- (ii) Colin Luxford, James Jordan, Adam Boscoscuro and Gallant Chiu of ASIC.

B. The statements made by Colin Luxford during the telephone conference are recorded in a two-page handwritten note discovered by ASX (ASX.010.001.0043).

5E. In the circumstances set out in paragraphs 5A to 5D above, as at about 9:00am on 2 October 2019:

- (a) ASIC had not given ASX:
 - (i) any documents from ASIC’s “financial reporting group”, including any documents which would justify ASX suspending the shares of ISX from quotation on the Australian Securities Exchange; and/or

- (ii) any “package” of its observations from the review undertaken in the financial reporting group; and/or
 - (iii) any other documents or evidence which would justify ASX suspending the shares of ISX from quotation on the Australian Securities Exchange; and/or
 - (iv) any direction under section 794D(2) of the Corporations Act to suspend the shares of ISX from quotation on the Australian Securities Exchange;
- (b) Kevin Lewis of ASX decided to suspend the shares of ISX from quotation on the Australian Securities Exchange because:
- (i) although ASX had no “hard evidence” and ASIC had no “smoking gun”, ASX and ASIC had unsubstantiated suspicions about ISX;
 - (ii) ASIC required additional time to decide whether to commence a formal investigation into ISX and, if it did so, time to conduct that investigation; and
 - (iii) ASIC agreed that ASX’s announcement to the market could refer to ASIC making enquiries.

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The decision to suspend the shares of ISX from quotation on the Australian Securities Exchange is implied from:

- (a) the statements made during the telephone conference on 1 October 2019, set out in paragraph 5A above;
- (b) the statements made during the telephone conference on 2 October 2019, set out in paragraph 5D above;
- (c) the fact that, at 9:05am on 2 October 2019, James Gerraty of ASX sent an email to Kevin Lewis which attached a draft market release in relation to the suspension of ISX’s shares from quotation

on the Australian Securities Exchange
(ASX.003.001.7150); and

(d) the fact that, at 9:23am on 2 October 2019,
Kevin Lewis sent an email to James
Gerraty which attached a revised version
of the draft market release in relation to
the suspension of ISX's shares from
quotation on the Australian Securities
Exchange (ASX.002.005.2593).

and,

- (c) the decision to suspend the shares of ISX from quotation on the Australian Securities Exchange was made by Kevin Lewis (at that time, Chief Compliance Officer of ASX) without any:
- (i) reference to, or approval from, the Managing Director and Chief Executive Officer of ASX, Dominic Stevens; and/or
 - (ii) reference to, or approval from, the Group General Counsel of ASX, Daniel Moran; and/or
 - (iii) reference to, or approval from, the Chief Risk Officer of ASX, Hamish Treleaven; and/or
 - (iv) reference to, or approval from, the Board of ASX; and/or
 - (v) reference to, or approval from, the Board Audit and Risk Committee of ASX; and/or
 - (vi) reference to, or approval from, the Chairman of the Board Audit and Risk Committee of ASX, Peter Marriott; and/or
 - (vii) documentation which openly and transparently recorded the reasons for the decision, including the relevant subsection/s of listing rule 17.3 relied on by ASX; and/or
 - (viii) any legal advice from internal lawyers or external lawyers.

PARTICULARS

The discovery made by ASX on 6 August 2021 does not include documents which record any of the matters in sub-paragraphs (i) to (viii) as having occurred.

5F. At 9:30am on 2 October 2019, James Gerraty (Senior Manager Listing Compliance (Melbourne)) of ASX sent an email to Colin Luxford of ASIC (copied to David Barnett and Clare Porta of ASX and Tom Veidners of ASIC) which attached the draft ASX announcement entitled “iSignthis Ltd (ASX:ISX) – Suspension from Official Quotation”.

PARTICULARS

The email and draft ASX announcement are in writing and have been discovered by ASX (ASX.002.005.2607).

5G. At 9:40am on 2 October 2019 Colin Luxford of ASIC sent a response by email to James Gerraty (copied to David Barnett and Clare Porta of ASX and Tom Veidners of ASIC) which said that “ASIC is content with this draft”.

PARTICULARS

The email is in writing and has been discovered by ASX (ASX.002.005.2611).

6. At 9:53am on 2 October 2019, ASX suspended the shares of ISX from quotation on the Australian Securities Exchange with immediate effect under listing rule 17.3, pending the outcome of enquiries said to be made by ASIC the Australian Securities & Investments Commission (ASIC) and ASX into a number of issues concerning ISX.

PARTICULARS

The suspension was recorded in writing. It was contained in a market announcement dated 2 October 2019. A copy of the market announcement is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

7. ASX exercised its power to suspend the quotation of ISX's shares without first giving ISX any:
- (a) notice of ASX's intention to do so;
 - (b) particulars of the alleged issues concerning ISX; or
 - (c) opportunity to address the alleged issues and/or suspicions concerning ISX so that the company could avoid having its shares suspended from quotation.

7A. Further, in the circumstances set out in paragraphs 5A to 5G above, as at 9:53am on 2 October 2019 ASX had no justifiable basis to suspend the shares of ISX from quotation on the Australian Securities Exchange.

8. In the circumstances set out in paragraphs 5A to 5G, 6, and 7 and 7A above, ASX failed to:
- (a) accord procedural fairness to ISX; and
 - (b) act in good faith and/or honestly and fairly and/or reasonably,
- before suspending the quotation of ISX's shares from the Australian Securities Exchange.

8A In the circumstances set out in paragraphs 5A to 8 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

The Applicants refers to and repeats the particulars under paragraph 51 below.

ASX has failed to meet its obligation under its operating rules: Order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act

8B. Further, by reason of the matters set out in paragraphs 5A to 8 above, ASX has failed to meet its obligations under its operating rules and ISX is aggrieved by the contravention.

PARTICULARS

By reason of the matters set out in paragraphs 5A to 8 above, ASX has breached its obligations under listing rule 17.3 (which, by reason of section 761A of the Corporations Act, is part of the operating rules).

8C. In the circumstances set out in paragraphs 5A to 8 and 8B above, ISX is entitled to an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

ASX contravened section 792A(a) of the Corporations Act: Order pursuant to section 1324(1)

8D. Further, notwithstanding that each of:

- (a) AMP Ltd (**AMP**);
- (b) BSP Financial Group Limited (**BSP**);
- (c) Crown Resorts Limited (**Crown**);
- (d) Commonwealth Bank Limited (**CBA**);
- (e) EML Payments Ltd (**EML**);
- (f) Horizon Oil Ltd (**Horizon**);
- (g) Macquarie Group Ltd (**Macquarie**);
- (h) National Australia Bank Ltd (**NAB**);
- (i) Nuix Ltd (**Nuix**);
- (j) Sky City Entertainment Group Limited (**Sky City**);
- (k) Star Entertainment Group Limited (**Star Entertainment**);
- (l) Tabcorp Holdings Limited (**Tabcorp**); and
- (m) Westpac Banking Corporation Ltd (**Westpac**);

were (and in some cases still are) the subject of suspicion and/or enquires and/or a regulatory investigation by ASIC and/or APRA and/or AUSTRAC, ASX did not suspend (and in some cases still has not suspended) the shares of those companies from quotation on the Australian Securities Exchange so that ASIC and/or APRA and/or AUSTRAC had time to decide whether to commence a formal investigation and, if it did so, time to conduct that investigation.

PARTICULARS

- A. Insofar as AMP is concerned, it has been the subject of suspicion and/or enquires and/or numerous regulatory investigations by ASIC and/or APRA and/or AUSTRAC, including in relation to the following matters:
- (a) it was the subject of suspicion and enquires during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**), including in relation to allegations that AMP had been charging fees for services that were never provided to customers;
 - (b) on 17 April 2018 the Australian Broadcasting Corporation (ABC) reported that during the Banking Royal Commission AMP's head of financial advice had lost count of the number of times the company misled ASIC over charging customers for no service;
 - (c) on 27 May 2021 ASIC published an announcement entitled "21-115MR ASIC sues AMP for charging deceased customers" which said, inter alia, that it had commenced civil penalty proceedings in the Federal Court against five companies that are, or were, part of the "AMP Limited group", alleging that these entities were involved in charging life insurance premiums and advice fees to more than 2,000 customers despite being notified of their death; and
 - (d) on 30 July 2021 ASIC published an announcement entitled "21-191MR ASIC sues AMP companies for fees for no service charged on corporate superannuation accounts" which said, inter alia, that it had commenced civil penalty proceedings in the Federal Court against six companies that are, or were, part of the "AMP Limited group", alleging that these entities charged advice fees to more than 1,500 customers despite being notified that those customers were not able to access the relevant advice.

B. Insofar as BSP is concerned:

- (a) on 13 July 2021 the ABC published an article by Natalie Whiting entitled “ASX listed company found to have breached PNG’s anti-money laundering laws, regulator want executives removed” (and an audio recording), which reported that Papua New Guinea’s financial regulator had said that an investigation had found “detailed and compelling evidence” of contraventions of the country’s anti-money laundering act;
- (b) on 22 July 2021 the Australian Financial Review (AFR) published an article by Angus Grigg entitled “Bank of South Pacific chairman breaches tenure limits”, which reported that the Financial Analysis and Supervision Unit, which sits within the PNG central bank, said it could have brought criminal and civil charges against BSP given the seriousness of its non-compliance but instead issued the bank with a “formal warning”; and
- (c) on 18 August 2021 the AFR published an article by Michael Roddan entitled “PNG bank money laundering concerns grow”, which reported that the company:
 - (i) had been the subject of a “show cause” notice in June 2020 as to why the central bank’s Financial Analysis and Supervision Unit should not be taken enforcement action;
 - (ii) did not formally respond until April 2021, and
 - (iii) in July 2021, was sanctioned for breaches of PNG’s anti-money laundering laws in what the regulator described as a “systemic culture of non-compliance”.

C. Insofar as Crown is concerned:

- (a) on 15 September 2014 the ABC's Four Corners program raised suspicions that Crown had breached anti-money laundering and gambling laws;
- (b) in the period from 27 July 2019 to 6 August 2019, the Nine Network broadcast its 60 Minutes program, and the Sydney Morning Herald (SMH), The Age and other media outlets published material, which, inter alia, alleged that Crown and/or its subsidiaries had engaged in money-laundering, breached gambling laws and partnered with junket operators with links to drug traffickers, money launderers, human traffickers and organised crime groups;
- (c) on 14 August 2019 the Independent Liquor and Gaming Authority of New South Wales established an inquiry under section 143 of the *Casino Control Act 1992* (NSW), which required the Commissioner to inquire into and report upon, inter alia, whether Crown was a suitable person to be a close associate of Crown Sydney Gaming Pty Ltd;
- (d) on 19 October 2020 the AFR published an article by James Thomson entitled "*Crown shares plunge on AUSTRAC probe*" which said, inter alia, that:

"Feared anti-money laundering regulator AUSTRAC has launched an enforcement investigation at beleaguered casino giant Crown Resorts, after problems at the group's Melbourne casino.

Crown Resorts said AUSTRAC had identified 'concerns in relation to ongoing customer due diligence, and adopting, maintaining and complying with an anti-money laundering/counter-terrorism financing program' "

- (e) on 1 February 2021 Commissioner Bergin published her report which found, inter alia, that Crown was not a suitable person to be a close associate of Crown Sydney Gaming Pty Ltd; and
 - (f) on 22 February 2021 the Royal Commission into the Casino Operator and Licence was established to inquire, inter alia, into the suitability of Crown Melbourne Limited to hold the casino licence under the *Casino Control Act 1991* (Vic).
- D. Insofar as CBA is concerned, it has been the subject of suspicion and/or enquires and/or numerous regulatory investigations by ASIC and/or APRA and/or AUSTRAC, including in relation to the following matters:
- (a) on 3 August 2017 AUSTRAC announced that it had initiated civil penalty proceedings in the Federal Court against CBA for “*serious and systemic non-compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)*” and that “*AUSTRAC’s action alleges over 53,700 contraventions of the AML/CTF Act*”;
 - (b) on 11 August 2017 the ABC published an article by Peter Ryan entitled “*Commonwealth Bank: ASIC to investigate CBA over money-laundering scandal*”, which said, inter alia, that:

“*The Australian Securities and Investments Commission (ASIC) has confirmed it will investigate the Commonwealth Bank’s handling of suspicions its intelligent deposit machines were used by money launderers and criminal gangs.*

ASIC chairman Greg Medcraft said the corporate regulator would investigate whether the CBA’s board complied with continuous disclosure laws when it decided not to alert investors to the suspicious behaviour.

Earlier this week, CBA chairwoman Catherine Livingstone said the bank's board first became aware the intelligent deposit machines were at risk of being targeted by criminal elements including money launderers in the second half of 2015.

Speaking to a parliamentary joint committee in Sydney this morning, Mr Medcraft said ASIC would look specifically at whether the CBA's officers and directors complied with their disclosure duties under the Corporations Act”;

- (c) on 13 December 2017 the ABC published an article by Carrington Clarke entitled “CBA admits breaching money laundering, counter-terror laws more than 53,000 times, expects more charges”, which said, inter alia, that;

“Investors are bracing for a share market reaction after the Commonwealth Bank (CBA) admitted it breached Australia’s money laundering and counter-terrorism regulations and indicated more charges could be brought against it.

Months after Australia's money laundering regulator, AUSTRAC, launched legal action against CBA, Australia's biggest bank has admitted it breached statutory disclosure laws more than 53,000 times”;

- (d) it was the subject of suspicion and enquires during the Banking Royal Commission, including in relation to overcharging interest and fees on loans;

- (e) on 4 October 2019 the ABC published an article entitled “CBA faces criminal charges over CommInsure scandal” which said, inter alia, that:

“Australia's largest bank is facing 87 criminal charges over unscrupulous practices in its life insurance arm — the first major bank to face criminal charges following the banking royal commission.

Commonwealth Bank's insurance arm CommInsure has been charged with "hawking" for trying to sell insurance products through unsolicited phone calls.

The Australian Securities and Investments Commission (ASIC) alleges that between October and December 2014, CommInsure, through its agent telemarketing firm Aegon Insights Australia, unlawfully sold life insurance policies known as Simple Life over the phone”;

and,

- (f) on 1 April 2021 nine.com.au published an article entitled “ASIC sues Commonwealth Bank for misleading conduct over monthly fees”, which said, inter alia, that:

“The Australian Securities and Investments Commission (ASIC) has launched legal action in the Federal Court against the Commonwealth Bank, alleging it incorrectly charged monthly access fees to almost a million customers.

ASIC is claiming that for a period of nine years, from June 2010 and 11 September 2019, the Commonwealth Bank charged monthly access fees to customers who were entitled to fee waivers

under their bank contracts. The incorrect fees amount to almost \$55 million, ASIC alleges.”

E. Insofar as EML is concerned:

(a) on or about 14 May 2021 the Central Bank of Ireland raised “significant regulatory concerns” about anti-money laundering compliance of EML’s Irish-based subsidiary which it acquired in late 2019;

(b) on 19 May 2021 the AFR published an article by James Evers and Hans van Leewen entitled “EML shares crash on Irish central bank regulatory concerns”, which said, inter alia, that:

“[u]nder Irish law, the Central Bank of Ireland’s ‘section 45’ powers include putting a freeze of up to 12 months on a financial services firm’s ability to offer a particular kind of service, perform particular transactions, or acquire or dispose of assets or liabilities. It can also tell the firm to sell assets, raise capital, change the way it interacts with third parties, and - potentially most likely in this case - issue specific directions on how a firm has to revamp its systems and controls. The Central Bank can even direct other Irish banks to stop transacting with the firm”;

(c) on 19 May 2021 the SMH published an article by Charlotte Grieve entitled “Payments player EML tanks after regulatory hit” which said, inter alia, that:

“ASX-listed global payments provider EML has seen more than \$800 million wiped off its market value in a single day, after revelations the Irish financial regulator is probing it for major breaches

of anti-money laundering (AML) and counter-terrorism financing (CTF) laws.

Brisbane-based EML said on Wednesday it had received a letter from the Central Bank of Ireland on May 14 raising “significant regulatory concerns” and threatening further disciplinary action. The news caused the company’s share price to tank by 45.63 per cent to close at \$2.80 per share”;

- (d) on 20 May 2021 the AFR published an article by James Evers entitled “EML’s prepaid cards pose ‘significant money-laundering risk’” which said, inter alia, that:

“Analysts expect the stock to remain volatile over the next month as the investigation into Prepaid Financial Services continues

....

Australian financial regulators said they were watching EML. ‘While we can’t comment on specifics, our supervisory team is monitoring matters closely,’ an ASX spokesman said.

....

The Australian Securities and Investments Commission said it was examining market trading in EML shares to determine if there was anything untoward. The regulator ‘always checks market trading in and around any major announcements or corporate developments, and this is no exception,’ a spokesman said on Thursday.

AUSTRAC confirmed that it engaged closely with the money-laundering investigation unit of the Garda National Economic Crime Bureau, a

specialised division of Ireland’s national police, but declined to say whether the Irish action had triggered any local investigation”;

- (e) on 25 May 2021 the AFR published an article by James Frost entitled “EML took five days to reveal money laundering concerns”, which said, inter alia, that:

“Global payments company EML did not request a trading halt for 3½ days after being told Ireland’s central bank had concerns about a subsidiary, and took another two days to inform the market, according to a company statement”;

and,

- (f) on 11 June 2021 Maurice Blackburn Lawyers issued a media release entitled “EML Payments faces class action over anti-money laundering, terrorism finance governance concerns” which, inter alia, said:

“We are investigating whether EML has breached continuous disclosure laws as set out in the Corporation Act, or engaged in misleading or deceptive conduct. Under Australian law, companies are required to inform the market of all relevant developments to ensure transparency”.

F. Insofar as Horizon is concerned:

- (a) on 10 February 2020 the AFR published an article by Angus Grigg and Jemima Whyte entitled “ASX oil firm mired in \$15m PNG bribery scandal” which said, inter alia, that:

“The payment is revealed in a cache of documents obtained by The Australian Financial Review, which raised concerns about ‘illicit payments’ and

'bribes', while describing the potential transaction as 'fruit of the poison tree' ”;

- (b) on 13 February 2020 the AFR published an article by Angus Grigg and Jemima Whyte entitled “New document reveals PNG minister’s link to \$US10.3 payment” which said, inter alia, that:

“Horizon Oil paid \$US10.3 million (\$15.4 million) to a shell company where the sole director and shareholder had close personal and business links to Papua New Guinea's then petroleum minister, William Duma, new documents reveal.

The revelations come as Horizon stood down chief executive Michael Sheridan on Wednesday, pending an independent investigation by lawyers at Herbert Smith Freehills and the accounting firm Deloitte.

The company, which has seen its stock price fall 35 per cent this week, said a board committee had been established to oversee the process after an investigation by The Australian Financial Review found the company had repeatedly ignored corruption warnings”;

and,

- (c) on 10 June 2020 the AFR published an article by Angus Grigg and Jemima Whyte entitled “Horizon Oil gives itself the all clear over PNG payment” which said, inter alia, that:

“Horizon Oil is refusing to release an internal report that it claims clears the company of breaching foreign bribery laws, saying the document is subject to legal privilege.

....

“The Australian Securities and Investments Commission was sent the same cache of internal emails as the Financial Review, which detailed the transaction and warnings over corruption.

The Australian Federal Police were also sent the documents. The AFP has previously said the ‘information is being assessed at the current time’

...

Three Australian banks have since been connected to the matter.

The Financial Review has been told Westpac, Commonwealth Bank and Macquarie Group have all lodged Suspicious Matter Reports over the \$US10.3 million with the regulator, AUSTRAC.”

G. Insofar as Macquarie is concerned:

(a) on 22 May 2021 the AFR published an article by Neil Chenoweth, Adele Ferguson and Kate McClymont entitled “Nuix turmoil turns spotlight on Macquarie”, which said, inter alia, that “Fresh details have emerged of the bank’s role in tech company’s IPO. Amid a witch-hunt to find the source of internal leaks” and “...a flood of new leaks from current and former Nuix and Macquarie executives this week has revealed fresh details of how closely Macquarie was involved in the IPO due diligence process”;

(b) on 7 June 2021 the SMH published an article by Adele Ferguson and Kate McClymont entitled “Macquarie facing ASIC probe into \$1.8b Nuix float”, which said, inter alia, that:

“Investment banking giant Macquarie Group is facing further reputational damage from its

financial backing of data analytics firm Nuix, as the corporate regulator begins an investigation into the \$1.8 billion float of the business.

The Sydney Morning Herald and The Age can reveal that the Australian Securities and Investments Commission has sent notices to both Nuix and Macquarie warning them to retain relevant documentation stretching back to 2018. The investigation by ASIC relates to allegations that Macquarie-backed Nuix overstated its sales forecasts ahead of its listing on the ASX in the hottest float of 2020.

The Herald and Age have also been told that several executives involved in the preparation of the float have received a section 19 notice....”

and,

- (c) on 30 June 2021 the AFR published an article by Neil Chenoweth entitled “Explosive insider trading claims as ASIC turns torch on Nuix IPO” which said, inter alia, that:

“Broadening investigations into alleged insider trading at fallen technology star Nuix now threaten to embroil Macquarie, Morgan Stanley and PricewaterhouseCoopers over their role in the technology group’s IPO last December.

Court action by the Australian Securities and Investments Commission relating to former Nuix CFO Stephen Doyle, who is accused of realising \$17.8 million from insider trading, has revealed a second ASIC investigation into the Nuix prospectus and into its accounts from 2018 to 2020.

The corporate regulator has said it is investigating whether Mr Doyle helped to release a prospectus for the tech company's December IPO that was false and misleading, raising questions as to broader liability by advisors to a float which saw Nuix shares shoot up before plunging, costing investors more than \$3 billion from the January peak.

Macquarie, which owned 76 per cent of Nuix before the float, was the principal beneficiary of the IPO, taking \$586.7 million of the \$953 million raised.

In addition, Macquarie and Morgan Stanley earned \$19.6 million as joint lead managers and underwriters for the Nuix IPO, and PricewaterhouseCoopers \$1.7 million for its role as auditor and investigating accountant.”

- H. Insofar as NAB is concerned, it has been the subject of suspicion and/or enquires and/or numerous regulatory investigations by ASIC and/or APRA and/or AUSTRAC, including in relation to the following matters:
- (a) it was the subject of suspicion and enquires during the Banking Royal Commission, including in relation to customers being charged fees for no service;
 - (b) on 5 February 2019, the ABC published an article by Daniel Ziffer entitled “NAB bosses come in for special criticism from banking royal commissioner Kenneth Hayne”;
 - (c) on 5 February 2019 the AFR published an article by James Evers entitled “Banking royal commission: Where NAB went wrong on fee for no service”;

- (d) on 6 February 2019, the SMH published an article entitled “Hayne has different take on NAB’s cries of innocence”, which said, inter alia, that:

“... Hayne in his final report had singled out Thorburn and his chairman, former Treasury Secretary Ken Henry, as being unwilling to accept criticism and said the bank charging customers fees for no service was not an innocent mistake”;

- (e) on 1 August 2019 the AFR published an article by Adele Ferguson entitled “Henry admitted NAB was still selling rip-offs while royal commission raged”, which said, inter alia, that:

“National Australia Bank chairman Ken Henry privately told consultants in the midst of the Hayne royal commission he was ‘confident’ the bank was selling products that ripped off its customers and would eventually trigger compensation.

In revelations that have immediately sparked calls for a parliamentary inquiry into the relationship between the big banks and the nation’s largest accounting firms, Dr Henry and dozens of other executives last year told NAB’s auditors EY about serious shortcomings in its risk management”;

- (f) on 15 November 2019 the AFR published an article by James Frost entitled “NAB faces ‘significant’ penalties for money laundering breaches”, which said, inter alia, that:

“NAB is facing a significant financial penalty from the financial intelligence regulator after self-reporting a large number of breaches of anti-money laundering and counter-terrorism laws and says there may be more to come.

The bank is still working on fixing shortcomings within its anti-money laundering and counter-terrorism financing systems more than two years after flagging issues with know-your-customer requirements.

Mr Chronican said the bank was working closely with AUSTRAC to help them understand the failures and its efforts to fix them but could not estimate what regulatory action would ultimately look like.”

- (g) on 7 June 2021 NAB published an announcement entitled “NAB advised of referral to AUSTRAC enforcement team” which said, inter alia, that:

“National Australia Bank Limited (NAB) has been informed by AUSTRAC it has identified serious concerns with NAB’s compliance with the Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) Act 2006 and the Anti-Money Laundering and Counter-Terrorism Financing Rules 2007.

AUSTRAC advised NAB in a letter dated 4 June, 2021, that it is AUSTRAC’s view that there is “potential serious and ongoing non-compliance” with customer identification procedures, ongoing customer due diligence and compliance with Part A of NAB’s AML/CTF Program.

These concerns have been referred to AUSTRAC’s enforcement team, which has initiated a formal enforcement investigation.”

and,

- (h) on 7 June 2021 the AFR published an article by James Frost entitled “AUSTRAC turns up heat on NAB” which said, inter alia, that:

“AUSTRAC wrote to the bank on Friday saying it had “serious concerns” about its compliance with the law. It informed the bank the matter has been escalated and a formal enforcement investigation had begun.”

I. Insofar as Nuix is concerned:

- (a) on 17 May 2021 the AFR published an investigation by Adele Ferguson, Kate McClymont and Neil Chenoweth entitled “The infighting behind the \$2.7b Nuix meltdown” which raised suspicions in relation to Nuix’s initial public offering;
- (b) on 17 May 2021 the AFR published an article by Yolanda Redrup entitled “Nuix investors urge leadership overhaul” which said, inter alia, that:

“Current and prospective investors in investigative analytics company Nuix believe CEO Rod Vawdrey and chief financial officer Stephen Doyle need to be ousted in order for trust to be restored, amid revelations it had governance and financial accounting issues.

The besieged \$996 million business plunged another 9.5 per cent on Monday, after trying but failing to assuage investor concerns, endeavouring to explain away reports of infighting and inadequate prospectus risk disclosures.

Since January, the company has lost more than 63 per cent of its value and on Monday was pushed to

a fresh low of \$3.06 per share, before regaining some ground to close at \$3.14, down 9.5 per cent”;

- (c) on 18 June 2021 the AFR published an article by Colin Kruger and Clancy Yeates entitled “ASIC confirms review of Nuix float disaster” which said, inter alia, that:

“The corporate watchdog has confirmed it is reviewing the disastrous float of embattled data forensics group Nuix but defended its role in letting the initial public offering go ahead late last year”;

- (d) on 30 June 2021, Nuix published an announcement entitled “ASIC update” which said, inter alia, that:

“...ASIC’s Financial Reporting and Audit Enforcement Team (FRAET) has commenced a separate investigation into the affairs of Nuix, specifically, suspected contraventions of sections 296, 344 and 1308 of the Corporations Act in relation to the financial statements of Nuix for the periods ending 30 June 2018, 30 June 2019 and 30 June 2020 lodged with ASIC and sections 1308 and 1309 of the Corporations Act, in relation to the Initial Public Offering Prospectus lodged by Nuix with ASIC and with the ASX”;

- (e) on 30 June 2021 the AFR published an article by Neil Chenoweth entitled “Explosive insider trading claims as ASIC turns torch on Nuix IPO” which said, inter alia, that:

“ASIC is investigating, among other things whether Stephen Doyle gave to the ASX, or permitted to be given to the ASX, a prospectus including information about the forecast revenue of Nuix for the financial year ended 30 June 2021

that was false or misleading in a material particular, without having taken reasonable steps to ensure that it was not false or misleading, ' Ms Truong said in her affidavit, which was released by the court on Tuesday evening"; and

and,

- (f) on 10 August 2021 Nuix published an announcement entitled "ASIC update" which said, inter alia, that:

"Nuix understands that ASIC's investigations relevantly concern:

- the financial statements of Nuix Limited for the period ending 30 June 2018, 30 June 2019 and 30 June 2020;
- Nuix's prospectus dated 18 November 2020;
- Nuix's market disclosure in the period between the period 4 December 2020 to 31 May 2021."

- J. Insofar as Sky City is concerned, on 7 June 2021 the Market Herald published an article by Samantha Goerling entitled "AUSTRAC launches investigation into SkyCity (ASX:SKC) Adelaide" which said, inter alia, that:

"The Australian Transaction Reports and Analysis Centre (AUSTRAC) has launched an enforcement investigation into SkyCity Entertainment (SKC)".

- K. Insofar as Star Entertainment is concerned, on 7 June 2021, Reuters published an article entitled "Star Entertainment investigated for money laundering breaches in Sydney", which said, inter alia, that:

"Star Entertainment Group on Monday said Australia's financial crime regulator had

launched an investigation into possible breaches of anti-money laundering and counter-terrorism laws at the company's casino in Sydney."

L. Insofar as Tabcorp is concerned:

- (a) on 14 March 2016, the SMH published an article by Nick McKenzie, Richard Baker, Michael Bachelard and Daniel Quinn entitled "Tabcorp faces police scrutiny over Cambodian payment", which said, inter alia, that:

"A Fairfax Media investigation has uncovered the payment and allegations it was made to a consulting company connected to a sister of Hun Sen, the ruthless strongman who has ruled Cambodia for 30 years.

The \$200,000 was channelled via the United States to Cambodia in early 2010, when Mr Funke Kupper was boss of Tabcorp and examining, with a small team of executives and advisers, how the gaming giant could expand into Asian sports betting.

...

The revelations are likely to prompt an AFP investigation into whether the payment breached bribery laws. Australian and US laws make it illegal to give a benefit to a foreign official or their representative in order to obtain a business advantage";

- (b) on 16 March 2017, the ABC published an article by Peter Ryan entitled "Tabcorp fined \$45 million for breaching money laundering, terrorism financing laws", which said, inter alia, that:

“Gaming company Tabcorp has been fined \$45 million for breaches of anti-money laundering and counter-terrorism financing laws.

The Federal Court found Tabcorp failed to alert regulators to reports of suspicious behaviour on 108 occasions over more than five years.

Tabcorp has admitted that the suspicions related to unlawful activity including money laundering and credit card fraud, which was not reported to the Australian Transaction Reports and Analysis Centre (AUSTRAC).

The \$45 million civil penalty awarded against Tabcorp is believed to be the highest in Australian corporate history.”

and,

- (c) on 11 September 2019, the SMH published an article by Nick Toscano entitled “AFP drop bribery probe into Tabcorp’s Cambodian payment.”

M. Insofar as Westpac is concerned, it has been the subject of suspicion and/or enquires and/or numerous regulatory investigations by ASIC and/or APRA and/or AUSTRAC, including in relation to the following matters:

- (a) on 24 October 2019 the ABC published an article by Stephen Letts entitled “Westpac misconduct costs head towards \$2 billion as it faces heavy AUSTRAC penalties over foreign transactions”;
- (b) on 20 November 2019 the ABC published an article by Michael Janda and Peter Ryan entitled “Westpac faces fines over ‘serious and systemic’ anti-money laundering breaches, AUSTRAC says”, which said, inter alia, that:

“AUSTRAC has applied to the Federal Court for civil penalty orders against Westpac for deficient oversight of its anti-money laundering and terrorism financing obligations.

The bank is alleged to have breached the Anti-Money Laundering and Counter-Terrorism Financing (AML-CTF) Act on more than 23 million occasions, including the failure to adequately monitor the accounts of a convicted child sex offender who was regularly sending money to the Philippines.

Westpac revealed the AUSTRAC investigation in its recent annual report, confirming it had been targeted in relation to the bank's "processes, procedures and oversight" of anti-money laundering and counter-terror financing regulations.

The bank confirmed in that report it had received a number of notices from AUSTRAC relating to reporting failures, due diligence, risk assessment and transaction monitoring”;

- (c) on 25 November 2019 the SMH published an article by Clancy Yeates entitled “ASIC launches investigation into Westpac”, which said, inter alia, that:

“The corporate watchdog has launched an investigation into Westpac over potential legal breaches linked to the bank's money laundering compliance scandal, as chairman Lindsay Maxsted commenced critical meetings with investors and proxy advisers”;

- (d) on 17 December 2019, APRA published an announcement entitled “APRA launches Westpac investigation and increases capital requirement add-ons to \$1 billion”, which said, inter alia, that:

“The Australian Prudential Regulation Authority (APRA) has today formally commenced an investigation into possible breaches of the Banking Act 1959 by Westpac Banking Corporation (Westpac).

APRA will focus on the conduct that led to the matters alleged last month by AUSTRAC, as well as the bank’s actions to rectify and remediate the issues after they were identified. The investigation will examine whether Westpac, its directors and/or its senior managers breached the Banking Act – including the Banking Executive Accountability Regime (BEAR) – or contravened APRA’s prudential standards”;

- (e) on 15 May 2020 the AFR published an article by James Frost entitled “Westpac admits 23m anti-money laundering breaches”, which said, inter alia, that:

“Westpac has admitted it broke the law 23 million times and could have kept a closer watch on a dozen customers the regulator suspected were paedophiles.

In a document filed in Federal Court on Friday afternoon, the bank also admitted its reporting and record keeping of international transactions were not good enough and accepted that many millions of reports had been deleted, filed years late or, in some cases, not filed at all”;

and

- (f) on 24 September 2020 AUSTRAC published a statement which said, inter alia, that:

“Westpac and AUSTRAC have today agreed to a 1.3 billion dollar proposed penalty over Westpac’s breaches of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). Westpac and AUSTRAC have agreed that the proposed penalty reflects the seriousness and magnitude of compliance failings by Westpac.”

8E. By reason of the matters set out in paragraphs 5A to 8 and 8D above, ASX failed to:

- (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and

PARTICULARS

By reason of the matters set out in paragraphs 5A to 8 above, ASX has breached its obligations under listing rule 17.3 (which, by reason of section 761A of the Corporations Act, is part of the operating rules).

- (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of suspicion and/or enquires and/or a regulatory investigation by ASIC and/or APRA and/or AUSTRAC.

8F. By reason of the matters set out in paragraphs 8D and 8E above, ASX has contravened section 792A(a) of the Corporations Act.

8G. In the circumstances set out in paragraphs 8D to 8F above, the shares of ISX should not have been suspended from quotation on the Australian Securities Exchange and ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX’s shares on the Australian Securities Exchange.

D. Failure to lift the suspension from quotation

(i) *First failure to ~~the~~ lift the suspension*

9. At 12:38pm on 2 October 2019, ISX received a five page Query Letter from the ASX which contained 15 questions, primarily directed to:

- (a) ISX's customers which were currently operating, or had previously operated, cryptocurrency exchanges; and
- (b) loans to the subsidiary of Etherstack plc;

(First Query Letter).

PARTICULARS

The First Query Letter was in writing. It was attached to an email sent by Mr James Gerraty, Senior Manager Listings Compliance (Melbourne) of the ASX, to Mr Todd Richards, Company Secretary of ISX. A copy of the email and First Query Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

10. At 7:20pm on 2 October 2019, ISX informed the market that it was responding to separate queries from ASX and the ASIC, which it believed had been triggered by recent share price movements in the company.

PARTICULARS

The statement was in writing. It was contained in a media release which was made on 2 October 2019. A copy of the media release is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

11. When it made the media release, ISX did not know, and therefore could not and did not tell the market, the particular reasons for the suspension of its shares from quotation by ASX because:

- (a) ISX had not been given any notice by ASX of its intention to suspend the quotation of ISX's shares;

- (b) ISX had not been given particulars of the alleged issues concerning ISX;
 - (c) ISX had not been given the opportunity to address the alleged issues concerning ISX so that it could avoid having its shares suspended from quotation; and
 - (d) the questions in the First Query Letter related to historical matters which had no apparent connection to the ISX share price movements which:
 - (i) immediately followed the publication of a report by Ownership Matters Pty Ltd on 10 September 2019, to which ISX had responded on 17 September 2019; and
 - (ii) preceded ISX's shares being suspended from quotation.
12. On 10 October 2019, ISX provided ASX with:
- (a) a four page detailed written response to the First Query Letter for release to the market (**First Market Release**);
 - (b) five annexures marked A to E, which contained confidential information not to be released to the market; and
 - (c) 79 documents, comprising 670 pages, which were not to be released to the market as they also contained confidential information,
- (together, the **First Response**).

PARTICULARS

A copy of the First Response is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the information in the five annexures and 79 documents is confidential. By referring to that information, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

13. Notwithstanding the First Response, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(ii) *Second failure to lift the suspension*

14. On 15 October 2019, ISX received a twenty-one page Query Letter from the ASX which contained 17 questions (**Second Query Letter**).

PARTICULARS

A copy of the Second Query Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

15. On 25 October 2019, ISX provided ASX with:

- (a) a twelve page detailed written response to the Second Query Letter which was for release to the market (**Second Market Release**); and
- (b) a further 135 documents, comprising 1721 pages, which were not to be released to the market as they contained confidential information,

(together, the **Second Response**).

PARTICULARS

A copy of the Second Response is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the 135 documents contain confidential information. By referring to those documents, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

16. On 28 October 2019, Mr Tim Hart, the Chairman of ISX, sent a letter to, among others, Mr Dominic Stevens, the Managing Director and Chief Executive Officer of ASX, (**28 October Letter**) which:

- (a) said that the First Query Letter and the Second Query Letter had sought production of a bewildering miscellaneous array of unrelated historical information, much of it immaterial to the price or value of ISX's shares, including:

- (i) how many clients were referred by a technology business in 2016; and

- (ii) a publicly verifiable licence issued in 2017 by a European Central Bank;
- (b) said that the diversity and disjunctive nature of the information sought gave rise to a reasonable inference that ASX was looking to find a problem, rather than acting on a suspected problem and that at least some of the information was not being sought for the purpose of satisfying ASX that ISX was complying with the Listing Rules;
- (c) asked whether ASIC had given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act;
- (d) said that ISX was concerned that ASX was making decisions to continue the suspension of quotation of its shares that took into account irrelevant considerations or were being exercised for an improper purpose;
- (e) expressed concern that information requests had been leaked and received by a short-seller in ISX shares;
- (f) said that ISX was concerned about the security of confidential information, including customer information, which it had supplied to ASX;
- (g) said that ISX was concerned that quotation of its shares was needlessly suspended;
- (h) said that ISX was concerned that a lengthy period of suspension was having reputational damage on the company; and
- (i) asked ASX to immediately lift the suspension of ISX shares.

PARTICULARS

The 28 October Letter was attached to an email entitled “ISX - Significant concerns about the exercise of ASX’s powers” sent at 2:26pm by Mr Hart of ISX to Mr Stevens of ASX. A copy of the email and 28 October Letter was also sent to Mr Gerraty of ASX. A copy of the emails and 28 October Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

17. At least by 29 October 2019 and continuing thereafter, the position taken by ASX was that the suspension would not be lifted any time soon and not until ASIC agreed.

PARTICULARS

- A. Between 2:24pm and 2:34pm on 2 October 2019, during a telephone conversation between James Gerraty and Tim Hart, statements to the effect alleged were made by James Gerraty. The statements are recorded in writing in an email from James Gerraty of ASX to Kevin Lewis, David Barnett and Clare Porta of ASX which has been discovered by ASX (ASX.002.005.2703).
- B. Between 3:20pm and 3:23pm on 29 October 2019, S statements to the effect alleged were made by Dean Litis during a telephone conversation between Mr Anthony Seyfort of HWL Ebsworth Lawyers (**HWL**) and Mr Dean Litis, a Principal Advisor, Listing Compliance (Melbourne), of ASX assigned to monitor and liaise with ISX. The statements are recorded in a file note of Dean Litis which has been discovered by ASX (ASX.001.001.1148). ~~Further and better particulars may be provided following discovery.~~
18. On 30 October 2019:
- (a) Mr Hart of ISX had not received a substantive response to the 28 October Letter; and
 - (b) sent an email to Mr Rick Holliday-Smith, the Chairman of ASX, expressing significant concerns about, among other things, ASX's apparent lack of:
 - (i) due process and procedural fairness; and
 - (ii) understanding of ISX's business sector and technology,
- (30 October Email).**

PARTICULARS

A copy of the 30 October Email is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

19. Notwithstanding the First Response, Second Response, 28 October Letter and 30 October Email, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(iii) *Third failure to lift the suspension*

20. At 3:17pm on 31 October 2019, ISX received a further fifteen page Query Letter from ASX which contained 28 questions and improperly referred to confidential information that ISX had given to ASX (**Third Query Letter**).

