

NOTICE OF FILING

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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.

Form 33
Rule 16.32



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

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(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~~ ~~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 ~~3~~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 to 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/isignthisresponce>); 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
[\(https://hotcopper.com.au/threads/letter-to-shareholders-asx-directions.5375701/\)](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 ~~2FASOC~~ ~~3FASOC~~ 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 ~~2FASOC~~ ~~3FASOC~~ 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 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 Agreement**) involved the provision of platform development services
- ii. The agreement between Authenticate BV and Nona Marketing Limited (**Nona Agreement**) 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