

Melbourne, 1st May 2020

iSignthis' official response to ASX's "Statement of Reasons"

On 30 April 2020 ASX released to the market a document titled "Statement of Reasons", which ASX says is "a record of its findings in relation to [iSignthis'] compliance with certain ASX Listing Rules".

This statement is iSignthis' formal response. **iSignthis rejects the conclusions reached by ASX.**

ASX's findings contain a multitude of factual errors, suppositions, unfounded assertions and irrelevant considerations. These substantial flaws have been the subject of a detailed 28 page corrective submission by iSignthis, which the ASX has almost entirely ignored.

The substantial flaws have also been outlined in detail to the Federal Court of Australia.

On 30 April 2020 the court concluded that iSignthis had not satisfied the legal requirements for an interlocutory injunction to prevent release of the ASX statement even though the court found that:

"the evidence before the court shows a serious question to be tried in respect of the accuracy of particular findings made by ASX as detailed in its statement of reasons."

Although iSignthis did not obtain an injunction, it achieved its objective of having an independent authority review the findings of ASX and to pass comment on them.

The court also noted that "*publication of the statement of reasons is not irreversible or irremediable conduct.*" iSignthis seeks its remedy through release of this response and through an acceleration of the main trial in its legal proceedings against ASX.

ASX has placed iSignthis in an extremely unfair position of needing to react publicly to incorrect allegations that should have been properly dealt with by means other than a 'war of words'.

iSignthis cannot publicly debate each flawed finding ahead of the conclusion of the Federal Court proceedings, but highlights a few matters that illustrate how confounded it is by ASX's allegations:

- ASX asserts that software integration services are not part of iSignthis' ordinary business. To the contrary, the services provided to each of ISX's clients (over 100 independent businesses) have all required some form of integration of the client's IT systems to ISX's systems. For example, it is currently working to integrate its ISXPay[®] and its Paydentity[™] software to enhanced trading systems for the National Stock Exchange of Australia.
- ASX now doubts whether certain revenue milestones were achieved by ISX approximately 2 years ago, even though that revenue was specifically audited twice by leading international audit firm Grant Thornton. ASX is not a qualified or registered auditor.
- ASX asserts that certain things were material to the price or value of securities even though, when disclosed, they did not materially move ISX's share price .

A more detailed response to ASX's principal findings is attached.

ASX's statement contains phrases such as "*it is not clear*", "*does not appear*", "*there are serious questions*", "*this begs the question*" or "*one possible answer must be*". ASX has yet to produce evidence in support of its allegations, while ignoring evidence produced by iSignthis. In iSignthis' view these are not findings. It is difficult to understand why ASX is content to publish such speculation when it would be harmful to iSignthis.

Authorised by the Managing Director, John Karantzis and Chairman, Tim Hart, of iSignthis Ltd

ISX's OFFICIAL RESPONSE TO ASX's "STATEMENT OF REASONS"

A. ABOUT ISX

1. iSignthis Limited (**ISX**) is a leading eMoney, payments and identity technology company listed on the Australian Securities Exchange and the Frankfurt Stock Exchange. Through its group of companies, ISX is a European Economic Area (**EEA**) electronic money institution and a credit card acquirer in the EEA and a credit card acquirer Australia. Its business is founded on patented technology for its identity verification and Anti Money Laundering (**AML**) checking services. It provides services to regulated financial services clients for identity verification, AML checking, electronic money issuance, international bank account issuing (cleared via a central bank) and payment processing.
2. ISX is an ASX300 company and a substantial enterprise employing 111 staff. In FY19 the company delivered a maiden profit of \$1.6m (NPAT). Over that period, revenue from customers grew over 400% to \$31.2m from just \$6.1m in FY18. That growth was predominantly driven by regulated services in Europe, with ISXPay Card Platform revenues representing almost 70% of the group's revenues.