PARTICULARS

The Third Query Letter was attached to an email sent by Mr Gerraty of ASX to Mr Richards of ISX. A copy of the email and Third Query Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment

21. At 3:21pm on 31 October 2019, HWL sent a letter to Mr Stevens of ASX (**31 October HWL Letter**) which referred to the 28 October Letter and said that ISX:
- (a) was concerned that the ongoing suspension of its shares from quotation (by now its 21st trading day) was detrimental to the interests of investors and to the efficacy of the market operated by the ASX;
 - (b) was concerned about the procedural unfairness of the process;
 - (c) was concerned that quotation of its shares was needlessly suspended;
 - (d) had not receive a coherent written explanation as to whether the daily decisions not to lift the suspension from quotation were founded in listing rules 17.3.1 or 17.3.2 or 17.3.3 or 17.3.4, nor the reasons for such decisions;

- (e) had not been advised whether ASIC has given ASX an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act;
- (f) was concerned that the ASX was making decisions that take into account irrelevant considerations or are being exercised for an improper purpose;
- (g) was concerned that a lengthy period of suspension was having reputational damage on the company; and
- (h) demanded that the ASX immediately lift the suspension on quotation of ISX's shares given that there is no direction under section 794D(2) of the Corporations Act or an identified current, material, operative breach of the Listing Rules by ISX.

22. Further, the 31 October HWL Letter:

- (a) observed that many listed companies on the Australian Securities Exchange had faced, and many currently face, enquiries by ASIC and other regulatory bodies while their securities continued to be quoted and traded on the Australian Securities Exchange; and
- (b) said that no valid reason had been given why ISX should be treated differently.

PARTICULARS

The 31 October Letter was attached to an email sent by Mr Seyfort of HWL to Mr Stevens of ASX. A copy of the email and 31 October Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

23. At 5:16pm on 31 October 2019, ISX received a letter from Mr Stevens in response to the 28 October Letter and 30 October Email (**31 October ASX Letter**).

PARTICULARS

The 31 October ASX Letter was attached to an email sent by Mr Stevens of ASX to Mr Karantzis of ISX. A copy of the email and the 31 October ASX Letter is in the possession of

the solicitors acting for ISX and may be inspected during business hours by appointment.

24. At 6:34pm on 31 October 2019, HWL received an email from Mr Daniel Moran, the Group General Counsel and Company Secretary of ASX, (**31 October ASX Email**) which:
- (a) attached a copy of the Third Query Letter and 31 October ASX Letter; and
 - (b) said that he would respond to the substance of the 31 October HWL Letter; and
 - (c) asked that any further correspondence be directed to him.

PARTICULARS

The 31 October ASX Email is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

25. The Third Query Letter required a response by 15 November 2019.
26. Between 5:26pm and 6:30pm on 1 November 2019, ISX provided ASX with:
- (a) an eight page written response to the Third Query Letter; and
 - (b) a further 23 documents, comprising 49 pages, that were not to be released to the market as they contained confidential information,
- (together, the **1 November Response**).

PARTICULARS

The 1 November Response was communicated in four separate emails sent by Mr Karantzis of ISX to Mr Gerraty of ASX, and a copy to Mr Litis of ASX. A copy of the 1 November Response is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the 23 documents contain confidential information. By referring to those documents, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

26A. Between 2:40pm and about 3:06pm on 4 November 2019, representatives of ASIC and representatives of ASX attended a telephone conference in relation to ISX during which:

- (a) a representative (alternatively, various representatives) of ASX said:
 - (i) it would be “helpful” to have a “direction not to reinstate until further down the track with the enquiries”; and
 - (ii) it would be “handy” to have a “direction” after the meeting that within the next 21 days ASX is not to reinstate the quotation of ISX’s shares on the Australian Securities Exchange,
- (b) a representative from ASIC said that they “can have a direct conversation with Sharon”, which was a reference to Sharon Concisom (Executive Director, Markets Enforcement) of ASIC.

PARTICULARS

A. The telephone conference was attended by:

- (i) Kevin Lewis, David Barnett, Clare Porta and Janine Ryan of ASX; and
- (ii) Colin Luxford, James Jordan and Adam Boscoscuro of ASIC.

B. The statements made during the telephone conference are recorded in a four-page handwritten note discovered by ASX (ASX.010.001.0061).

26B. Neither on 4 November 2019, nor at any time since that date, has ASIC given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange.

27. At 12:03pm on 5 November 2019, HWL received a letter from Mr Moran which said that the decision to suspend the shares was not made at the direction of ASIC.

PARTICULARS

The letter was attached to an email sent by Mr Moran of ASX to Mr Seyfort and Mr Colin Almond of HWL. A copy of the letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

28. At 3:31pm on 5 November 2019, ISX received an email from Mr Kevin Lewis, the Chief Compliance Officer of ASX, which:
- (a) made various observations about the 1 November Response;
 - (b) said that ISX could either provide an amended response to the Third Query Letter which addressed his observations or elect to have the 1 November Response released to the market; and
 - (c) said that if ISX elected not to provide an amended response the suspension of its shares from quotation would not be lifted.
29. By at least 6 November 2019 and continuing thereafter, the position of ASX was that, even if ISX satisfied ASX's queries, it would not necessarily lift the suspension while an ASIC investigation was underway.

PARTICULARS

ISX refers to and repeats paragraph 17 above and its particulars.

Further, the position of ASX was stated at a meeting held at the Melbourne offices of ASX on 6 November 2019. It was recorded in a file note made by Mr Seyfort of HWL.

A copy of the file note is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

The meeting was attended in person by:

- (a) Mr Karantzis, Mr Scott Minehane and Ms Elizabeth Warrell of ISX;

(b) Mr Seyfort of HWL; and

(c) Mr Gerraty and Mr Litis of ASX.

The meeting was attended by video conference by Mr Lewis, Mr Moran and Ms Janine Ryan of ASX.

The meeting was attended by telephone by Mr Luke Hastings of Herbert Smith Freehills.

30. On 7 November 2019, HWL received ~~an~~ emails from Mr Colin Luxford of ASIC which said that ISX should direct its “enquiries in relation to the determination of ISX suspension to the ASX directly” and that the decision by ASX to suspend ISX from trading on 2 October 2019 was not made with a direction from ASIC.

PARTICULARS

The first email was received at 10:23am on 7 November 2019 by David Clarke of HWL. The second email was received at 4:59pm on 7 November 2019 by Mr David Clarke of HWL. A copy of the emails is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

- 30A. On 8 November 2019 John Karantzis sent an email to Dominic Stevens of ASX entitled “ISX - Significant concerns about the exercise of ASX’s powers”, which told him the position stated by ASIC on 7 November 2019 and attached an intended release to the market on Monday, 11 November 2019.

PARTICULARS

The email was sent at 4:54pm on 8 November 2019 by John Karantzis to Dominic Stevens (copied to, inter alia, James Gerraty and Rick Holliday-Smith of ASX and Tim Hart and Elizabeth Warrell of ISX). A copy of the email and the attachment is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

30B. On 11 November 2019 (at 1:02pm) ISX informed the market that:

- (a) ASIC had confirmed in writing that it did not request the suspension of ISX's securities and had referred ISX to ASX for an explanation as to why ISX's shares were suspended on 2 October 2019; and
- (b) a written statement from ASIC's Markets Enforcement desk received by ISX on 7 November 2019 said that "*the decision by ASX to suspend ISX Ltd from trading on 2 October 2019 was not made with a direction from ASIC*".

PARTICULARS

The statements were in writing, contained in ISX's market announcement dated 11 November 2019.

30C. On 11 November 2019 (at 1:04pm) ASX published a notice which:

- (a) informed the market that:
 - (i) under Listing Rule 17.3.4, it has the power to suspend any security from trading where for any reason ASX considers that course to be appropriate;
 - (ii) ASX was satisfied that the suspension of ISX's securities on 2 October 2019 was appropriate, without any need for a direction from ASIC; and
 - (iii) ASX's 2 October 2019 market announcement notes that ASX's decision to suspend trading in ISX securities was made in consultation with ASIC,

PARTICULARS

The statements made by ASX were in writing, contained in ASX's market announcement dated 11 November 2019.

and,

- (b) did not tell the market that on 2 October 2019, when it suspended trading in ISX securities;
- (i) ASX had no “hard evidence” and did not have “sufficient evidence” to suspend trading in ISX securities;
- (ii) ASIC had no “smoking gun”;
- (iii) ASIC had not given ASX any documents or evidence which would justify ASX suspending the shares of ISX from quotation on the Australian Securities Exchange; and
- (iv) Kevin Lewis of ASX had decided to suspend the shares of ISX from quotation on the Australian Securities Exchange because:
 - (A) ASX and ASIC had unsubstantiated suspicions about ISX;
 - (B) ASIC required additional time to decide whether to commence a formal investigation into ISX and, if it did so, time to conduct that investigation; and
 - (C) ASIC agreed that ASX’s announcement to the market could refer to ASIC making enquiries.

PARTICULARS

The omissions were excluded from ASX’s market announcement dated 11 November 2019.

30D. In the circumstances set out in paragraphs 5A to 5G, 7A, 30 and 30A to 30C above, ASX published a notice in relation to ISX’s securities which omitted matters that, by their omission, rendered the information misleading or deceptive, or likely to mislead to deceive.

31. At 9:02am on 11 November 2019, Mr Karantzis told Mr Gerraty that ISX would be providing an updated response to the Third Query Letter by the morning of 15 November 2019.

PARTICULARS

The communication was in writing. It was contained in an email sent by Mr Karantzis of ISX to Mr Gerraty of ASX. It was acknowledged in an email sent at 10:13am on 11 November 2019 by Mr Gerraty to Mr Karantzis, as well as Mr Seyfort of HWL and Mr Litis of ASX. A copy of the emails is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

32. Between 3:27pm and 3:39pm on 15 November 2019, ISX:
- (a) provided ASX with an eighteen page detailed written response to the Third Query Letter which was for release to the market (**Third Market Release**);
 - (b) provided ASX with a one page annexure, which was not for release to the market;
 - (c) told ASX that the requisite documents had already been provided as part of the 1 November Response; and
 - (d) told ASX that in relation to question 25 of the Third Query Letter:
 - (i) it was concerned to protect the confidentiality of its sensitive commercial information;
 - (ii) it was also concerned to comply with its obligations under the Listing Rules and placate any concerns which the ASX may have; and
 - (iii) given the leak of information from the ASX, it would provide the information upon ASX giving an undertaking to keep the information confidential,
 (together, the **Third Response**).

PARTICULARS

The Third Response was attached and contained in two emails sent by Mr Karantzis of ISX to Mr Gerraty of ASX. A copy of the emails and Third Response is in the possession of the

solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the one page annexure contains confidential information. By referring to that document, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

33. At 4:05pm on 15 November 2019, HWL sent a letter to Mr Moran (**15 November HWL Letter**) which said, as was the fact, that:
- (a) in light of ISX's comprehensive 19 page reply to the Third Query Letter, ASX ought to lift the suspension of ISX shares from quotation; and
 - (b) if ASX decided to continue the suspension, it would have failed to act honestly and fairly, and therefore reasonably, in exercising its power to suspend ISX's shares from quotation, in the sense that no reasonable person could possibly act in that particular way.
34. Further, the 15 November HWL Letter asked Mr Moran to confirm by 4:00pm on 19 November 2019 that ASX would immediately lift the suspension of ISX's shares.

PARTICULARS

The 15 November HWL Letter was attached to an email sent by Mr Almond of HWL to Mr Moran of ASX. A copy of the 15 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

35. Notwithstanding the:
- (a) First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response and 15 November HWL Letter;
 - (b) fact that, despite ASX's request during the telephone conference on 4 November 2019, ASIC had not given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;

- (c) position of ASIC stated in the emails to HWL on 7 November 2019, which was made known to Dominic Stevens of ASX on 8 November 2019; and
- (d) ISX announcement on 11 November 2019 in relation to ASIC's stated position.

ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

- (iv) *Fourth failure to lift the suspension and unreasonable exercise of power to compel confidential information*

36. At 3:23pm on 19 November 2019 Mr Moran sent an email to HWL (**19 November ASX Email**) which:

- (a) alleged that ISX had refused to provide the information requested in question 25 of the Third Query Letter;
- (b) effectively said that ASX would not give the undertaking sought by ISX to keep the sensitive commercial information confidential;
- (c) asserted that the failure to provide that information was a breach of listing rule 18.7 and that this provided ASX with a further basis to maintain the suspension of ISX's shares; and
- (d) effectively compelled ISX to produce to ASX sensitive commercial information without any assurance that it would be kept confidential.

PARTICULARS

The 19 November ASX Email was sent by Mr Moran of ASX to Mr Almond of HWL. A copy of the email was also sent to Ms Katharine Allen and Mr Seyfort of HWL. A copy of the 19 November ASX Email is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

- 37. At 4:48pm on 22 November 2019 ISX received a further three page Query Letter from ASX which contained 9 questions and required a response by 9:00am on Monday, 2 December 2019 (**Fourth Query Letter**).

PARTICULARS

The Fourth Query Letter was attached to an email sent by Mr Gerraty of ASX to Mr Richards of ISX, and a copy to Mr Karantzis, Ms Elizabeth Warrell and Mr Hart of ISX as well as Mr Litis of ASX. A copy of the email and Fourth Query Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment

38. At 5:00pm on 22 November 2019, HWL sent a letter to Mr Moran (**22 November HWL Letter**) which attached the confidential information in response to question 25 of the Third Query Letter and said, as was the fact, that:
- (a) ISX had not refused to provide information in response to question 25 of the Third Query Letter;
 - (b) ISX had sought to first put in place a regime to protect the confidential information in circumstances where information previously given by it to ASX had been leaked to third parties, including the media;
 - (c) in the circumstances, the position adopted by ISX was justified and reasonable whereas the position adopted by ASX in relation to the undertaking sought by ISX was unjustified and unreasonable;
 - (d) ISX was concerned to have its shares returned to quotation forthwith;
 - (e) ISX therefore had no option but to accede to the illegitimate pressure being applied to it by ASX and provide the confidential information in response to question 25 without the undertaking; and
 - (f) that he and ASX were on notice that if any of the sensitive commercial information is either released to the market without the written consent of ISX or disseminated to any third party, including the media, ISX would suffer irreparable loss and damage and would hold him and ASX liable for that loss and damage.
39. The 22 November HWL Letter further:
- (a) asked ASX to confirm that it would now lift the suspension of ISX's shares from quotation without any further delay; and

- (b) observed that, notwithstanding the APRA investigation into Westpac Banking Corporation Limited and the subsequent media reports earlier in that week, ASX had not suspended or threatened to suspend trading in that company's shares.

PARTICULARS

The 22 November HWL Letter and the confidential attachment is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the information in the attachment is confidential. By referring to the attachment, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

- 40. At 1:24pm on 25 November 2019, HWL received an email from Mr Moran (**25 November ASX Email**) which confirmed receipt of the 22 November HWL Letter and said that he had provided it to the ASX's Listing Compliance team for their review.

PARTICULARS

The 25 November ASX Email is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

- 41. At 5:14pm on 25 November 2019, HWL sent a letter to Mr Moran (**25 November HWL Letter**) which:
 - (a) observed, as was the fact, that the 25 November ASX Email failed to confirm that Mr Moran had communicated the confidential information to the Listings Compliance team on a confidential basis or that appropriate safeguards had been put in place to protect its confidentiality;
 - (b) reiterated that ISX would hold him and ASX liable for the irreparable loss and damage that it would suffer if any of the commercially sensitive information was either released to the market or disseminated to any third party, including the media; and
 - (c) provided further confidential information in order to update one figure in the confidential attachment to the 22 November HWL Letter.

PARTICULARS

The 25 November HWL Letter was attached to an email sent on behalf of Mr Almond of HWL to Mr Moran of ASX. A copy of the email and the 25 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the further information provided in the letter is confidential. By referring to this information, ISX does not waive its confidentiality or its right to protect that confidentiality.

42. At 4:37pm on 26 November 2019, ISX:

- (a) provided ASX with a four page written response to the Fourth Query Letter which was for release to the market (**Fourth Market Release**); and
- (b) a further 34 documents, comprising 177 pages, which were not to be released to the market as they contained confidential information,

(together, the **Fourth Response**).

43. Notwithstanding the:

- (a) First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response, 15 November HWL Letter, 22 November HWL Letter and Fourth Response;
- (b) fact that, despite ASX's request during the telephone conference on 4 November 2019, ASIC had not given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;
- (c) position of ASIC stated in the emails to HWL on 7 November 2019, which was made known to Dominic Stevens of ASX on 8 November 2019; and
- (d) ISX announcement on 11 November 2019 in relation to ASIC's stated position,

ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(v) *Failure to respond within a reasonable period of time and unfounded allegations made by ASX*

44. At 10:05am on 27 November 2019, HWL received a letter from Mr Moran (**First 27 November ASX Letter**) which wrongly suggested by implication that ISX had sought to avoid its obligations under the Listing Rules by providing him with the confidential information.

PARTICULARS

The First 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL.

The First 27 November ASX Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

45. At 10:06am on 27 November 2019 HWL received a second letter from Mr Moran (**Second 27 November ASX Letter**) which said that:

- (a) ASX anticipated providing its draft findings to ISX by the end of the next week;
- (b) if those findings were adverse, then ISX would be given a reasonable opportunity to respond to them;
- (c) ASX would have regard to any relevant information that ISX provided in response, and would also consider any proposal put by ISX in order to address matters raised in the draft findings;
- (d) ASX would then make its findings; and
- (e) whether this resulted in the reinstatement of ISX's shares to quotation would depend on matters including the nature of ASX's findings and any proposals put by ISX to address such matters to ASX's satisfaction.

PARTICULARS

The Second 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL. The Second 27 November ASX Letter is in the possession

of the solicitors acting for ISX and may be inspected during business hours by appointment.

46. At 9:13am on 28 November 2019, HWL sent a letter to Mr Moran (**First 28 November HWL Letter**) which said, as was the fact, that:

- (a) by now ASX had had more than a reasonable opportunity to consider the documents and information which had been given to it by ISX;
- (b) ISX did not accept that ASX making findings about past compliance with the Listing Rules was relevant to ISX's request to have the suspension of its shares from quotation lifted;
- (c) the leisurely timetable indicated in the Second 27 November ASX Letter was unreasonable and detrimental to ISX as it failed to:
 - (i) accord the appropriate degree of urgency to this matter, particularly given that ISX's shares had now been suspended from quotation for almost two months;
 - (ii) acknowledge that the ASX had been in possession of most of the requested information and documents since at least 15 November 2019; and
 - (iii) acknowledge that at the end of the following week there would only be two working weeks left before the Christmas break, when most offices would close for at least three weeks;
- (d) in the circumstances, ISX required ASX to provide its draft findings by 1:00pm on Monday, 1 December 2019, so that it would have a reasonable opportunity to consider them with a view to having the protracted suspension of its shares from quotation lifted well before the Christmas break.

PARTICULARS

The First 28 November HWL Letter was attached to an email sent by Mr Almond of HWL to Mr Moran of ASX and Mr Seyfort of HWL. A copy of the email and First 28 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

47. At 10:19am on 28 November 2019, HWL sent a second letter to Mr Moran (**Second 28 November HWL Letter**) which:

- (a) observed (as was the fact) that his veiled suggestion that ISX was seeking to avoid its obligations under the rules by providing him with its response to question 25 of the Third Query Letter was extraordinary, unfounded and disingenuous given the recent correspondence concerning the leak of information from the ASX;
- (b) detailed the recent correspondence in relation to the leak of information;
- (c) observed (as was the fact) that the First 27 November ASX Letter ignored that context and ISX's legitimate concern to protect its sensitive commercial information, which he had effectively compelled ISX to provide in response to question 25 of the Third Query Letter;
- (d) rejected his attempt to obscure ISX's legitimate concern to protect its sensitive commercial information;
- (e) rejected his attempt to evade any responsibility to ensure that appropriate safeguards were in place to protect the confidentiality of the sensitive commercial information which had been given to him; and
- (f) again reiterated that ISX would hold him and ASX liable for the irreparable loss and damage that it would suffer if any of the sensitive commercial information was either released to the market or disseminated to any third party, including the media.

PARTICULARS

The Second 28 November HWL Letter was attached to an email sent by Mr Almond of HWL to Mr Moran of ASX. A copy of the email and Second 28 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

48. Notwithstanding the First 28 November HWL Letter, ASX:

- (a) did not provide its draft findings by 1:00pm on Monday, 1 December 2019, so that ISX would have a reasonable opportunity to consider them with a view to having the suspension of its shares from quotation lifted well before the Christmas break; and

- (b) has failed to lift the suspension and permit the quotation of ISX's shares on the Australian Securities Exchange.

(vi) *Failure to lift the suspension after ISX had complied with ASX's Directions*

- 48A. On 1 May 2020 ASX gave written Directions (defined in paragraph 70 below and more particularly described in the letter dated 1 May 2020) to ISX.

PARTICULARS

The Directions were contained in a letter dated 1 May 2020 from Kevin Lewis to Timothy Hart. A copy of the letter is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

- 48B. On 15 May 2020 ISX complied with the second third direction given by ASX by issuing its quarterly activity report with a breakdown by sector of the revenue ISX had derived during the applicable quarter.

PARTICULARS

The quarterly report was in writing, released on the Markets Announcements Platform. A copy of the document is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

- 48C. On 20 May 2020 ISX complied with the first direction given by ASX by disclosing information regarding the "Nona Agreement" and the "Variation Letter".

PARTICULARS

The information was in writing, disclosed in two announcements dated 19 May 2020, which were released on the Markets Announcements Platform on 20 May 2020. A copy of the announcements is in the possession of the solicitors acting for the applicants

and may be inspected during business hours by appointment.

- 48D. On 20 May 2020, pursuant to the ~~third~~ second direction given by ASX, ISX told the market that it had appointed Michael Linehan of Clayton Utz to prepare the independent report regarding ISX's continuous disclosure policy.

PARTICULARS

The information was in writing, disclosed in an announcement dated 19 May 2020, which were released on the Markets Announcements Platform on 20 May 2020. A copy of the announcement is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

- 48DA. On 17 June 2020, ASX instructed the independent experts that there had been further breaches by ISX of Chapter 3 of the Listing Rules which should be factored into their review of ISX's continuous disclosure policies.

PARTICULARS

The instruction was in writing, contained in an email sent at 9:15am on 17 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment

- 48DB. On 18 June 2020, ASX told the independent experts that:

- (a) ASX regarded ISX's failure to properly disclose the Visa suspension and the reasons for it as a clear and serious breach of Listing Rule 3.1 that would appear to raise potential issues about the adequacy of ISX's policies and process to comply with that rule; and
- (b) these potential issues fall within the purview of their review and report;

PARTICULARS

The statements were in writing, contained in an email sent at 1:55pm on 18 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

48E. On 16 July 2020:

- (a) the report of the independent experts was provided to ISX, which said that:
 - (i) they did not identify any contract entered into by ISX with customers since 1 January 2018 that had not been disclosed and that, in their opinion, was of such a nature that a reasonable person would have expected information about the contract to affect the price or value of ISX's shares; and

PARTICULARS

Independent Expert Review dated 16 July 2020
signed by Michael Linehan and Brendan Groves, the scope of which did not include a review of the "Key Contracts" in accordance with the written direction given by ASX.

- (ii) they were unable to conclude that the decision taken by ISX to not announce the Visa suspension at the time of the initial suspension constituted a breach of its continuous disclosure obligations and that the subsequent disclosure on 29 April 2020 was deficient but the letter to shareholders dated 24 May 2020, released to the market on 25 May 2020, provided a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final;

PARTICULARS

The statements were in writing, contained on pages 9 to 11 of the independent experts' report dated 16 July 2020 signed by Michael Linehan

and Brendan Groves. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

and,

- (b) ISX resolved to adopt all of the recommendations made by the independent experts in the independent experts' report dated 16 July 2020.

48F. On 17 July 2020 ISX sent to ASX a copy of the independent experts' report, and a copy of a draft announcement that attached pages one to five of that report, to ASX, noted asserted that it had complied with all of the Directions (Assertion) and asked ASX to lift the suspension of trading in its securities as soon as possible.

PARTICULARS

- A. The independent experts' report and draft announcement was attached to an email sent at 8:45am 8:19am on 17 July 2020 by John Karantzis to Janine Ryan of ASX. Pages one to five of the report contained the background and purpose of the report, a summary of the scope of the review, a summary of the findings and the recommendations of the experts. A copy of the email and documents is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
- B. The request was in writing. It was contained in the email sent at 8:45am 8:19am on 17 July 2020 by John Karantzis to Janine Ryan of ASX.

48FA. On 17 July 2020, ASX:

- (a) interrogated the independent experts in relation to their report dated 16 July 2020;

PARTICULARS

The questions were in writing, contained in emails sent at 1:46pm and 7:06pm on 17 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves. The response from Clayton Utz was in writing, contained in an email sent at 4:03pm on 17 July 2020 by Michael Linehan to Janine Ryan. A copy of the emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

- (b) told ISX it will have a number of further questions in relation to the independent experts' report; and
- (c) did not accept the Assertion and told ISX that in its view, the second direction required ISX to release the entire independent experts' report to the market, not an executive summary of the findings as contained in the draft announcement.

PARTICULARS

The statements in sub-paragraphs (b) and (c) were in writing. They were contained in the email sent at 7:06pm on 17 July 2021 by Janine Ryan of ASX to Michael Linehan and Brendan Groves of Clayton Utz and John Karantzis of ISX. A copy of the email and document is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

48FB. On 20 July 2020, ASX further interrogated the independent experts in relation to their report dated 16 July 2020.

PARTICULARS

The questions were in writing, contained in an email sent at 8:07am on 20 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves. The response from Clayton Utz was in writing, contained in a document attached to an email sent at 1:10pm on 20 July 2020 by Michael Linehan to Janine Ryan. A copy of the emails and document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

48FC. On 16 August 2020, pursuant to ASX's requests, ISX asked the independent experts to:

- (a) review correspondence that ASX had obtained from ASIC and sent directly to the independent experts; and
- (b) update their report as necessary.

PARTICULARS

- A. In or about mid-July 2020, pursuant to section 127(4B) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX obtained from ASIC copies of correspondence between Visa and ISX in relation to Visa's suspension and subsequent termination of the arrangement between ISX and Visa (**Visa Correspondence**).
- B. At 6:28pm on 22 July 2020, notwithstanding section 127(4F) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX sent a copy of the Visa Correspondence to the independent experts. A

copy of the email has been discovered by ASX (ASX.006.002.9087).

- C. The ASX requests were in writing. They were contained in an email sent at 3:27pm on 30 July 2020 by Janine Ryan and in an email sent at 8:46am on 5 August 2020 by Janine Ryan. A copy of the two emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
- D. ISX's request was in writing, contained in an email sent at 5:51pm on 16 August 2020. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

48G. On 4 September 2020 a supplementary report of the independent experts was provided to ISX.

48H. On 7 September 2020:

- (a) the report of the independent experts and the supplementary report of the independent experts were both released on the Markets Announcements Platform;
- (b) a copy of the supplementary report of the independent experts was sent to ASX; which:
 - (i) said that they had considered the additional correspondence relating to the suspension and termination of the arrangements between ISX and Visa;
 - (ii) said that based on their review of the information available to them, nothing had come to their attention which caused them to believe that ISX's reliance on ASX Listing Rule 3.1A during the periods from 17 April 2020 to 12 May 2020 and 12 May 2020 to 21 May 2020 was not appropriate; and

(iii) concluded that:

- (A) the obligation of ISX to disclose the termination of the arrangements between ISX and Visa in accordance with Listing Rule 3.1 first arose on 21 May 2020; and
- (B) there was a technical breach of ASX Listing Rule 3.1 that arose from a 1 to 2 business day delay by ISX in formally announcing the termination to the market, but that as ISX's shares were suspended at this time ISX did not have the ability to use a trading halt to assist in managing its continuous disclosure obligations, which it may have otherwise done to cover the period of the delay;
- (c) ISX told ASX that it had complied with all of the Directions and said that it knew of no reason why ISX's shares should remain suspended from trading; and
- (d) ISX demanded that the suspension of trading in its securities be lifted immediately.

PARTICULARS

- A. The supplementary report of the independent experts was attached to an email sent at 11:34am on 7 September 2020 by John Karantzis to Janine Ryan of ASX. A copy of the email and document is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.
- B. The statements and demand referred to in subparagraphs (c) and (d) were in writing. They were contained in a letter attached to the email sent at 11:34am on 7 September 2020 by John Karantzis to Janine Ryan of ASX. A copy of the letter is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

48I. By reason of the matters set out in paragraphs 48A to 48H, since 7 September 2020 ISX has complied with each of the Directions given by ISX.

48IA On 26 October 2020, ASX released to the market its query letters and ISX's responses regarding the suspension and termination of the arrangements between ISX and Visa.

48J. Notwithstanding ISX's compliance with the Directions, since 7 September 2020, alternatively 26 October 2020, ASX has failed to lift the suspension and permit the quotation of ISX's shares on the Australian Securities Exchange.

48K. Further:

- (a) on 1 May 2020 an offer was made to voluntarily escrow for a period of 12 months the ordinary shares held by the current directors and officers of ISX, Select All Enterprise Ltd and Red 5 Solutions Ltd, which had been issued following the achievement of the milestones;
- (b) on 2 May 2020 the offer was clarified to confirm that it included 99.7% of the ordinary shares issued when the performance shares converted following the achievement of the milestones, the remaining 0.3% having been sold by a former employee or held by a former employee of the company;
- (c) on 18 May 2020 ISX sent a proposed escrow agreement to ASX; and

PARTICULARS

- A. The offer referred to in sub-paragraph (a) was in writing. It was contained in an email sent at 2:16pm on 1 May 2020 by John Karantzis to Daniel Moran. A copy of the email is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.
- B. The clarification referred to in sub-paragraph (b) was in writing. It was contained in an email sent at 9:41am on 2 May 2020 by John Karantzis to Kevin Lewis. A copy of the email is in the possession of the solicitors acting for

the applicants and may be inspected during business hours by appointment.

- C. The proposed escrow agreement referred to in sub-paragraph (c) was in writing. It was attached to an email sent at 5:47pm on 18 May 2020 by Anthony Seyfort to Daniel Moran. A copy of the email and the proposed escrow agreement is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

- (d) on 18 May 2020 ASX refused to consider the escrow agreement proposed by ISX.

PARTICULARS

The refusal was in writing. It was contained in an email sent at 7:45pm by Daniel Moran to Anthony Seyfort. A copy of the email is in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

- 48L. The refusal was unreasonable as the information requested by ASX before it would consider the proposed escrow agreement had already been provided.

PARTICULARS

- A. The information was in writing. It was contained in the:
- (i) Form 603 and Appendix 3Y published on the Market Announcements Platform on 6 September 2018;
 - (ii) the 2019 Annual Report for ISX which was released on 28 February 2020;
 - (iii) the email sent at 9:41am on 2 May 2020 by John Karantzis to Kevin Lewis;

- (iv) the spreadsheet attached to the email sent at 9:41am on 2 May 2020 by John Karantzis to Kevin Lewis; and
- (v) the email sent at 6:58pm on 5 May 2020 by John Karantzis to Kevin Lewis.

B. A copy of these emails and documents are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

49. In the circumstances set out in paragraphs 9 to 48L above, ASX has failed to act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules as it has:

- (a) failed to forthwith tell ISX the precise steps it needs to take in order to have the suspension lifted and its shares reinstated for quotation;
- (b) failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange notwithstanding:
 - (i) the First Market Release, Second Market Release, Third Market Release and Fourth Market Release; ~~and~~
 - (ii) all of the confidential information and documents given by ISX to ASX in response to the First Query Letter, Second Query Letter, Third Query Letter and Fourth Query Letter; and
 - (iii) ISX's compliance with the Directions and proposed escrow agreement;
 - (iv) the fact that, despite ASX's request during the telephone conference on 4 November 2019, ASIC did not give ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;
 - (v) the position of ASIC stated in the emails to HWL on 7 November 2019, which was made known to Dominic Stevens of ASX on 8 November 2019;

- (vi) the ISX announcement on 11 November 2019 in relation to ASIC's stated position;
 - (vii) the release to the market, on 26 October 2020, of ASX's query letters and ISX's responses regarding the suspension and termination of the arrangements between ISX and Visa; and
 - (viii) the fact that to date ASIC still has not given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;
- (c) failed to ensure that ISX was treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation; and
- (d) compelled ISX, against its will, to produce to ASX sensitive commercial information without first:
- (i) undertaking to keep that information confidential; or
 - (ii) giving ISX an assurance that it had implemented appropriate safeguards to protect ISX's confidentiality so that it would not be released to the market or leaked to third parties, including the media.
- and,
- (e) in the circumstances set out in paragraphs 5A to 5G, 7A, 30 and 30A to 30C above, published notices on 2 October 2019 and 11 November 2019 in relation to ISX's securities which omitted matters that, by their omission, rendered the information misleading or deceptive, or likely to mislead to deceive.
50. By reason of the matters set out in paragraphs 9 to 49 above, ASX has breached its implied obligations to:
- (a) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
 - (b) do all that is necessary to enable ISX to have the benefit of the agreement.
51. In the circumstances set out in paragraphs 9 to 50 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

~~Particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.~~

- A. By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused ISX's premium for its Directors and Officers Liability Insurance to increase from \$70,000 per annum to \$250,000 per annum. The increase was notified in writing. The reason for the increase was notified orally, on about 4 February 2020, by Chris Ward of Marsh Insurance Brokers during a telephone conversation with Elizabeth Warrell.
- B. By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused ISX to:
 - a) retain the services of public and media relations consultants to deal with issues in relation to the suspension of ISX's shares by ASX; and
 - b) in the period from October 2019 to August 2020, incur public and media relations costs of approximately \$159,836.71 (excluding GST).
- C. By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused ISX to:
 - a) retain an independent expert to review its continuous disclosure policy and processes; and
 - b) incur fees of \$156,815 (excluding GST), being costs over and above the costs which it has incurred in relation to this proceeding.
- D. Since 2 October 2019, the value of ISX's shares in iSignthis eMoney and Authenticate Pty Ltd, a wholly owned subsidiary of ISX, or the amount of the distributions it would receive, has diminished by reason of the following:

- a) By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with ClearBank Ltd (**ClearBank**), which would have given it direct access, through the banking platform of ClearBank, to clearing and settlement facilities with the Bank of England.
- (i) When fully established and operational this commercial arrangement would have generated a net profit of approximately £84,359,730.44 over an anticipated period of four years, calculated as follows:
- A. Average net profit of £15,054,111 for the first year;
 - B. *plus* the average net profit of £18,516,556.53 during the second year, derived by applying a compound annual growth rate (CAGR) of 23% per industry standard to the previous year's net profit;
 - C. *plus* the average net profit of £22,775,364.53 during the third year, derived by applying a CAGR of 23% per industry standard to the previous year's net profit;
 - D. *plus* the average net profit of £28,013,698.37 during the fourth year, derived by applying a CAGR of 23% per industry standard to the previous year's net profit.
- (ii) On 20 September 2019, iSignthis eMoney applied to become a customer of ClearBank in order to obtain direct access, through the banking platform

of ClearBank, to clearing and settlement facilities with the Bank of England.

- (iii) On 14 February 2020, ClearBank raised concerns about the suspension of trading in ISX's shares and the subsequent adverse media concerning this issue. The concerns were raised by Sean Lee-Rice of Clearbank during a face-to-face meeting in London with James Cameron of iSignthis eMoney. The allegations made by ISX against ASX in this proceeding were also discussed by James Cameron with Sean Lee-Rice.
 - (iv) On 20 February 2020 James Cameron sent an email to Sean Lee-Rice which contained additional information for iSignthis eMoney's application and requested that ClearBank make a determination based upon the facts and matters alleged by ISX in this proceeding against ASX.
 - (v) On 27 March 2020, ClearBank told iSignthis eMoney that due to "*recent events and allegations*" it had decided not to work with iSignthis eMoney. The communication was in writing. It was contained in an email from Sean Lee-Rice of ClearBank to James Cameron and Dominic Melo of iSignthis eMoney.
- b) By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused Authenticate Pty Ltd and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with HighLow Markets Pty Ltd (Australian Financial Services Licence number 364264) and Highlow Markets Ltd (together, **HighLow**).

- (i) This commercial arrangement would have generated a net profit of approximately \$362,000 per month, for an anticipated period of 5 years, (being a total net profit of \$21,720,000) calculated as follows:
 - A. \$364,000 per month, being the gross profit of 1.4% on HighLow's anticipated GPTV of \$26,000,000 per month;
 - B. *less* \$2,000 per month in dedicated costs to service the agreement.
- (ii) On 21 August 2017 Highlow Markets Pty Ltd signed a Merchant Application Form, which disclosed GPTV of \$26,000,000 per month.
- (iii) On about 13 August 2019 Authenticate Pty Ltd, iSignthis eMoney, HighLow Markets Pty Ltd and Highlow Markets Ltd executed an agreement for the provision of payment facilitation, acquiring and identity services.
- (iv) In September 2019 integration of HighLow was concluded and by 8 November 2019 testing was completed and HighLow was preparing to switch live customers over to Authenticate Pty Ltd.
- (v) On 2 January 2020 HighLow terminated the contract with Authenticate Pty Ltd and iSignthis eMoney because of the ongoing suspension of ISX and the negative publicity associated with that ongoing suspension. The termination was in writing, contained in an email sent on 2 January 2020 by Tommy Yi, Senior Finance Manager, of HighLow to Nazih Trad of Authenticate Pty Ltd and George Yena of iSignthis eMoney. Insofar as the reasons for the termination, they were

communicated orally to Andrew Karantzis by Edward Lodens, Payment Manager at HighLow, the substance of which is to the effect alleged.

- c) By suspending, and continuing to keep suspended, trading in ISX's shares, ASX caused Authenticate Pty Ltd to lose the opportunity to earn revenue from a commercial arrangement with First Data Merchant Solutions Australia Pty Ltd (now known as Fiserv) (**First Data**).
 - (i) On about 12 December 2018 Authenticate Pty Ltd and First Data executed a Member Service Provider Agreement (**MSP Agreement**). Pursuant to the MSP Agreement, First Data was Authenticate Pty Ltd's processing partner for Visa and Mastercard transactions in Australia.
 - (ii) On 25 October 2019, and again on 24 January 2020, First Data told Authenticate Pty Ltd that due to ASX's suspension of trading in ISX's shares it would not allow Authenticate Pty Ltd to add any further merchants to its processing network. The statement was oral. It was made by Kees Kwakernaak, Managing Director, of First Data, to James Cameron of Authenticate Pty Ltd in a meeting on 25 October 2019 and in a further meeting on 24 January 2020 at the offices of First Data in North Sydney, during which the continuing suspension of ISX's shares was discussed.
 - (iii) On or about 3 March 2020 First Data gave Authenticate Pty Ltd notice that it had decided to terminate the MSP Agreement with effect from 3 September 2020. The notice of termination was

in writing. It was contained in a letter dated 3 March 2020 from Kees Kwakernaak.

(iv) This commercial arrangement would have generated a net profit of approximately \$8,677,968, over an anticipated period of five years, calculated as follows:

- A. Average net profit per month of \$91,625 for the first year, being the average revenue per month of \$125,159 *less* the average cost of goods of \$33,534;
- B. *plus* the average net profit per month of \$112,699 during the second year, derived by applying a CAGR of 23% per industry standard to the previous year's average net profit per month;
- C. *plus* average net profit per month of \$138,620 during the third year, derived by applying a CAGR of 23% per industry standard to the previous year's average net profit per month;
- D. *plus* average net profit per month of \$170,502 for the fourth year, derived by applying a CAGR of 23% per industry standard to the previous year's average net profit per month;
- E. *plus* average net profit per month \$209,718 for the fifth year, derived by applying a CAGR of 23% per industry standard to the previous year's average net profit per month.

- d) Further, Authenticate Pty Ltd lost the opportunity to earn an additional net profit of \$16,680,000, over an anticipated period of five years, from the following additional customer which it was unable to onboard to the commercial arrangement with First Data:
- (i) International Capital Markets Pty Ltd (ICM):
- A. On 25 June 2018 ICM signed a Merchant Application Form, which disclosed an anticipated GPTV of \$20,000,000 per month.
 - B. On or about 3 September 2018 ICM entered into an agreement with iSignthis eMoney (AU) Pty Ltd for the provision of payment facilitation and identity services by Authenticate Pty Ltd until otherwise notified.
 - C. On 5 February 2020 ICM asked to resume integration under the agreement. The request was in writing. It was contained in an email from Lucy Lu of ICM to Andrew Karantzis and Theodoros Photiou.
 - D. This commercial arrangement for the provision of payment facilitation and identity services would have generated a net profit of approximately \$278,000 per month, for an anticipated period of 5 years (being a total net profit of \$16,680,000), calculated as follows:
 - a. \$280,000 per month, being the gross profit of 1.4% on ICM's anticipated GPTV of \$20,000,000 per month;

- b. *less \$2,000 per month in dedicated costs to service the agreement.*

- E. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.
- F. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

ASX has failed to meet its obligation under its operating rules: Order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act

- 52. Further, by reason of the matters set out in paragraphs 6 5A to 51 above, ASX has failed to meet its obligations under its operating rules and ISX is aggrieved by the contravention.

PARTICULARS

By reason of the matters set out in paragraphs 6 5A to 51 above, ASX has breached its obligations under listing rule 17.3 (which, by reason of section 761A of the Corporations Act, is part of the operating rules).

- 53. In the circumstances set out in paragraphs 6 5A to 52 above, ISX is entitled to an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

ASX has contravened section 792A(a) of the Corporations Act: Order pursuant to section 1324(1)

- 54. Further, by reason of the matters set out in paragraphs 8D and 9 to 51 above, ASX has failed to:
 - (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and

PARTICULARS

By reason of the matters set out in paragraphs 9 to 51 above, ASX has failed to apply listing rule 17.3 (which, by reason of section 761A of the Corporations Act, is part of the operating rules) in a fair manner and treat ISX in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.

- (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.

55. By reason of the matters set out in paragraph 54 above, ASX has contravened section 792A(a) of the Corporations Act.

56. In the circumstances set out in paragraphs 8D, 9 to 51 and 54 to 55 above, ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

E. Judicial review of the decisions to suspend and not lift the suspension

(i) *Amenability of ASX to judicial review: Datafin principle*

57. Further, in the circumstances set out in:

- (a) paragraphs 5A 6 to 8G above, ASX decided to suspend the quotation of ISX's shares on the Australian Securities Exchange; and
- (b) paragraphs 9 to 48L above, ASX decided to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

58. Each of the decisions was made pursuant to the Listing Rules:

- (a) purportedly in the performance of a public duty to ensure that the market is fair, orderly and transparent as required by section 792A(a) of the Corporations Act; or
- (b) in the exercise of a power which has a public element.

PARTICULARS

The exercise of the power under the Listing Rules, including the power to suspend quotation of ISX's shares, refuse to reinstate quotation of ISX's shares and compel the production of confidential information and documents has a public element by reason of the following:

- A. The ASX is permitted to operate the Australian Securities Exchange by reason of the Market Licence granted to it by the Minister who can:
 - a) pursuant to section 794A(1) of the Corporations Act, give the ASX a written direction to do specified things that the Minister believes will promote compliance by ASX if the Minister considers that the ASX is not complying with its obligations as a market licensee; and
 - b) pursuant to section 794B(1) of the Corporations Act, give ASX a written notice requiring it to give ASIC a special report on specified matters.

- B. In granting the Market Licence and in disallowing a change to the operating rules of the ASX, the Minister must have regard to whether it would be in the public interest to do so: sections 798A(1)(a), 798A(1)(b) and 798A(2)(g) of the Corporations Act.

- C. The Listing Rules are supervised by the ASIC and the Minister by reason of, inter alia:
 - a) section 793C of the Corporations Act, which provides a statutory means for

enforcing compliance with the Listing Rules;

- b) section 793D of the Corporations Act, which requires ASX to lodge with ASIC written notice any of changes to the Listing Rules; and
- c) section 793E of the Corporations Act, which requires ASIC to send a copy of the notice to the Minister, who may disallow all or a specified part of the change.

59. By reason of the matters set out in paragraphs 2 and 57 to 58 above, the decisions of ASX are amenable to judicial review by this Court.

(ii) *Decision to suspend ISX's shares from quotation*

60. By reason of the matters set out in paragraphs 5A 6 to 8G above:

- (a) a breach of natural justice occurred in connection with the decision to suspend the quotation of ISX's shares on the Australian Securities Exchange;
- (b) there was no evidence or other material to justify the making of the decision to suspend the quotation of ISX's shares on the Australian Securities Exchange; and
- (c) the making of the decision to suspend the quotation of ISX's securities on the Australian Securities Exchange was an improper exercise of power as it:

(i) was an exercise of power that was so unreasonable that no reasonable person could have so exercised the power; and/or

(ii) took into account irrelevant considerations;

PARTICULARS

The irrelevant considerations were:

- (a) statements, comments and opinions expressed by representatives of ASIC with whom representatives of

ASX consulted before making the decision to suspend the quotation of ISX's shares; and/or

- (b) speculation in the media, premised on the erroneous report published by Ownership Matters Pty Ltd (ACN 152 996 739); and/or
- (c) the report published on 10 September 2019 by Ownership Matters Pty Ltd which was sent that day by Dean Paatsch of Ownership Matters Pty Ltd to David Barnett of ASX (ASX.002.002.4492 and ASX.002.002.4494); and/or
- (d) a complaint made on 20 September 2019 by Shaun Bettman who represented himself as being “a fund manager” who specialises “in analysing companies” (ASX.002.003.5414 and ASX.002.003.5416); and/or
- (e) a spreadsheet sent on 25 September 2019 by Dean Paatsch of Ownership Matters Pty Ltd to Kevin Lewis of ASX (ASX.002.005.2472 and ASX.002.005.2473).

(iii) failed to take into account relevant considerations being that:

- (A) by 13 September 2019 James Gerraty of ASX had looked at the accounts of ISX and formed the view that they “check out” (ASX.002.004.3641);
- (B) on 13 September 2019 Tom Veidners told James Gerraty that he approaches reports prepared by Ownership Matters Pty Ltd “with a degree of scepticism”;

PARTICULARS

The statement was oral made during a telephone call between Dean Litis of ASX and Tom Veidners of ASIC, the substance of which is recorded in an email sent at 11:43am on 13 September 2019 by Dean Litnis to David Barnett

(copied to Kevin Lewis, James Gerraty and Clare
Porta of ASX) discovered by ASX
(ASX.003.002.1348).

(C) on 17 September 2019 Dean Litis was of the view that Dean Paatsch of
Ownership Matters Pty Ltd was “barking up the wrong tree...again”;

PARTICULARS

The statement was made in writing in an email sent
at 6:13pm on 17 September 2019 by Dean Litnis to
David Barnett (copied to James Gerraty of ASX)
discovered by ASX (ASX.003.002.7460).

(D) on 30 September 2019 James Gerraty said that the backdoor listing file
for ISX was in order, appeared complete and seemed to reveal nothing
useful about John Karantzis or anything else for that matter;

PARTICULARS

The statement was made in writing in an email sent
at 1:03pm on 30 September 2019 by James Gerraty
to Clare Porta and Kelly Boschenok of ASX
discovered by ASX (ASX.002.003.5484), a copy of
which was forwarded at 5:39pm that day by Clare
Porta to Kevin Lewis and David Barnett of ASX
(ASX.002.003.5484).

(E) on 1 October 2019 ASX had no “hard evidence” and ASIC told ASX
that they had reviewed “work done by ASIC’s financial reporting and
accounts team to ensure that they were not duplicating work or seeking
the same information” and “upon revisiting these ISX documents
already in ASIC’s possession, it did not reveal a ‘smoking gun’”; and

PARTICULARS

The statements made during the telephone conference
are recorded in a handwritten note

(ASX.010.001.0001) and a typed file note discovered by ASX (ASX.002.001.0862).

(F) the fact that by 2 October 2019, ASIC had not given ASX:

- (i) any documents from ASIC's "financial reporting group", including any documents which would justify ASX suspending the shares of ISX from quotation on the Australian Securities Exchange; and/or
- (ii) any "package" of its observations from the review undertaken in the financial reporting group; and/or
- (iii) any other documents or evidence which would justify ASX suspending the shares of ISX from quotation on the Australian Securities Exchange; and/or
- (iv) any direction under section 794D(2) of the Corporations Act to suspend the shares of ISX from quotation on the Australian Securities Exchange;

(iv) constituted an exercise of power for a purpose other than a purpose for which the power was conferred in circumstances where ASIC had not given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act.

PARTICULARS

(a) The purpose of the power is to ensure that the market is a fair, orderly and transparent market.

(b) The power was exercised because:

(i) ASX and ASIC had unsubstantiated suspicions about ISX;

(ii) ASIC required additional time to decide whether to commence a formal investigation

into ISX and, if it did so, time to conduct that investigation; and

(iii) ASIC agreed that ASX's announcement to the market could refer to ASIC making enquiries,

being purposes for which the power was not conferred in the circumstances.

(iii) *Decisions to not reinstate ISX's shares to quotation*

61. By reason of the matters set out in paragraphs 9 to 48^L above, there was no evidence or other material to justify the making of each decision to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
62. Further, by reason of the matters set out in paragraphs 9 to 48^L above, each decision to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange was an improper exercise of power because it:
 - (a) was an exercise of power that was so unreasonable that no reasonable person could have so exercised the power; and/or
 - (b) took into account irrelevant considerations being:
 - (i) past conduct of ISX; and/or
 - (ii) the fact that ASIC is presently conducting an investigation in relation to ISX; and/or
 - (c) failed to take into account relevant considerations being:
 - (i) the First Market Release, Second Market Release, Third Market Release and Fourth Market Release, after each had been made; and
 - (ii) the confidential information and documents after it had been given by ISX to ASX in response to the First Query Letter, Second Query Letter, Third Query Letter and Fourth Query Letter;

- (iii) the fact that, despite ASX's request during the telephone conference on 4 November 2019, ASIC had not given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;
- (iv) the position of ASIC stated in the emails to HWL on 7 November 2019, which was made known to Dominic Stevens of ASX on 8 November 2019;
- (v) the ISX announcement on 11 November 2019 in relation to ASIC's stated position;
- (vi) ISX's compliance with the Directions and proposed escrow agreement;
- (vii) the release to the market, on 26 October 2020, of ASX's query letters and ISX's responses regarding the suspension and termination of the arrangements between ISX and Visa; and
- (viii) the fact that to date ASIC still has not given ASX a direction under section 794D(2) of the Corporations Act to keep the shares of ISX suspended from quotation on the Australian Securities Exchange;

and/or

- (d) constituted an exercise of power for a purpose other than a purpose for which the power was conferred in circumstances where ASIC had not given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act.

PARTICULARS

- (a) The purpose of the power is to ensure that the market is a fair, orderly and transparent market.
- (b) The power was exercised because ASIC is presently conducting an investigation in relation to ISX, being a purpose for which the power was not conferred in the circumstances.

F. ASX’s decision to publish formal findings and give directions

63. At 6:55pm on 6 December 2019 ASX sent a letter to ISX which attached a copy of its draft “*findings*” (**Draft Findings**).

PARTICULARS

The letter and the Draft Findings were attached to an email sent by Mr Kevin Lewis of ASX to Mr Timothy Hart of ISX.

A copy of the email, letter and Draft Findings is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

64. On 17 December 2019 ISX told ASX, among other things, [as is the fact](#) that:
- (a) it is not the function of ASX to make and publish “*findings*” in relation to the alleged conduct of ISX, particularly in circumstances where:
 - (i) it is for ASIC to consider and determine whether there is sufficient evidence (and therefore a proper basis) to commence legal proceedings against ISX for alleged breaches of the Corporations Act and/or the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (ii) if legal proceedings are commenced, it is for the Court to determine whether there has been any contravention of the Corporations Act and/or ASIC Act based on cogent admissible evidence to the requisite standard of proof, not based on mere supposition, conjecture or conspiracy theories;
 - (b) ASX would be acting beyond its responsibility for “*operational matters*” and therefore acting ultra vires if it were to usurp the role of ASIC and the Courts in supervising compliance with the Corporations Act and ASIC Act;

[and further that:](#)

- (c) if ASX published its “*findings*” it would likely mislead the market (particularly as the ASIC investigation was still ongoing) and ISX would likely suffer irreparable loss and damage, even if a Court ultimately determined that those “*findings*” were unfounded;

- (d) ISX had no objection to ASX referring matters concerning the supervision of the market, including the conduct of persons in relation to the market, to ASIC; and
- (e) ISX would in due course respond to ASX's allegations so that a complete and accurate representation of the facts and circumstances concerning ISX could, if considered by ASX to be necessary, be referred to ASIC for its attention.

PARTICULARS

The statements were in writing. They were contained in a letter dated 17 December 2019 from Mr Almond and Mr Seyfort to Mr Moran. A copy of the letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

65. At 10:20am on 20 December 2019 ASX told ISX, among other things, that:

- (a) it was not usurping the role of either ASIC or the Courts;
- (b) it did not agree with the position of ISX that it does not have the power to make or publish "*findings*";
- (c) the matters set out in its draft "*findings*" were directly relevant to its obligations as a licensed market operator, including its obligations with respect to the operation of a fair, orderly and transparent market, and monitoring and enforcement of compliance with the Listing Rules;
- (d) under listing rule 18.7A, it may publish correspondence between it and a listed entity, if it has reserved the right to do so and considers it necessary for an informed market;
- (e) it reserved the right to publish its draft "*findings*", subject to considering and making appropriate changes, having regard to any representations that may be made by ISX; and
- (f) it reserved the right to make an announcement in relation to the draft "*findings*".

PARTICULARS

The statements were in writing. They were contained in a letter dated 20 December 2019 which was sent by Mr Moran

to Mr Seyfort by email. A copy of the email and letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

66. At 7:02pm on 20 December 2019 ISX:

- (a) told ASX, among other things, that it was inappropriate for ASX to make an announcement which either disclosed the Draft Findings or referred to the Draft Findings (directly or indirectly), particularly in circumstances where:
 - (i) ISX had not yet responded to ASX's allegations, and had said that it intended to do so without prejudice to its rights;
 - (ii) ISX's shares were currently suspended from quotation, such that there was no urgent need to release such information to the market; and
 - (iii) any such announcement was likely to cause irreparable damage to ISX's business;

and
- (b) sought an undertaking from ASX that it would not make any announcement which either disclosed the Draft Findings or directly or indirectly referred to the Draft Findings without first giving ISX two business days' written notice of its intention to do so, together with a copy of ASX's proposed announcement.

PARTICULARS

The statements were in writing. They were contained in a letter dated 20 December 2019 from Mr Almond and Mr Seyfort to Mr Moran which was sent by email. A copy of the email and letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

67. At 10:16am on 23 December 2019 ASX told ISX that it:

- (a) could not provide the undertaking as it would amount to an undertaking by ASX not to comply with its statutory obligations as a licensed market operator; and

- (b) had no intention of publishing the Draft Findings before ISX has responded to them or the time for ISX to respond had elapsed.

PARTICULARS

The statements were in writing. They were contained in a letter dated 23 December 2019 which was sent by Mr Moran to Mr Seyfort. A copy of the letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

68. On or about 24 January 2020, ISX:

- (a) sent its written response to ASX's draft "*findings*" (**ISX Response**) under cover of a letter from HWL Ebsworth Lawyers;
- (b) said that its response was given:
 - (i) so that a complete and accurate representation of the facts and circumstances concerning ISX is given to ASIC for its consideration; and
 - (ii) without prejudice to all of its rights against ASX;
- (c) said that it objected to ASX making and publishing "*findings*";
- (d) noted that on 23 December 2019 ASX had refused to give an undertaking to ISX not to publish its "*findings*"; and
- (e) said that if ASX maintained its intention to publish findings a timetable should be fixed for dealing with an injunction application by ISX to restrain publication.

PARTICULARS

The statements were in writing. They were contained in a letter dated 24 January 2020 which was sent by Mr Seyfort and Mr Almond to Mr Seyfort. A copy of the letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

69. Further, the ISX Response said, among other things, that the Draft Findings:
- (a) failed to take into account relevant considerations given to ASX by ISX and took into account irrelevant considerations;
 - (b) made allegations which had no proper factual or legal basis; and
 - (c) made allegations based on mere supposition, conjecture or conspiracy theories which ought not to be made.
70. On 26 February 2020 ASX gave ISX a document entitled “[*Draft*] *Statement of Reasons*” (**Draft Reasons**), whereby ASX said that it intended to direct ISX to:
- (a) make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;
 - (b) engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review; and
 - (c) include in each quarterly activity report it gives to ASX under listing rule 4.7C a breakdown by sector of the revenue ISX has derived from customers during the applicable quarter divided into the following sectors:
 - (i) Options/CFDs/FX;
 - (ii) Crypto/digital currency;
 - (iii) Online gambling; ~~and~~
 - (iv) Online video gaming;
 - (v) Credit providers;
 - (vi) Travel services; and
 - (vii) Other,
- (the Directions).**

70A. On 13 March 2020 ASX gave ISX a further document entitled “*Statement of Reasons*” (Final Reasons) whereby ASX said that it intended to make directions under listing rule 18.8 as soon as it is able to do so.

70B. On 30 April 2020 ASX published the Final Reasons. ~~and made the Directions.~~

70C. On 1 May 2020 ASX made the Directions.

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The Directions were contained in a letter dated 1 May 2020 from Kevin Lewis to Timothy Hart.

71. The Draft Reasons and the Final Reasons:

- (a) fail to take into account relevant considerations raised in the ISX Response;

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The relevant considerations in the ISX Response which have not been taken into account are as follows:

- (a) ASX has no power to make directions under Listing Rule 18.8 because that rule is void and unenforceable for inconsistency with sections 792B, 793C and 1101B of the Corporations Act.
- (b) Where a market operator such as ASX has reason to suspect that a person has committed, is committing, or is about to commit a significant contravention of the market operating rules (in this case, the Listing Rules) or the Corporations Act, ASX ought give a written notice to ASIC under section 792B(2)(c) of the Corporations Act or make application to a Court for appropriate injunctive relief, rather than embark upon its own investigation with a view to publishing “*findings*” in circumstances where:
 - (i) the ASX lacks the statutory investigatory powers possessed by ASIC;
 - (ii) by reason of the absence of those powers, any investigatory findings are at risk of being incomplete, unreliable, incorrect and/or misleading;

- (iii) the publication of incomplete, unreliable, incorrect and/or misleading investigatory findings by ASX would be inconsistent with ASX's obligations under section 792A(1)(a) of the Corporations Act to do all things necessary to ensure that the market is a fair, orderly and transparent market; and
 - (iv) companies listed on the Australian Securities Exchange have no right of appeal from any investigatory findings made and published by ASX, given that the ASX Appeal Tribunal was abolished on 24 December 2015.
- (c) In this particular case ASIC has commenced an investigation into matters that include those that are the subject of the Final Reasons; in those circumstances it is not appropriate for ASX to conduct a parallel investigation and, further, to publish findings that are incomplete, unreliable, incorrect and/or misleading.
- (d) By reason of its lack of proper investigatory powers, the Final Reasons contain incomplete and/or speculative "*findings*" and it is not appropriate that those "*findings*" be released to the market in circumstances where ISX wishes to challenge them in this proceeding. Examples include paragraphs 9.2, 9.9, 9.10, 9.12, 10.2 and 10.3 of the Final Reasons.
- (e) By reason of the ongoing suspension of the shares of ISX, there is no need to publish the findings in the Final Reasons.
- (f) It is not the proper function of ASX to construe the terms of a contract between ISX and its shareholders.
- (g) In considering a draconian direction such as the appointment of an independent expert under Listing Rule 18.8(1) (ASX Draft Reasons, paragraph 12.5), ASX has failed to take into account that ISX has responded fully and in detail to each of ASX's four query letters.

- (h) In finding that “*there are serious questions to be determined as to whether the revenue derived by ISX under the Key Contracts was ordinary business revenue or whether it was generated solely or predominantly for the purpose of meeting the Milestones*” and that “*the Key Contracts were all ‘out of the ordinary’, involving the provision of services...that were not part of ISX’s core business*”, ASX has failed to take into account the relevant considerations raised in the ISX Response, including the following:
- (i) Delivering software is part of ISX’s ordinary business.
 - (ii) Standard & Poor’s includes ISX in the General Industry Classification “*Application Software*”.
 - (iii) ISX’s key objective was, and still is, to generate diverse recurrent transactional (known as “clip the ticket”) revenue, otherwise known as GPTV revenue, and to achieve that objective ISX has to on-board customers.
 - (iv) To on-board customers ISX had to demonstrate and replicate the integration of its technology with the technologies used by its customers, including their trading platforms, Customer Relationship Management and accounting systems.
 - (v) The deployment and integration of ISX’s products to various platforms (including trading, banking, payment, accounting and ecommerce platforms) is part of ISX’s core business, in that:
 - A. ISX provides services to entities which face retail customers; and
 - B. to “*sell*” payment services to each customer, ISX’s products first need to be integrated with the Customer Relationship Management system of the customer or the platform which the customer uses to take orders or both.

- (vi) In 2017 ISX had been trying to enter the online market but met resistance from vendors of online platforms as well as potential customers which were already using those platforms.
- (vii) In late 2017 and early 2018 ISX was presented with an advantageous business development opportunity which it could use to enter the online market.
- (viii) ISX, through its wholly own Dutch subsidiary Authenticate BV, did in fact integrate ISX's Payidentity™ and ISXPay® products with:
 - A. a third party integrated Customer Relationship Management system (**CRM system**) and trading platform which it obtained from Fino Software Technologies Ltd (**FinoSoft**); and
 - B. a third party integrated CRM system and exchange platform which it obtained from Gibi Tech Ltd (**Gibi Tech**).
- (ix) Authenticate BV had to purchase the third party CRM systems integrated with either a trading platform or exchange platform because Authenticate BV and ISX did not have them, could not build them and could not integrate ISX's products into them without first obtaining them.
- (x) Gibi Tech and FinoSoft are unrelated to Authenticate BV and ISX and are unrelated to each of ISX's customers and the customers' directors and shareholders.
- (xi) The purchase of goods wholesale is an extremely common practice. It is not unusual for companies to acquire goods and either add a retail mark-up under a wholesale arrangement or add value to the goods before on-selling them for a profit.

- (xii) ISX made a profit of approximately €150,000 from the four agreements, in addition the revenue from those agreements contributed towards the company's overheads and the cost of ISX's technical services personnel.
- (i) In finding that *“there are serious questions...as to whether the work required under those contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was properly recognised in the Relevant Period”*, ASX failed to take into account the relevant considerations raised in the ISX Response, including the following:
 - (i) The revenue earned by ISX in the second half of the financial year ending 30 June 2018 was derived from arms-length third parties who were independent of ISX and each other, in that there was no connection whatsoever between the shareholders, directors and officers of each entity.
 - (ii) Each of those arms-length third parties certified that the contractual obligations had been met by 30 June 2018 by providing a signed Certificate of Practical Completion to that effect and a signed twenty-one page Payment Card Industry Data Security Standard Assessment and Attestation.
 - (iii) Invoices were issued before 30 June 2018 in respect of each customer's irrevocable binding legal obligation to pay the fees due under the agreement and none of the customers disputed the invoices.
 - (iv) Before 30 June 2018, Corp Destination Pty Ltd paid 38% of the fees due under the agreement, Nona Marketing Ltd paid 100% of the fees due under the agreement, FCorp Services Ltd paid 63% of the fees due under the agreement and Immo Servis Group S.R.O paid 87% of the fees due under the agreement.

- (v) The revenue earned by ISX in the second half of the financial year ending 30 June 2018 was the subject of two audits performed by Grant Thornton.
- (vi) During the audits no information was withheld from Grant Thornton and their two audits were unqualified.
- (vii) Grant Thornton confirmed that the revenue satisfied AASB 118, AASB 111 and AASB 15.
- (viii) Grant Thornton was satisfied that the revenue was accurately recorded and that revenue targets in place and disclosed in the Prospectus dated 22 December 2014 had been met.
- (j) In finding that section 8.7 of its own Guidance Note 8 does not apply because ISX's shares were already suspended when ISX provided its response to ASX's four query letters, ASX failed to take into account:
 - (i) its own assertions that “[t]he achievement of the Milestones and the potential issuance of the Milestone Shares had material implications for the price or value of ISX's shares” and “none of the Milestones would have been met” without the revenue from the “Key Contracts”; and
 - (ii) therefore, the fact that on its own case it is the impact of the announcements concerning the achievement of the Milestones which are relevant to observe, and at that time ISX's shares were not suspended.
- (k) In the circumstances set out in paragraph (j) above:
 - (i) ASX failed to take into account section 8.7 of its own Guidance Note 8 and the movements of ISX's share price when ISX made announcements on 22 June 2018 and 31 July 2018, including in relation to the conversion of the performance rights into ordinary shares; and/or

- (ii) evidence that it is actual GPTV which affects the price or value of ISX's shares.
- (l) In finding that the <15% Representation "*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*" ASX failed to take into account the relevant considerations in paragraphs 24 to 27, 51 to 53 and 93 of the ISX Response.
- (m) In finding that it is "*appropriate to publish*" the Final Reasons to "*correct the lack of information and misinformation in the market places*" ASX failed to take into account the concerns raised by ISX in the ISX Response that ASX would in fact be misleading the market due to the errors identified in the ISX Response.
- (b) take into account irrelevant considerations notwithstanding the ISX Response;

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The irrelevant considerations taken into account by ASX notwithstanding the ISX Response are as follows:

- (a) Information provided in confidence by ASIC to ASX which has not been disclosed to ISX and in respect of which ISX has not had an opportunity to consider and comment. This consideration was not disclosed to ISX in the Draft Findings.
- (b) That the revenue from all, or any one, of the agreements can, or should be, excluded or disregarded.
- (c) In respect of Corp Destination Pty Ltd and FCorp Services Ltd, the length of time between 30 June 2018 and the date the relevant payments were received, the relevant consideration being the Accounting Standards applied by ISX's auditors.

- (d) That Authenticate BV may have incurred a loss in respect of the agreement with Corp Destination Pty Ltd, in circumstances where ISX was trying to overcome resistance in relation to its entry into the online market.
 - (e) That Authenticate BV may have incurred a loss in respect of the agreement with FCorp Services Ltd, in circumstances where ISX was trying to overcome resistance in relation to its entry into the online market.
 - (f) In finding that the <15% Representation made on 3 August 2018 was market sensitive, ASX took into account a research report dated 1 March 2018 in relation to ISX's December 2017 half result. Again, this consideration was not disclosed to ISX in the Draft Findings.
 - (g) The finding that "*ASX uncovered evidence to suggest that ISX may also have breached Listing Rules 3.19A, 3.19B, 4.3A, 4.3B, 4.10.3, 10.11, 12.5 and 19.11A*", particularly given that ASX concedes that its enquires were focused on other matters.
 - (h) Annexure A – Information concerning the invoicing and payments under the "*Key Contracts*".
 - (i) Annexure B - Information concerning the customers under the "*Key Contracts*".
- (c) contain reasons, notwithstanding the ISX Response, that:
- (i) have no foundation in fact or law;

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The reasons which have no foundation in fact or law are as follows:

- (a) There is no foundation in fact or law for ASX's finding that it gave ISX notice of the suspension. Eleven minutes notice before suspension of ISX's shares, which did not in fact disclose the reasons, is not proper notice.

- (b) There is no foundation in fact for ASX's finding that the "*Key Contracts*" were "*out of the ordinary*" because ISX "*has not provided similar services to any other customers before or since*". ASX relies on ISX's response to question 7 of the Fourth Query Letter. The answer to that question does not support the finding because the question asked by ASX, and therefore the answer given by ISX, was substantially narrower.
- (c) There is no foundation in fact for ASX's finding that "*there may be other market sensitive contracts that ISX has entered into which either have not been disclosed, or have not been adequately disclosed, to the market*".
- (d) There is no foundation in fact for ASX's findings that the revenue was generated solely or predominantly for the purpose of meeting the Milestones.
- (e) There is no foundation in fact or law for ASX's finding that "*there is a reasonable argument that, properly construed, the reference to 'revenue' in the Milestones meant ordinary business revenue and excluded revenue generated solely or predominately for the purpose of meeting the Milestones.*" ASX has failed to consider the facts in the ISX Response and apply the legal principles relevant to construing contracts.
- (f) There is no foundation in fact or law for ASX's finding that "*there is a reasonable argument that it was an implied term of the Performance Shares that the Milestones had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the Milestones.*" ASX has failed to consider the facts in the ISX Response and apply the legal requirements for the implication of a term into a contract.
- (g) There is no foundation in fact for ASX's finding that "*it could not reasonably have been in contemplation of the parties when the terms of the Performance Shares were originally agreed between ISX (then Otis Energy) and the original holders...that it*

would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue of the Milestones". Before shareholders passed the resolutions on 22 December 2014, they were told by the independent expert that conversion of the performance rights into ordinary shares was linked to turnover and not to profitability such that the incentive to grow revenue could come at the expense of profits (see paragraphs 2.10 and 12.19 of the Expert Report).

- (h) There is no foundation in fact for ASX's finding that ISX structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar fee predominantly to generate revenue for the purpose of meeting the Milestones. The finding fails to take into account the facts in the ISX Response, including the matters mentioned in paragraph 9.8 of the Final Reasons and, in particular, the fact that having acquired the licence in the customer's name ISX then deployed the trading software into the cloud environment and integrated its products with that software.
- (i) There is no foundation in fact for ASX's finding that the revenue was not properly recognised in the financial year ended 30 June 2018.
- (j) There is no foundation in fact or law for ASX's finding that different meanings are attributed to "*price*" and "*value*" when determining the material effect of information.
- (k) Given the relevant considerations in paragraphs (h) and (i) under paragraph 71(a) above which ASX failed to take into account, there is no foundation in fact for ASX's conjecture that ISX must have structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar

fee predominantly to generate revenue for the purpose of meeting the Milestones.

- (l) There is no foundation in fact or law for ASX's finding that the "*<15% Representation...was also false and materially misleading*" when considered in context.
 - (m) There is no foundation in fact or law for ASX's finding that "[b]y making the *<15% Representation*, ASX considers that ISX triggered an obligation under Listing Rule 3.1 to make corrective disclosure to the market".
- (ii) are based on supposition and conjecture;

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The reasons based on supposition and conjecture are as follows:

- (a) ASX surmises that "*it could not reasonably have been in contemplation of the parties when the terms of the Performance Shares were originally agreed between ISX (then Otis Energy) and the original holders...that it would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue of the Milestones*".
- (b) ASX surmises that ISX structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar fee because it did so predominantly to generate revenue for the purpose of meeting the Milestones.
- (c) ASX surmises that there are serious questions to be determined as to whether the revenue derived by ISX under the "*Key Contracts*" was ordinary business revenue or whether it was generated solely or predominantly for the purpose of meeting the Milestones.

- (d) ASX surmises that ISX structured the contractual arrangements solely or predominantly to generate revenue for the purpose of meeting the Milestones and questions whether ISX was acting as an agent for the re-sellers rather than as principal in its own right.
- (e) ASX surmises that the length of time between 30 June 2018 and the date the relevant payments were received raises questions as to whether the work required under the agreements with Corp Destination Pty Ltd and FCorp Services Ltd was substantially completed by 30 June 2018 and therefore appropriately recognised in the financial year ended 30 June 2018.
- (f) ASX surmises that the Certificates of Practical Completion suggest that ISX's auditors were concerned.
- (g) ASX surmises that the Certificates of Practical Completion may not be reliable.
- (h) ASX surmises that *"the revenue Milestones were not validly met despite the audit certificates for the Relevant Period"*.
- (i) ASX speculates as to why ISX's share price did not materially decline when information about the forthcoming issue of the Milestone Shares was disclosed.
- (j) ASX surmises in the absence of supporting evidence that there *"may be other market sensitive contracts that ISX has entered into which have not been disclosed"*.
- (k) ASX surmises that *"the factual underpinning for ISX's submission mentioned in section s9.1 and 10.1 of these reasons may well be missing"*.
- (l) ASX surmises that *"there may be other market sensitive contracts that ISX has entered into which either have not been disclosed, or have not been adequately disclosed, to the market."*
- (m) ASX surmises that information about each of the *"Key Contracts"* was information *"that a reasonable person would*

expect to have a material effect on the price or value of ISX's shares.

- (n) ASX surmises that *"a reasonable person would expect those percentage increases in issued capital to have a material effect on the price or value of ISX's shares"*.
 - (o) ASX surmises that the auditors were concerned about the fact that the relevant websites were not live *"may have been of concern to ISX's auditor"*.
 - (p) ASX surmises that notwithstanding the Certificate of Practical Completion ISX's obligations under the agreement with Immo Servis Group S.R.O were not in fact performed by 30 June 2018.
- (iii) are founded on facts which have been conflated to justify the conclusions;

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The reasons which are founded on facts (or alleged facts) which have been conflated to justify the conclusions are as follows:

- (a) ASX finds that the *"Key Contracts"* were *"out of the ordinary"* by conflating the following alleged facts:
 - (i) the services were not part of ISX's core business (which is denied);
 - (ii) similar services had not been provided before or since (which is denied);
 - (iii) each service was provided over a short period of time; and
 - (iv) each service was provided for a fixed fee.
- (b) ASX finds that the information about the character and standing of certain customers is relevant by conflating alleged facts about those customers which have arisen at distinctly different points in time.

- (c) ASX finds that there is a serious question to be determined that the revenue was generated solely or predominantly for the purpose of meeting the Milestones by conflating the alleged facts in paragraphs 9.3 to 9.9 of the Final Reasons.
 - (d) ASX finds that the Milestones were not validly met despite the audit certificates for the financial year ended 30 June 2018 by conflating the alleged deficiencies in the Certificates of Practical Completion (set out in sections 9.13 and 9.14 of the Final Reasons) with:
 - (i) the terms of agreements in section 4 of the Final Reasons;
 - (ii) ASX's own analysis in section 9 of the Final Reasons; and
 - (iii) ASX's assertions in Annexure A of the Final Reasons about the payments which were made.
 - (e) ASX finds that the "*<15% Representation...was also false and materially misleading*" by conflating the facts associated with that allegation with the allegations concerning the "*Key Contracts*".
- (d) do not contain an accurate representation of the facts and circumstances concerning ISX;

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By reason of ASX's failures referred to in paragraphs 71(a) to 71(c) of the Amended Claim, as particularised above, the Draft Reasons and the Final Reasons do not contain an accurate representation of the facts and circumstances concerning:

- (a) the suspension of ISX's shares;
- (b) the business of ISX;
- (c) the integration of ISX's products into third party platforms for Corp Destination Pty Ltd, FCorp Services Ltd and Immo Servis Group S.R.O;

- (d) the achievement and recognition of revenue by ISX in the financial year ended 30 June 2018;
 - (e) the integrity of the audits undertaken by Grant Thornton of ISX's financial accounts for the financial years ended 30 June 2018 and 31 December 2018;
 - (f) the achievement of the Milestones by ISX and subsequent conversion of the performance rights into ordinary shares;
 - (g) the effect which the achievement of the Milestones had on the price or value of ISX's shares;
 - (h) the impact of actual GPTV on the price or value of ISX's shares;
 - (i) the representation made on 3 August 2018 at an analyst briefing; and
 - (j) the state of ISX's books and records.
- (e) are likely to mislead the market and other persons who read the document; and
- (f) contain findings which do not justify the making of the directions.
72. ~~In the circumstances set out in paragraph 71 above, if ASX publishes the Draft Reasons and/or the Final Reasons and/or makes the directions it will breach~~ In the circumstances pleaded in paragraphs 63 to 71 above, the publication of the Final Reasons and the giving of the Directions caused ASX to breach its implied obligations to:
- (a) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
 - (b) do all that is necessary to enable ISX to have the benefit of the agreement.
73. In the circumstances set out in paragraphs 68 to 72 above, ~~ISX has suffered loss and damage. were the Draft Reasons and/or the Final Reasons to be published and the directions made, ISX will suffer irreparable loss and damage.~~

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- A. By publishing the Final Reasons which contained the false representations, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly Group AB (**Trustly**), a Swedish payments institution. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
- (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
 - (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Paydentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions took place between John Karantzis and Adam Bowman over digital voice communication devices.
 - (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
 - (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.

- (e) On 12 May 2020:
 - (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
 - (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
 - (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
 - (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “the investigations”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.
- B. Further, since 30 April 2020, the value of ISX’s shares in Probanx and iSignthis eMoney, or the amount of the distributions it would receive, has diminished by reason of the following:
- (a) On 13 June 2017 Probanx and Golden Anchor Ventures Limited (**Golden Anchor**) executed a written agreement for the licensing of Probanx’s Core banking software. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which immediately followed, on 1 May 2020 Golden Anchor (trading as Payments 88) terminated the contract with Probanx. The termination was

communicated orally during a telephone conversation between Ran Zangi of Golden Anchor and Christodoulos Georgiou of Probanx. Prior to the termination, Probanx was to receive a monthly fee of €1,100 for an anticipated period of at least 5 years.

- (b) On about ~~29 January~~ 4 March 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders. On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.

- (c) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.

- (d) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.
- (e) By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW GP Limited, VGW Malta Limited and VGW Games Limited (together, **VGW**).
 - (i) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
 - A. USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - B. *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;
 - C. *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;
 - D. *plus* USD5,000 per month in transfer fees; and

- E. *less* USD8,000 per month in dedicated costs to service the agreement.
- (ii) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.
 - (iii) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Payidentity™ and payment platform known as ISXPay® with the systems of VGW.
 - (iv) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
 - (v) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
 - (vi) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.
 - (vii) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
 - (viii) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told

Andrew Karantzis that he first had to speak with his Chief Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.

- (ix) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.
- (f) By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland Holdings Ltd (**Lottoland**).
- (i) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
 - A. €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - B. *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
 - C. *plus* €5,000 per month in transfer fees; and
 - D. *less* €3,000 per month in dedicated costs to service the agreement.

- (ii) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland. The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (iii) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email from David Gill of Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.
- (iv) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (v) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (vi) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (vii) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris

Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.

(viii) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

- C. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.
- D. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

Order pursuant to sections 793C(2), 1101B(1) and/or 1324(1) of the Corporations Act

74. Further, by reason of the matters set out in paragraphs 68 to 71 above, ~~by the delivery of the Draft Reasons and/or the publication of those reasons in draft or final form and~~ by the delivery of the Final Reasons and/or publication of those reasons, ASX:

- (a) has failed ~~and/or threatens to fail~~ to meet its obligations under the operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) and ISX ~~will be~~ is a person aggrieved by that failure;
- (b) has contravened ~~and/or threatens to contravene~~ the operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) and ISX ~~will be~~ is a person aggrieved by the contravention; and/or
- (c) in breach of section 792A(a), has failed ~~and/or threatens to fail~~ to apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner and ensure that ISX is treated in a like manner as other participants.

75. In the circumstances set out in paragraph 74 above, ISX is entitled to an order pursuant to section 793C(2), 1101B(1) and/or 1324(1)(4) of the Corporations Act [requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the codes ISX and ASX. ~~restraining ISX from making the directions and publishing the Draft Reasons and/or Final Reasons.~~](#)

Listing Rule 18.8 is invalid for inconsistency with the Corporations Act

76. On or about 10 October 2019 ASX purported to change the Listing Rules by, inter alia, amending listing rule 18.8.
77. On 1 December 2019 the amendments to listing rule 18.8 purported to come into effect.
78. By purporting to amend listing rule 18.8 ASX sought to confer on itself the power to require an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing that in ASX's opinion is necessary to ensure or facilitate compliance with the Listing Rules, including (without limitation):
- (a) not to enter into or perform an agreement or transaction that would breach the Listing Rules (listing rule 18.8(c));
 - (b) to cancel or reverse an agreement or transaction entered into in breach of the Listing Rules (listing rule 18.8(d)); and
 - (c) to engage an independent expert to review the entity's policies and processes to comply with the Listing Rules and to release to the market the findings of, and any changes the entity proposes to make to its compliance policies and processes in response to, the review (listing rule 18.8(l)).
79. By reason of the matters set out in paragraphs 76 to 78 above, ASX sought to confer upon itself power to:
- (a) make formal findings (without any hearing or right of appeal) that an entity has breached the Listing Rules;
 - (b) publish its formal findings and reasons to the market;
 - (c) effectively compel an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing, even if it is unfairly prejudicial to the entity or

any other person without the need to apply to the Court for relief pursuant to sections 793C and/or 1101B of the Corporations Act; and

(d) bypass the function of ASIC to investigate a potential contravention of the Listing Rules.

80. In the circumstances set out in paragraph 79 above, listing rule 18.8 is repugnant to, or inconsistent with, the scheme for the enforcement of the Listing Rules established by Part 7.2, Division 3 and section 1101B of the Corporations Act and is therefore ultra vires and/or invalid.

81. By reason of the matters set out in paragraph 80 above, ASX has no power to:

(a) give the ~~three d~~Directions referred to in paragraphs 70 and 70A above or any other directions under listing rule 18.8;

(b) publish the ~~Draft Reasons in draft or final form and/or the~~ Final Reasons supporting the making of the Directions or disclose information contained therein to anyone except ASIC on a confidential basis.

G. Misleading or deceptive conduct by ASX

(i) *October Notice and November Notice*

82A. Each of the notice published by ASX at 9:53am on 2 October 2019 (**October Notice**) and the notice published by ASX at 1:04pm on 11 November 2019 (**November Notice**) related to the listed shares of ISX, being a financial product within the meaning of section 763A of the Corporations Act.