B. SUMMARY

- (a) ISX rejects, as incorrect, the principal findings in ASX's statement of reasons ("ASX Reasons"):
 - (i) (*materiality of the alleged "Key Contracts"*): The alleged "Key Contracts" are not information that a reasonable person would expect to have a material effect on the price or value of ISX's shares requiring disclosure to the market under Listing Rule 3.1;
 - (ii) (*Milestone Shares*): ISX denies that, properly construed, the reference to "revenue" in the Milestones means something narrower than revenue according to Australian Accounting Standards. ISX further denies that it was an implied term of the Milestone Shares that the Milestones had to be met by "ordinary business revenue" (whatever that means). Most importantly, ISX denies that the "revenue" was "generated solely or predominantly for the purpose of meeting the Milestones";
 - (iii) (*3 August 2018 representation*): 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.
- (b) There is a serious question to be tried as to the validity of a multitude of specific findings/reasons contained in the ASX Reasons on which the principal "findings" are based. That multitude of specific findings/reasons includes factual errors made by ASX that, despite being pointed out by ISX in a detailed 28 page submission ("ISX Response"), have been substantially ignored in the ASX Reasons. It also includes an array of irrelevant considerations, matters not based on fact or law,

conflated matters and findings/reasons that are, by ASX's own admission, incomplete or speculative. The ASX Reasons therefore do not contain an accurate representation of the facts and circumstances concerning ISX and are likely to mislead the market and other persons who read the document.

C. ISX RESPONSE TO ASX's PRINCIPAL FINDINGS

Alleged "Key Contracts" were not "out of the ordinary"

3. In the ASX Reasons, ASX opines that "*the Key Contracts were all 'out of the ordinary', involving the provision of services...that were not part of ISX's core business*".
4. ISX disputes that finding and says that ASX, among other things, has failed to take into account numerous relevant considerations which ISX raised in the ISX Response, including the fact that Standard & Poors categorises ISX in its General Industry Classification "*Application Software*".
5. The deployment and integration of software to various platforms is part of ISX's core business. This was a focus of ISX's business in late 2017 and early 2018, when it purchased customer nominated trading platform software which it then deployed to secure cloud environments which it established.
6. Significantly, an understanding of ISX's business requires an understanding of the following elements:
 - (a) an online "*ecosystem*" is comprised of:
 - (i) software which can take an order, for example a trading platform or an ecommerce platform;
 - (ii) a Customer Relationship Management System (**CRM system**);
 - (iii) software which can facilitate payment, for example a payment platform such as ISX's ISXPay®; and
 - (iv) for entities required to comply with Anti-Money Laundering (**AML**) obligations, a means by which a customer's identity can be verified, for example an identity verification platform such as ISX's Payidentity™;
 - (b) the deployment and integration of ISX's products to various platforms (including trading, banking, payment, accounting and ecommerce platforms) is part of ISX's core business because:
 - (i) ISX provides services to entities which face retail customers; and

- (ii) to “sell” payment services to each customer, ISX’s products first need to be integrated with the CRM system of the customer or the platform which the customer uses to take orders or both;
- (c) in 2017 ISX had been trying to enter the online market but met resistance from vendors of online platforms as well as potential customers which were already using those platforms;
- (d) in late 2017 and early 2018 ISX took up a business opportunity to enter certain online markets when it was:
 - (i) first approached by a number of start-up companies in Europe to supply them with ISX’s payment software known as ISXPay® and identity verification software known as Paydentity™; and
 - (ii) then asked to build the whole online “ecosystem” for them because they did not yet have the necessary personnel and/or know how to deploy the third party CRM systems and trading platforms.