PARTICULARS

The October Notice and the November Notice were released on the Market Announcements Platform. A copy of the documents is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

82B. Each of the October Notice and the November Notice contained an implied representation that on 2 October 2019 ASX had a justifiable basis to suspend the shares of ISX from quotation on the Australian Securities Exchange pursuant to Listing Rule 17.3 (**Suspension Representations**).

PARTICULARS

- A. The October Notice said “*In consultation with the Australian Securities and Investments Commission (‘ASIC’) and having regard to the recent volatility in its share price, ASX has determined that it is appropriate to suspend trading in the shares of iSignthis Ltd (‘ISX’) with immediate effect under Listing Rule 17.3, pending the outcome of enquiries to be made by ASIC and ASX into a number of issues concerning ISX. The securities will remain suspended until further notice.*”
- B. The November Notice said “*Under Listing Rule 17.3.4, ASX has the power to suspend any security from trading where for any reason ASX considers that course to be appropriate. ASX was satisfied that the suspension of ISX’s securities on 2 October 2019 was appropriate, without any need for a direction from ASIC.*”

82C. Further, or alternatively, each of the October Notice and the November Notice contained an implied representation that on 2 October 2019 ASX held the opinion on reasonable grounds that it had a justifiable basis to suspend the shares of ISX from quotation on the Australian Securities Exchange pursuant to Listing Rule 17.3 (**Opinion Representations**).

82D. By reason of the matters set out in paragraphs 5A to 5G and 7A above:

- (a) each of the Suspension Representations was false;
- (b) alternatively, each of the Opinion Representations lacked reasonable grounds; and/or

(c) alternatively, each of the October Notice and the November Notice omitted matters that, by their omission, rendered the information misleading or deceptive, or likely to mislead or deceive.

82E In the circumstances set out in paragraphs 82A to 82D above, ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the Corporations Act.

82F. By reason of the matters set out in paragraph 82E above, the Applicants have suffered, and continue to suffer, loss and damage.

PARTICULARS

A. By publishing the October Notice, further or alternatively the November Notice, ASX caused:

(a) iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with ClearBank, which would have given it direct access, through the banking platform of ClearBank, to clearing and settlement facilities with the Bank of England. The Applicants refer to and repeat paragraphs D(a)(i)-D(a)(v) of the Particulars under paragraph 51 above.

(b) Authenticate Pty Ltd and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Highlow. The Applicants refer to and repeat paragraphs D(b)(i)-D(b)(v) of the Particulars under paragraph 51 above.

(c) Authenticate Pty Ltd to lose the opportunity to earn revenue from a commercial arrangement with First Data. The Applicants refer to and repeat paragraphs D(c)(i)-D(c)(iv) of the Particulars under paragraph 51 above.

(d) Authenticate Pty Ltd to lose the opportunity to earn an additional net profit of \$16,680,000, over an anticipated period of five years, from ICM which it was unable to onboard to the commercial arrangement with First Data.

The Applicants refer to and repeat paragraphs D(d)(i) of the Particulars under paragraph 51 above.

- B. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.
- C. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

82G. By reason of the matters set out in each of paragraphs 82E and 82F above:

- (a) the Applicants are entitled to an order pursuant to section 1041I of the Corporations Act for their loss and damage; and/or
- (b) ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(ii) The Final Reasons

82. The Final Reasons related to the listed shares of ISX, being a financial product within the meaning of section 763A of the Corporations Act.

83. The Final Reasons said in substance that:

- (a) ~~in 2018 ISX's core business was identity verification and transaction processing and did not include;~~ the four contracts were "*out of the ordinary*" because:
 - (i) they involved the provision of "*platform development services*" and "*marketing management services*" that were not part of ISX's core business;
 - (ii) ISX had not provided similar services to any other customers before or since; and
 - (iii) the four contracts all involved the provision of one-off services over a short period with fixed fees, in contrast to the identity verification and transactional processing business that ISX normally undertakes,

(First Representation);

- (b) a serious question arose as to whether the revenue ~~earned~~ derived by ISX under the four contracts was ordinary business revenue or whether it was ~~in the second half of the financial year ending 30 June 2018 was artificial or contrived~~, generated solely or predominantly for the purpose of meeting the milestones (**Second Representation**);
- (c) a serious question arose as to whether the work required under the four contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was ~~from the four contracts was not~~ properly recognised in the ~~the six-month period ended 30 June 2018 financial year ending 30 June 2018~~ (**Third Representation**);
- (d) the payments pursuant to the four contracts revealed a number of anomalies so as to raise an issue as to whether the work required under the four contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was appropriately recognised in the six-month period ended 30 June 2018 ~~were suspect as they were made by third parties~~ (**Fourth Representation**);
- (e) the revenue milestones were not validly met ~~despite the audit certificates for the six-month period ended 30 June 2018~~ (**Fifth Representation**);
- (f) the conversion of the performance rights to ordinary shares was material to the price or value of ISX's shares (**Sixth Representation**);
- (g) the signing of each of the four contracts was material to the price or value of ISX's shares and ought to have been disclosed by ISX (**Seventh Representation**); ~~and~~
- (h) the <15% Representation "*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*" (**Eighth Representation**);
- (i) ISX breached Listing Rule 3.1 by failing to disclose to the market the fact that it had entered into the four contracts and their material terms (**Ninth Representation**);
- (j) ISX breached Listing Rule 3.1 by failing to correct the <15% Representation once it had been made (**Tenth Representation**); and
- (k) ISX had committed a number of significant breaches of the Listing Rules (**Eleventh Representation**);

PARTICULARS

- A. The First Representation was made in paragraphs 6.3, ~~and 9.3~~ and 9.4 of the Final Reasons.
- B. The Second Representation was made in paragraphs 9.2 and 9.9 of the Final Reasons.
- C. The Third Representation was made in paragraphs 9.10 and 10.3 of the Final Reasons and footnotes 45, 51 and 115 of the Final Reasons.
- D. The Fourth Representation was made in section 1 of Annexure A to the Final Reasons.
- E. The Fifth Representation was made in paragraph 10.3 of the Final Reasons.
- F. The Sixth Representation was made in paragraphs 5.6 to 5.8 and 7.10 to 7.11 of the Final Reasons.
- G. The Seventh Representation was made in paragraphs 5.1, 7.3, 7.5, 7.8 and 12.1 of the Final Reasons.
- H. The Eighth Representation was made in paragraphs 8.5 and 12.3 of the Final Reasons.
- I. The Ninth Representation was made in paragraph 12.1 of the Final Reasons.
- J. The Tenth Representation was made in paragraph 12.3 of the Final Reasons.
- K. The Eleventh Representation was made in paragraph 1.11 of the Final Reasons.

83A. Further or alternatively, by the Final Reasons, ASX represented that it held the following opinions on reasonable grounds:

- (a) the four contracts were “*out of the ordinary*” because:
 - (i) they involved the provision of “*platform development services*” and “*marketing management services*” that were not part of ISX’s core business;
 - (ii) ISX had not provided similar services to any other customers before or since; and
 - (iii) the four contracts all involved the provision of one-off services over a short period with fixed fees, in contrast to the identity verification and transactional processing business that ISX normally undertakes,

(First Opinion Representation);
- (b) a serious question arose as to whether the revenue derived by ISX under the four contracts was ordinary business revenue or whether it was generated solely or predominantly for the purpose of meeting the milestones **(Second Opinion Representation);**
- (c) a serious question arose as to whether the work required under the four contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was properly recognised in the six-month period ended 30 June 2018 **(Third Opinion Representation);**
- (d) the payments pursuant to the four contracts revealed a number of anomalies so as to raise an issue as to whether the work required under the four contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was appropriately recognised in the six-month period ended 30 June 2018 **(Fourth Opinion Representation);**
- (e) ASX was concerned that the revenue milestones were not validly met despite the audit certificates for the six-month period ended 30 June 2018 **(Fifth Opinion Representation);**
- (f) the conversion of the performance rights to ordinary shares was material to the price or value of ISX’s shares **(Sixth Opinion Representation);**

- (g) the signing of each of the four contracts was material to the price or value of ISX's shares and ought to have been disclosed by ISX (**Seventh Opinion Representation**);
- (h) the <15% Representation "*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*" (**Eighth Opinion Representation**);
- (i) there was a reasonable argument that, properly construed, the reference to "*revenue*" in the milestones meant ordinary business revenue and excluded revenue generated solely or predominantly for the purpose of meeting the milestones (**Ninth Opinion Representation**);
- (j) there was a reasonable argument that it was an implied term of the performance shares that the milestones had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the milestones (**Tenth Opinion Representation**);
- (k) ISX breached Listing Rule 3.1 by failing to disclose to the market the fact that it had entered into the four contracts and their material terms (**Eleventh Opinion Representation**);
- (l) ISX breached Listing Rule 3.1 by failing to correct the <15% Representation once it had been made (**Twelfth Opinion Representation**);
- (m) ISX had committed a number of significant breaches of the Listing Rules (**Thirteenth Opinion Representation**); and
- (n) there may be other market sensitive contracts that ISX had entered into which either had not been disclosed, or had not been adequately disclosed, to the market (**Fourteenth Opinion Representation**).

PARTICULARS

- A. The First Opinion Representation was made in paragraphs 6.3, 9.3 and 9.4 of the Final Reasons.
- B. The Second Opinion Representation was made in paragraphs 9.2 and 9.9 of the Final Reasons.

- C. The Third Opinion Representation was made in paragraphs 9.10 and 10.3 of the Final Reasons and footnotes 45, 51 and 115 of the Final Reasons.
- D. The Fourth Opinion Representation was made in section 1 of Annexure A to the Final Reasons.
- E. The Fifth Opinion Representation was made in paragraph 10.3 of the Final Reasons.
- F. The Sixth Opinion Representation was made in paragraphs 5.6 to 5.8 and 7.10 to 7.11 of the Final Reasons.
- G. The Seventh Opinion Representation was made in paragraphs 5.1, 7.3, 7.5, 7.8 and 12.1 of the Final Reasons.
- H. The Eighth Opinion Representation was made in paragraphs 8.5 and 12.3 of the Final Reasons.
- I. The Ninth Opinion Representation was made in paragraph 9.2 of the Final Reasons.
- J. The Tenth Opinion Representation was made in footnote 89 of the Final Reasons.
- K. The Eleventh Opinion Representation was made in paragraph 12.1 of the Final Reasons.
- L. The Twelfth Opinion Representation was made in paragraph 12.3 of the Final Reasons.
- M. The Thirteenth Opinion Representation was made in paragraph 1.11 of the Final Reasons.
- N. The Fourteenth Opinion Representation was made in paragraphs 6.6 and 12.4 of the Final Reasons.

Each of the opinions pleaded in paragraphs 83A(a) to (n) above was represented by ASX to be an opinion held on reasonable grounds because ASX held itself out as appropriately qualified to give those opinions by reason of the statements contained in the first and second paragraphs on page 1 of the Final Reasons and paragraphs 1.1 to 1.12 of the Final Reasons.

84. The First Representation was false, alternatively the First Opinion Representation lacked reasonable grounds, as, at all material times:

- (a) “*platform development services*” included the supply of software and integration services by a service provider:
 - (i) updating and/or extending its technology platforms; and
 - (ii) integrating its technology platforms with trading or ecommerce platforms for the benefit of its customer;
- (b) S&P classified ISX as a provider of “*software and services*”;
- (c) ISX was a start-up company in the early stages of offering its identity verification and transaction processing services through its platforms known as ISX’s Payidentity™ and ISXPay®;
- (d) ISX’s identity verification platform known as ISX’s Payidentity™ and payment platform known as ISXPay® could not operate on a standalone basis and could only operate as part of an online “*ecosystem*” comprised of:
 - (i) software that could take an order;
 - (ii) a Customer Relationship Management System (**CRM system**);
 - (iii) software that could facilitate payment; and
 - (iv) for entities required to comply with Anti-Money Laundering (**AML**) obligations, a means of verifying the identity of the customer;

PARTICULARS

- A. ISXPay® facilitates payment in the online “*ecosystem*”.
 - B. ISX’s Payidentity™ verifies the identity of the customer in the ecosystem.
 - C. Software that can take an order includes a trading platform or an ecommerce platform.
- (e) therefore before ISX could provide identity verification and/or transaction processing services to a customer it had to:
- (i) update and/or extend its technology platforms; and
 - (ii) integrate its technology platforms with the other two parts of the online “*ecosystem*” for the benefit of its customer so that they all talked to each other;
- ~~and~~
- (f) in the circumstances set out in paragraphs 84(a) to (e) above:
- (i) the supply of platform development services was part of ISX’s core business as it could not provide the identity verification and transaction processing services to a customer without first supplying the software and integration services;
 - (ii) ISX had provided “*platform development services*” to customers before and since; and

PARTICULARS

- A. ISX refers to and repeats paragraph (e) above.
- B. The customers before and since were:
 - (i) in 2016, Trading Point Holdings Limited;
 - (ii) in 2017, Topero Nominees Pty Ltd trading as Michaels Camera-Video-Digital;

(iii) in 2019, Xtrade (AU) Pty Ltd; and

(iv) in 2020, NSX Limited and National Stock Exchange Limited.

(iii) the provision of “*platform development services*” over a short period with fixed fees was not out of the ordinary;

and,

(g) ASX’s reliance on ISX’s response to question 7 of the Fourth Query Letter was unfounded because the question asked by ASX, and therefore the answer given by ISX, was substantially narrower and did not support the First Representation, alternatively the First Opinion Representation.

85. The Second Representation was false, alternatively the Second Opinion Representation lacked reasonable grounds, as:

(a) ISX chose to focus on providing its identity verification and transaction processing services to entities with anti-money laundering obligations (**AML regulated entities**);

(b) during 2017:

(i) ISX approached AML regulated entities and discovered that they:

A. had no interest in changing the status quo;

B. were not prepared to assume any risk associated with integrating ISX’s Payidentity™ and ISXPay® with the platforms that they were already using; and

C. would only consider using ISX’s Payidentity™ and ISXPay® if they were already integrated with either a CRM system, trading platform or eCommerce platform;

(ii) ISX approached popular CRM, cashier, trading, gaming and ecommerce platforms such as Shopify, Tradologic, PlayTech, DevCode, Praxis, MetaTrader4/5, Panda and Antelope and was told by each of them that they

were not interested in assuming the integration risk without an assurance that customers would purchase the end product; and

(iii) therefore ISX needed to find:

- A. customers who were prepared to assume the integration risk alongside ISX and use the modified third party platform with ISX's integrated Payidentity™ and ISXPay®;
- B. find vendors of platforms within the online "*ecosystem*" that it could partner with to integrate ISXPay® and Payidentity®; or
- C. a combination of both customers and vendors;

- (c) in anticipation of securing customers, in late 2017 and early 2018 ISX worked to integrate its products into popular third party trading platforms at its own risk;
- (d) at about this time ISX was approached by a number of individuals who were each looking to start up their own online trading businesses and needed to build the whole online "*ecosystem*";
- (e) on about 17 April 2018, ISX, through its wholly owned subsidiary Authenticate BV, offered to provide ISXPay® and Payidentity™ to one of the start-up businesses, which by this time had been incorporated as Corp Destination Pty Ltd (**Corp Destination**);
- (f) in late April 2018 ISX was in a position to undertake the work required to integrate Payidentity™ and ISXPay® into a third party trading platform but Corp Destination said that:
 - (i) the company did not yet have the necessary personnel and/or know how to deploy the third party CRM system and trading platform; and
 - (ii) it was going to take them between 6 to 12 months to acquire the necessary personnel and/or know how to build and deploy the third party CRM system and trading platform;

PARTICULARS

The statements were made by Constantin
Bardeanu of Corp Destination to John
Karantzis of ISX.

- (g) in those circumstances ISX, through its wholly owned Dutch subsidiary Authenticate BV, offered to also deploy the requisite cloud based environment and install the third party CRM system and trading platform for Corp Destination;
- (h) Corp Destination accepted that offer and Authenticate BV proceeded to:
 - (i) build and configure the secure cloud environment, which complied with PCI DSS and ISO27001 standards;
 - (ii) purchase from Fino Software Technologies Ltd (**FinoSoft**) the integrated CRM system and trading platform required by Corp Destination;
 - (iii) install the integrated CRM system and trading platform supplied by FinoSoft in the cloud environment which Authenticate BV had built;
 - (iv) integrate the Paydentity™ and ISXPay® platforms so that they would talk to the integrated CRM system and trading platform;
 - (v) test the online “*ecosystem*” to ensure that everything worked; and
 - (vi) demonstrate to the satisfaction of Corp Destination that the services could “*go live*” when Corp Destination was ready to do so;
- (i) shortly after Authenticate BV agreed to build the whole online “*ecosystem*” for Corp Destination other start-up businesses, such as FCorp Services Ltd (**FCorp**) and Immo Servis Group S.R.O (**Immo**), also engaged Authenticate BV to build a whole online “*ecosystem*” for them;
- (j) in FCorp’s case, Authenticate BV purchased an integrated CRM system and trading platform from FinoSoft;
- (k) in Immo’s case, Authenticate BV was required to obtain a different integrated CRM system and exchange platform from Gibi Tech Ltd (**Gibi Tech**) because it held the licences for the specific CRM system and exchange platform required by Immo;

- (l) the contracts which Authenticate BV entered into with Gibi Tech and FinoSoft were for CRM systems integrated with either a trading platform or exchange platform, which Authenticate BV and ISX did not have and could not build such that Authenticate BV needed to purchase them in order to integrate ISX's Payidentity™ and ISXPay® platforms;
- (m) Gibi Tech and FinoSoft are unrelated to Authenticate BV and ISX and unrelated to each of ISX's customers and the customers' directors and shareholders;
- (n) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was derived from arms-length counterparties who were independent of ISX and each other;
- (o) by integrating ISX's platforms with third party CRM systems integrated with either a trading platform or exchange platform in the second half of the financial year ended 30 June 2018:
 - (i) ISX gained valuable knowledge that it has since been able to deploy for subsequent customers who have elected to use the same or similar third party CRM system integrated with either a trading platform or exchange platform; and
 - (ii) this has enabled ISX to connect new customers using, or who are wanting to use, the same or similar third party CRM system integrated with either a trading platform or exchange platform much faster than it would otherwise have been able to do;
- (p) the platforms of FCorp and the two different brands of Immo (now trading as Bitconvert and thechange.io) have since gone live, which has resulted in ISX processing more than \$35m of Gross Processed Turnover Volume (**GPTV**) between these customers and receiving combined revenue of more than A\$800,000 (unaudited) in 2019;
- (q) ISX would not have earned the revenue referred to in paragraph 85(p) above if Authenticate BV had not entered into the agreements with FCorp and Immo;
- (r) in the circumstances set out in paragraphs 85(a) to (q) above, the revenue earned from these three contracts was not generated solely or predominantly for the purpose of meeting the milestones as these contracts were central to:

- (i) ISX establishing itself as an entity able to provide identity verification and transaction processing services to AML regulated entities;
- (ii) gaining valuable knowledge that it has since been able to deploy for subsequent customers; and
- (iii) gaining substantial revenue from GPTV.

86. The Third Representation was false, alternatively the Third Opinion Representation lacked reasonable grounds, as:

- (a) the services were delivered by 30 June 2018;
- (b) the invoices were issued before 30 June 2018 in respect of each customer's irrevocable binding legal obligation to pay the fees due under their agreement;
- (c) Australian Accounting Standard AASB No.15 allows for the practice of wholesale purchase and resale without any value add;
- (d) in this case, value was added as:
 - (i) ISX's wholly owned subsidiary, Authenticate BV, deployed the CRM system integrated with either a trading platform or exchange platform into the secure cloud environments which it built to comply with the PCI DSS and then integrated the Payidentity™ and ISXPay® platforms so that they would all talk to each other; and
 - (ii) a profit of approximately €150,000 was made across the four contracts, in addition to contributing towards the company's overheads and covering the cost of ISX's technical services personnel;
- (e) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was the subject of the audit performed by Grant Thornton;
- (f) Grant Thornton confirmed that the revenue satisfied Australian Accounting Standards AASB No.118, AASB No. 111 and AASB No.15;
- (g) Grant Thornton said that:
 - (i) they were satisfied as to the current process of reporting and treatment of revenue;

- (ii) an increase in revenue contributed to a strong focus by them on revenue; and
- (iii) they were satisfied that the revenue was accurately recorded and that revenue targets in place and disclosed in the Prospectus had been met;

PARTICULARS

- A. The statements were made at the Audit Committee Meeting held on 23 August 2018 (**August 2018 Meeting**), which was attended by Scott Minahane, Tim Hart, Barnaby Egerton-Warburton and Todd Richards of ISX, Brad Taylor and Brad Krafft of Grant Thornton and Mathew Watkins of Leydin Freyer.
- B. The statements are recorded in section 3.2 of the Minutes of the August 2018 Meeting (**Minutes**). A copy of the Minutes is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

and,

- (h) in the circumstances set out in paragraphs 86(a) to (g) above, the correct accounting treatment was to record those fees as revenue during the financial year ending on 30 June 2018.
87. The Fourth Representation was false, alternatively the Fourth Opinion Representation lacked reasonable grounds, as:
- (a) at all material times SEPAGA E.M.I. LIMITED (**SEPAGA**) and OrangeTrust S.R.O (**OrangeTrust**) were electronic money institutions authorised by European financial regulators to, among other things, send payments on behalf of others;
 - (b) at all material times each of Corp Destination, FCorp, Immo and Authenticate BV held an electronic money account with iSignthis eMoney Ltd;

- (c) the payments in respect of the agreement between Corp Destination and Authenticate BV were:
 - (i) debited from the electronic money account of Corp Destination held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and
 - (ii) in one instance made directly into the bank account of Authenticate BV held with ABN AMRO;
- (d) the payments in respect of the agreement between FCorp and Authenticate BV were debited from the electronic money account of FCorp held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (e) the payments in respect of the agreement between Immo and Authenticate BV were:
 - (i) made by Immo directly into the bank account of Authenticate BV held with ABN AMRO;
 - (ii) debited from the electronic money account of Immo held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and
 - (iii) debited from the electronic money account of Immo held with OrangeTrust and transferred to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (f) the payments in respect of the agreement with Nona were sent by SEPAGA on behalf of Nona to the bank account of Authenticate BV held with ABN AMRO; and
- (g) in the circumstances set out in paragraphs 87(a) to (f) above, the payments were not anomalous so as to raise an issue as to whether the work required under the four contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was appropriately recognised in the six-month period ended 30 June 2018 ~~suspect~~ as they were made with money belonging to each of the respective counterparties to the agreements with Authenticate BV.

88. The Fifth Representation was false, alternatively each of the Fifth, Ninth and Tenth Opinion Representations lacked reasonable grounds, as:

- (a) on 22 December 2014, the shareholders of the company approved the issue of the performance rights on the terms and conditions in the Explanatory Memorandum which accompanied the Notice of Meeting dated 17 November 2014 (**Notice of Meeting**);
- (b) the conversion of the performance rights into ordinary shares was linked to turnover and not to profitability;
- (c) before the shareholders approved the issue of the performance rights the company disclosed the fact set out in paragraph 88(b);

PARTICULARS

The disclosure was made in paragraphs 2.10 and 12.19 of the Independent Expert's Report prepared by RSM Bird Cameron dated 6 November 2014 (**Expert Report**), which the company gave to shareholders together with the Notice of Meeting and Explanatory Memorandum. A copy of the Expert Report is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

- (d) before the shareholders approved the issue of the performance rights the company disclosed that it recognised revenue based on the Australian Accounting Standards;

PARTICULARS

Notes (a) and (h) to the Historical and Pro-Forma Financial Information as at 30 September 2014, which formed part of the Prospectus, expressly referred to the Australian Accounting Standards and "*Revenue recognition*".

- (e) by reason of the matters set out in paragraphs 88(a) to (d) above:
 - (i) “revenue” in the Prospectus is properly construed in accordance with the Australian Accounting Standards; and
 - (ii) there was no, and there could not be, any basis for implying a term in the Prospectus that the milestones for the conversion of the performance rights to ordinary shares “*had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the Milestones*”;
 - (f) by reason of the matters set out in paragraphs 85(a) to (q) above, the revenue was not generated solely or predominantly for the purpose of meeting the milestones;
 - (g) by reason of the matters set out in paragraphs 86(a) to (g) above, the revenue was properly recognised by ISX during the financial year ending on 30 June 2018;
 - (h) by reason of the matters set out in paragraph 87(a) to (f) above, the revenue received by ISX was not anomalous suspect; and
 - (i) in the circumstances set out in paragraphs 88(a) to (h) above, the revenue milestones were validly met.
89. The Sixth Representation was false, alternatively the Sixth Opinion Representation lacked reasonable grounds, as:
- (a) “price” and “value” are synonymous when determining the effect that information had on the market price of an entity’s securities;
 - (b) the actual effect that the information had on the market price of the entity’s securities when it was finally announced to the market is the relevant enquiry not a hypothetical analysis;
 - (c) information is generally considered not to be market sensitive if it appears to have moved the market price of the entity’s securities (relative to the prices in the market generally or in the entity’s sector) by roughly 5% or less; and
 - (d) the materiality threshold is 10%, or close to it, for smaller entities;

PARTICULARS

The matters in paragraphs (b) to (d) above are contained in section 8.7 of ASX Guidance Note 8.

- (e) by market capitalisation, ISX is a small entity on the Australian Securities Exchange;
- (f) on 22 June 2018 ISX told the market that:
 - (i) the cash receipts in the second half of the financial year ending 30 June 2018 were in excess of \$3,750,000; and
 - (ii) consequently, subject to audit, milestones A and B will be satisfied so as to trigger the issue of the Class A and Class B performance rights under section 14.2 of the Prospectus;
- (g) the information set out in paragraph 89(f) above only had a positive impact on ISX's share price of 5.8%, which is significantly less than 10%;

PARTICULARS

- A. On 21 June 2018 the price of ISX's shares closed at \$0.16.
- B. On 22 June 2018 the price of ISX's shares rose by \$0.01 to \$0.17.
- (h) on 31 July 2018 ISX told the market that:
 - (i) the GPTV processed by the company did not experience the growth expected by the company due to a number of unforeseeable events, including technical issues with its suppliers; and
 - (ii) based on the unaudited revenue for the 6 months from 1 January 2018 to 30 June 2018, it estimated that the requirements for all three tranches of the performance rights would be met such that 336,666,667 ordinary shares would be issued in the September quarter period, taking the total number of shares on issue for the company to 1,004,832,159;

- (i) the information set out in paragraph 89(h) above had a negative impact on ISX's share price of 4.8%, which is significantly less 10%; and

PARTICULARS

- A. On 30 July 2018 the price of ISX's shares closed at \$0.215.
 - B. On 31 July 2018 the price of ISX's shares declined by \$0.01 to \$0.205.
 - (j) in the circumstances set out in paragraphs 89(a) to (i) above, the conversion of the performance rights to ordinary shares was not material to the price or value of ISX's shares.
90. The Seventh Representation was false, alternatively the Seventh Opinion Representation lacked reasonable grounds, as:
- (a) it is actual GPTV which affects the price or value of ISX's shares, not revenue from platform development services;
 - (b) the revenue which ISX was to receive from each contract was insignificant when properly considered in context, both temporally and relative to the company's anticipated and actual GPTV;
 - (c) the conversion of the performance rights to ordinary shares was not material to the price or value of ISX's shares such that each contract which contributed to that conversion being triggered (through the achievement of the milestones set out in the Prospectus) was not material to the price or value of ISX's shares; and

PARTICULARS

ISX refers to and repeats paragraph 89 above.

- (d) in the circumstances set out in paragraphs 90(a) to (c) above, the fact that ISX had entered into each contract was not material to the price or value of ISX's shares.

91. Each of ~~the~~ Eighth and Tenth Representations was false, alternatively each of the Eighth and Twelfth Opinion Representations lacked reasonable grounds, as:

- (a) the reference to “<15% of revenue” was made in the context of the company explaining its products and “cash to revenue lag”, not the composition of its revenue;
- (b) as at 3 August 2018, ISX still:
 - (i) had not yet fully appreciated the impact which the KAB, Worldline and Apple issues would have on its ability to generate revenue from actual GPTV;
 - (ii) reasonably expected that its capability to process GPTV was imminent; and
 - (iii) expected to receive significant GPTV revenue in the six months ending on 31 December 2018;

PARTICULARS

- A. On 4 June 2018 ISX told the market that it anticipated GPTV totalling \$550 million in the 6 month period ending 31 December 2018.
- B. By 31 July 2018 this figure had risen to \$600 million.

and,

- (c) in the circumstances set out in paragraphs 91(a) and (b) above, in context the statement was not false and materially misleading.

91A. By reason of the matters set out in paragraphs 89 and 90 above, the Ninth Representation was false, alternatively the Eleventh Opinion Representation lacked reasonable grounds.

91B. By reason of the matters set out in paragraphs 89 to 91 above, the Eleventh Representation was false, alternatively the Thirteenth Opinion Representation lacked reasonable grounds.

91C. The Fourteenth Opinion Representation lacked reasonable grounds as:

- (a) it was based on supposition and conjecture; and

- (b) before making the representation ASX did not ask ISX whether there were any other “*market sensitive contracts*” which either had not been disclosed, or had not been adequately disclosed, to the market.
92. In the circumstances set out in paragraphs 82 and 83 above, alternatively 82 and 83A above, and each of paragraphs ~~84~~ to 91C above, ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the Corporations Act.
93. By reason of the matters set out in paragraph ~~92~~ 92 above, each of the Applicants has suffered, and continue to suffer, loss and damage.

PARTICULARS

- A. By publishing the Final Reasons which contained the false representations, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
- (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
- (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Paydentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions

took place between John Karantzis and Adam Bowman over digital voice communication devices.

- (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
- (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.
- (e) On 12 May 2020:
 - (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
 - (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “*due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams*”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
- (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
- (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “*the investigations*”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.

B. Since 30 April 2020, Probanx has lost the following customers:

- (a) On 13 June 2017 Probanx and Golden Anchor executed a written agreement for the licensing of Probanx's Core banking software. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which immediately followed, on 1 May 2020 Golden Anchor (trading as Payments 88) terminated the contract with Probanx. The termination was communicated orally during a telephone conversation between Ran Zangi of Golden Anchor and Christodoulos Georgiou of Probanx. Prior to the termination, Probanx was to receive a monthly fee of €1,100 for an anticipated period of at least 5 years.
- (b) On about 29 January 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders. On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.

C. Since 30 April 2020, iSignthis eMoney has lost the following customers:

- (a) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written

agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.

- (b) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.

D. By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW.

- (a) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
 - (i) USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - (ii) *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;

- (iii) *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;
 - (iv) *plus* USD5,000 per month in transfer fees; and
 - (v) *less* USD8,000 per month in dedicated costs to service the agreement.
- (b) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.
- (c) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Paydentity™ and payment platform known as ISXPay® with the systems of VGW.
- (d) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
- (e) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
- (f) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.
- (g) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made

during a telephone call between Christopher Koch and Andrew Karantzis.

- (h) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told Andrew Karantzis that he first had to speak with his Chief Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (i) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

E. By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland.

- (a) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
 - (i) €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - (ii) *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
 - (iii) *plus* €5,000 per month in transfer fees; and
 - (iv) *less* €3,000 per month in dedicated costs to service the agreement.

- (b) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland. The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (c) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email from David Gill of Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.
- (d) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (e) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (f) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (g) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.

- (h) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

F. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.

G. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

94. By reason of the matters set out in each of paragraphs [92](#) and 93 above, each of the Applicants is entitled to:

- (c) an order pursuant to section 1041I of the Corporations Act for its loss and damage; and/or
- (d) an order pursuant to section 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.

H. ASX's refusal to publish ISX's official response to the "Statement of Reasons"

Failure to act in good faith and/or honestly and fairly and/or reasonably

95. On 14 April 2020 ASX said that to the extent ISX considers ASX's conclusions in the Final Reasons to be erroneous or unwarranted, it can publish such facts as it considers the market, and those with whom it deals (including regulators), ought to possess.

PARTICULARS

Paragraph 81 of ASX's written submissions dated 14 April 2020, filed in opposition to the Interlocutory Application.

96. On 1 May 2020 ISX attempted to publish its official response to ASX’s “*Statement of Reasons*” on the same Market Announcements Platform which that document was published under the ISX code so that the same readers of ASX’s “*Statement of Reasons*” were informed of ISX’s position.

PARTICULARS

The document was uploaded to the Market Announcements Platform at 2:01pm on 1 May 2020.

97. ISX’s official response was comprised of a one page summary and an 11 page document which was substantially extracted from the written submissions filed in this Court in support of the Interlocutory Application.
98. On 4 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX’s official response which contained such facts that ISX considered the market ought to possess.

PARTICULARS

The refusal was in writing, contained in a letter dated 4 May 2020 from Kevin Lewis to the directors of ISX (**First Refusal**).

99. The First Refusal gave ISX reasons for ASX’s refusal to allow the publication of ISX’s official response on the Market Announcements Platform, which reasons were solely concerned with the one page summary.
100. ISX took into account the reasons given in the First Refusal and amended its one page summary.
101. On 4 May 2020 ISX:
- (a) told ASX that it had taken into account the reasons given in the First Refusal and revised its official response to ASX’s “*Statement of Reasons*”; and
 - (b) attempted to publish, on the Market Announcements Platform under the ISX code, its amended one page summary together with the 11 page document as the company’s official response to ASX’s “*Statement of Reasons*”.

PARTICULARS

- A. The statement in paragraph 101(a) was in writing. It was contained in an email sent at 11:04pm by John Karantzis of ISX to Kevin Lewis of ASX.
- B. The document was uploaded to the Market Announcements Platform at 11:01pm on 4 May 2020.

102. On 10 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX’s amended official response to ASX’s “*Statement of Reasons*” which contained such facts that ISX considered the market ought to possess.

PARTICULARS

The refusal was in writing, contained in an email sent at 12:12pm on Sunday, 10 May 2020, by Kevin Lewis of ASX to John Karantzis of ISX (**Second Refusal**).

103. The Second Refusal:
- (a) said that on its face the statement that ISX “*denies representing at an analyst briefing on 3 August 2018 that one-off fees and one-off set ups accounted for less than 15% of ISX’s revenue*” was “*plainly misleading*”; and
 - (b) otherwise failed to give any specific reasons for ASX’s refusal to release ISX’s official response on the Market Announcements Platform under the ISX code.
104. The statement in paragraph 103(a) above:
- (a) was identical to paragraph 23(d)(ii) of the written submissions filed in support of the Interlocutory Application;
 - (b) was not alleged to be misleading at any stage of the Interlocutory Application; and
 - (c) was not alleged to be misleading in the First Refusal.

105. In the circumstances set out in paragraphs 95 to 104 above, the Second Refusal was not made in good faith, fairly and/or reasonably.
106. By reason of the matters set out in paragraphs 95 to 105 above, ASX has breached its implied obligations to:
- (a) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
 - (b) do all that is necessary to enable ISX to have the benefit of the agreement.
107. In the circumstances set out in paragraphs 95 to 106 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

- A. By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly Group AB (**Trustly**), a Swedish payments institution. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
- (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
 - (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Paydentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would

provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions took place between John Karantzis and Adam Bowman over digital voice communication devices.

- (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
- (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.
- (e) On 12 May 2020:
 - (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
 - (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “*due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams*”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
- (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
- (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “*the investigations*”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.

B. Further, since 30 April 2020, the value of ISX's shares in Probanx and iSignthis eMoney, or the amount of the distributions it would receive, has diminished by reason of the following:

- (a) On about 29 January 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders. On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.
- (b) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response on the Market Announcements Platform, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.

- (c) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response on the Market Announcements Platform, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.
- (d) By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW GP Limited, VGW Malta Limited and VGW Games Limited (together, **VGW**).
 - (i) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
 - A. USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - B. *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;
 - C. *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;

- D. *plus* USD5,000 per month in transfer fees; and
 - E. *less* USD8,000 per month in dedicated costs to service the agreement.
- (ii) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.
 - (iii) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Paydentity™ and payment platform known as ISXPay® with the systems of VGW.
 - (iv) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
 - (v) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
 - (vi) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.
 - (vii) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
 - (viii) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told Andrew Karantzis that he first had to speak with his Chief

Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.

- (ix) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.
- (e) By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland Holdings Ltd (**Lottoland**).
- (i) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
 - A. €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
 - B. *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
 - C. *plus* €5,000 per month in transfer fees; and
 - D. *less* €3,000 per month in dedicated costs to service the agreement.
- (ii) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland.

The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.

- (iii) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email from David Gill of Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.
- (iv) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (v) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (vi) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (vii) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.

(viii) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

- C. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.
- D. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

ASX has failed to meet its obligation under its operating rules: Order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act

- 108. Further, by reason of the matters set out in paragraphs 95 to 106 above, ASX has failed to meet its obligations under its operating rules and ISX is aggrieved by the contravention.
- 109. In the circumstances set out in paragraphs 108 above, ISX is entitled to an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith publish ISX's amended official response to ASX's "Statement of Reasons" on the Market Announcements Platform under the ISX code.

ASX has contravened section 792A(a) of the Corporations Act: Order pursuant to section 1324(1)

- 110. Further, by reason of the matters set out in paragraphs 95 to 106 above, ASX has failed to:
 - (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and
 - (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.
- 111. By reason of the matters set out in paragraph 110 above, ASX has contravened section 792A(a) of the Corporations Act.

112. In the circumstances set out in paragraphs 110 and 111 above, ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith publish ISX's amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.

AND ISX CLAIMS AGAINST ASX

- A. A declaration that ASX failed, in breach of the agreement, to accord procedural fairness to ISX and act in good faith and/or honestly and fairly and/or reasonably before suspending the quotation of its shares on the Australian Securities Exchange.
- B. A declaration that ASX failed, in breach of the agreement, to act in good faith and/or honestly and fairly and/or reasonably by not lifting the suspension and reinstating ISX's shares for quotation on the Australian Securities Exchange.
- C. A declaration that ASX failed to meet its obligations under its operating rules.
- D. An order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate ISX's shares for quotation on the Australian Securities Exchange.
- E. A declaration that ASX contravened section 792A(a) of the Corporations Act.
- F. Further or alternatively to paragraph D above, an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- G. Further or alternatively to paragraphs D and F above, an order:
 - (i) setting aside the decisions not to lift the suspension and reinstate ISX's shares for quotation on the Australian Securities Exchange, with effect from the date of the order; and
 - (ii) directing ASX to forthwith reinstate ISX's shares for quotation on the Australian Securities Exchange.

H. ~~An order permanently restraining ASX from:~~ A declaration that by publishing the Final Reasons and giving the Directions, ASX breached its implied obligations to:

- (i) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
- (ii) do all that is necessary to enable ISX to have the benefit of the agreement.

~~directing ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;~~

~~directing ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review;~~

~~directing ISX to include in each quarterly activity report it gives to ASX under listing rule 4.7C a breakdown by sector of the revenue ISX has derived from customers during the applicable quarter divided into the following sectors:~~

- ~~• Options/CFDs/FX;~~
- ~~• Crypto/digital currency;~~
- ~~• Online gambling; and~~
- ~~• Online video gaming;~~

~~publishing the Draft Reasons in draft or final form and/or the Final Reasons or disclosing information contained therein to anyone except ASIC on a confidential basis.~~

I. A declaration that listing rule 18.8 is ultra vires and/or invalid.

J. A declaration that ASX has no power to:

- (i) direct ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;
- (ii) direct ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review;
- (iii) direct ISX to include in each quarterly activity report it gives to ASX under listing rule 4.7C a breakdown by sector of the revenue ISX has derived from customers during the applicable quarter divided into the following sectors:
 - Options/CFDs/FX;
 - Crypto/digital currency;
 - Online gambling; ~~and~~
 - Online video gaming;
 - Credit providers;
 - Travel services; and
 - Other,
 - ~~or,~~
- (iv) give any other direction purportedly pursuant to listing rule 18.8; ~~or~~
- (v) publish the Final Reasons supporting the Directions or disclose information contained therein to anyone except ASIC on a confidential basis.

K. A declaration that ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.

L. Damages pursuant to section 1041I of the Corporations Act.

M. An order pursuant to section 793C(2), 1101B(1)(d) and/or 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and

publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.

- N. A declaration that ASX failed, in breach of the agreement, to act in good faith and/or honestly and fairly and/or reasonably by refusing to allow ISX to publish its amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.
- O. A declaration that ASX failed to meet its obligations under its operating rules.
- P. Alternatively to paragraph M above, an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to publish ISX's amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.
- Q. A declaration that ASX contravened section 792A(a) of the Corporations Act.
- R. Alternatively to paragraph P above, an order pursuant to section 1324(1) of the Corporations Act requiring ASX to publish ISX's amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.
- S. Damages.
- T. Such other relief as the Court considers to be appropriate.
- U. Costs.

AND ISIGNTHIS EMONEY LTD AND PROBANX SOLUTIONS LTD CLAIM AGAINST ASX

- V. A declaration that ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.
- W. Damages pursuant to section 1041I of the Corporations Act.
- X. An order pursuant to section 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.
- Y. Such other relief as the Court considers to be appropriate.

Z. Costs.

AND AUTHENTICATE PTY LTD CLAIMS AGAINST ASX

AA. A declaration that ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.

BB. Damages pursuant to section 1041I of the Corporations Act.

CC. Such other relief as the Court considers to be appropriate.

DD. Costs.

Dated: ~~4 December 2019~~ ~~12 March 2020~~ ~~26 March 2020~~ ~~17 August 2020~~ ~~7 October 2020~~
31 August 2021

P W Collinson

J S Mereine

HWL Ebsworth

HWL Ebsworth Lawyers
Solicitors for the Applicants

Schedule of Parties

iSignthis Limited (ACN 075 419 715)

First Applicant

iSignthis eMoney Ltd

(a company incorporated in Republic of Cyprus allocated number HE348009)

Second Applicant

Probanx Solutions Ltd

(a company incorporated in the Republic of Cyprus allocated number HE111921)

Third Applicant

Authenticate Pty Ltd (ACN 600 573 233)

Fourth Applicant

ASX Limited (ACN 008 624 691)

Respondent

Certificate of lawyer

I Colin Almond certify to the Court that, in relation to the Fourth Further Amended Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 31 August 2021



Signed by Colin Almond, Partner
HWL Ebsworth Lawyers
Lawyer for the Applicants

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/09/2021 3:07:41 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	VID1315/2019
File Title:	ISIGNTHIS LIMITED & ORS v ASX LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 28/09/2021 3:07:44 PM AEST

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

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 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.



Defence to Fourth Third Second Further Amended Statement of Claim

No. VID1315 of 2019

Federal Court of Australia

District Registry: Victoria

Division: General

iSignthis Limited ACN 075 419 715

First Applicant

iSignthis eMoney Ltd (a company incorporated in the Republic of Cyprus allocated number HE348009)

Second Applicant

Probanx Solutions Ltd (a company incorporated in the Republic of Cyprus allocated number HE111921)

Third Applicant

Authenticate Pty Ltd ACN 600 573 233

Fourth Applicant

ASX Limited ACN 008 624 691

Respondent

Note: Headings are used in this defence for convenience only. They do not form part of the defence to the second third fourth further amended statement of claim filed on 4 December 2019 (~~SOC~~) 12 March 2020 (~~ASOC~~) 15 April 2020 (~~FASOC~~) 20 August 7 October 2020 31 August 2021 (~~2FASOC~~) (~~3FASOC~~) (~~4FASOC~~). Unless the context requires otherwise, the Respondent (**ASX**) adopts the defined terms used in the ~~SOC~~ ~~ASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the ~~SOC~~ ~~ASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC and repeated in this defence.

A. Background

1. In response to paragraph 1 of the ~~SOC~~ ~~ASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
 - (a) admits sub-paragraphs (a) to (d) and (g); and

Filed on behalf of (name & role of party)	The Respondent		
Prepared by (name of person/lawyer)	Luke Hastings		
Law firm (if applicable)	Herbert Smith Freehills		
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Email	Luke.Hastings@hsf.com		
Address for service (include state and postcode)	ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000		

- (b) does not know and therefore cannot admit the allegations in sub-paragraphs (e) and (f), save that it admits that the **First Applicant (ISX)** is listed on the Australian Securities Exchange.
2. ASX admits the allegations in paragraph 2 of the ~~SOC~~~~ASOC~~~~FASOC~~~~2FASOC~~ **3FASOC** 4FASOC and says further that:
- (a) it relies on the Market Licence and s 792A of the *Corporations Act 2001* (Cth) for their full force and effect; and
- (b) the Market Licence dated 8 March 2002 did not take effect until 11 March 2002.

B. Alleged agreement between ASX and ISX

3. In response to paragraph 3 of the ~~SOC~~~~ASOC~~~~FASOC~~~~2FASOC~~ **3FASOC** 4FASOC, ASX:
- (a) denies the allegations; and
- (b) says that ISX is, and has since 12 March 2015 been, bound by a Deed, executed and given to ASX, by which it agreed among other things that:
- (i) ISX's admission to the official list is in ASX's absolute discretion;
- (ii) quotation of ISX's securities is in ASX's absolute discretion;
- (iii) ISX's removal from the official list, the suspension or ending of quotation of ISX's securities, or a change in the category of ISX's admission, is in ASX's absolute discretion;
- (iv) ASX is entitled immediately to suspend quotation of ISX's securities or remove ISX from the official list if ISX breaks its agreement but the absolute discretion of ASX is not limited;
- (v) ISX will comply with the listing rules that are in force from time to time, even if quotation of its securities is deferred, suspended or subject to a trading halt; and
- (vi) ASX has discretion to take no action in response to a breach of a listing rule.

Particulars

Appendix 1A ASX Listing Application and Agreement executed as a Deed on 12 March 2015, cl 1, 5, 7

Section 793B(1) of the *Corporations Act 2001* (Cth)

4. ASX denies the allegations in paragraph 4 of the ~~SOCASOC FASOC~~ 2FASOC 3FASOC 4FASOC.

Particulars

ASX refers to paragraph 3 above and paragraph 52 below

5. In response to paragraph 5 of the ~~SOCASOC FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) admits that ASX's power to suspend the shares of listed entities from quotation on the Australian Securities Exchange was and is not to be exercised for the purpose of punishing listed entities;
 - (b) refers to paragraph 52 below; and
 - (c) otherwise denies the allegations in paragraph 5.

C. Suspension of ISX's shares from quotation

5A. In response to paragraph 5A of the 4FASOC, ASX:

- (a) admits that a telephone conference was attended by representatives of ASIC and ASX on 1 October 2019 between 9:00am and about 9:40am;
- (b) says that paragraphs 5A(a)-(i) of the 4FASOC do not constitute proper pleadings because they plead evidence, rather than material facts, and therefore ASX does not otherwise plead to them.

5B. In response to paragraph 5B of the 4FASOC, ASX:

- (a) admits that a telephone conference was attended by representatives of ASIC and ASX on 1 October 2019 between 9:00am and about 9:40am;
- (b) says that the paragraph does not constitute a proper pleading because it pleads evidence, rather than material facts, and therefore ASX does not otherwise plead to it.

5C. ASX denies the allegation in paragraph 5C of the 4FASOC.

5D. In response to paragraph 5D of the 4FASOC, ASX:

- (a) admits that a telephone conference was attended by representatives of ASIC and ASX on 2 October 2019 between 8:30am and about 9:00am;

(b) says that paragraphs 5D(a)-(d) do not constitute proper pleadings because they plead evidence, rather than material facts, and therefore ASX does not otherwise plead to them.

5E. In response to paragraph 5E of the 4FASOC:

(a) in relation to sub-paragraph (a), ASX admits that as at about 9:00am on 2 October 2019, ASIC had not given ASX:

(i) any documents from ASIC's "financial reporting group";

(ii) any documentary "package" of its observations from the review undertaken in the financial reporting group;

(iii) any other documents;

(iv) any direction under s 794D(2) of *Corporations Act 2001* (Cth) to suspend the shares of ISX from quotation under the Australian Securities Exchange;

(b) in relation to sub-paragraph (b), ASX:

(i) admits that Kevin Lewis, ASX's Chief Compliance Officer at that time, made the decision on behalf of ASX to suspend ISX's securities from quotation on the Australian Securities Exchange;

(ii) admits that ASIC agreed that ASX's announcement to the market could refer to ASIC making enquiries;

(iii) says further that ASX decided to suspend the securities of ISX from quotation on the Australian Securities Exchange, in consultation with ASIC, in the following circumstances and because of the following matters:

(A) speculation in the media as to whether ISX's revenue for the six-month period ended 30 June 2018 (**Relevant Period**) had met the milestones required to trigger the conversion of certain performance shares held by iSignthis Ltd (BVI), an entity associated with ISX's board and management, into fully paid ordinary shares in ISX;

(B) the volatility in ISX's share price;

(C) information provided in confidence by ASIC to ASX in a teleconference on 1 October 2019 that ASIC had concerns about

ISX's financial statements for the Relevant Period, including concerns about the revenue generated in the Relevant Period, which revenue triggered the conversion of the performance shares referred to in sub-paragraph (b)(iii)(A) above into ordinary shares;

(D) advice from ASIC that it was proposing to launch a formal investigation into the matters referred to in sub-paragraph (b)(iii)(C) above and ISX's compliance with its disclosure obligations under the Corporations Act 2001 (Cth).

(E) ASX's opinion that:

(1) the market was not properly informed of the matters identified in sub-paragraphs (b)(iii)(C) and (D) above, and that trading in ISX's shares was therefore taking place on an unformed basis;

(2) trading in ISX's shares, if permitted to continue, may become disorderly if and when the market became aware of the matters identified in sub-paragraphs (b)(iii)(C) and (D) above; and

(3) the suspension was therefore appropriate;

Particulars

i. As to (A) (speculation in the media): Australian Financial Review, *iSignthis plunges on governance concerns*, 12 September 2019; Sydney Morning Herald, *Super hot tech stock drops \$700m after bonuses queried*, 12 September 2019;

ii. As to (B) (price volatility), during the month of September 2019, the lowest share price recorded for ISX was \$0.66 (on 19 September 2019), while the highest price was \$1.765 (on 10 September 2019), a difference of 167%. On five trading days, the difference between the intraday highest and lowest price was greater than 20% (23% of 11 September 2019, 59% on 12 September 2019, 25% on 13 September 2019, 45% on 19 September 2019, and 21% on 20 September 2019);

iii. As to (C) and (D) (information and advice provided by ASIC), the information was conveyed orally at a meeting at 9:00 am on 1 October 2019 and on 2 October 2019, ASIC confirmed that the fact of enquiries to be made by it could be referred to publicly in connection with any suspension of ISX.

(iv) says further that:

(A) ASX had already conducted a preliminary review into ISX's announcements which (among other things) had identified a number of contracts under which ISX was providing services to cryptocurrency exchanges;

(B) ASX had publicly stated concerns and issued guidance about listed entities engaging in cryptocurrency-related activities;

(C) ASX had determined to commence its own investigation into ISX's compliance with the Listing Rules;

Particulars

As to (B) (ASX's publicly-stated concerns and guidance about listed entities engaged in cryptocurrency-related activities): section 5 of ASX's Compliance Update no. 09/17 dated 30 October 2017, section 3 of ASX's Compliance Update no. 01/18 dated 16 February 2018, ASX's Compliance Update no. 06/19 dated 1 August 2019;

(c) in relation to sub-paragraph (c), ASX admits that the decision to suspend ISX's securities was made by Kevin Lewis, as its Chief Compliance Officer, and says that no approval from another person or body within ASX was required;

(d) ASX otherwise denies the allegations in the paragraph.

5F. In response to paragraph 5F of the 4FASOC, ASX:

(a) refers to and relies upon the email of 2 October 2019 at 9:30am (ASX.002.005.2607) and its attachment (ASX.002.005.2608) for their full force and effect;

(b) says further that that email from James Gerraty (ASX) was sent to Colin Luxford (ASIC) and copied to David Barnett and Clare Porta (ASX) and not Tom Veidners (ASIC); and

(c) otherwise denies the allegation.

5G. ASX admits the allegation in paragraph 5G of the 4FASOC.

6. In response to paragraph 6 of the ~~SOCASOC~~ ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:

(a) refers to and relies on the terms of the market announcement for their full force and effect; and

(b) otherwise admits the allegations in the paragraph.

7. In response to paragraph 7 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

(a) in relation to sub-paragraph (a):

- (i) denies the allegations in the sub-paragraph; and
- (ii) says further that it was not required to give notice of its intention to suspend the quotation of ISX's shares;

Particulars

On 2 October 2019, James Gerraty (ASX) notified Todd Richards (ISX) of ASX's intention to suspend the quotation of ISX's shares during a phone call at 9:49am

(b) says that on 12 September 2019 ASX sent to ISX a letter (**12 September Price Query**) which:

- (i) noted the significant change in the price of ISX's securities from 11 September 2019 to 12 September 2019;
- (ii) noted the significant increase in the volume of ISX's securities traded on 12 September 2019; and
- (iii) requested ISX to provide certain information relating to the matters listed in sub-paragraphs (b)(i) and (b)(ii) above;

Particulars

The 12 September Price Query was in writing addressed to Todd Richards

(c) says that on 13 September 2019 ISX sent a letter to ASX (**13 September ISX Response**) which:

- (i) said that a report circulated by Ownership Matters Pty Ltd (**Ownership Matters Report**) explained recent trading in its securities;
- (ii) referred to reporting by the *Australian Financial Review* and *Sydney Morning Herald* about the Ownership Matters Report; and
- (iii) noted the substance of allegations contained in the Ownership Matters Report;

Particulars

The 13 September ISX Response was in writing addressed to Dean Litis

- (d) says that on 19 September 2019, ASX sent ISX a letter (**19 September Price Query**), which:
 - (i) noted the significant change in the price of ISX's securities from 18 September 2019 to 19 September 2019;
 - (ii) noted the significant increase in the volume of ISX's securities traded on 19 September 2019;
 - (iii) asked specific questions about media reports;
 - (iv) noted the 12 September Price Query and 13 September ISX Response; and
 - (v) requested ISX to provide certain information relating to the matters listed in sub-paragraphs (d)(i) and (d)(ii) above;

Particulars

The 19 September Price Query was in writing addressed to Todd Richards

- (e) in relation to sub-paragraph (b):
 - (i) denies the allegations in the sub-paragraph;
 - (ii) says further that it was not required to give particulars of the alleged issues concerning ISX prior to exercising its power to suspend; and
 - (iii) says further or alternatively, if it was required to give ISX particulars of the alleged issues concerning ISX prior to exercising its power to suspend, that the 12 September Price Query and 19 September Price Query constituted particulars of the alleged issues;
- (f) in relation to sub-paragraph (c):
 - (i) denies the allegations in the sub-paragraph;
 - (ii) says further that it was not required to give ISX an opportunity to address the alleged issues concerning it; and

- (iii) says further or alternatively, if it was required to give ISX an opportunity to address the alleged issues concerning it, the 12 September Price Query and the 19 September Price Query constituted such opportunity.

7A. ASX refers to and repeats paragraphs 5A to 5G above and otherwise denies the allegation in paragraph 7A of the 4FASOC.

8. ASX denies the allegations in paragraph 8 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC} 4FASOC.

8A. ASX refers to and repeats paragraphs 5A to 8 above, denies the allegation in paragraph 8A of the 4FASOC, and says further or in the alternative that ASX's alleged failures (which failures are denied) did not cause the loss or damage claimed by ISX because:

(a) any person aware of the suspension of ISX would or would likely also have been or become aware of one or more of the circumstances set out in paragraph 73 below; and

(b) on or around 15 May 2020, alternatively 20 May 2020, ASX would, or would likely:

(i) not have lifted the suspension of ISX securities; or

(ii) have suspended ISX's securities and kept them suspended,

by reason of:

(iii) ISX's failure to respond adequately to queries raised by ASX in a query letter sent to ISX on 7 May 2020; and

(iv) ASX's ongoing concern regarding ISX's compliance with the Listing Rules in relation to ISX's relationship with Visa;

Particulars

ASX refers to and repeats the particulars to paragraph 49(a)(ii), below.

(c) on or after 4 February 2021, ASX would, or would likely:

(i) not have lifted the suspension of ISX securities; or

(ii) have suspended ISX's securities and kept them suspended,

by reason of:

- (iii) ASX's view that ISX had breached Listing Rule 3.1 by making materially incomplete and misleading disclosures in relation to ISX's suspension by Visa, and failing to disclose ISX's termination by Visa in the Appendix 4C on 29 April 2020;
- (iv) ASX's view that ISX breached Listing Rule 18.7 by making materially incomplete and misleading statements in its (i) responses to ASX's 7 May 2020 query letter dated 13 May 2020 and 25 May 2020, and (ii) response to ASX's 5 August 2020 query letter;
- (v) ASX's view that the breaches of Listing Rules 3.1 and 18.7 referred to in sub-paragraphs (iii)-(iv) immediately above were serious;
- (vi) ASX's view that ISX has, over a protracted period engaged in conduct which did not comply with, or delayed its compliance with, its obligations under the Listing Rules, or otherwise indicated an inability or unwillingness to comply with the Listing Rules, in relation to the status of its relationship with Visa; and
- (vii) ISX's failure to respond to the substance of ASX's concerns about the matters referred to in (iii)-(vi) immediately above, despite being given notice of them and being afforded a lengthy opportunity to do so.

Particulars

ASX refers to and repeats the particulars to paragraph 49(a)(iii), below

8B. In response to paragraph 8B of the 4FASOC, ASX:

- (a) refers to and repeats paragraphs 5A to 8 above;
- (b) refers to and repeats paragraph 52, below; and
- (c) otherwise denies the allegations in the paragraph.

8C. ASX denies the allegation in paragraph 8C of the 4FASOC.

8D. In response to paragraph 8D of the 4FASOC, ASX:

- (a) admits that, in the period 2014 – 2021, as covered by the particulars to paragraph 8D of the 4FASOC, each of AMP Ltd; BSP Financial Group Limited; Crown Resorts Limited; Commonwealth Bank Limited; EML Payments Ltd; Horizon Oil Ltd; Macquarie Group Ltd; National Australia Bank Ltd; Nuix Ltd; Sky City Entertainment Group Limited; The Star Entertainment Group Limited, Tabcorp Holdings Limited; and Westpac Banking Corporation Ltd has been subject to media reporting and/or regulatory action, enquiries and/or investigations;
- (b) otherwise does not know and cannot admit whether any of the entities referred to in sub-paragraph (a) above were the subject of suspicion by any regulator;

(c) admits that none of the main class of securities of the entities referred to in sub-paragraph (a) above, in the period referred to in sub-paragraph (a) above, has been suspended by ASX from quotation on the Australian Securities Exchange;

(d) otherwise denies the allegations in the paragraph.

8E. In response to paragraph 8E of the 4FASOC, ASX refers to and repeats paragraphs 5A to 8 and 8D above, and otherwise denies the allegation.

8F. ASX refers to and repeats paragraphs 8D to 8E above and denies the allegation in paragraph 8F.

8G. ASX refers to and repeats paragraphs 8D to 8F above and denies the allegation in paragraph 8G.

D. Alleged failure to lift the suspension from quotation

Alleged first failure to lift ~~the~~ suspension

9. In response to paragraph 9 of the ~~SOCASOC FASOC~~ ~~2FASOC 3FASOC 4FASOC~~, ASX:

- (a) refers to and relies on the terms of the First Query Letter for their full force and effect; and
- (b) otherwise admits the allegations in the paragraph.

10. In response to paragraph 10 of the ~~SOCASOC FASOC~~ ~~2FASOC 3FASOC 4FASOC~~, ASX:

- (a) refers to and relies on the terms of the media release made by ISX on 2 October 2019 for their full force and effect;
- (b) otherwise admits the allegations in the paragraph; and
- (c) says further that the media release stated that ISX welcomed any opportunity to address regulator queries, which it said are a normal part of operating in regulated markets and industries.

11. In response to paragraph 11 of the ~~SOCASOC FASOC~~ ~~2FASOC 3FASOC 4FASOC~~, ASX:

- (a) refers to and repeats paragraph 7 above;
- (b) admits that movement in ISX's share price occurred as stated in sub-paragraphs (d)(i) to (d)(ii);

- (c) otherwise denies the allegations in the paragraph;
- (d) says further that on 2 October 2019, ASX explained to ISX factors contributing to its decision to suspend ISX's shares from quotation;

Particulars

Conference call between Tim Hart (ISX) and James Gerraty (ASX) at 2:24pm lasting approximately 10 minutes

- (e) says further that on 7 October 2019, ASX explained to ISX the reasons for its decision to suspend ISX's shares from quotation; and

Particulars

Conference call between Tim Hart, Liz Warrell (ISX), Anthony Seyfort, Colin Almond (HWL), James Gerraty, Dean Litis, Kevin Lewis and Clare Porta (ASX) at approximately 10:15am lasting approximately 2 hours

- (f) says further that on 7 October 2019 ISX stated to shareholders that the reason it was suspended from trading was due to share price volatility over recent months and that it welcomed a period of suspension.

Particulars

Market announcement titled 'Update re share price volatility suspension' and made at 5:50pm via the ASX's Market Announcement Platform

12. In response to paragraph 12 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

- (a) admits that, on or about 10 October 2019 and the preceding days, ISX provided ASX with a written response to the First Query Letter together with annexures and documents (**First Response**);
- (b) refers to and relies on the terms of the First Response for their full force and effect;
- (c) admits that the First Response asserted that it contained confidential information not to be released to the market but does not know and therefore cannot admit that was the fact; and
- (d) otherwise denies the allegations in the paragraph.

13. ASX admits that it did not lift the suspension and otherwise denies the allegations in paragraph 13 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

Alleged second failure to lift the suspension

14. In response to paragraph 14 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the Second Query Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
15. In response to paragraph 15 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) admits that on or about 25 October 2019 and the preceding days, ISX provided ASX with a written response to the Second Query Letter together with documents **(Second Response)**;
 - (b) refers to and relies on the terms of the Second Response for their full force and effect;
 - (c) admits that the Second Response asserted that it contained confidential information not to be released to the market but does not know and therefore cannot admit that was the fact; and
 - (d) otherwise denies the allegations in the paragraph.
16. In response to paragraph 16 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 28 October Letter for their full force and effect;
 - (b) denies the allegations in sub-paragraph (e) and says that the 28 October Letter asserted that detail about information requests had been leaked and received by a short-seller;
 - (c) otherwise admits the allegations in the paragraph; and
 - (d) says further that the 28 October Letter said that the First and Second Query Letters were clearly a standard exercise in seeking to ensure that the market was fully informed by a listed company.
17. ASX denies the allegations in paragraph 17 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC.
18. In response to paragraph 18 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:

- (a) refers to and relies on the terms of the 30 October Email for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
19. ASX admits that it did not lift the suspension and otherwise denies the allegations in paragraph 19 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC.

Alleged third failure to lift the suspension

20. In response to paragraph 20 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies upon the terms of the Third Query Letter for their full force and effect;
 - (b) denies that the Third Query Letter improperly referred to confidential information that ISX had given ASX; and
 - (c) otherwise admits the allegations in the paragraph.
21. In response to paragraph 21 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 31 October HWL Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
22. In response to paragraph 22 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 31 October HWL Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
23. ASX admits the allegations in paragraph 23 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC.
24. In response to paragraph 24 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 31 October ASX Email for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.

25. ASX admits the allegations in paragraph 25 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

26. In response to paragraph 26 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

- (a) admits that on 1 November 2019, ISX provided ASX with a written response to the Third Query Letter together with documents (**1 November Response**);
- (b) refers to and relies on the terms of the 1 November Response for their full force and effect;
- (c) admits that the 1 November Response asserted that it contained confidential information not to be released to the market but does not know and therefore cannot admit that was the fact; and
- (d) otherwise denies the allegations in the paragraph.

26A. In response to paragraph 26A of the 4FASOC, ASX:

- (a) admits that a telephone conference was attended by representatives of ASIC and ASX on 4 November 2019 between 2:40pm and about 3:06pm;
- (b) says that paragraphs 26A(a)-(b) of the 4FASOC do not constitute proper pleadings because they plead evidence, rather than material facts, and therefore ASX does not plead to them.

26B. ASX admits the allegation in paragraph 26B.

27. In response to paragraph 27 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

- (a) refers to and relies on the terms of the letter from Mr Moran dated 5 November 2019 for their full force and effect;
- (b) otherwise admits the allegations in the paragraph; and
- (c) says further that the letter stated that:
 - (i) the provision by an entity of frank and full responses to ASX's queries could obviate the need for further questions;
 - (ii) the circumstances giving rise to ISX's suspension were well known to it;

- (iii) the reasons why ISX's securities remained in suspension would be evident to it from the matters raised by ASX in the First, Second and Third Query Letters;
- (iv) these reasons included matters relating to compliance by ISX with the Listing Rules relating to continuous disclosure and security issuance;
- (v) matters of concern to ASX had not been satisfactorily addressed by ISX to date; and
- (vi) the period of any suspension would depend on factors that included the nature of the potential breaches, the degree of cooperation by the entity with ASX's enquiries, and any further matters disclosed by ASX's enquiries.

28. In response to paragraph 28 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

- (a) refers to and relies on the terms of the email from Mr Lewis on 5 November 2019 for their full force and effect;
- (b) otherwise admits the allegations in the paragraph; and
- (c) says further that the email:
 - (i) referred ISX to ASX's market announcement which contained the reasons for the suspension;
 - (ii) stated that, as a result of further enquiries since 2 October 2019, there was growing evidence that the suspension could be grounded under Listing Rules 17.3.1 and 17.3.2; and
 - (iii) stated that failing to provide an amended response addressing deficiencies in the 1 November Response would be a breach of Listing Rule 18.7.

29. In response to paragraph 29 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

- (a) admits that, during a meeting with ISX on 6 November 2019, ASX said that it would consult with ASIC before reinstating ISX's shares to quotation; and
- (b) otherwise denies the allegations in the paragraph.

30. In response to paragraph 30 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

(a) says that on 4 November 2019, not 7 November 2019, Mr Luxford said by email to HWLE (among other things) that “we ask that you direct enquiries in relation to the determination of ISX suspension to the ASX directly”;

(b) says that on 7 November 2019, Mr Luxford said by email to HWLE (among other things) that “the decision by ASX to suspend ISX Ltd from trading on 2 October 2019 was not made with a direction from ASIC”;

(c) (a) refers to and relies on the terms of the emails from Mr Luxford on 4 and 7 November 2019 for their full force and effect; and

(d) (b) otherwise admits denies the allegations in the paragraph.

30A. In response to paragraph 30A, ASX:

(a) refers to and relies on the terms of the email from Mr Karantzis of 8 November 2019 for their full force and effect; and

(b) otherwise denies the allegations in the paragraph.

30B. In response to paragraph 30B, ASX:

(a) refers to and relies on the terms of ISX’s market announcement dated 11 November 2019 for their full force and effect; and

(b) otherwise admits the allegations in the paragraph.

30C. In response to paragraph 30C, ASX:

(a) refers to and relies on the terms of ASX’s market announcement dated 11 November 2019 for their full force and effect;

(b) admits it informed the market of the matters pleaded in sub-paragraph (a);

(c) admits that it did not state the matters alleged in sub-paragraph (b);

(d) otherwise denies the allegations in the sub-paragraph.

30D. ASX refers to and repeats paragraphs 5A to 5G, 7A, 30 and 30A to 30C above and denies the allegation in paragraph 30D.

31. ASX admits the allegations in paragraph 31 of the ~~SOCASOC~~ ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC.

32. In response to paragraph 32 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) admits that it received an eighteen page response to the Third Query Letter on 15 November 2019 with an annexure (**Third Response**);
 - (b) refers to and relies on the terms of the Third Response for their full force and effect;
 - (c) admits that the one page annexure to the Third Response was marked “Not for Release to Market”;
 - (d) admits that the Third Response said the matters alleged in sub-paragraph (d); and
 - (e) otherwise denies the allegations in the paragraph.
33. In response to paragraph 33 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 15 November HWL Letter for their full force and effect;
 - (b) denies that the matters alleged in sub-paragraphs (a) and (b) were the fact; and
 - (c) otherwise admits that the 15 November HWL Letter said the matters alleged in sub-paragraphs (a) and (b).
34. In response to paragraph 34 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 15 November HWL Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
35. ASX admits that it did not lift the suspension, refers to and repeats paragraphs 26A, 30, and 30A above, and otherwise denies the allegations in paragraph 35 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC.

Alleged fourth failure to lift the suspension and unreasonable exercise of power to compel confidential information

36. In response to paragraph 36 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 19 November ASX Email for their full force and effect;
 - (b) admits the allegations in sub-paragraph (a);

- (c) otherwise denies the allegations in the paragraph; and
 - (d) says further that the 19 November ASX Email said that:
 - (i) failure to provide information required by ASX is a breach of Listing Rule 18.7;
 - (ii) if ISX refused to provide information required by ASX, that refusal would provide ASX with a further basis to maintain the suspension of ISX's shares from quotation;
 - (iii) ASX would not give undertakings of the type demanded by ISX in order to remain in a position to meet ASX's obligations as a licenced market operator; and
 - (iv) ASX would consider any reasonable request for specified information to be provided to it on the basis that it not be released to the market.
37. In response to paragraph 37 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:
- (a) refers to and relies on the terms of the Fourth Query Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
38. In response to paragraph 38 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:
- (a) refers to and relies on the terms of the 22 November HWL Letter for their full force and effect;
 - (b) admits the allegation that the 15 November HWL Letter said the matters alleged in sub-paragraphs (a) to (f);
 - (c) denies the allegation that the matters listed alleged in sub-paragraphs (a) to (c), (e) and (f) were the fact; and
 - (d) says that it does not know and therefore cannot admit that the matter alleged in sub-paragraph (d) was the fact.
39. In response to paragraph 39 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:
- (a) refers to and relies on the terms of the 22 November HWL Letter for their full force and effect; and

- (b) otherwise admits the allegations in the paragraph.
40. In response to paragraph 40 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 25 November ASX Email for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
41. In response to paragraph 41 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the 25 November HWL Letter for their full force and effect;
 - (b) in relation to sub-paragraph (a):
 - (i) admits that the 25 November HWL Letter observed the matters alleged in the sub-paragraph;
 - (ii) admits that the 25 November ASX Email did not confirm to HWL the matters alleged in the sub-paragraph;
 - (iii) otherwise denies the allegations in the sub-paragraph; and
 - (c) otherwise admits the allegations in sub-paragraphs (b) and (c), save that it does not know and therefore cannot admit that the further information provided was confidential.
42. In response to paragraph 42 of the ~~SOCASOC FASOC~~2FASOC 3FASOC 4FASOC, ASX
- (a) admits that on 26 November 2019, ISX provided ASX with a written response to the Fourth Query Letter together with documents (**Fourth Response**);
 - (b) refers to and relies on the terms of the Fourth Response for their full force and effect;
 - (c) admits that the Fourth Response asserted that it contained confidential information not to be released to the market but does not know and therefore cannot admit that was the fact; and
 - (d) otherwise denies the allegations in the paragraph.

43. ASX admits that it did not lift the suspension, refers to and repeats paragraphs 26A, 30 and 30A above, and otherwise denies the allegations in paragraph 43 of the ~~SOCASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC.

Alleged failure to respond within a reasonable period of time and unfounded allegations made by ASX

44. In response to paragraph 44 of the ~~SOCASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) admits that a letter was sent from Mr Moran to HWL on 27 November 2019 regarding information provided by ISX to ASX;
 - (b) refers to and relies on the terms of the First 27 November ASX Letter for their full force and effect; and
 - (c) otherwise denies the allegations in the paragraph.
45. In response to paragraph 45 of the ~~SOCASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the Second 27 November ASX Letter for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
46. In response to paragraph 46 of the ~~SOCASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the First 28 November HWL Letter for their full force and effect;
 - (b) denies that the matters alleged in sub-paragraphs (a), (c) and (d) were the fact;
 - (c) does not know, and therefore cannot admit, that the matter listed in sub-paragraph (b) was the fact; and
 - (d) admits that the First 28 November HWL Letter said the matters alleged in sub-paragraphs (a) to (d) save that ISX required ASX to provide its draft findings by 1:00pm on Monday, 2 December 2019.
47. In response to paragraph 47 of the ~~SOCASOC~~ ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the Second 28 November HWL Letter for their full force and effect;

- (b) denies the allegation that the matters listed alleged in sub-paragraphs (a) and (c) were the fact; and
 - (c) otherwise admits the allegation that the Second 28 November HWL Letter said the matters alleged in sub-paragraphs (a) to (f).
48. In response to paragraph 48 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:
- (a) admits that it did not provide its draft findings by 1:00pm on Sunday, 1 December 2019 or Monday, 2 December 2019;
 - (b) admits that it did not reinstate the quotation of ISX's shares on the Australian Securities Exchange after receiving the First 28 November HWL Letter;
 - (c) otherwise denies the allegations in the paragraph; and
 - (d) says further that:
 - (i) it provided its draft findings to ISX on Friday, 6 December 2019;
 - (ii) it invited ISX to provide any representations that it wished to make by Friday, 10 January 2020, or sooner if it could. It also invited ISX to request a longer period to respond if it required;
 - (iii) ISX requested that it have until Friday, 24 January 2020 to provide its representations so that it had a fair opportunity to consider the draft findings and obtain legal advice before providing its response;
 - (iv) ASX agreed to ISX's requested extension; and
 - (v) ASX denies that, even had it delivered its draft findings on 1 December 2019 or 2 December 2019, there was a reasonable prospect of the suspension being lifted before the Christmas break, as to which it refers to and repeats sub-paragraphs (d)(ii) and (d)(iii) above.

Particulars

Letter from Kevin Lewis (ASX) to Timothy Hart (ISX) dated 6 December 2019 enclosing the draft findings

Letter from Anthony Seyfort (HWL) to Daniel Moran (ASX) dated 8 January 2020

Letter from Janine Ryan (ASX) to Anthony Seyfort (HWL) dated 8 January 2020

Alleged failure to lift the suspension after ISX had complied with ASX's Directions

- 48A. ASX refers to and relies on the terms of the letter from Kevin Lewis to Timothy Hart dated 1 May 2020 (**Directions Letter**), which contained three directions (**Directions**), for their full force and effect and otherwise admits the allegations in paragraph 48A of the ~~3FASOC~~ 4FASOC.
- 48B. In response to paragraph 48B of the ~~3FASOC~~ 4FASOC, ASX:
- (a) says that the direction to publish a breakdown by sector of revenue in each quarterly activity report was the third direction made in the Directions Letter (**Third Direction**);
 - (b) refers to and relies on the terms of the Third Direction for their full force and effect;
 - (c) admits that on 15 May 2020, ISX issued its quarterly report with a breakdown by sector of the revenue ISX had derived during 1Q20, thereby complying with the Third Direction for that quarter; and
 - (d) otherwise denies the allegations in the paragraph.
- 48C. In response to paragraph 48C of the ~~3FASOC~~ 4FASOC, ASX:
- (a) says that the direction to make an announcement to the market, satisfactory to ASX, with specified information regarding the Variation Letter and Nona Agreement was the first direction made in the Directions Letter (**First Direction**);
 - (b) refers to and relies on the terms of the First Direction for their full force and effect;
 - (c) admits that on 20 May 2020, ISX published announcements on the Market Announcements Platform titled "Disclosure regarding Nona Agreement (2017)" and "Disclosure regarding Variation Letter (2018)", thereby complying with the First Direction; and
 - (d) otherwise denies the allegations in the paragraph.
- 48D. In response to paragraph 48D of the ~~3FASOC~~ 4FASOC, ASX:
- (a) says that the direction to engage an independent expert, acceptable to ASX, to review ISX's policies and processes to comply with Listing Rule 3.1 and release the expert's findings was the second direction made in the Directions Letter (**Second Direction**);

- (b) refers to and relies on the terms of the Second Direction for their full force and effect;
- (c) says that on 19 May 2020, and as required by the Second Direction, ISX appointed Mr Michael Linehan, a Partner of Clayton Utz, to prepare an independent expert report regarding ISX's continuous disclosure policy; and

Particulars

ISX's announcement published on the Market Announcements Platform titled "Independent Expert Appointment" dated 19 May 2020

- (d) otherwise denies admits the allegations in the paragraph.

48DA. In response to paragraph 48DA, ASX:

- (a) admits that on 17 June 2020 at 9:15am, ASX wrote to Michael Linehan of Clayton Utz (copying representatives of ISX and ASX) saying:

"I wanted to make sure that you are aware of the further breaches by ISX of chapter 3 of the listing rules evidenced by the following market releases and factor those into your independent review of ISX's continuous disclosure policies", and provided links to two ASX market releases:

- (b) refers to and relies upon the terms of the 17 June 2020 email of 9:15am for their full force and effect; and
- (c) otherwise denies the allegation in the paragraph.

48DB. In response to paragraph 48DB, ASX:

- (a) admits that on 18 June 2020 at 1:55pm, ASX wrote to Michael Linehan of Clayton Utz (copying representatives of ISX, ASX and Clayton Utz) saying, in the context of clarifying the scope of the Second Direction, (among other things) that:

"ASX regards ISX's failure to properly disclose the Visa suspension and the reason(s) for it as a clear and serious breach of Listing Rule 3.1 that would appear to raise potential issues about the adequacy of ISX's policies and processes to comply with that rule. These potential issues clearly fall within the purview of your review and report, as per the first sentence of the [Second Direction]...":

(b) refers to and relies upon the terms of the 18 June 2020 email of 1:55pm for their full force and effect; and

(c) otherwise denies the allegation in the paragraph.

48E. In response to paragraph 48E of the 3FASOC 4FASOC, ASX:

- (a) does not know, and therefore cannot admit, that the document described as a “report of the independent experts” was provided to ISX on 16 July 2020;
- (b) admits that a document titled “ISX: Independent Review of Continuous Disclosure Policy and Processes” prepared by Clayton Utz and dated 16 July 2020 (**First Clayton Utz Report**) included the following statement:

“Based on our review in accordance with the Agreed Scope, we did not identify any contract entered into by ISX with customers since 1 January 2018 that has not been disclosed and that, in our opinion, was of such a nature that a reasonable person would have expected information about the contract to affect the price or value of ISX's shares.”

(ba) admits that the First Clayton Utz Report included the following statements:

(i) “based on the information available to us, we are unable to conclude that the decision taken by ISX to not announce the Visa suspension at the time of the initial suspension constituted a breach of its continuous disclosure obligations”;

(ii) “ISX announced the fact of the suspension in its Appendix 4C on 29 April 2020 on the basis that it had formed the view that the suspension subsequently became material (as it could lead to a material event, being termination of the Visa arrangement).

We consider that the disclosure in the Appendix 4C in these circumstances was deficient. In particular, if the fact of the suspension was announced on the basis that ISX considered it to be potentially material information, the announcement did not fully disclose potentially material information. In particular, we consider that the disclosure should have included the following:

(i) additional information regarding the potential impact of the suspension; and

- (ii) if the suspension was considered to be material at the time of announcement, a statement that ISX would continue to update the market in relation to material developments in respect of the ongoing discussions with Visa, or in respect of alternative arrangements that could be made by ISX.

We note that the correspondence between ASX and ISX, and the letter to shareholders dated 24 May 2020 in respect of the Visa arrangements that was released to the market on 25 May 2020 provides a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final”.

and otherwise refers to and repeats paragraph 48F(d)(ii)(B), below:

- (bb) admits that a circular resolution of ISX dated 16 July 2020 records:

“IT IS RESOLVED that the Directors of the Company accept the recommendations of the Independent Expert report into Continuous Disclosure and instruct the Managing Director and Company Secretary to implement and/or update policies and procedures per the recommendations of the report”.

- (c) refers to and relies on the terms of the First Clayton Utz Report and 16 July 2020 circular resolution for their full force and effect;
- (d) refers to and repeats paragraph 48F below; and
- (e) otherwise denies the allegation in the paragraph.