7. In particular:

- (a) on about 17 April 2018, ISX, through its wholly owned subsidiary Authenticate Pty Ltd, offered to provide its ISXPay® and Paydentity™ products to one of the start-up businesses, which by this time had been incorporated as Corp Destination Pty Ltd;
- (b) in late April 2018 ISX was in a position to undertake the work required to integrate its Paydentity™ and ISXPay® products into a third party trading platform but Corp Destination Pty Ltd took a position that:
 - (i) the company did not yet have the necessary personnel and/or know how to deploy the third party CRM system and trading platform; and
 - (ii) it was going to take them between 6 to 12 months to acquire the necessary personnel and/or know how to build and deploy the third party CRM system and trading platform;
- (c) in those circumstances ISX, through its wholly owned Dutch subsidiary Authenticate BV, offered to deploy the requisite cloud based environment and install the third party CRM system and trading platform for Corp Destination Pty Ltd;
- (d) Corp Destination accepted that offer and Authenticate BV proceeded to:

- (i) build and configure the secure cloud environment, which had to comply with the Payment Card Industry Data Security Standard (**PCI DSS**) ISO27001;
 - (ii) purchase from Fino Software Technologies Ltd (**FinoSoft**) the integrated CRM system and trading platform required by Corp Destination Pty Ltd;
 - (iii) install the integrated CRM system and trading platform which had been supplied by FinoSoft in the cloud environment which Authenticate BV had built;
 - (iv) integrate ISX's Paydentity™ and ISXPay® products so that they would “talk” to the integrated CRM system and trading platform;
 - (v) test the online “*ecosystem*” to ensure that everything worked; and
 - (vi) demonstrate to the satisfaction of Corp Destination Pty Ltd that the services could “*go live*” when Corp Destination Pty Ltd was ready to do so;
- (e) shortly after Authenticate BV agreed to build the whole online “*ecosystem*” for Corp Destination Pty Ltd other overseas start-up businesses, such as FCorp Services Ltd (**FCorp**) and Immo Servis Group S.R.O (**Immo**), also engaged Authenticate BV to build a whole online “*ecosystem*” for them;
 - (f) in FCorp's case, Authenticate BV purchased an integrated CRM system and trading platform from FinoSoft;
 - (g) in Immo's case, Authenticate BV was required to obtain a different integrated CRM system and exchange platform from Gibi Tech Ltd (**Gibi Tech**) because it held the licences for the specific CRM system and exchange platform required by Immo;
 - (h) the contracts which Authenticate BV entered into with Gibi Tech and FinoSoft were for CRM systems integrated with either a trading platform or exchange platform, which Authenticate BV and ISX did not have and could not build such that Authenticate BV needed to purchase them in order to integrate ISX's products; and
 - (i) Gibi Tech and FinoSoft are unrelated to Authenticate BV and ISX and unrelated to each of ISX's customers and the customers' directors and shareholders.

8. ISX's uncontradicted evidence is also that:

- (a) by integrating its products with third party CRM systems integrated with either a trading platform or exchange platform, in the second half of the financial year ended 30 June 2018:

- (i) ISX gained valuable knowledge that it has since been able to deploy for subsequent customers who have elected to use the same or similar third party CRM system integrated with either a trading platform or exchange platform; and
 - (ii) this has enabled ISX to bring on new customers using, or who are wanting to use, the same or similar third party CRM system integrated with either a trading platform or exchange platform much faster than it would otherwise have been able to do;
- (b) like most businesses, ISX used a combination of skilled personnel, business skill, accumulated know-how, trade secrets, owned intellectual property and licensed intellectual property to deliver a contracted service through a combination of staff and contractors, and avoided the burden and risk of locking-in high fixed costs for its business; and
- (c) the platforms of FCorp and the two different brands of Immo (now trading as Bitconvert and thechange.io) have since gone live, which has resulted in ISX processing more than \$35 million of Gross Processed Turnover Volume (**GPTV**) between these customers and receiving combined revenue of more than A\$800,000 in 2019; ISX would not have been in a position to earn that revenue if it had not entered into the agreements with FCorp and Immo.
9. There is no foundation in fact for ASX's finding that the "*Key Contracts*" were "*out of the ordinary*" because ISX "*has not provided similar services to any other customers before or since*". ASX relies on ISX's response to question 7 of the ASX's fourth query letter (released to the market on 19 November 2019). The answer to that question does not support the finding because the question asked by ASX, and therefore the answer given by ISX, was substantially narrower.
10. In the circumstances set out above, there is no foundation in fact for ASX's finding that ISX structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar fee predominantly to generate revenue for the purpose of meeting the Milestones. The finding fails to take into account the facts in the ISX Response, including the matters set out above and, in particular, the fact that having acquired the licence in the customer's name ISX then deployed the trading software into the cloud environment and integrated its products with that software.