48F. In response to paragraph 48F of the ~~3FASOC~~ 4FASOC, ASX:

- (a) says that an email from John Karantzis attaching the First Clayton Utz Report and a draft announcement that attached only the executive summary (pages 1-5) of the First Clayton Utz Report was sent to Janine Ryan on 17 July 2020 at 8:19am; and
- (b) admits that in its email of 17 July 2020 at 8:19am ISX asserted that it had complied with all of the Directions and asked ASX to lift the suspension in trading of securities as soon as possible;
- (c) says that ISX had not complied with the Second Direction by 17 July 2020 ~~denies that ISX had complied with all of the Directions as at 17 July 2020;~~

(d) says further that:

- (i) compliance by ISX with the Directions was in any event in and of itself not sufficient for ASX to reinstate ISX's shares to quotation on the Australian Securities Exchange; and

Particulars

Final Reasons section 12.6

Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 5 May 2020 at 1:51pm

Email from Kevin Lewis (ASX) to Elizabeth Warrell (ISX) sent on 7 May 2020 at 10:41pm

Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 21 May 2020 at 8:38pm

Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 3 June 2020 at 9:44pm

Email from Janine Ryan (ASX) to John Karantzis (ISX) sent on 17 July 2020 at 12:11pm

ASX Market Announcement, iSignthis Limited (ASX:ISX) Update on status of ASX directions, 22 July 2020

ASX refers to and repeats the particulars to paragraph 49 below

- (ii) during July and August 2020, ASX told ISX that, in its view, ISX had not complied with the Second Direction, including by ISX:
 - (A) refusing to release to the market the full First Clayton Utz Report; and
 - (B) failing to instruct Clayton Utz to review documents relevant to Visa's suspension and termination of its relationship with ISX (**Relevant Documents**) for the purposes of Clayton Utz considering ISX's compliance with its disclosure obligations; and

Particulars

- i. In ISX's 17 July 2020 email at 8:19am, it attached a proposed ASX announcement, which itself attached only the executive summary of the First Clayton Utz Report
- ii. On 17 July 2020 at 1:46pm, ASX wrote to Clayton Utz, copying ISX, about whether it:
 - a. took into account the matters set out by ASX in an email dated 18 June 2020 (in particular the potential issues set out in the fifth paragraph to that email, which concerned Visa's suspension and termination of its relationship with ISX); and
 - b. reviewed all correspondence between ISX and Visa in relation to the Visa suspension and termination: Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) dated 17 June July 2020 at 1:46pm, attaching email from

Kevin Lewis (ASX) to Michael Linehan (Clayton Utz) dated 18 June 2020 at 2.56pm

- iii. On 17 July 2020 at 4:03pm, Clayton Utz replied to ASX, saying that:
 - a. it had considered the matters in ASX's 18 June 2020 email; and
 - b. it had interviewed management regarding the Visa issues and reviewed correspondence to assess ISX's approach to continuous disclosure issues, but that a review of all correspondence between ISX and Visa in relation to those issues was beyond the "Agreed Scope" set out in its report: Email from Michael Linehan (Clayton Utz) to Janine Ryan (ASX) dated 17 July 2020 at 4:03pm
- iv. On 17 July 2020 at 7:06pm, ASX wrote to ISX and Clayton Utz noting, among other things that:
 - a. in light of Clayton Utz's response that afternoon, ASX had a number of further questions in relation to the scope and basis of preparation of, and assumptions and qualifications in, the First Clayton Utz Report; and
 - b. in relation to the associated market announcement lodged with ASX, the Second Direction required ISX to release the expert's findings to the market, and that ASX considered that that required disclosure of the entire First Clayton Utz Report, not just an executive summary of the findings as contained in ISX's draft announcement: Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) and John Karantzis (ISX) dated 17 July 2020 at 7:06pm
- v. On 20 July 2020 at 8:06am, ASX wrote to Clayton Utz, copying ISX, setting out further questions in relation to the First Clayton Utz Report, in relation to:
 - a. the scope of the contracts reviewed;
 - b. the scope of the ASX announcements reviewed;
 - c. the assumptions; and
 - d. the sources of information: Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) dated 20 July 2020 at 8:06am
- vi. On 20 July 2020 at 8:15am, ISX sent an email to ASX in which, among other things, it pressed for the publication of the executive summary of the First Clayton Utz Report only: Email from John Karantzis (ISX) to Janine Ryan (ASX) dated 20 July 2020 at 8:15am
- vii. On 20 July 2020 at 11:32am, ASX sent an email to ISX in which, among other things:
 - a. it explained that the Second Direction required that ISX release the entire First Clayton Utz Report to the market, not the executive summary, and that the executive summary did not include all findings in the First Clayton Utz Report; and
 - b. noted that ASX was not currently satisfied that ISX had complied with the Second Direction: Email from Janine Ryan (ASX) to John Karantzis (ISX) dated 20 July 2020 at 11:32am

- viii. On 20 July 2020 at 12:21pm, ISX replied to ASX, pressing its position that the full First Clayton Utz Report did not need to be released: Email from John Karantzis (ISX) to Janine Ryan (ASX) dated 20 July 2020 at 12:21pm
- ix. On 20 July 2020 at 1:10pm, Clayton Utz responded to ASX's questions in relation to the First Clayton Utz Report stating, among other things, that it "did not request or review all correspondence between ISX and Visa in relation to the suspension and termination, and we do not consider that to do so would form part of our Agreed Scope": Email from Michael Linehan (Clayton Utz) to Janine Ryan (ASX) dated 20 July 2020 at 1:10pm and its attachment titled "Clayton Utz responses to ASX queries"
- x. On 20 July 2020 at 1:34pm, ISX wrote to ASX stating that its position remained unchanged: Email from John Karantzis (ISX) to Janine Ryan (ASX) to dated 20 July 2020 at 1:34pm
- xi. On 20 July 2020 at 2:01pm, ASX wrote to ISX stating that ASX remained of the view that the announcement, in the form lodged the previous Friday 17 July 2020, was not appropriate for release: Email from Janine Ryan (ASX) to John Karantzis (ISX) dated 20 July 2020 at 2:01pm
- xii. On 21 July 2020, ISX wrote to ASX, stating again that it considered release of the executive summary complied with the Second Direction and requesting that ASX's position be "update[d]": Email from Tim Hart (ISX) to Janine Ryan (ASX) dated 21 July 2020 at 3:24pm
- xiii. On 22 July 2020, ASX published an announcement regarding ISX, including regarding its compliance with the First and Third Directions and non-compliance with the Second Direction: ASX market announcement titled "iSignthis Ltd (ASX:ISX) Update on status of ASX Directions" dated 22 July 2020
- xiv. On 22 July 2020, ASX wrote to Clayton Utz:
 - a. providing it with a copy of the Relevant Documents;
 - b. requesting that Clayton Utz confirm whether Clayton Utz was provided with a full copy of the Relevant Documents for the purposes of the preparation of the First Clayton Utz Report; and
 - c. noting that, given the conclusions in the First Clayton Utz Report, it was concerned that Clayton Utz may not have been provided with a full copy of the Relevant Documents: Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) dated 22 July 2020 at 6:28pm
- xv. On 23 July 2020, ASX issued a query letter to ISX, concerning whether the Relevant Documents were provided to Clayton Utz, with a deadline for response of 24 July 2020 at 4:00pm: ASX query letter to ISX dated 23 July 2020
- xvi. On 27 July 2020, Clayton Utz wrote to ASX advising, among other things, that:
 - a. it was not provided with the Relevant Documents for the purposes of preparing the First Clayton Utz Report;
 - b. it was provided with a "chronology of key events" in relation to the ISX relationship with Visa, which it was informed was

- prepared for the ISX board, which included “some extracts of correspondence between ISX and Visa”; and
- c. that it had identified some differences in dates and descriptions of documents in the “chronology of key events” and the Relevant Documents: Email from Michael Linehan (Clayton Utz) to Janine Ryan (ASX) dated 27 July 2020 at 12:17pm
- xvii. On 30 July 2020 at 3:26pm, ASX wrote to ISX, among other things:
 - a. noting that ISX had failed to respond to all of the matters raised in the 23 July 2020 query letter;
 - b. stating that ASX considered that Clayton Utz should be requested to review the Relevant Documents and confirm whether any further findings should be made in light of those documents: Email from Janine Ryan (ASX) to the ISX directors dated 30 July 2020 at 3:26pm
 - xviii. On 31 July 2020, HWL wrote to ASX, among other things, advising that the Relevant Documents were not documents that were relevant to ISX, and therefore were not relevant to Clayton Utz’s considerations for as far as ISX was concerned: Letter from HWLE to ASX dated 31 July 2020
 - xix. On 5 August 2020 at 8:45am, ASX wrote to ISX, among other things:
 - a. noting that it considered that ISX’s failure to request Clayton Utz review the Relevant Documents and confirm whether any further finding should be made in light of those documents would act as a further impediment to ISX’s satisfaction of the Directions; and
 - b. attached a further query letter regarding disclosures in relation to the Visa suspension and termination: Email from Janine Ryan (ASX) to the ISX directors dated 5 August 2020 at 8:45am, attaching a query letter dated 5 August 2020
 - xx. On 12 August 2020, ISX sent the ASX Market Announcements Platform a market announcement titled “Independent Expert Report: ISX Compliance with Continuous Disclosure Requirements” which it requested be released to the market, which announcement attached the executive summary of the First Clayton Utz Report
 - xxi. On 13 August 2020, ASX wrote to ISX referring to ISX’s proposed market announcement and noting that ISX had not sought to address the various issues ASX had previously raised in relation to the independent expert report and the executive summary and therefore ASX did not consider it appropriate to publish the announcement: Email from James Gerraty (ASX) to John Karantzis (ISX) on 13 August 2020 at 10:26am
 - xxii. On 13 August 2020 at 10:55am, ISX wrote to ASX asserting, among other things, that not releasing the executive summary of the First Clayton Utz Report would be misleading, but otherwise did not propose to release the full First Clayton Utz Report: Email from John Karantzis (ISX) to James Gerraty (ASX) dated 13 August 2020 at 10:55am
 - xxiii. On 17 August 2020, ISX responded to ASX’s query letter dated 5 August 2020 stating that, at ASX’s request, it had asked Clayton Utz

whether its opinion was changed by the Relevant Documents: ISX's response to ASX's 5 August 2020 query letter, dated 17 August 2020

xxiv. On 17 August 2020, ISX published the First Clayton Utz Report to shareholders on its website

(e) otherwise denies the allegations in the paragraph.

48FA. In response to paragraph 48FA, ASX:

(a) admits that on 17 July 2020:

(i) ASX wrote to Clayton Utz, copying ISX, about whether it:

(A) took into account the matters set out by ASX in an email dated 18 June 2020 (in particular the potential issues set out in the fifth paragraph to that email, which concerned Visa's suspension and termination of its relationship with ISX); and

(B) reviewed all correspondence between ISX and Visa in relation to the Visa suspension and termination;

Particulars

Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) dated 17 July 2020 at 1:46pm, attaching email from Kevin Lewis (ASX) to Michael Linehan (Clayton Utz) dated 18 June 2020 at 2.56pm

(ii) Clayton Utz replied to ASX, saying that:

(A) it had considered the matters in ASX's 18 June 2020 email; and

(B) it had interviewed management regarding the Visa issues and reviewed some correspondence to assess ISX's approach to continuous disclosure issues, but that a review of all correspondence between ISX and Visa in relation to those issues was beyond the "Agreed Scope" set out in its report.

Particulars

Email from Michael Linehan (Clayton Utz) to Janine Ryan (ASX) dated 17 July 2020 at 4:03pm

(iii) ASX wrote to ISX and Clayton Utz noting, among other things that:

- (A) in light of Clayton Utz's response that afternoon, ASX had a number of further questions in relation to the scope and basis of preparation of, and assumptions and qualifications in, the First Clayton Utz Report; and
- (B) in relation to the associated market announcement lodged with ASX, the Second Direction required ISX to release the expert's findings to the market, and that ASX considered that that required disclosure of the entire First Clayton Utz Report, not just an executive summary of the findings as contained in ISX's draft announcement.

Particulars

Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) and John Karantzis (ISX) dated 17 July 2020 at 7:06pm:

- (b) relies on the terms of the 17 July 2020 correspondence for their full force and effect; and
- (c) otherwise denies the allegations in the paragraph.

48FB. In response to paragraph 48FB, ASX:

- (a) admits that on 20 July 2020, it wrote to Clayton Utz, copying ISX, setting out further questions in relation to the First Clayton Utz Report, in relation to:
 - (i) the scope of the contracts reviewed;
 - (ii) the scope of the ASX announcements reviewed;
 - (iii) the assumptions; and
 - (iv) the sources of information;

Particulars

Email from Janine Ryan (ASX) to Michael Linehan and Brendan Groves (Clayton Utz) dated 20 July 2020 at 8:06am

- (b) refers to and relies on the terms of the 20 July 2020 email for their full force and effect; and
- (c) otherwise denies the allegations in the paragraph.

48FC. In response to paragraph 48FC, ASX:

- (a) admits that, on 30 July 2020, ASX wrote to ISX in which, among other things, it stated that ASX considered that Clayton Utz should be requested to review the Relevant Documents and confirm whether any further findings should be made in light of those documents:

Particulars

ASX refers to particular (xvii) to paragraph 48F(d)(ii) above.

- (b) admits that, on 16 August 2020, John Karantzis wrote to Clayton Utz by email in which he said (among other things) that ASX had provided Clayton Utz with seven redacted attachments involving Visa entities on about 23 July 2020, referred to particular parts of the First Clayton Utz Report regarding ISX's relationship with Visa, and said:

"Please review the seven redacted attachments sent to you by Janine Ryan and tell me whether the opinion which you expressed in the Independent Review [First Clayton Utz Report] in relation to this issue remains the same or not. If it does not, please tell me what if any amendments need to be made to the Independent Review [First Clayton Utz Report] in relation to this issue":

- (c) refers to and relies on the terms of the emails of 30 July 2020 and 16 August 2020 for their full force and effect; and

- (d) otherwise denies the allegations in the paragraph.

48G. In response to paragraph 48G of the ~~3FASOC~~ 4FASOC, ASX does not know, and therefore cannot admit, when the document described in that paragraph as a "supplementary report of the independent experts" was provided to ISX.

48H. In response to paragraph 48H of the ~~3FASOC~~ 4FASOC, ASX:

- (a) admits that:
- (i) on 7 September 2020 the First Clayton Utz Report and a document titled "ISX: Independent Expert Review of Continuous Disclosure Policy and Processes - Supplementary Report" dated 4 September 2020 (**Supplementary Clayton Utz Report**) were published on the Market Announcements Platform;

- (ii) by email on 7 September 2020 at 11:34am, ISX sent a copy of the Supplementary Clayton Utz Report to ASX; and
 - (iii) in a letter attached to its email of 7 September 2020 at 11:34am:
 - (A) ISX asserted that it had complied with all of the Directions, and said that it knew of no reason why ISX's shares should remain suspended from trading;
 - (B) ISX demanded that the suspension be lifted immediately;
 - (b) refers to and relies on the terms of the email from John Karantzis to Janine Ryan on 7 September 2020, together with attachments, for their full force and effect, and otherwise admits sub-paragraph (b);
 - (c) refers to and repeats paragraph 48F(d) above, and the particulars thereto;
 - (d) says further that on 7 September 2020 (and not earlier), ISX complied with the Second Direction; and
 - (e) otherwise denies the allegations in the paragraph.
- 48I. ~~ASX admits that ISX has complied with the Directions given by ASX,~~ refers to and repeats paragraphs 48A-48H above, and otherwise admits that on and from 7 September 2020 (and not earlier), ISX has complied with the Directions given by ASX, and otherwise denies the allegations in the paragraph.
- 48IA. ASX admits the allegations in paragraph 48IA.
- 48J. In response to paragraph 48J of the ~~3FASOC~~ 4FASOC, ASX:
- (a) refers to and repeats paragraphs 48F and 48H above and 49 below;
 - (b) admits that it did not lift the suspension after ISX complied with the Directions;
 - (c) otherwise denies the allegations in the paragraph; and
 - (d) says further that compliance by ISX with the Directions in and of itself was not sufficient for ASX to reinstate ISX's shares to quotation on the Australian Securities Exchange.

Particulars

Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 5 May 2020 at 1:51pm

Email from Kevin Lewis (ASX) to Elizabeth Warrell (ISX) sent on 7 May 2020 at 10:41pm

Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 21 May 2020 at 8:38pm

~~Email from Kevin Lewis (ASX) to John Karantzis (ISX) sent on 3 June 2020 at 9:44pm~~

Email from Janine Ryan (ASX) to John Karantzis (ISX) sent on 17 July 2020 at 12:11pm

ASX Market Announcement, iSignthis Limited (ASX:ISX) Update on status of ASX directions, 22 July 2020

ASX refers to and repeats the particulars to paragraph 49 below

48K. In response to paragraph 48K of the 3FASOC 4FASOC, ASX:

- (a) in relation to sub-paragraph (a):
 - (i) refers to and relies on the terms of the email sent on 1 May 2020 at 2.16pm by John Karantzis to Daniel Moran for their full force and effect;
 - (ii) admits that the email sent on 1 May 2020 at 2.16pm by John Karantzis to Daniel Moran offered to escrow “the milestone performance shares held by current directors, officers, Select All Enterprise Ltd and Red 5 Solutions Ltd (but excluding our employees who represent circa 14%)”; and
 - (iii) does not know, and therefore cannot admit, whether the shares subject of the escrow offer were in fact the ordinary shares held by the current directors and officers of ISX, Select All Enterprise Ltd and Red 5 Solutions Ltd, and had been issued following the achievement of the milestones;
- (b) in relation to sub-paragraph (b):
 - (i) refers to and relies on the terms of the email sent on 2 May 2020 at 9.40am by John Karantzis to Kevin Lewis for their full force and effect;
 - (ii) admits that the email sent on 2 May 2020 at 9.40am by John Karantzis to Kevin Lewis said that it offered to escrow 99.7% of the original issue of the milestone performance shares; and
 - (iii) does not know, and therefore cannot admit, whether the shares subject of the escrow offer were in fact 99.7% of the ordinary shares issued when the performance shares converted following the achievement of the milestones;

- (c) admits the allegations in sub-paragraph (c);
- (d) in relation to sub-paragraph (d):
 - (i) refers to and relies on the terms of the email sent at 7:45pm on 18 May 2020 by Daniel Moran to Anthony Seyfort for their full force and effect;
 - (ii) otherwise denies the allegations in the sub-paragraph; and
- (e) says further that:
 - (i) on 20 December 2019, 5 May 2020 and 11 June 2020, ASX gave feedback to ISX about the terms of an escrow agreement which might be acceptable to it, and sought information and documents from ISX in order to properly consider an escrow proposal;

Particulars

- i. The information and documents sought from ISX included, among other things:
 - a. details of the current holders of the Milestone Shares that were proposed to be escrowed, including how and when those holders acquired their shares and for what consideration;
 - b. details of the Milestone Shares which ISX said had been sold, including details of the persons who were sold these shares, how and when and for what consideration they were issued these shares, how and when and for what consideration they were sold these shares and, if they sold through an off-market transaction, to whom they were sold;
 - c. details of how Performance Shares went from being owned by iSignthis Limited (BVI) to other persons: Letter from Daniel Moran (ASX) to HWL dated 20 December 2019; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 10:27pm; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 8:58pm; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 9:33pm; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 9:52pm; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 10:12pm; Email from Kevin Lewis (ASX) to John Karantzis (ISX) dated 5 May 2020 at 11:15pm; Letter from Kevin Lewis (ASX) to ISX Directors dated 11 June 2020
- (ii) upon receipt of the proposed escrow agreement from ISX on 18 May 2020, ASX said that no escrow proposal would be considered until after the relevant information that ASX requested had been provided;

Particulars

Email from Daniel Moran (ASX) to Anthony Seyfort (HWL) dated 18 May 2020 at 7:44pm

ASX Market Announcement, iSignthis Limited (ASX:ISX) Correction of Statements in ISX Letter to Shareholders dated 18 June 2020

- (iii) ISX has not provided to ASX all the information sought by ASX; and
 - (iv) no escrow arrangement is in place.
- 48L. ASX denies the allegations in paragraph 48L of the ~~3FASOC~~ 4FASOC and repeats paragraph 48K(e) above.
49. ASX refers to and repeats paragraphs 9 to 48L above, denies the allegations in paragraph 49 of the ~~SOCASOC FASOC~~ 2FASOC ~~3FASOC~~ 4FASOC and:
- (a) as to the allegation at sub-paragraph (b):
 - (i) says further that at all relevant times, ASX has considered it to be appropriate that securities in ISX be and remain suspended from quotation on the Australian Securities Exchange;
 - (ii) says further and in the alternative that from around 15 May 2020, or alternatively 20 May 2020, ASX would, or would likely:
 - (A) not have lifted the suspension of ISX securities; or
 - (B) have suspended ISX's securities and kept them suspended, by reason of:
 - (C) ISX's failure to respond adequately to queries raised by ASX in a query letter sent to ISX on 7 May 2020; and
 - (D) ASX's ongoing concern regarding ISX's compliance with the Listing Rules in relation to ISX's relationship with Visa₊.

Particulars

Listing Rules 3.1, 17.3.1, 17.3.4 and 18.7

ASX query letter to ISX dated 7 May 2020 regarding the suspension and then termination of ISX's participation in the Visa network

Initial email in response to the query letter from John Karantzis (ISX) to Kevin Lewis (ASX) dated 13 May 2020, with attachments

Email from Kevin Lewis (ASX) to John Karantzis (ISX) on 14 May 2020

Further email in response from John Karantzis (ISX) to Kevin Lewis (ASX) dated 20 May 2020 at 9.10am

Letter from ISX to ASX in response dated 25 May 2020, with enclosed letter sent by ISX to its shareholders dated 24 May 2020

ASX Market Announcement, iSignthis Limited (ASX:ISX) ASX query letter and ISX's responses dated 25 May 2020

ASX query letter to ISX dated 15 June 2020 and the email in response from John Karantzis (ISX) to James Gerraty (ASX) dated 15 June 2020

ASX query letter to ISX dated 23 July 2020

Letter from HWL to ASX dated 24 July 2020

Email from Janine Ryan (ASX) to Anthony Seyfort (HWL) and copying John Karantzis (ISX) on 24 July 2020 at 6:55pm

Email from John Karantzis (ISX) to Janine Ryan (ASX) on 24 July 2020 at 7:44pm

Letter from HWL to ASX dated 27 July 2020

Email from Janine Ryan (ASX) to ISX Directors on 30 July 2020 at 3:26pm

Letter from HWL to ASX dated 31 July 2020

Email from Janine Ryan (ASX) to Colin Almond (HWL) on 5 August 2020 at 8:39am

Email from Janine Ryan (ASX) to ISX Directors on 5 August 2020 at 8:45am attaching the query letter to ISX dated 5 August 2020

ASX query letter to ISX dated 5 August 2020 and ISX's response dated 17 August 2020

Email from Janine Ryan (ASX) to John Karantzis (ISX) on 20 August 2020 at 11:18am

Email from Janine Ryan (ASX) to ISX Directors on 10 September 2020 at 3:10pm

ASX query letter to ISX dated 10 September 2020 and ISX's response dated 14 September 2020

ASX's letter to ISX dated 9 October 2020

ASX Market Announcement, iSignthis Limited (ASX:ISX) ASX query letters regarding ISX's suspension and termination by Visa dated 26 October 2020

Letter from ASX to ISX dated 4 February 2021

Letter from HWLE to ASX dated 19 March 2021, attaching submission

Letter from HSF to HWLE dated 14 May 2021

Letter from ASX to ISX dated 14 May 2021

Other particulars may be provided after discovery

(iii) says further and in the alternative that on or after 4 February 2021, ASX would, or would likely:

(A) not have lifted the suspension of ISX securities; or

(B) have suspended ISX's securities and kept them suspended,

by reason of:

(C) ASX's view that ISX had breached Listing Rule 3.1 by making materially incomplete and misleading disclosures in relation to

ISX's suspension by Visa, and failing to disclose ISX's termination by Visa in the Appendix 4C on 29 April 2020;

- (D) ASX's view that ISX breached Listing Rule 18.7 by making materially incomplete and misleading statements in its (i) responses to ASX's 7 May 2020 query letter dated 13 May 2020 and 25 May 2020, and (ii) response to ASX's 5 August 2020 query letter;
- (E) ASX's view that the breaches of Listing Rules 3.1 and 18.7 referred to in sub-paragraphs (C)-(D) immediately above were serious;
- (F) ASX's view that ISX has, over a protracted period engaged in conduct which did not comply with, or delayed its compliance with, its obligations under the Listing Rules, or otherwise indicated an inability or unwillingness to comply with the Listing Rules, in relation to the status of its relationship with Visa; and
- (G) ISX's failure to respond to the substance of ASX's concerns about the matters referred to in (C)-(F) immediately above, despite being given notice of them and being afforded a lengthy opportunity to do so.

Particulars

Listing Rules 3.1, 17.12 and 18.7

Letter from ASX to ISX dated 4 February 2021

Letter from HWLE to ASX dated 19 March 2021, attaching submission

Letter from HSF to HWLE dated 14 May 2021

Letter from ASX to ISX dated 14 May 2021

Other particulars may be provided after discovery

- (b) as to the allegation in sub-paragraph (e), refers to and repeats paragraphs 5A to 5G, 7A, 30 and 30A to 30C, above.

50. ASX denies the allegations in paragraph 50 of the ~~SOCASOC FASOC~~ 2FASOC 3FASOC 4FASOC.

51. ASX denies the allegations in paragraph 51 of the ~~SOCASOC FASOC~~ 2FASOC 3FASOC 4FASOC and says further or in the alternative that ASX's alleged breach of implied obligations (which implied obligations and breach are both denied) did not cause the loss or damage claimed by ISX because:

- (a) any person aware of the suspension of ISX would or would likely also have been or become aware of one or more of the circumstances set out in paragraph 73 below; and
- (b) on or around 15 May 2020, alternatively 20 May 2020, ASX would or would likely:
 - (i) not have lifted the suspension of ISX's securities; or

- (ii) have suspended ISX's securities and kept them suspended in any event.;

by reason of ISX's failure adequately to respond to queries raised by ASX in a Query Letter sent to ISX on 7 May 2020 and related correspondence.

Particulars of sub-paragraph (b)

ASX refers to the particulars to paragraph 49(a)(ii) above

~~ASX Market Announcement, iSignthis Limited (ASX:ISX) ASX query letter and ISX's responses, 25 May 2020~~

- (iii) on or after 4 February 2021, ASX would, or would likely:

(A) not have lifted the suspension of ISX securities; or

(B) have suspended ISX's securities and kept them suspended.

by reason of:

(C) ASX's view that ISX had breached Listing Rule 3.1 by making materially incomplete and misleading disclosures in relation to ISX's suspension by Visa, and failing to disclose ISX's termination by Visa in the Appendix 4C on 29 April 2020;

(D) ASX's view that ISX breached Listing Rule 18.7 by making materially incomplete and misleading statements in its (i) responses to ASX's 7 May 2020 query letter dated 13 May 2020 and 25 May 2020, and (ii) response to ASX's 5 August 2020 query letter;

(E) ASX's view that the breaches of Listing Rules 3.1 and 18.7 referred to in sub-paragraphs (C)-(D) immediately above were serious;

(F) ASX's view that ISX has, over a protracted period engaged in conduct which did not comply with, or delayed its compliance with, its obligations under the Listing Rules, or otherwise indicated an inability or unwillingness to comply with the Listing Rules, in relation to the status of its relationship with Visa; and

(G) ISX's failure to respond to the substance of ASX's concerns about the matters referred to in (C)-(F) immediately above, despite being given notice of them and being afforded a lengthy opportunity to do so.

Particulars

ASX refers to the particulars to paragraph 49(a)(iii) above

51A. In further answer to paragraph 51 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX says that the losses claimed by ISX:

- (a) are not losses arising naturally from the alleged breach;

- (b) are not losses of a kind that was reasonably within the contemplation of ASX and ISX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied); and
- (c) were not matters communicated by ISX to ASX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied) or at all.

ASX has allegedly failed to meet its obligations under its operating rules: Orders pursuant to section 793C(2) and/or 1101B(1)(d) of the Corporations Act

52. In response paragraph 52 of the ~~SOCASOC FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:

- (a) admits that it is, and at all material times was, obliged to exercise the power conferred by Listing Rule 17.3 to suspend an entity's securities from quotation in accordance with the Listing Rules;

Particulars

Clause 4 of the *Australian Market Licence (Australian Stock Exchange Limited) 2002 as varied by Australian Market Licence (Australian Stock Exchange Limited) Variation Notice 2006 (No. 1)*

Section 792A(b) of the *Corporations Act 2001* (Cth)

- (b) admits that by reason of the matters in sub-paragraph 52(a) above, ASX was obliged to exercise the power conferred by Listing Rule 17.3:
 - (i) having formed the requisite opinion specified in Listing Rule 17.3;
 - (ii) honestly and in good faith; and
 - (iii) affording procedural fairness appropriate to the circumstances.
- (c) admits that any failure by ASX to enforce Listing Rule 17.3 in the manner stated in sub-paragraph 52(b) above would constitute a failure to enforce ASX's operating rules for the purposes of s 793C of the *Corporations Act 2001* (Cth);
- (d) admits that, if ASX failed to comply with its obligations to enforce Listing Rule 17.3 in the manner stated in paragraph 52(b) above, ISX would be a person aggrieved within the meaning of s 793C(1)(d) of the *Corporations Act 2001* (Cth); and
- (e) otherwise denies the allegations in the paragraph.

53. ASX denies the allegations in paragraph 53 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

ASX has allegedly contravened section 792A(a) of the Corporations Act: Order pursuant to section 1324(1)

54. ASX denies the allegations in paragraph 54 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

55. ASX denies the allegations in paragraph 55 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

56. ASX denies the allegations in paragraph 56 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

E. Judicial review of the alleged decisions to suspend and not lift the suspension

Alleged amenability of ASX to judicial review: Datafin principle

57. In response to paragraph 57 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}, ASX:

(a) in relation to sub-paragraph (a):

- (i) admits that it decided to suspend the quotation of ISX's shares on the Australian Securities Exchange;
- (ii) refers to and repeats paragraphs ~~5A-6~~^{5A-6} to ~~8G~~^{8G} above; and
- (iii) otherwise denies the allegations in the sub-paragraph; and

(b) denies the allegations in sub-paragraph (b).

58. ASX denies the allegations in paragraph 58 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

59. ASX denies the allegations in paragraph 59 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

Alleged decision to suspend ISX's shares from quotation

60. ASX denies the allegations in paragraph 60 of the ~~SOCASOC FASOC~~^{2FASOC 3FASOC 4FASOC}.

Alleged decisions to not reinstate ISX's shares to quotation

61. ASX denies the allegations in paragraph 61 of the ~~SOCASOC FASOC~~~~2FASOC 3FASOC~~
4FASOC.

Particulars

At all times, ASX held the opinion that it was appropriate that ISX's securities ~~be remain~~ suspended ~~from quotation including~~ on the basis that the market was not informed of matters that were material or which ASX considered to be material

62. ASX denies the allegations in paragraph 62 of the ~~SOCASOC FASOC~~~~2FASOC 3FASOC~~
4FASOC.

- 62A. In further answer to the allegations in paragraphs 57 to 62 of the ~~SOCASOC FASOC~~
2FASOC 3FASOC 4FASOC, ASX says that the Court:

- (a) would not recognise, create or otherwise exercise any supervisory or other judicial review jurisdiction in relation to decisions of ASX; or
- (b) would otherwise inevitably withhold the grant of judicial review remedies in the exercise of discretion,

because aggrieved persons can obtain adequate alternative remedies under the *Corporations Act 2001* (Cth).

Particulars

ASX refers to paragraph 52 above and s 793C of the *Corporations Act 2001* (Cth)

F. ASX's decision to publish formal findings and give directions

63. In response to paragraph 63 of the ASOC ~~FASOC~~~~2FASOC 3FASOC~~ 4FASOC, ASX:
- (a) refers to and relies on the terms of the letter dated 6 December 2019 from Mr Lewis to Mr Hart and the Draft Findings for their full force and effect;
 - (b) otherwise admits the allegations in paragraph 63 of the ASOC ~~FASOC~~~~2FASOC~~ 3FASOC 4FASOC; and
 - (c) says further that ASX provided ISX an opportunity to make representations to ASX about why ASX should not make some or all of the findings, and why ASX should

not take some or all of the actions it proposed to take on the basis of the findings, by 10 January 2020.

Particulars

Letter from Kevin Lewis to Timothy Hart dated 6 December 2019, attaching the Draft Findings

64. In response to paragraph 64 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the letter dated 17 December 2019 from Mr Almond and Mr Seyfort to Mr Moran for their full force and effect; and
 - (b) otherwise ~~admits~~ denies the allegations in the paragraph.
65. In response to paragraph 65 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the letter dated 20 December 2019 from Mr Moran to Mr Seyfort for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph (but not the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC points of emphasis).
66. In response to paragraph 66 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the letter dated 20 December 2019 from Mr Almond and Mr Seyfort to Mr Moran for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
67. In response to paragraph 67 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the letter dated 23 December 2019 from Mr Moran to Mr Seyfort for their full force and effect; and
 - (b) otherwise admits the allegations in the paragraph.
68. In response to paragraph 68 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:
- (a) refers to and relies on the terms of the ISX Response and the letter from HWLE dated 24 January 2020 for their full force and effect;
 - (b) otherwise admits the allegations in the paragraph (but not the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC points of emphasis);

- (c) says further that ISX, through its solicitors, requested an extension of time to 24 January 2020 to provide representations to ASX on the Draft Findings; and

Particulars

Letter from Anthony Seyfort to Daniel Moran dated 8 January 2020.

- (d) says further that ASX agreed to give ISX the requested extension of time.

Particulars

Letter from Janine Ryan to Anthony Seyfort dated 8 January 2020.

69. In response to paragraph 69 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:

- (a) refers to and relies on the terms of the ISX Response for their full force and effect; and
- (b) otherwise admits the allegations in the paragraph.

70. In response to paragraph 70 of the ASOC ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:

- (a) refers to and relies on the terms of the Draft Reasons for their full force and effect; and
- (b) otherwise admits the allegations in the paragraph; and
- (c) ~~says further that the intended direction to ISX pleaded in sub-paragraph (c) referred, in addition to the sectors pleaded in sub-paragraphs (c)(i)–(iv), to “Credit providers”, “Travel services”, and “Other” sectors.~~

70A. In response to paragraph 70A of the ~~FASOC~~ 2FASOC 3FASOC 4FASOC, ASX:

- (a) refers to and relies on the terms of the Final Reasons for their full force and effect;
- (b) says that ASX’s stated intention to make directions under listing rule 18.8 as soon as it is able to do so expressly noted the injunctions sought in the interlocutory application filed by ISX in this proceeding on 12 March 2020; and
- (c) otherwise admits the allegations in the paragraph.

70B. In response to paragraph 70B of the 2FASOC 3FASOC 4FASOC, ASX:

- (a) admits the allegations in the paragraph; and

- (b) says further that ASX published the Final Reasons and made the Directions after ISX applied for, and was refused, an interlocutory injunction to prevent ASX from doing so.

70C. In response to paragraph 70C of the ~~3FASOC~~ 4FASOC, ASX:

- (a) refers to and relies on the terms of the Directions Letter for their full force and effect;
- (b) admits that it issued the Directions Letter to ISX on 1 May 2020; and
- (c) otherwise denies the allegations in the paragraph.

71. ASX denies the allegations in paragraph 71 of the ASOC ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC.

72. In response to paragraph 72 of the ASOC ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs ~~63~~ to 71 above and denies the allegations in the paragraph.

73. In response to paragraph 73 of the ASOC ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 68 to 72 above and denies the allegations in the paragraph and says further or in the alternative that ASX's alleged breach of implied obligations (which implied obligations and breach are both denied) did not cause the loss or damage claimed by ISX because any person aware of the Final Reasons would or would likely also have been or become aware of one or more of the following circumstances:

ISX's Announcement in relation to the Final Reasons

- (a) on 30 April 2020, ISX published on the ASX Market Announcements Platform a Letter to Shareholders concerning the Federal Court's judgment in relation to ISX's application for an interlocutory injunction.
- (b) the Letter to Shareholders referred to in sub-paragraph (a) recorded ISX's contention that the Final Reasons contained "erroneous and unwarranted conclusions" and emphasised that the judgment said there was a "serious question to be tried in respect of the accuracy of particular findings made by ASX".

Particulars

iSignthis, Letter to Shareholders – Federal Court Action, 30 April 2020

ISX's Response to the Final Reasons

- (c) ISX maintains a website on which it has in the past published information about ASX's enquiries (www.isignthis.com/investors);

Particulars

iSignthis, Media Release, 2 October 2019

(<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2019/October/Media%20Release%2002.10.pdf?hsLang=en>)

iSignthis, Update on suspension due to share price volatility, and clarification of the distribution of Consideration Shares and Performance Rights, 7 October 2019

(<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2019/October/Update%20re%20share%20price%20volatility%20suspension%207.10.pdf?hsLang=en>)

iSignthis, Shareholder Update, 11 November 2019

(<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2019/November/Shareholder%20Update%2011.11.pdf?hsLang=en>)

iSignthis, Letter to Shareholders, 22 January 2020

(<https://w3.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/Letter%20to%20Shareholders%2022.01.pdf?hsLang=en>)

iSignthis, Letter to Shareholders; Subject: The Age and The Sydney Morning Herald Articles, 23 January 2020

(<https://w3.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/Letter%20to%20Shareholders%20re%20SMH%20and%20the%20Age%2023.01.pdf?hsLang=en>)

iSignthis, Letter to Shareholders; Subject: The Age and The Sydney Morning Herald (SMH) Articles 5th February 2020, 6 February 2020

(<https://w3.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/Shareholder%20Update%2006.02.pdf?hsLang=en>)

iSignthis, Letter to Shareholders - Federal Court Action, ~~20~~ 30 April 2020

(<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/April/Letter%20to%20Shareholders%20-%20Federal%20Court%20Action.pdf?hsLang=en>)

iSignthis, Letter to Shareholders: ASX Directions, 1 May 2020

(<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/May/Letter%20to%20Shareholders.pdf?hsLang=en>)

iSignthis, iSignthis announcement to shareholders, 4 May 2020

(<https://www.isignthis.com/resources-blog/isignthisresponse>); including link to iSignthis' official response to ASX's Statement of Reasons, 1 May 2020

(https://www.isignthis.com/hubfs/Investor%20Documents%202020/ISX_Formal%20response%20to%20ASX%20reasons%5B1%5D.pdf?hsLang=en)

- (d) on 1 May 2020, ISX sent a Letter to Shareholders regarding the directions made by ASX, which referred to ASX's Final Reasons. The Letter to Shareholders was circulated publicly on social media on and from 1 May 2020;

Particulars

iSignthis, Shareholders Update re ASX Directions, 1 May 2020

HotCopper, Letter to Shareholders : ASX Directions

(<https://hotcopper.com.au/threads/letter-to-shareholders-asx-directions.5375701/>), 1 May 2020

- (e) on 4 May 2020, ISX published on its website an announcement to shareholders including the “Full ISX Official Response to the ASX SoR”;

ISX’s claims about ASX’s decision-making procedures

- (f) on 25 May 2020, ASX made an announcement to the ASX Market under ISX’s code releasing a copy of a 7 May 2020 Query Letter from ASX to ISX and related correspondence, which included responses from ISX making claims to the effect that ASX engaged in “*an outrageous abuse of ASX’s powers*”, pursued matters that were “*not an appropriate use of ASX’s powers*”, that there were “*errors in ASX’s Statement of Reasons*”, that ASX had “*refused to publish [ISX’s] response*”, and that ISX did not have “*confidence that the ASX is acting in good faith*”, all of which conveyed that ASX’s position in relation to ISX, including its Final Reasons, was a contested issue;

Termination of relationship with Visa

- (g) on 29 April 2020, ISX announced to the ASX market that “*processing to merchants across the Visa network was also suspended for parts of March pending response to Visa re queries on ASX ‘investigation’, concerns re ‘derogatory media’ and other matters*”;

Particulars

ISX Appendix 4C, 29 April 2020

- (h) by no later than 1 May 2020, it was publicly reported that Visa’s anti-money-laundering division had suspended the Second Applicant;

Particulars

Visa Global Registry of Service Providers, as updated on 1 May 2020
Australian Financial Review, *Rear Window*, 4 May 2020, citing Visa’s website

- (i) by no later than 29 May 2020, it was publicly reported that Visa had removed ISX and the Second Applicant from its Global Registry of Service Providers;

Particulars

Visa Global Registry of Service Providers, as updated on 29 May 2020

Other payments processing issues

- (j) on 29 April 2020, it was publicly reported by ISX that ISX failed to process transactions across a number of card schemes.

Particulars

ISX Appendix 4C, 29 April 2020

Ongoing ASIC Investigation

- (k) since October 2019 and as at 30 April 2020, it was publicly known that ISX was the subject of regulatory investigation by the Australian Securities and Investments Commission;

APRA and RBA regulatory applications

- (l) it was publicly known:
 - (i) from at least 5 July 2019, that ISX had applied for an Authorised Deposit-taking Institution (ADI) licenses from the Australian Prudential Regulation Authority and an exchange settlement account from the Reserve Bank of Australia;
 - (ii) at all times since 5 July 2019 that ISX had not been granted an ADI licence or exchange settlement account;

Particulars

ISX ASX Announcement, Australian Licensing Update, 5 July 2019

Sydney Morning Herald, *iSignthis party put on hold by watchdogs*, 5 October 2019

Australian Financial Review, *iSignthis backs NSX with stake*, 21 February 2020

Other matters

- (m) it was publicly reported on and from October 2019 that several ISX customers were linked with alleged regulatory breaches;

Particulars

Danish bank, KAB, was charged with violations of Danish money-laundering regulations: Sydney Morning Herald, *iSignthis party put on hold by watchdogs*, 5 October 2019.

AGM Markets, OT Capital and Ozifin were subject to freezing orders in Australia, and regulatory action by US and Israeli authorities: Australian Financial Review, *iSignthis source of revenue is “deceptive”*, 29 October 2019; The Times of Israel, *Australia stock market probe hints at magnitude of alleged Israeli scam industry*, 30 October 2019; Sydney Morning Herald, *Three iSignthis clients face US, Israeli legal action*, 1 November 2019; Sydney Morning Herald, *Executives linked to iSignthis customer face US fraud charges*, 18 November 2019; Sydney Morning Herald, *'Make YOU Rich': Court finds iSignthis customers ran fake bitcoin ads*, 3 March 2020.

XtraderFX was raided by Austrian and German police in February 2019 after they suspected it snared customer deposits and showed traders fake profits, encouraging them to deposit more funds; ISX was processing bank transfers from customers of XtraderFX as recently as 2019: Australian Financial Review, *iSignthis and the high risk, high reward online payments game*, 18 November 2019.

(iSignthis processed payments and ran authentication checks for gambling and sports betting sites run by Araxio Development NV (Zetcasino, Alfcasino, Wazamba and Malina Casino, and sports betting site Librabet). Almost all of these sites are banned by the Cyprus gaming authority according to its blocked gaming sites: Australian Financial Review, *iSignthis and the high risk, high reward online payments game*, 18 November 2019.

FCorp was reported on 19 December 2019 to have been ordered to stop trading by the German financial regulator and the subject of a warning by Australian regulators to consumers that FCorp may be running an online trading scam: Sydney Morning Herald, *iSignthis customer in hot water over licence*, 19 December 2019.

Maxi EFX Global AU Pty Ltd, which operates the EuropeFX platform, was reported on 2 January 2020 to have had assets frozen on application by ASIC: Sydney Morning Herald, *Latest iSignthis customer has assets frozen*, 2 January 2020.

EuropeFX, a direct iSignthis customer, was accused of operating an unlicensed investment scheme in Australia that has allegedly caused harm to consumers: Sydney Morning Herald, *Rabbitohs sponsor, iSignthis customer under criminal investigation*, 17 January 2020.

Rodeler and Hoch Capital, a Cypriot online broker, was banned from operating in the UK by the Financial Conduct Authority. Rodeler and Hoch Capital had been banned from providing financial services in France in August 2016 (the ban was lifted in July 2017) and was placed on the Ontario Securities Commission's Warning List in April 2013. Rodeler and Hoch Capital was an iSignthis customer in early 2017: Australian Financial Review, *iSignthis CEO John Karantzis plays the Wirecard*, 5 July 2020.

- (n) from at least 24 January 2020, it was known that Gadens was investigating a class action against ISX for breach of continuous disclosure obligations, misleading or deceptive conduct, and breach of directors' duties;

Particulars

Gadens website regarding ISX investigation
(<https://classactions.gadens.com/Actions/Details/13>)

Sydney Morning Herald, *iSignthis faces shareholder class action*,
29 January 2020

- (o) from at least 8 May 2020, it was known that ISX acquired Probanx, which was publicly reported to have earlier set up or advised nine fake Gambian banks involved in defrauding hundreds of millions of dollars from real, state-owned banks;

Particulars

Australian Financial Review, *Rear Window*, 8 May 2020

- (p) at all material times, ISX and its operations have attracted significant adverse media and other scrutiny;
- (q) other circumstances may be identified after discovery.

73A. In further answer to paragraph 73 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX says that the losses claimed by ISX:

- (a) are not losses arising naturally from the alleged breach;
- (b) are not losses of a kind that was reasonably within the contemplation of ASX and ISX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied); and
- (c) were not matters communicated by ISX to ASX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied) or at all.

Orders pursuant to sections 793C(2), 1101B(1) and / or 1324(1) of the Corporations Act

74. In response to paragraph 74 of the ASOC ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 68 to 71 above and denies the allegations in the paragraph.

75. In response to paragraph 75 of the ASOC ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraph 74 above and denies the allegations in the paragraph.

Allegation that Listing Rule 18.8 is invalid for inconsistency with the Corporations Act

76. In response to paragraph 76 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX denies the allegation conveyed by the word “purported” and otherwise admits the allegations in the paragraph.

77. In response to paragraph 77 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ ~~4FASOC~~, ASX denies the allegation conveyed by the word “purported” and otherwise admits the allegations in the paragraph.
78. In response to paragraph 78 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ ~~4FASOC~~, ASX:
- (a) refers to and relies on the full force and effect of Listing Rule 18; and
 - (b) otherwise denies the allegations in the paragraph.
79. In response to paragraph 79 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ ~~4FASOC~~, ASX repeats paragraphs 76 to 78 above and denies the allegations in the paragraph.
80. In response to paragraph 80 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ ~~4FASOC~~, ASX repeats paragraph 79 above and denies the allegations in the paragraph.
81. In response to paragraph 81 of the ~~FASOC~~ ~~2FASOC~~ ~~3FASOC~~ ~~4FASOC~~, ASX repeats paragraph 80 above and denies the allegations in the paragraph.

G. Alleged misleading or deceptive conduct by ASX

(i) *October and November market announcements*

82A. In response to paragraph 82A, ASX admits that the listed shares of ISX are a financial product within the meaning of section 763A of the *Corporations Act 2001* (Cth) and otherwise denies the allegations in the paragraph.

82B. In response to paragraph 82B, ASX:

- (a) refers to and relies on the terms of the market announcements of 2 October 2019 and 11 November 2019 for their full force and effect;
- (b) denies the allegations in the paragraph; and
- (c) says in the alternative that the statements in each of the 2 October 2019 and 11 November 2019 market announcements contained at most implied representations that ASX held a view or opinion that it was appropriate to suspend ISX’s securities from quotation.

Particulars

- i. The 2 October 2019 market announcement included that “ASX has determined that it is appropriate to suspend trading in the shares of ... ISX...”;

- ii. The 11 November 2019 market announcement included that: “Under Listing Rule 17.3.4, ASX has the power to suspend any security from trading where for any reason ASX considers that course to be appropriate. ASX was satisfied that the suspension of ISX’s securities on 2 October 2019 was appropriate...”; and “...ASX considers it appropriate that trading in ISX’s securities remains suspended until further notice”.

82C. In response to paragraph 82C, ASX denies the allegations and says further and in the alternative there were reasonable grounds for the Opinion Representations (if it is established that the Opinion Representations were made).

Particulars

ASX refers to paragraph 5E(b)(iii), and the particulars thereto, above.

82D. In response to paragraph 82D, ASX refers to and repeats paragraphs 5A to 5G and 7A above, and

(a) denies sub-paragraph (a):

(b) refers to and repeats paragraph 82C and otherwise denies sub-paragraph (b):

(c) says that sub-paragraph (c) is vague and does not constitute a proper pleading because it does not identify the matters omitted and otherwise denies the sub-paragraph.

82E. In response to paragraph 82E, ASX refers to and repeats paragraphs 82A to 82D above, and denies the allegations in the paragraph.

82F. In response to paragraph 82F, ASX:

(a) repeats paragraph 82E above:

(b) denies the allegations in the paragraph; and

(c) says in the alternative that ASX’s alleged misleading or deceptive conduct (which is denied) did not cause the loss or damage claimed by the applicants because any customers or potential customers aware of the “Suspension Representations” and/or the “Opinion Representations” (as those terms are defined in the 4FASOC) would or would likely also have been or become aware of one or more of the circumstances set out in paragraph 73 above.

82G. ASX denies the allegation in paragraph 82G.

(ii) *The Final Reasons*

82. In response to paragraph 82 of the ~~2FASOG~~ ~~3FASOG~~ 4FASOC, ASX admits that the listed shares of ISX are a financial product within the meaning of section 763A of the Corporations Act and otherwise denies the allegations in the paragraph.
83. In response to paragraph 83 of the ~~2FASOG~~ ~~3FASOG~~ 4FASOC, ASX:
- (a) relies on the Final Reasons for their full force and effect;
 - (b) denies the allegations in the paragraph; and
 - (c) says in the alternative that any of the First to ~~Eighth~~ Eleventh Representations was at most a representation that ASX held a view or opinion having regard to information provided to it by ISX by reason of the following matters:
 - (i) the Final Reasons read fairly as a whole;
 - (ii) the context in which the Final Reasons were published, being the suspension of trading in ISX's securities on 2 October 2019, ASX's subsequent enquiries, and consideration of whether to lift the suspension by reference to ASX's opinion about ISX's compliance with the Listing Rules in accordance with Listing Rule 17.3;
 - (iii) the Final Reasons were expressed to be a record of ASX's "view" having regard to "information ASX has received from ISX";

Particulars of sub-paragraph (iii)

Paragraph 1.11 of the Final Reasons

- (iv) the matters alleged to constitute the First Representation were expressed to be "ASX's view";
- (v) the matters alleged to constitute the Second Representation were expressed in terms that "based on the materials that have been presented by ISX to ASX thus far, in ASX's view, there are serious questions to be determined as to whether the revenue derived by ISX under the Key Contracts was ordinary business revenue or whether it was generated solely or predominantly for the purpose of meeting the Milestones" or that this was a "possible" state of affairs;

- (vi) the matters alleged to constitute the Third Representation were expressed in terms that in “ASX’s view” there are “serious questions” or “issues”, and that ASX “remains concerned”, about the recognition of the revenue derived from the four contracts;
- (vii) the matters alleged to constitute the Fourth Representation were expressed to be “information ... to which ASX has had regard” which “revealed a number of anomalies” and features that “remain a matter of concern for ASX”;
- (viii) the matters alleged to constitute the Fifth Representation were expressed in terms that “ASX remains concerned that the revenue Milestones were not validly met”;
- (ix) the matters alleged to constitute the Sixth Representation were expressed in terms that “a reasonable person would expect” the increases in issued capital to have a material effect on price or value of ISX’s shares and therefore an expression of ASX’s opinion;
- (x) the matters alleged to constitute the Seventh Representation were expressed to be “ASX’s opinion”;
- (xi) the matters alleged to constitute the Eighth, Ninth and Tenth Representations were expressed to be ASX’s “consider[ation]”; and
- (xiA) the matters alleged to constitute the Eleventh Representation were expressed to be ASX’s “view”; and
- (xii) by reason of the matters in sub-paragraphs (i) to (xiA) above, any representation conveyed by the Final Reasons in relation to the matters alleged to constitute the First to Eighth Eleventh Representations (which are denied) was a representation of ASX’s opinion based on information provided to it by ISX, or alternatively of ASX’s opinion, and not a representation of fact.

83A. In response to paragraph 83A of the ~~3FASOC~~ 4FASOC, ASX:

- (a) relies on the Final Reasons for their full force and effect;

- (b) says further that the Final Reasons, including the opinions expressed therein, must be read fairly as a whole, taking into account their full context, including all the matters referred to therein; and
 - (c) otherwise denies the allegations in the paragraph.
84. ASX denies the allegations in paragraph 84 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the First Opinion Representation (if it is established that the First Opinion Representation was made).

Particulars

- i. The “Service Agreement” between Authenticate BV and Corp Destination Pty Ltd (**Corp Destination**) dated 15 May 2018 (**Corp Destination Agreement**), “Service Agreement” between Authenticate BV and FCorp Services Limited dated 30 May 2018 (**FCorp Agreement**), and the “Service Agreement” between Authenticate BV and Immo Servis Group s.r.o. (**Immo**) dated 6 June 2018 (**Immo Agreement**) involved the provision of platform development services
- ii. The agreement between Authenticate BV and Nona Marketing Limited (**Nona**) dated 11 December 2017 (**Nona Agreement**) involved the provision of marketing management services
- iii. ISX represented to ASX that it did not enter into any agreements akin to the FCorp, Immo or the Nona Agreements in the December 2018 half year and the 2019 year to 22 November 2019: Fourth Response, answer to question 7
- iv. ISX’s principal activities as described in its financial statement for the financial year ending 30 June 2018 did not include platform development services and marketing management services: ISX Appendix 4E Preliminary Final Report for year ending 30 June 2018
- v. Integration services were excluded from the services to be provided under the Corp Destination, FCorp and Immo Agreements
- vi. The Corp Destination Agreement was entered into and claimed to have been substantially performed within 1.5 months just prior to the end of the ~~6-month period ending 30 June 2018~~ (Relevant Period); the FCorp Agreement was entered into and claimed to have been substantially performed within 1 month just prior to the end of the Relevant Period; the Immo Agreement was entered into and claimed to have been substantially performed within 3 weeks just prior to the end of the Relevant Period; and the Nona Agreement was entered into and claimed to have been performed within 2-3 months at the beginning of the Relevant Period
- vii. Each of the Corp Destination, FCorp, Immo and Nona Agreements included the payment of fixed fees
- viii. The provision of one-off services over a short period with fixed fees, in the Corp Destination, FCorp, Immo and Nona Agreements (**Key Contracts**), was in contrast to the identity verification and transactional processing business that ISX normally undertook
- ix. ISX represented that it “has created market opportunities to explore and generate new revenue streams in the quarter ending 30 June

2018. These new revenue streams involving eMoney accounts and direct service integration on behalf of existing and new merchants and other forms of settlement and payment services to merchants operating in high risk industries will provide the following benefits ... Additional one off revenues to new merchants enabling direct connection to our core services. These revenues are at low margin and have a direct correlation with an increase in cost of goods sold but they will enable long term, consistent revenues via our core services and creates a stickier relationship with the merchant.”: ISX’s Appendix 4C for the June 2018 quarter released on 31 July 2018

85. ASX denies the allegations in paragraph 85 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the Second Opinion Representation (if it is established that the Second Opinion Representation was made).

Particulars

- i. ASX repeats the particulars to paragraph 84
- ii. ISX did not have the capabilities to meet its obligations under the Corp Destination Agreement, FCorp Agreement and Immo Agreement, and sub-contracted substantially all of its responsibilities under those agreements, who in turn charged ISX fees substantially equivalent to the fees receivable by ISX under the agreements: Service Agreement between Authenticate BV and Fino Software Technologies Ltd (Cyprus) (**Fino**) entered into on 15 May 2018 (**First Fino Agreement**); Service Agreement between Authenticate BV and Fino entered into on 30 May 2018 (**Second Fino Agreement**); Service Agreement between Authenticate BV and Gibi Tech Ltd (Seychelles) signed on 26 and 27 July 2018 (**Gibi Agreement**)
- iii. ISX described its substantive role under the Corp Destination, FCorp and Immo Agreements as including to “acquire a licence of off-the-shelf trading software on behalf of the customer in the customer’s name”: Third Response, answers to questions 8 and 9
- iv. ISX represented to ASX that it never had a copy of licences for off-the-shelf trading software it was required under the Corp Destination Agreement, FCorp Agreement and Immo Agreement to acquire on behalf of the customer in the customer’s name: Fourth Response, answer to question 4

86. ASX denies the allegations in paragraph 86 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the Third Opinion Representation (if it is established that the Third Opinion Representation was made).

Particulars

- i. ASX repeats particular (vi) to paragraph 84
- ii. The ‘certificate of practical completion’ relating to the Corp Destination Agreement dated 14 August 2018 states that ‘all work required’ under that Agreement ‘have [sic] been satisfactorily completed by the 30th June 2018’

- iii. The 'certificate of practical completion' relating to the FCorp Agreement dated 25 July 2018 states that 'all work required' under that Agreement 'have [sic] been satisfactorily completed by the 30th June 2018'
- iv. The 'certificate of practical completion' relating to the Immo Agreement dated 25 July 2018 states that 'all work required' under that Agreement 'have [sic] been satisfactorily completed by the 30th June 2018'
- v. None of the Corp Destination, FCorp and Immo Agreements required the production of certifications of practical completion
- vi. The certificates of practical completion for the Corp Destination, FCorp and Immo Agreements:
 - a. used the same template prepared by ISX; and
 - b. all stated that their underlying agreement was dated 30 May 2018, whereas in fact, the Corp Destination Agreement was dated 15 May 2018 and the Immo Agreement was dated 6 June 2018
- vii. The certificate of practical completion for the FCorp Agreement is unsigned
- viii. The certificate of practical completion for the Immo Agreement dated 25 July 2018 was signed by Mr Alan Pešek, who had ceased to be a director of Immo on 1 June 2018: Third Response, answer to question 6; Complete statement for Immo from the Commercial Register kept by Municipal Court Prague
- ix. The certificates of practical completion for the Corp Destination, FCorp and Immo Agreements state that the 'go live' date of the relevant website was to be advised, with the exception of 'Brand A' under the Immo Agreement
- x. In relation to the Immo Agreement:
 - a. The Gibi Agreement was signed by Gibi on 26 July 2018 and by Authenticate BV on 27 July 2018, in circumstances where Authenticate BV was substantially reliant on Gibi and its sub-contractor(s) to perform its obligations under the Immo Agreement; and
 - b. the invoices issued to Authenticate BV by Gibi for services under the Immo Agreement which Authenticate BV sub-contracted to Gibi under the Gibi Agreement are dated 17 August 2018, 18 ~~November~~ September 2018, 20 November 2018 and 11 December 2018
- xi. There were anomalies in the amounts invoiced to, and payments made by, Corp Destination under the Corp Destination Agreement and Variation Letter:
 - a. The 'Total Commitment' under the Corp Destination Agreement was stated to be €343,500 (ex VAT). The 'Total Commitment' exceeded the aggregate of the line items in the Corp Destination Agreement, which was €298,900
 - b. The fees owing under the Variation Letter were stated to be €183,025

- c. The total amount due to Authenticate BV by Corp Destination under the Corp Destination Agreement and Variation Letter was €526,525
 - d. Authenticate BV issued two invoices to Corp Destination, on 23 May 2018 (CDP-001) and 18 June 2018 (CDP-002) respectively, the sum of which was the same as the total amount due, being €526,525. Each invoice included the bank details of Authenticate BV's ABN Amro account for payment purposes. The amounts invoiced were not strictly calculated per the individual line items in the Corp Destination Agreement
 - e. The full amount of the amount invoiced on 23 May 2018 does not appear to have been paid in accordance with the invoice terms
 - f. ISX identified four separate payments as being in relation to the Corp Destination Agreement and Variation Letter and made on behalf of Corp Destination, which total €508,099.04. Each payment appears to have been made by a different entity, being Bayline Trading Limited, two unnamed entities and Albius Ltd: Document titled "ASX Query Dated 22nd November Q2 Response 1 of 4: Not For Release to Market" annexed to the Fourth Response; Document titled "Bank Statement with Receipts" annexed to the Third Response
 - g. The payments were made into two separate accounts, being Authenticate BV's ABN Amro bank account and iSignthis eMoney Limited's client account with AstroBank
 - h. Corp Destination does not appear to have opened an electronic money account with ISX such as to explain the two payments which were made into iSignthis eMoney Limited's account
 - i. There appears to be an underpayment of €18,425.96 in respect of the Corp Destination Agreement and Variation Letter which ISX identified as "outstanding as at 31/11/2018": Document titled "ASX Query Dated 22nd November Q2 Response 1 of 4: Not For Release to Market" annexed to the Fourth Response
- xii. There were anomalies in the amounts invoiced to, and payments made by, FCorp under the FCorp Agreement:
- a. The 'Total Commitment' under the FCorp Agreement was stated to be €478,500 (ex VAT). The 'Total Commitment' exceeded the aggregate of the line items in the FCorp Agreement, which was €433,900
 - b. Authenticate BV issued 4 invoices to FCorp, one being on 30 May 2018 (FSL-001) and three being on 18 June 2018 (FSL-002; FSL-003; FSL-004). Each invoice included the bank details of Authenticate BV's ABN Amro account for payment purposes. The invoiced amounts were not strictly calculated as per the individual line items in the FCorp Agreement
 - c. ISX identified three separate payments as being in relation to the FCorp Agreement, which total €506,077.23. ISX identified that each of these payments was made by a different entity, being 1/TRX – Systems, Margeteks Project and Masterpay: Document titled "ASX Query Dated 22nd November Q2

Response 3 of 4: Not For Release to Market” annexed to the Fourth Response; Document titled “Bank Statement with Receipts” annexed to the Third Response

- d. ISX identified these payments as being made into FCorp’s electronic money account, which ISX advised were then direct debited by ISX with FCorp’s authority: Fourth Response, question 2c. ISX has not separately identified any direct debits by ISX from FCorp’s electronic money account relating to payments of Authenticate BV’s invoices
 - e. ISX identified that the amount received from FCorp in excess of the amounts invoices (€27,577.23) was carried forward in FCorp’s EMA: Fourth Response, answer to question 2b
 - f. ISX identified €299,500 was outstanding at 30 June 2018 under the FCorp Agreement: document titled “Attachment 2(c) – Trade Debtors and Other Receivables 30 June 2018” annexed to the Second Response. This does not reconcile with the payments which ISX identified as having been made by 30 June 2018, which show that the outstanding amount was €178,112
- xiii. There were anomalies in the amounts invoiced to, and payments made by, Immo under the Immo Agreement:
- a. The ‘Total Commitment’ under the Immo Agreement was stated to be €900,000 (ex VAT)
 - b. Authenticate BV issues eight invoices to Immo, four on 6 June 2018 (IM-001; IM-002; IM-003; IM-004) and four on 18 June 2018 (IM-005; IM-006; IM-007; IM-008). Each invoice included the bank details of Authenticate BV’s ABN Amro account for payment purposes. The invoiced amounts were not strictly calculated as per the individual line items in the Immo Agreement
 - c. ISX identified three payments made by Immo directly to Authenticate BV’s ABN Amro bank account, which total €452,000
 - d. ISX identified a further three separate payments as being in relation to the Immo Agreement, which total €446,096.31. ISX identified that each of these payments was made by a different entity, being HongKong Lanhai, Anjalli Limited and 1/TRX – Systems: Document titled “ASX Query Dated 22nd November Q2 Response 4 of 4: Not For Release to Market” annexed to the Fourth Response; Document titled “Bank Statement with Receipts” annexed to the Third Response
 - e. ISX identified these further three payments as being made into Immo’s electronic money account, which ISX advised were then direct debited by ISX with Immo’s authority: Fourth Response, answer to question 2c. ISX has not separately identified any direct debits by ISX from Immo’s electronic money account relating to payments of Authenticate BV’s invoices
 - f. There appears to be an underpayment of €1,903.69 in respect of the Immo Agreement, which ISX identified as “outstanding as at 31/11/2018”: Document titled “ASX Query Dated 22nd

November Q2 Response 4 of 4: Not For Release to Market” annexed to the Fourth Response

- g. ISX identified that Immo had a credit balance of €9,132 at 30 June 2018: Document titled “Attachment 2(c) – Trade Debtors and Other Receivables 30 June 2018” annexed to the Second Response. This does not reconcile with the payments which ISX identified as having been made by 30 June 2018, which show that the outstanding amount was €112,256 was outstanding
- xiv. There were anomalies in the amounts invoiced to, and payments made by, Nona under the Nona Agreement:
 - a. The total amount payable under the Nona Agreement and related purchase order was stated to be €250,000
 - b. Authenticate BV issued an invoice to Nona on 28 March 2018 (IT-001) for €252,500, without an explanation for why an additional amount of €2,500 was invoiced
 - c. ISX identified two payments as being made into Authenticate BV’s bank account, both being made by Sepaga EMI Limited and including the description “ROC Marketing Services”: Document titled “ASX Query Dated 22nd November Q2 Response 2 of 4: Not For Release to Market” annexed to the Fourth Response. ISX identified that Sepaga EMI Limited is an electronic money institution who identified the actual e-money sender in the reference note of a transfer: ISX’s response to ASX’s draft findings dated 24 January 2020 at [72]. As such it appears that Sepaga EMI Limited transferred the two payments made in respect of the Nona Agreement from ROC Marketing Services to Authenticate BV at Nona’s direction
- xv. ISX represented to ASX that it does not have remittance advices for payments received from Corp Destination, FCorp, Immo and Nona, and that these customers did not provide remittance advices: Fourth Response, answer to question 2a
- xvi. ISX represented to ASX that remittance advices (a) are largely from a bygone era of cheques and manual payments, which was not the case in relation to ISX’s customers, (b) are not customary in ISX’s sector, (c) are not issued for amounts paid into an account of an ISX customer as the incoming SWIFT message provides the requisite detail, and (d) ISX was authorised to debit the relevant customer’s e-money account for payment of the invoices such that there was no need for a “remittance” advice. Notwithstanding these representations:
 - a. ISX’s invoices issued under the Key Contracts each have the notation “Remittance Advice: accounts: isignthis.com”: ISX’s invoices numbered CDP-001, CDP-002, FSL-001, FSL-002, FSL-003, FSL-004, IM-001, IM-002, IM-003, IM-004, IM-005, IM-006, IM-007, IM-008, IT-001;
 - b. ISX did not produce to ASX any SWIFT invoices to ASX when it could readily have done so; and
 - c. ASX understood that:
 - i. the payments for the Nona Agreement were made directly into Authenticate BV’s bank account:

Document titled “ASX Query Dated 22nd November Q2 Response 2 of 4: Not For Release to Market” annexed to the Fourth Response; Document titled “Bank Statement with Receipts” annexed to the Third Response;

- ii. Corp Destination did not have an e-money account (EMA) with ISX: ISX did not provide a copy of any agreement with Corp Destination for the provision of EMA services in the Second Response, answer to question 2(f); ISX did not indicate that Corp Destination was an EMA customer or that ISX generated any revenue for EMA services from Corp Destination in the document titled “Attachment 2(a) (b) – Unaudited Revenue by Customer” annexed to the Second Response; ISX did not indicate that it provided any EMA services to Corp Destination during the June 2018 quarter the Second Response, answer to question 5; and
 - iii. Nona did not have an EMA with ISX at the time the relevant payments were made: ISX’s response to ASX’s draft findings dated 24 January 2020 at [63]; The “E-Money Account (EMA) For Client Payment Services Commercial Agreement” between Nona and iSignthis eMoney Ltd dated 8 June 2018; Document titled “ASX Query Dated 22nd November Q2 Response 2 of 4: Not For Release to Market” annexed to the Fourth Response; Document titled “Bank Statement with Receipts” annexed to the Third Response
- xvii. ISX’s auditors were provided with the certificates of practical completion referred to in particulars (ii)-(iv) above, for the purpose of satisfying the auditors that the Corp Destination, FCorp and Immo Agreements had been practically completed by the end of the Relevant Period and that it was appropriate to recognise their revenue: Third Response
- xviii. Invoices issued by the Authenticate BV to Corp Destination were:
 - a. invoice dated 23 May 2018 (CDP-001) for €475,000, due within 7 days of the execution of the agreement on 15 May 2018; and
 - b. invoice dated 18 June 2018 (CDP-002) for €51,525, due “upon End User Licensee ‘Go Live’”,

but there were substantial delays in payment of the full amounts of those invoices until after the Relevant Period, being payments of:

 - c. €107,318 in November 2018;
 - d. €100,004 in December 2018; and
 - e. €100,777 in December 2018: Document titled “Bank Statement with Receipts” annexed to the Third Response; Document titled “ASX Query Dated 22nd November Q2 Response 1 of 4: Not For Release to Market” annexed to the Fourth Response
- xix. Invoices issued by the Authenticate BV to FCorp were:

- a. invoice dated 30 May 2018 for €239,5000 (FSL-001), due within 7 days; and
- b. invoices dated 18 June 2018 for:
 - i. interim progress payment of €119,625 (FSL-002);
 - ii. progress payment for go live of €93,225 (FSL-003); and
 - iii. monthly service fee of €26,400 (FSL-004), payable in advance,

but there were substantial delays in payment of the full amounts of those invoices until after the Relevant Period, being a payment of €205,689 on 13 September 2018: Document titled “Bank Statement with Receipts” annexed to the Third Response; Document titled “ASX Query Dated 22nd November Q2 Response 3 of 4 : Not For Release to Market” annexed to the Fourth Response

xx. Invoices issued by Authenticate BV to Immo were:

- a. two invoices dated 6 June 2018 (IM-001; IM-003) for €218,400 each, due within 7 days of execution of the agreement;
- b. two invoices dated 6 June 2018 (IM-002; IM-004) for €109,200 each, due “at time of installation”;
- c. two invoices dated 18 June 2018 (IM-005; IM-006) for €96,000 each, due within 7 days of execution of the agreement; and
- d. two invoices dated 18 June 2018 (IM-007; IM-008) for €26,400 each, due within 7 days of execution of the agreement,

but there was a delay in payment of the full amounts of those invoices until after the Relevant Period, including a payment of €110,353 on 20 July 2018: Document titled “Bank Statement with Receipts” annexed to the Third Response; Document titled “ASX Query Dated 22nd November Q2 Response 4 of 4: Not For Release to Market” annexed to the Fourth Response

- xxi. Payments in relation to single invoices in relation to the Corp Destination, FCorp and Immo Agreements were made in a piecemeal manner: Document titled “Bank Statement with Receipts” Annexed to the Third Response; Document titled “ASX Query Dated 22nd November Q2 Response 1 of 4 : Not For Release to Market” annexed to the Fourth Response; Document titled “ASX Query Dated 22nd November Q2 Response 3 of 4 : Not For Release to Market” annexed to the Fourth Response; Document titled “ASX Query Dated 22nd November Q2 Response 4 of 4 : Not For Release to Market” annexed to the Fourth Response
- xxii. The aggregate payments identified by ISX as relating to the Corp Destination Agreement and Immo Agreement did not amount to the total amount due under the applicable invoices: Document titled “ASX Query Dated 22nd November Q2 Response 1 of 4: Not For Release to Market” annexed to the Fourth Response; Document titled “ASX Query Dated 22nd November Q2 Response 4 of 4: Not For Release to Market” annexed to the Fourth Response
- xxiii. The payments identified by ISX as relating to the FCorp Agreement resulted in a balance being carried forward in FCorp’s electronic money account”: Document titled “ASX Query Dated 22nd November

Q2 Response 3 of 4 : Not For Release to Market” annexed to the Fourth Response

87. ASX denies the allegations in paragraph 87 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the Fourth Opinion Representation (if it is established that the Fourth Opinion Representation was made).

Particulars

ASX repeats the particulars (xi)-(xiv), (xviii)-(xxiii) to paragraph 86 above

88. ASX denies the allegations in paragraph 88 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that:

- (a) there were reasonable grounds for the Fifth Opinion Representation (if it is established that the Fifth Opinion Representation was made); and

Particulars

ASX repeats the particulars to paragraphs 84 to 86 above

- (b) there were reasonable grounds for the Ninth Opinion Representation (if it is established that the Ninth Opinion Representation was made); and

Particulars

It was a reasonable interpretation that the word “revenue” — in the terms for the Milestones for the conversion of the Performance Shares — meant revenue that was not generated solely or predominantly for the purpose of meeting the Milestones: ISX (then Otis Energy) Prospectus “for the offer of 103,333,333 Shares each at a price of \$0.03 to raise approximately \$3,100,000 (before costs)”

- (c) there were reasonable grounds for the Tenth Opinion Representation (if it is established that the Tenth Opinion Representation was made).

Particulars

It could fairly be considered that the “revenue” necessary for the Milestones to be achieved was, in accordance with the Prospectus for the issue of the Milestone Shares, ordinary revenue and not revenue that was generated solely or predominantly for the purpose of meeting the Milestones

89. ASX denies the allegations in paragraph 89 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the Sixth Opinion Representation (if it is established that the Sixth Opinion Representation was made).

Particulars

- i. The Key Contracts accounted for €2,157,525 (approximately A\$3.3 million), or approximately 60% of ISX's total revenue for the Relevant Period
- ii. Without that revenue generated by the Key Contracts, none of the Milestones would have been met, resulting in the performance shares converting into a total of three ordinary shares rather than 336,666,667 ordinary shares
- iii. There was a significant increase in the number of ISX's ordinary shares on issue upon the conversion of the performance rights to ordinary shares
- iv. The percentage of ISX's total shares on issue represented by the ordinary shares which converted from the performance rights was significant: the issue of the Milestone A, B and C Shares together in fact resulted in an increase in the number of ordinary shares on issue of 50.4%
- v. ISX's issued capital on 29 August 2018 would have increased by 50% if Milestones A, B and C were met (\$5 million revenue for the Relevant Period)
- vi. A reasonable person would expect those percentage increases in issued capital to have a material effect on the price or value of ISX's shares

90. ASX denies the allegations in paragraph 90 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and says further and in the alternative that there were reasonable grounds for the Seventh Opinion Representation (if it is established that the Seventh Opinion Representation was made).

Particulars

- i. ASX repeats the particulars to paragraph 89

91. ASX denies the allegations in paragraph 91 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC and:

- (a) as to the Eighth Representation, says further that at no time has ISX corrected or withdrawn the "<15% Representation"; and
- (b) says further and in the alternative that:
 - (i) there were reasonable grounds for the Eighth Opinion Representation (if it is established that the Eighth Opinion Representation was made); and

Particulars

- i. ASX repeats the particular (i) to paragraph 89 above
- ii. The Key Contracts involved the provision of one-off services over a short period with fixed fees
- iii. ISX essentially reiterated the <15% Representation when it represented to ASX that 'Integration/Set Up' accounted for only

\$26,860 of revenue generated in the Relevant Period, and it was only in response to a follow up question from ASX that ISX stated that its previous response was “mistaken”, and disclosed that \$2,923,960 should have been classified as ‘Integration/Set up services’ revenue: Second Response, answers to questions 2(a)(ii) and 2(b)(ii); Third Query Letter; Third Response, answer to question 10

- (ii) there were reasonable grounds for the Twelfth Opinion Representation (if it is established that the Twelfth Opinion Representation was made).

Particulars

- i. ASX repeats the particulars to paragraph 91(b)(i) above
- ii. The market sensitivity of representations regarding the percentage of an entity’s revenue derived from recurring, as opposed to one-off, business activity: Research report prepared by Mr Martyn Jacobs of Patersons Securities Limited dated 1 March 2018 in relation to ISX’s December 2017 half year results; Research report prepared by Mr Martyn Jacobs of Patersons Securities Limited dated 1 August 2018 in relation to ISX’s June 2018 quarter Appendix 4C; Research email prepared by Mr Martyn Jacobs of Patersons Securities Limited dated 6 August 2018 in relation to the ISX Analyst Call on 6 August 2018

91A. In response to paragraph 91A of the ~~3FASOC~~ 4FASOC, ASX:

- (a) denies the allegations in the paragraph;
- (b) refers to and repeats the matters pleaded at paragraphs 89 and 90 above; and
- (c) says further and in the alternative that there were reasonable grounds for the Eleventh Opinion Representation (if it is established that the Eleventh Opinion Representation was made).

Particulars

ASX repeats the particulars to paragraph 89 and 91 above

91B. In response to paragraph 91B of the ~~3FASOC~~ 4FASOC, ASX:

- (a) denies the allegations in the paragraph;
- (b) refers to and repeats the matters pleaded at paragraphs 89 to 91 above; and
- (c) says further and in the alternative that there were reasonable grounds for the Thirteenth Opinion Representation (if it is established that the Thirteenth Opinion Representation was made).

Particulars

ASX repeats the particulars to paragraph 89 and 91 above

- 91C. ASX denies the allegations in paragraph 91C of the ~~3FASOC~~ 4FASOC and says further and in the alternative that, there were reasonable grounds for the Fourteenth Opinion Representation (if it is established that the Fourteenth Opinion Representation was made).

Particulars

ISX had a policy of not announcing merchants by name

92. In response to paragraph 92 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 82 to 91C above and denies the allegations in the paragraph.
93. In response to paragraph 93 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:
- (a) repeats paragraph 92 above;
 - (b) denies the allegations in the paragraph; and
 - (c) says in the alternative that ASX's alleged misleading or deceptive conduct (which is denied) did not cause the loss or damage claimed by the applicants because any customers or potential customers aware of the Final Reasons would or would likely also have been or become aware of one or more of the circumstances set out in paragraph 73 above.
94. In response to paragraph 94 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 92 and 93 above and denies the allegations in the paragraph.

ASX ought to be excused from liability

- 94A. In the alternative to paragraphs 93 and 94 above, ASX says that:
- (a) ASX has acted honestly; and
 - (b) having regard to all the circumstances of the case, ASX ought fairly to be excused for any liability under s 1041I(1) of the *Corporations Act 2001* (Cth) pursuant to sections 1041I(4) and 1317S of the *Corporations Act 2001* (Cth).

Particulars

ASX published the Final Reasons in the exercise of its functions and powers as operator of the ASX Market based on information provided to it by ISX.

The Court refused ISX an injunction to restrain the publication of the Final Reasons.

ASX gave ISX opportunities to provide information about the matters ultimately published in the Final Reasons (the last of which ISX chose not to take up).

ISX did not provide to ASX any information about its customers, its subsidiaries' customers, or commercial opportunities now alleged to have been lost by reason of the Final Reasons.

The matters referred to in paragraphs 94B to 94E below.

Contributory negligence

94B. In the alternative to paragraph 94A above, and in the further alternative to paragraphs 93 and 94 above, ASX says:

- (a) by reason of the matters referred to in paragraphs 94C to 94E below, the applicants suffered any alleged loss or damage as a result of their own failure to take reasonable care;
- (b) ASX did not intend to cause the loss or damage that the applicants claim;
- (c) ASX did not fraudulently cause the loss or damage that the applicants claim; and
- (d) in the premises, pursuant to s 1041I(1B) of the *Corporations Act 2001* (Cth), the damages that the applicants may recover in relation to any loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the applicants' share in the responsibility for the loss or damage.

94C. Nicholas John Karantzis, also known as Nikogiannis Karantzis and John Karantzis, is:

- (a) the managing director and chief executive officer of ISX; and
- (b) the managing director of each of the second and third applicants.

94D. ISX engaged with ASX's enquiries leading to the publication of the Final Reasons:

- (a) concerning the affairs of ISX and its related companies, including the second and third applicants; and
- (b) on behalf of ISX and its related companies, including the second and third applicants.

94E. The applicants failed to take reasonable care in that ISX failed to furnish to ASX complete information, material or evidence in support of its contentions that the first to eighth

representations alleged in paragraph 83 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC (which are denied) are not correct.

Particulars

ASX gave ISX opportunities to provide to ASX any information, evidence or other material on which it wished to rely in relation to matters contained in the Final Reasons as follows: in response to the First Query Letter referred to in paragraph 9 of the 2FASOC; in response to the Second Query Letter referred to in paragraph 14 of the 2FASOC; in response to the Third Query Letter referred to in paragraph 20 of the 2FASOC; in response to the Fourth Query Letter referred to in paragraph 37 of the 2FASOC; in response to ASX's invitation to make representations in relation to the Draft Findings referred to in paragraph 63 of the 2FASOC; and in response to ASX's invitation to make representations in relation to the Draft Reasons referred to in paragraph 70 of the 2FASOC.

ISX provided to ASX responses to the First to Fourth Query Letters, and representations in relation to the Draft Findings (the ISX Response of 24 January 2020 referred to in paragraph 68 of the 2FASOC).

ISX did not provide any documents or other response to ASX about the Draft Reasons prior to the Draft Reasons being finalised as the Final Reasons on 13 March 2020.

Any information, material or evidence that ISX may adduce or seek to adduce in this proceeding that it did not previously provide to ASX is information, material or evidence that ISX, taking reasonable care, ought to have provided to ASX prior to the Draft Reasons being finalised as the Final Reasons on 13 March 2020 or prior to the publication of the Final Reasons on 30 April 2020.

H. ASX's refusal to publish ISX's official response to the "Statement of Reasons"

95. In response to paragraph 95 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:

- (a) admits the allegations in the paragraph;
- (b) says further that ASX Listing Rules Guidance Note 14 (section 14) provides that:
 - (i) any announcement for release to the market must be accurate, complete and not misleading;
 - (ii) the market announcement platform should not be used as a guise to publish material that is really promotional, political or tendentious in nature;
 - (iii) an announcement for release to the market must be couched in language that is factual, relevant and expressed in a clear and objective manner and not emotive, intemperate or defamatory or vague or imprecise;

- (iv) ASX may refuse to accept or publish an announcement from a listed entity that does not meet the standards referred to in sub-paragraphs (i) to (iii) above; and
- (c) says further that ASX expressly relied on Guidance Note 14 in connection with its submissions to the Court about ISX's ability to publish its own response to the Final Reasons.

Particulars

Transcript of Proceedings, 16 April 2020, T 59.01-15.

Affidavit of Daniel Vincent Moran sworn on 14 April 2020 at [45].

96. In response to paragraph 96 of the 2FASOC ~~3FASOC~~ 4FASOC, ASX:
- (a) admits that on 1 May 2020 ISX attempted to publish its official response to ASX's "*Statement of Reasons*" on the same Market Announcements Platform on which that document was published under the ISX code;
 - (b) does not know and cannot admit whether ISX attempted this so that the same readers of ASX's "*Statement of Reasons*" were informed of ISX's position; and
 - (c) otherwise denies the allegations in the paragraph.
97. In response to paragraph 97 of the 2FASOC ~~3FASOC~~ 4FASOC, ASX:
- (a) admits that ISX's official response to ASX's Statement of Reasons comprised a one page summary and an 11 page document;
 - (b) relies on ISX's official response to ASX's Statement of Reasons for its full force and effect; and
 - (c) otherwise denies the allegations in the paragraph.
98. In response to paragraph 98 of the 2FASOC ~~3FASOC~~ 4FASOC, ASX:
- (a) admits that on 4 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX's official response to ASX's Statement of Reasons;
 - (b) relies on the letter from Kevin Lewis to the directors of ISX dated 4 May 2020 for its full force and effect;

- (c) relies on Guidance Note 14, especially section 14 referred to in paragraph 95 above and in the letter from Kevin Lewis to the directors of ISX dated 4 May 2020;
 - (d) otherwise denies the allegations in the paragraph; and
 - (e) says further that, on 4 May 2020, ISX published its official response to ASX's Statement of Reasons on its website in an announcement to shareholders.
99. ASX denies the allegations in paragraph 99 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC.
100. In response to paragraph 100 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:
- (a) admits that ISX amended its one page summary; and
 - (b) otherwise denies the allegations in the paragraph.
101. In response to paragraph 101 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:
- (a) denies the allegation in sub-paragraph (a) and says that on 4 May 2020 ISX told ASX that it had taken into account its concerns and had revised its official response; and
 - (b) denies the allegation in sub-paragraph (b) and says that on 4 May 2020 ISX attempted to publish, on the Market Announcements Platform under the ISX code, its amended one page summary together with a slightly amended version of the 11 page document as the company's official response to ASX's Statement of Reasons.
102. In response to paragraph 102 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:
- (a) admits that on 10 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX's amended official response to ASX's Statement of Reasons;
 - (b) relies on the email from Kevin Lewis to John Karantzis of ISX at 12:12pm on 10 May 2020 for its full force and effect;
 - (c) relies on Guidance Note 14, especially section 14 referred to in paragraph 95 above and in the email from Kevin Lewis to John Karantzis of ISX at 12:12pm on 10 May 2020; and
 - (d) otherwise denies the allegations in the paragraph.

103. In response to paragraph 103 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX:

- (a) admits the allegation in sub-paragraph (a);
- (b) denies the allegation in sub-paragraph (b); and
- (c) relies on the email from Kevin Lewis to John Karantzis of ISX at 12:12pm on 10 May 2020 for its full force and effect.

104. In relation to paragraph 104 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC:

- (a) in response to sub-paragraph (a), ASX:
 - (i) admits that paragraph 23(d)(ii) of ISX's written submissions dated 8 April 2020 filed in support of its Interlocutory Application dated 12 March 2020 contained the statement that "*ISX denies representing at an analyst briefing on 3 August 2018 that one-off fees and one-off setups accounted for less than 15% of ISX's revenue*"; and
 - (ii) otherwise denies the allegations in sub-paragraph (a);
- (b) in response to sub-paragraph (b), ASX:
 - (i) admits the allegation in sub-paragraph (b); and
 - (ii) says further that ASX was under no obligation to allege that the statement was misleading at any stage of the Interlocutory Application;
- (c) in response to sub-paragraph (c), ASX:
 - (i) admits the allegation in sub-paragraph (c); and
 - (ii) says further that the First Refusal said that in highlighting certain significantly misleading statements, "ASX does not intend to suggest that the ISX Response otherwise meets ASX's guidance on market announcements"; and
- (d) in response to paragraph 104 says further that, on 4 May 2020, ISX published the statement referred to in paragraph 103(a) of the 2FASOC on its website as part of its official response to ASX's Statement of Reasons.

105. In response to paragraph 105 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 95 to 104 above and denies the allegations in the paragraph.

106. In response to paragraph 106 of the ~~2FASOC~~ 3FASOC 4FASOC, ASX repeats paragraphs 95 to 105 above and denies the allegations in the paragraph.

107. In response to paragraph 107 of the ~~2FASOC~~ 3FASOC 4FASOC, ASX:

- (a) repeats paragraphs 95 to 106 above and denies the allegations in the paragraph;
- (b) says further or in the alternative that ASX's alleged breach of implied obligations (which implied obligations and breach are both denied) did not cause the loss or damage claimed by ISX because:
 - (i) ISX published its official response to the Final Reasons on its website on 4 May 2020; and
 - (ii) any customers or potential customers aware of the Final Reasons would or would likely also have been or become aware of one or more of the circumstances set out in paragraph 73 above; and
- (c) says further that the allegation depends on ISX's anterior allegations concerning ASX's publication of the Final Reasons, in relation to which ASX repeats paragraphs 82 to 94E above as a basis for denying liability.

107A. In further answer to paragraph 107 of the ~~2FASOC~~ 3FASOC 4FASOC, ASX says that the losses claimed by ISX:

- (a) are not losses arising naturally from the alleged breach;
- (b) are not losses of a kind that was reasonably within the contemplation of ASX and ISX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied); and
- (c) were not matters communicated by ISX to ASX at the time of entering into the agreement pleaded at paragraphs 3 and 4 of the 2FASOC (which agreement is denied) or at all.

ASX's alleged failure to meet its obligation under its operating rules

108. In response to paragraph 108 of the ~~2FASOC~~ 3FASOC 4FASOC, ASX:

- (a) repeats paragraphs 95 to 106 above and denies the allegations in the paragraph; and

- (b) says further that ASX is not obliged under its operating rules or otherwise to publish ISX's amended official response to ASX's Statement of Reasons on the Market Announcements Platform under the ISX code.

Particulars

Guidance Note 14

109. In response to paragraph 109 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraph 108 above and denies the allegations in the paragraph.

ASX's alleged contravention of section 792A(a) of the Corporations Act

110. In response to paragraph 110 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 95 to 106 above and denies the allegations in the paragraph.
111. In response to paragraph 111 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraph 110 above and denies the allegations in the paragraph.
112. In response to paragraph 112 of the ~~2FASOC~~ ~~3FASOC~~ 4FASOC, ASX repeats paragraphs 110 and 111 above and denies the allegations in the paragraph.

Date: ~~28 February~~ ~~3-15 April~~ ~~4 September~~ ~~14 November 2020~~ 28 September 2021



Signed by Luke Hastings
Lawyer for the Respondent

This pleading was prepared by Herbert Smith Freehills and settled by Catherine Button QC and, Brendan Lim and Colette Mintz.

Certificate of lawyer

I, Luke Hastings, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~28 February~~ ~~3-15 April~~ ~~4 September~~ ~~14 November 2020~~ 28 September 2021



Signed by Luke Hastings
Lawyer for the Respondent

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/10/2021 9:30:27 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Reply - Form 34 - Rule 16.33
File Number:	VID1315/2019
File Title:	ISIGNTHIS LIMITED & ORS v ASX LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 1/11/2021 3:40:54 PM AEDT

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

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 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.



Form 34
Rule 16.33

Reply to the Defence
to the Fourth Further Amended Statement of Claim

No. VID1315/2019

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

iSignthis Limited (ACN 075 419 715) & Ors
(according to the attached Schedule)

Applicants

ASX Limited (ACN 008 624 691)

Respondent

By way of Reply to the Defence dated 28 September 2021 ~~14 November 2020~~ (**Defence**) the Applicants say as follows:

1. Save for the admissions in the Defence and in this Reply, the Applicants otherwise join issue with the matters set out in the Defence.

1A. As to paragraph 5E(b)(iii)(E) of the Defence, the Applicants:

(a) say that on 4 October 2021 they served a Request for Further and Better Particulars (**Request for Particulars**):

(b) say that save for stating that the relevant opinion was held by Kevin Lewis in his capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraph 4 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iii)(E) of the Defence; and

Filed on behalf of (name & role of party)	The Applicants		
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Email	calmond@hwle.com.au	Ref:	CA:LC:957343
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	DX 564 MELBOURNE		
	Email: calmond@hwle.com.au		

- (c) otherwise deny each and every allegation in paragraph 5E(b)(iii)(E) of the Defence.

1B. As to paragraph 5E(b)(iv)(A) of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraph 5 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iv)(A) of the Defence; and
- (b) otherwise deny each and every allegation in paragraph 5E(b)(iv)(A) of the Defence.

1C. As to paragraph 5E(b)(iv)(C) of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraph 6 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iv)(C) of the Defence; and
- (b) otherwise deny each and every allegation in paragraph 5E(b)(iv)(C) of the Defence.

1D. As to paragraph 5F of the Defence, the Applicants:

- (a) admit sub-paragraph (b); and
- (b) otherwise deny each and every allegation in paragraph 5F of the Defence.

2. As to paragraph 7(a) of the Defence, the Applicants:

- (a) say that by its own admission in paragraphs 5(a) and 52 of the Defence, ASX was obliged to exercise the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances;
- (b) say further that in the circumstances set out in paragraph 6(c) below, or at all, ASX giving ISX four minutes notice before announcing, at 9:53am on 2 October 2019, the suspension from official quotation of ISX's securities:
 - (i) did not constitute notice, alternatively reasonable notice, of ASX's intention to suspend trading in ISX's securities and therefore did not afford ISX procedural fairness appropriate to the circumstances; and/or
 - (ii) did not constitute an exercise of the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances;

and,

(c) otherwise deny each and every allegation in paragraph 7(a) of the Defence.

3. As to paragraph 7(b) of the Defence, the Applicants:

(a) say that in the 12 September Price Query ASX noted the change in the price of ISX's securities from 11 September 2019 to 12 September 2019;

(b) admit that in the 12 September Price Query ASX noted what it considered to be a significant increase in the volume of ISX's securities traded on 12 September 2019;

(c) say that in the 12 September Price Query ASX asked a number of standard questions in relation to the recent trading in ISX's securities; and

(d) otherwise deny each and every allegation in paragraph 7(b) of the Defence.

4. As to paragraph 7(c) of the Defence, the Applicants:

(a) admit that on 13 September 2019 ISX sent a letter to ASX which responded to the 12 September Price Query (**13 September Response**);

(b) say that in the 13 September Response ISX:

(i) told ASX that the company's attention had been drawn to a report authored by James Samson and Dean Paatsch on 10 September 2019, which had been circulated by Ownership Matters Pty Ltd to a number of ISX's shareholders, and likely other parties, as reported in the Australian Financial Review and the Sydney Morning Herald;

(ii) told ASX that the company was not invited to comment by Ownership Matters Pty Ltd during the drafting of the report, and it still had not received the report from Ownership Matters Pty Ltd;

(iii) rebutted the allegations made in the report circulated by Ownership Matters Pty Ltd; and

(iv) told ASX that it will refer the matter and conduct of Ownership Matters Pty Ltd to ASIC and will update the market once it had an opportunity to consider the contents of the report and what further action may be available to it;

and,

- (c) otherwise deny each and every allegation in paragraph 7(c) of the Defence.

5. As to paragraph 7(d) of the Defence, the Applicants:

- (a) say that in the 19 September Price Query ASX noted the change in the price of ISX's securities from 18 September 2019 to 19 September 2019;
- (b) admit that in the 19 September Price Query ASX noted what it considered to be a significant increase in the volume of ISX's securities traded on 19 September 2019;
- (c) say that the 19 September Price Query referred to the fact that ISX had responded to the 12 September Price Query on 13 September 2019;
- (d) say that in the 19 September Price Query ASX asked a number of standard questions in relation to the recent trading in ISX's securities and asked ISX to address and consider:
 - (i) an article published earlier that day by the Australian Financial Review in relation to legal proceedings in the Federal Court of Australia; and
 - (ii) whether the company was aware of any information that its earnings guidance provided in its Half Yearly Report and Accounts is likely to differ materially;
- (e) say further that on 19 September 2019 ISX sent a letter to ASX which responded to the 19 September Price Query (**19 September Response**);
- (f) say that in the 19 September Response, ISX told ASX:
 - (i) that the latest update on GPTV dated 9 September 2019 remained supportive of the earnings guidance;
 - (ii) the company had addressed the purported governance issues raised by Ownership Matters Pty Ltd in their report dated 10 September 2019, which were unsubstantiated and refuted by the company;
 - (iii) there had been no changes to operations and the business continued to strengthen;

- (iv) the company was continuing to operate as noted in the Half Yearly Accounts and as per the announcements made on 28 August 2019; and
- (v) the article in the Australian Financial Review earlier that day:
 - (A) failed to distinguish between ISX and the company known as iSignthis Ltd incorporated in the British Virgin Islands, which previously held the assets acquired by ISX; and
 - (B) referred to a dispute between historical (pre listing) shareholders and the former company iSignthis Ltd incorporated in the British Virgin Islands, which has no impact on the operations of ISX, its shares on issue and cost base;

and,

- (g) otherwise deny each and every allegation in paragraph 7(d) of the Defence.

6. As to paragraph 7(e) of the Defence, the Applicants:

- (a) deny each and every allegation in paragraph 7(e) of the Defence;
- (b) say that by its own admission in paragraphs 5(a) and 52 of the Defence, ASX was obliged to exercise the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances; and
- (c) say further that in the circumstances set out in paragraphs 2 to 5 above:
 - (i) the standard questions raised by ASX in the 12 September Price Query and the 19 September Price Query only concerned the:
 - (A) change in the price of ISX's securities from 11 September 2019 to 12 September 2019 and from 18 September 2019 to 19 September 2019; and
 - (B) volume of ISX's securities traded on 12 September 2019 and 19 September 2019;
 - (ii) ISX addressed each of those matters in the 13 September Response and the 19 September Response; and

(iii) in the period between 19 September 2019 and 2 October 2019 (the day on which ASX suspended trading in ISX's securities), ASX did not:

- (A) issue any further query letters to ISX;
- (B) tell ISX that it was not satisfied with the 13 September Response or the 19 September Response; or
- (C) tell ISX that there were any further issues concerning it about the company and give ISX a reasonable opportunity to respond prior to exercising its power to suspend trading in ISX's securities.

7. As to paragraph 7(f) of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 6(b) and 6(c) above; and
- (b) otherwise deny each and every allegation in paragraph 7(f) of the Defence.

7A. As to paragraph 8A of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraphs 7, 8 and 14 of the Request for Particulars and therefore they do not know and cannot admit the allegations in paragraphs 8A(b)(iii), 8A(b)(iv) or 8A(c)(vii) of the Defence;
- (b) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 11 and 13 of the Request for Particulars and therefore they do not know and cannot admit the allegations in paragraphs 8A(c)(iii), 8A(c)(iv), 8A(c)(v), 8A(c)(vi) of the Defence; and
- (c) otherwise deny each and every allegation in paragraph 8A of the Defence.

7B. As to paragraph 30 of the Defence, the Applicants:

- (a) in relation to sub-paragraph (a):
 - (i) admit that at 10:23am on 4 November 2019 Colin Luxford said by email to HWL Ebsworth that "we ask that you direct enquires in relation to the determination of ISX suspension to the ASX directly"; and
 - (ii) say further that at 11:09am on 4 November 2019 David Clarke of HWL Ebsworth sent an email to Colin Luxford (copied to Jane Fan and Sharon

Concisolom of ASIC) in which he said “You have not answered the question in our email to Sharon Concisolom. Did ASIC issue a notice or direction under section 794D of the Corporations Act?”;

(b) in relation to sub-paragraph (b):

- (i) say that at 11:56am on 7 November 2019 David Clarke of HWL Ebsworth sent an email to Colin Luxford (copied to Jane Fan and Sharon Concisolom) in which he said “Please can you provide me with a reply to my email below. It is not an unreasonable question”;
- (ii) say that at 4:59pm on 7 November 2019 Colin Luxford sent an email to David Clarke (copied to Jane Fan, Sharon Concisolom and Adam Boscoscuro of ASIC) in which he said “[i]n response to an earlier email to Ms Concisolom where you raised the identical question, I advised that you should refer your enquiry to the ASX”; and
- (iii) say further that in his email of 7 November 2019, Colin Luxford also said “To be clear, and to answer your question, the decision by ASX to suspend ISX Ltd from trading on 2 October 2019 was not made with a direction from ASIC”;

and,

(c) otherwise deny each and every allegation in paragraph 30 of the Defence.

8. As to paragraph 48B of the Defence, the Applicants:

- (a) admit that the third direction given by ASX to ISX required ISX to include in each quarterly activity report a breakdown by sector of the revenue ISX had derived during the applicable quarter; and
- (b) otherwise deny each and every allegation in paragraph 48B of the Defence.

9. As to paragraph 48D of the Defence, the Applicants:
 - (a) admit that the second direction given by ASX to ISX required ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with Listing Rule 3.1 and to release to the market the findings of, and any changes ISX proposed to make to its compliance policies and processes in response to, the review;
 - (b) admit that on 19 May 2020 ISX appointed Michael Linehan, a Partner of Clayton Utz, to prepare an independent expert report regarding ISX's continuous disclosure policy; and
 - (c) otherwise deny each and every allegation in paragraph 48D of the Defence.
10. As to paragraph 48E of the Defence, the Applicants:
 - (a) refer to and repeat paragraph 11 below; and
 - (b) otherwise deny each and every allegation in paragraph 48E of the Defence.
11. As to paragraph 48F of the Defence, the Applicants:
 - (a) say that pages 1 to 5 of the report attached to the draft announcement contained the background and purpose of the report, a summary of the scope of the review, a summary of the findings and the recommendations of the experts and otherwise admit the allegation in sub-paragraph (a);
 - (b) admit the allegation in sub-paragraph (b);
 - (c) in relation to sub-paragraph (c):
 - (i) say that the paragraph pleads a conclusion without any material facts such that it is ambiguous and/or likely to cause prejudice, embarrassment or delay in the proceeding and ought to be struck out; and
 - (ii) under cover of the objection in sub-paragraph (c)(i) above, refer to and repeat paragraph 48FA(c) of the 4FASOC and say that:
 - A. the second direction required ISX "to release to the market the findings of, and any changes ISX [proposed] to make to its compliance policies and processes in response, to the review";

- B. say that pages 1 to 5 of the report attached to the draft announcement contained the background and purpose of the report, a summary of the scope of the review, a summary of the findings and the recommendations of the experts; and
 - C. in the circumstances set out in sub-paragraphs A and B above, ISX did not fail to comply with the second direction by 17 July 2020 because the draft announcement did not attach the entire independent experts' report;
- (d) admit that, in the Final Reasons, ASX said that it considered it appropriate for ISX's shares to remain suspended pursuant to Listing Rule 17.3.4 and not reinstated until:

“the matters referred to in these statement of reasons are satisfactorily disclosed to the market; and

acceptable measures are put in place so that the current holders of the Milestone Shares (other than those who were bona fide purchasers for value of those shares on-market) are not able to sell them for a reasonable period while ASIC has an opportunity to pursue its investigations and to determine whether it wishes to take action against those involved in the issue of the Milestone Shares.”

PARTICULARS

Paragraph 12.6 of the Final Reasons.

- (e) say that, insofar as relevant information was sought by ASX from ISX so that ASX could consider ISX's proposed escrow agreement, in the period from 1 May 2020 to 5 May 2020, ISX:
 - (i) told ASX:
 - (A) the details of all current and former holders of the ordinary shares issued following the achievement of the milestones;

- (B) that the current holders of these ordinary shares which are associated with Tim Hart, Scott Minehane, Todd Richards, Barneby Egerton-Warburton, John Karantzis and Andrew Karantzis respectively, received them pursuant to agreements made with each of these individuals;
- (C) that the remaining current and former holders of these ordinary shares received them out of the proportion which was to be distributed to John Karantzis (or his nominee), as an incentive to the executive team;
- (D) that iSignthis Ltd (BVI) directed the transfer of the ordinary shares issued following the achievement of the milestones to these individuals or their nominees;
- (E) that 500,000 of the ordinary shares issued following the achievement of the milestones had been sold on 15 May 2019, by a former employee on the market through BNP, such that ISX was unable to determine the exact sale price but the range that day was approximately \$0.405;
- (F) that 500,000 of the ordinary shares issued following the achievement of the milestones were still held by a former employee who had not been in contact with ISX for many months; and
- (G) that notwithstanding the matters in sub-paragraphs (E) and (F) above, the total amount of the 336,666,667 ordinary shares issued following the achievement of the milestones would be subject to escrow as Red 5 Solutions BVI Limited and Select All Enterprises, companies associated with Andrew Karantzis and John Karantzis respectively, would voluntarily contribute the additional 1,000,000 ordinary shares required to cover the ordinary shares sold and held by former employees;

and,

- (ii) sent ASX copies of relevant documents, including ISX's share register and correspondence with Link Market Services in relation to the sale of the 500,000 ordinary shares by the former employee;

PARTICULARS

- A. Insofar as sub-paragraphs (i)(A) to (i)(G) above are concerned, the information was provided in writing. It was contained in the emails and attachments sent by John Karantzis to Kevin Lewis at 9:41am on 2 May 2020 (which referred to the email sent by John Karantzis to Daniel Moran at 2:16pm on 1 May 2020), 2:20pm on 5 May 2020, 6:58pm on 5 May 2020, 9:22pm on 5 May 2020, 9:40pm on 5 May 2020, 10:15pm on 5 May 2020 and 10:21pm on 5 May 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
 - B. Insofar as sub-paragraph (ii) above is concerned, the documents were attached to the emails sent by John Karantzis to Kevin Lewis at 9:41am on 2 May 2020, 2:20pm on 5 May 2020 and 6:58pm on 5 May 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
- (f) say that notwithstanding the information given by ISX to ASX, and the offer to voluntarily contribute an additional 1,000,000 ordinary shares as set out in sub-paragraph ~~(d)~~(e)(i)(G) above, on 5 May 2020 and 11 June 2020, ASX:
- (i) demanded further information from ISX which was irrelevant to ASX's consideration of ISX's offer to escrow the total number of ordinary shares

issued following achievement of the milestones for a period of 12 months;
and

- (ii) refused to consider ISX's escrow offer;

PARTICULARS

A. Insofar as sub-paragraphs (i) and (ii) above are concerned, ASX's demands and refusals were in writing. They were contained in the email sent by Kevin Lewis to John Karantzis at 11:16pm on 5 May 2020 and the letter dated 11 June 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

B. The further information demanded by ASX from ISX was irrelevant to whether the Escrow Offer (as defined in sub-paragraph ~~(f)~~(g) below) would prevent the ordinary shares issued following the achievement of the milestones being sold for a reasonable period of time while ASIC pursued its investigations.

(g) say that in the circumstances set out in sub-paragraphs ~~(d)~~ and (e) and (f) above:

- (i) as at 5 May 2020, ISX had offered to put 336,666,667 ordinary shares in escrow for a period of 12 months (**Escrow Offer**), being 100% of the total number of ordinary shares issued on conversion of the performance rights approved by shareholders on 22 December 2014;
- (ii) as at 5 May 2020, ISX had given ASX all of the relevant information which it had sought from ISX so that ASX could consider the Escrow Offer in order to lift the suspension of trading in ISX's securities; and
- (iii) to date no escrow arrangement is in place because ASX has failed to consider the Escrow Offer honestly and in good faith, or at all, having regard to the relevant information provided to it by ISX;

- (h) say that after the Final Reasons were published by ASX on the Market Announcements Platform and ISX had made the Escrow Offer, ASX put further obstacles in the way of ISX's securities being reinstated to trading by:
 - (i) commencing an entirely new interrogation of ISX's business, this time concerning the suspension and termination of the arrangements between ISX and Visa, including the announcement made on 20 March 2020 by ISX (~~ASX Visa Query~~);

PARTICULARS

- A. The new interrogation by ASX of ISX was first alluded to in the email from Kevin Lewis to John Karantzis sent at 1:51pm on 5 May 2020, which was then followed by:
 - (i) ASX's query letter dated 7 May 2020, attached to an email sent at 10:42pm by Kevin Lewis to Elizabeth Warrell;
 - (ii) ISX's response dated 13 May 2020, attached to an email sent at 1:08pm by John Karantzis to Kevin Lewis;
 - (iii) email sent at 7:20pm on 14 May 2020 by Kevin Lewis to John Karantzis;
 - (iv) email sent at 9:10am on 20 May 2020 by John Karantzis to Kevin Lewis; and
 - (v) email sent at 8:38pm on 21 May 2020 by Kevin Lewis to John Karantzis;
 - (vi) email sent at 8:59am on 22 May 2020 by John Karantzis to Domenic Stevens;
 - (vii) email sent at 5:43pm on 23 May 2020 by Daniel Moran to John Karantzis;

- (viii) ISX letter to shareholders dated 24 May 2020, a copy of which was sent at 2:33pm that day to Dean Litis of ASX for release on the Market Announcements Platform; and
- (ix) ISX's response dated 25 May 2020, which was released to the market that same day on the Market Announcements Platform.

A copy of these documents is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

- (ii) engaging in the conduct alleged in paragraphs 48DA and 48DB of the 4FASOC; and
- (iii) notwithstanding the facts alleged in paragraph 48E of the 4FASOC, engaging in the conduct alleged in paragraphs 48FA(a), 48FA(b), 48FB and paragraphs A, B and C of the Particulars under paragraph 48FC of the 4FASOC;
- ~~(ii) notwithstanding the information given by ISX to ASX in response to the ASX Visa Query, which ASX released to the market on 25 May 2020, instructing the independent experts that there had been further breaches by ISX of chapter 3 of the Listing Rules which should be factored into their review of ISX's continuous disclosure policies; and~~

PARTICULARS

~~The instruction was in writing, contained in an email sent at 9:15am on 17 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- ~~(iii) telling the independent experts that:~~

~~(A) — ASX regarded ISX’s failure to properly disclose the Visa suspension and the reasons for it as a clear and serious breach of Listing Rule 3.1 that would appear to raise potential issues about the adequacy of ISX’s policies and process to comply with that rule; and~~

~~(B) — these potential issues fall within the purview of their review and report;~~

PARTICULARS

~~The statements were in writing, contained in an email sent at 1:55pm on 18 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~(g) — say further that:~~

~~(i) — the independent experts said that they were unable to conclude that the decision taken by ISX to not announce the Visa suspension at the time of the initial suspension constituted a breach of its continuous disclosure obligations and that the subsequent disclosure on 29 April 2020 was deficient but the letter to shareholders dated 24 May 2020, released to the market on 25 May 2020, provided a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final; and~~

PARTICULARS

~~The statements were in writing, contained on pages 9 to 11 of the Independent Expert Review dated 16 July 2020 signed by Michael Linehan and Brendan Groves. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~(ii) — on 16 July 2020 ISX resolved to adopt all of the recommendations made by the independent experts in the Independent Expert Review dated 16 July 2020;~~

~~(h) — say further that notwithstanding the matters in sub-paragraph (h) above:~~

~~(i) — on and from 17 July 2020 ASX interrogated the independent experts in relation to their Independent Expert Review dated 16 July 2020;~~

PARTICULARS

~~A. — The questions were in writing, contained in emails sent at 1:46pm and 7:06pm on 17 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves and a further email sent at 8:07am on 20 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves. A copy of the emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~B. — The responses from Clayton Utz were in writing, contained in an email sent at 4:03pm on 17 July 2020 by Michael Linehan to Janine Ryan and a document attached to an email sent at 1:10pm on 20 July 2020 by Michael Linehan to Janine Ryan.~~

~~(ii) — in or about mid July 2020, pursuant to section 127(4B) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX obtained~~

from ASIC copies of correspondence between Visa and ISX in relation to Visa's suspension and subsequent termination of the arrangement between ISX and Visa (**Visa Correspondence**);

- (iii) ~~ASX was of the view that the Visa Correspondence raised questions as to whether ISX's response to ASX's letter dated 7 May 2020, and its disclosures to the market about its relationship with Visa since 6 March 2020, had complied with the Listing Rules;~~

PARTICULARS

~~ASX's view was expressed in writing, contained on page 2 of its Market Announcement dated 26 October 2020.~~

- (iv) ~~on 22 July 2020, notwithstanding section 127(4F) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX sent a copy of the Visa Correspondence to the independent experts;~~

PARTICULARS

~~Email from Janine Ryan to Michael Linehan and Brendan Groves sent at 6:28pm on 22 July 2020. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- (v) ~~on 23 July 2020 ASX sent a copy of the Visa Correspondence and a further query letter to ISX;~~

PARTICULARS

~~Email sent at 6:58pm on 23 July 2020 by James Gerraty to Tim Hart, John Karantzis and Elizabeth Warrell. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- ~~(vi) — pursuant to ASX's requests, on 16 August 2020 ISX asked the independent experts to review the additional correspondence and update their report as necessary;~~

PARTICULARS

~~A. — The ASX request was in writing. It was contained in an email sent at 3:27pm on 30 July 2020 by Janine Ryan and in an email sent at 8:46am on 5 August 2020 by Janine Ryan. A copy of the two emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~B. — ISX's request was in writing, contained in an email sent at 5:51pm on 16 August 2020. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- ~~(vii) — the supplementary report of the independent experts dated 3 September 2020:~~

~~(A) — said that they had considered the additional correspondence relating to the suspension and termination of the arrangements between ISX and Visa;~~

~~(B) — said that based on their review of the information available to them, nothing had come to their attention which caused them to believe that ISX's reliance on ASX Listing Rule 3.1A during the periods from 17 April 2020 to 12 May 2020 and 12 May 2020 to 21 May 2020 was not appropriate; and~~

~~(C) — concluded that:~~

- ~~(1) — the obligation of ISX to disclose the termination of the arrangements between ISX and Visa in accordance with Listing Rule 3.1 first arose on 21 May 2020; and~~
- ~~(2) — there was a technical breach of ASX Listing Rule 3.1 that arose from a 1 to 2 business day delay by ISX in formally announcing the termination to the market, but that as ISX's shares were suspended at this time ISX did not have the ability to use a trading halt to assist in managing its continuous disclosure obligations, which it may have otherwise done to cover the period of the delay;~~

PARTICULARS

~~The statements in sub paragraphs (A) to (C) above were in writing, contained in paragraphs 2.4 to 2.9 of the supplementary report of the independent experts dated 3 September 2020.~~

- (i) say further that notwithstanding the matters in paragraph 11(h) above and paragraphs 48DA to 48I of the 4FASOC: sub paragraph (i) above:
 - (i) on 10 September 2020, ASX issued a further query letter to ISX pursuant to Listing Rule 18.7, purportedly to enable it to be satisfied that ISX was, and had been, complying with the Listing Rules when, in fact, the letter:
 - (A) sought to interrogate ISX about the supplementary report of the independent experts dated 3 September 2020 and ISX's disclosures about the Visa suspension and termination; and
 - (B) demanded that ISX provide to ASX copies of its legal advice;

- (ii) on 15 September 2020, ISX sent to ASX its response to the further query which said, among other things, that:
 - (A) ASX did not have the power to compel a listed entity to produce its legal advice; and
 - (B) the query letter had not been issued in good faith for a proper purpose as the independent experts had conclusively dealt with the very issue which had been unilaterally added to the scope of their review by Kevin Lewis;
- (iii) on 9 October 2020, ASX sent ISX a further query letter which:
 - (A) persisted with its interrogation of ISX about the supplementary report of the independent experts dated 3 September 2020 and ISX's disclosures about the Visa suspension and termination; and
 - (B) wrongly asserted that ISX had waived legal professional privilege over its legal advice;

and,

- (iv) on 26 October 2020, ASX released to the market its query letters and ISX's responses regarding the suspension and termination of the arrangements between ISX and Visa;

and,

- (j) otherwise deny each and every allegation in paragraph 48F of the Defence.

12. As to paragraph 48J of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 11(~~d~~)(~~e~~) to 11(~~j~~)(~~k~~) above; and
- (b) otherwise deny each and every allegation in paragraph 48J of the Defence.

13. As to paragraph 48K of the Defence, the Applicants:

- (a) say that by ASX's own admission, as at 7 September 2020 ISX had complied with all of the Directions;
- (b) refer to and repeat paragraphs 11(~~e~~)(~~f~~) to 11(~~g~~)(~~h~~) above; and

(c) otherwise deny each and every allegation in paragraph 48K of the Defence.

14. As to paragraph 49 of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 11(h) and 11(i)(g) to 11(j) above;
- (b) say that in the circumstances set out in paragraph 14(a) above, ASX would not have had a proper basis to suspend ISX's securities and keep them suspended from around 15 May 2020, or alternatively 20 May 2020;
- (c) say further that in the circumstances set out in paragraphs 13(a), 14(a) and 14(b) above, since at least 7 September 2020, alternatively 26 October 2020:
 - (i) ASX has not had a proper basis to maintain its suspension of trading in ISX's securities; and
 - (ii) by keeping ISX's shares suspended from trading, ASX has:
 - (A) in breach of section 792A(1)(a) of the *Corporations Act 2001* (Cth), failed to apply its operating rules in a fair manner and ensure that ISX is treated in a like manner as other participants whose shares have not been suspended while they have been the subject of ongoing investigations or legal proceedings by regulators, including ASIC and AUSTRAC; and
 - (B) breached its implied obligations to act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules and do all that is necessary to enable ISX to have the benefit of the agreement;

~~and,~~

- (d) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 12, 13 and 15 of the Request for Particulars and therefore they do not know and cannot admit the allegations in sub-paragraphs 49(a)(iii)(C), 49(a)(iii)(D), 49(a)(iii)(E), 49(a)(iii)(F) and 49(a)(iii)(G) of the Defence; and
- (e) otherwise deny each and every allegation in paragraph 49 of the Defence.

15. As to paragraph 51 of the Defence, the Applicants:
- (a) refer to and repeat paragraphs 14(a) to 14(c) above;
 - (b) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 12, 13 and 15 of the Request for Particulars and therefore they do not know and cannot admit the allegations in sub-paragraphs 51(b)(iii)(C), 51(b)(iii)(D), 51(b)(iii)(E), 51(b)(iii)(F) and 51(b)(iii)(G); and
 - (c) otherwise deny each and every allegation in paragraph 51 of the Defence.
16. As to paragraph 51A of the Defence, the Applicants:
- (a) deny each and every allegation in paragraph 51A of the Defence;
 - (b) say that, during ISX's Interlocutory Application in this proceeding, ISX told ASX that the publication of the Final Reasons would lead to a substantial further loss of clients and would make it significantly more difficult for ISX to acquire further new clients; and
 - (c) say further that:
 - (i) on or about 12 March 2015, ISX told ASX that the material business risks the entity faces were set out in section 12 (pages 79-85) of the Prospectus;

PARTICULARS

The statement was in writing, contained in item 34 of the checklist attached to Appendix 1A (ASX Listing Application and Agreement), executed by ISX and accepted by ASX on or about 15 March 2015.

- (ii) sub-paragraph (m) of section 12 of the Prospectus said that:
 - (A) the reputation of ISX and its products is important in attracting and retaining existing business and obtaining new business and key employees; and

- (B) negative publicity could adversely impact the reputation of ISX which may potentially result in a fall in the number of customers seeking the products and services of the company.

17. As to paragraph 73(p) of the Defence, the Applicants:

- (a) say that ISX did not attract adverse media prior to:
 - (i) the publication of a report by Ownership Matters Pty Ltd on 10 September 2019; and
 - (ii) the suspension of trading of its securities on 2 October 2019 by ASX;
 and,
- (b) otherwise deny each and every allegation in paragraph 73(p) of the Defence.

18. As to paragraph 73A of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 16(b) and 16(c) above; and
- (b) otherwise deny each and every allegation in paragraph 73A of the Defence.

19. As to paragraph 94A of the Defence, the Applicants:

- (a) deny each and every allegation in paragraph 94A of the Defence;
- (b) say that:
 - (i) as the single largest licenced market operator in Australia, ASX has:
 - (A) significant authority and power which it can, and does, wield over entities listed on the Australian Securities Exchange through the Listing Rules; and
 - (B) a platform whereby it can cause damage to entities listed on the Australian Securities Exchange through the dissemination of misleading or deceptive information on its Market Announcements Platform;
 - (ii) ASX has a statutory obligation pursuant to section 792A(1)(a) of the *Corporations Act 2001* (Cth) to ensure that the market is a fair, orderly

and transparent market, which necessitates that it not engage in conduct which is misleading or deceptive or is likely to mislead or deceive;

- (iii) on about 12 March 2015, ISX told ASX that:
 - (A) the reputation of ISX and its products is important in attracting and retaining existing business and obtaining new business and key employees; and
 - (B) negative publicity could adversely impact the reputation of ISX which may potentially result in a fall in the number of customers seeking the products and services of the company;

PARTICULARS

The statement was in writing, contained in item 34 of the checklist attached to Appendix 1A (ASX Listing Application and Agreement), executed by ISX and accepted by ASX on or about 15 March 2015, which referred to section 12 (pages 79-85) of the Prospectus.

- (iv) in December 2019 and January 2020, ISX warned ASX that if it made and published its “*findings*”:
 - (A) it would be acting beyond its responsibility for “*operational matters*” and would therefore be acting ultra vires;
 - (B) it would likely mislead the market; and
 - (C) ISX would likely suffer irreparable loss and damage, even if a Court ultimately determined that those “*findings*” were unfounded;

PARTICULARS

The warnings were in writing, contained in:

- (i) the letter dated 17 December 2019 from Colin Almond and Anthony Seyfort of HWL Ebsworth Lawyers to Daniel Moran of ASX; and

- (ii) paragraph 3 of the ISX Response (as defined in paragraph 68 of the Third Further Amended Statement of Claim).
- (v) ISX attempted to prevent ASX from publishing the Final Reasons on the basis that:
 - (A) the Final Reasons did not contain an accurate representation of the facts and circumstances concerning ISX and were likely to mislead the market and other persons who read the document;

PARTICULARS

Paragraph 101 of the written submissions filed in support of ISX's Interlocutory Application.

- (B) by reason of ASX's lack of proper investigatory powers, the Final Reasons contained incomplete and/or speculative "*findings*" apparent on their face and it was not appropriate that this kind of information be released to the market in circumstances where ISX wished to challenge them in this proceeding;

PARTICULARS

Paragraph 102 of the written submissions filed in support of ISX's Interlocutory Application.

- (C) the suspension of trading has damaged the company's reputation with a number of its clients and the publication of the Final Reasons by ASX would lead to a substantial further loss of clients and would make it significantly more difficult for ISX to acquire further clients;

PARTICULARS

Paragraph 108 of the written submissions filed in support of ISX's Interlocutory Application.

- (vi) the decision of this Court to refuse ISX's Interlocutory Application was not an imprimatur for ASX to publish the Final Reasons, particularly in

circumstances where the Court accepted that the evidence before it showed a serious question to be tried in respect of the accuracy of particular findings made by ASX as detailed in the Final Reasons;

PARTICULARS

Isignthis Limited v ASX Limited [2020] FCA
567 at [37].

and,

- (c) say further that having regard to all the circumstances of the case and each of the matters in sub-paragraph (b) above, ASX ought not be excused from liability under sections 1041I(4) and 1317S of the *Corporations Act 2001* (Cth).

20. As to paragraph 94B of the Defence, the Applicants:

- (a) refer to and repeat paragraph 19(b) above; and
- (b) otherwise deny each and every allegation in paragraph 94B of the Defence.

21. The Applicants admit the allegations in paragraph 94C of the Defence.

22. The Applicants admit the allegations in paragraph 94D of the Defence.

23. As to paragraph 94E of the Defence, the Applicants:

- (a) refer to and repeat paragraph 19(b) above;
- (b) say that, before it published the Final Reasons, ASX also received four affidavits of Anthony Seyfort and the written submissions filed on behalf of ISX in support of its Interlocutory Application; and
- (c) otherwise deny each and every allegation in paragraph 94E of the Defence.

24. As to paragraph 98 of the Defence, the Applicants:

- (a) admit the allegation in sub-paragraph (e); and
- (b) otherwise deny each and every allegation in paragraph 98 of the Defence.

25. As to paragraph 107A of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 16(b) and 16(c) above; and
- (b) otherwise deny each and every allegation in paragraph 107A of the Defence.

DATED: ~~27 November 2020~~ 27 October 2021

P W Collinson

J S Mereine

HWL Ebsworth

HWL Ebsworth Lawyers
Solicitors for the Applicants

Schedule of Parties

iSignthis Limited (ACN 075 419 715)

First Applicant

iSignthis eMoney Ltd

(a company incorporated in Republic of Cyprus allocated number HE348009)

Second Applicant

Probanx Solutions Ltd

(a company incorporated in the Republic of Cyprus allocated number HE111921)

Third Applicant

Authenticate Pty Ltd (ACN 600 573 233)

Fourth Applicant

ASX Limited (ACN 008 624 691)

Respondent