No implied term as alleged in the ASX Reasons

11. The finding in the ASX Reasons that “*it was an implied term of the Performance Shares that the Milestones had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the Milestones*” has no foundation in fact or law, and has been made because ASX failed to take into account relevant considerations and took into account irrelevant considerations.
12. Any term sought to be implied must meet the well-known requirements for an implied term laid down in *BP Refinery Western Port Pty Ltd v Hastings Shire Council*¹ and adopted by the High Court in *Codelfa Construction Pty Ltd v State Rail Authority of NSW*:²
- (a) it must be reasonable and equitable;
 - (b) it must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it;
 - (c) it must be so obvious that it goes without saying;
 - (d) it must be capable of clear expression;
 - (e) it must not contradict any express term of the agreement.
13. The term “*revenue*” is properly construed having regard to the Australian Accounting Standards and there is no basis to imply the term “*ordinary business revenue*”. The additional term is not necessary to give business efficacy to the contract between ISX and its shareholders concerning the conversion of the performance rights into ordinary shares. It is not so obvious that it goes without saying and would contradict the express terms. In particular, notes (a) and (h) to the Historical and Pro-Forma Financial Information as at 30 September 2014, which formed part of the Prospectus given to shareholders before they voted at the General Meeting on 22 December 2014, expressly refer to the Australian Accounting Standards and “*Revenue recognition*”. ISX drew ASX’s attention to these notes in the ISX Response, but ASX failed to take them into account in the ASX Reasons.

¹ (1977) 52 ALJR 20 at 26.

² (1982) 149 CLR 337 at 347.

14. Furthermore, prior to the meeting of ISX shareholders on 22 December 2014:
- (a) the company's solicitors asked ASX to confirm that the "*Performance Shares*" were acceptable securities on the terms and conditions attached to the letter and ASX raised no issues as to the meaning of "*revenue*"; and
 - (b) the expert report prepared by RSM Bird Cameron dated 6 November 2014 noted that the conversion of the performance rights into ordinary shares was linked to turnover and not to profitability such that the incentive to grow revenue could come at the expense of profits but nevertheless considered the proposed transaction was reasonable for shareholders.
15. Accordingly, there is no foundation in fact for ASX's finding that "*it could not reasonably have been in contemplation of the parties when the terms of the Milestone Shares were originally agreed between ISX (then Otis Energy) and the original holders...that it would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue of the Milestones*". In any event, ISX has said that the revenue was not generated solely or predominantly for that purpose.

Revenue was audited by Grant Thornton and properly recognised in the Relevant Period

16. The revenue was audited and properly recorded in the financial year ended 30 June 2018.
17. The uncontradicted facts are that:
- (a) the correct accounting treatment was to record those fees as revenue during the financial year ending on 30 June 2018 because the services were delivered by 30 June 2018 and the invoices were issued before 30 June 2018 in respect of each customer's irrevocable binding legal obligation to pay the fees due under their agreement;
 - (b) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was the subject of the audit performed by Grant Thornton, no information was withheld from Grant Thornton and their audit was unqualified; and
 - (c) Grant Thornton confirmed that the revenue satisfied AASB118, AASB111 and AASB 15.
18. Further:
- (a) AASB 15 clearly allows for the practice of wholesale purchase and resale without any value add; and
 - (b) in this case, ISX actually added value as it:

- (i) deployed the trading platforms into the secure cloud environments which it designed to comply with the PCI DSS, together with elements of integration; and
- (ii) actually made a profit of approximately €150,000 across the four agreements, in addition to contributing towards the company's overheads and covering the cost of ISX's technical services personnel.

Conversion of the performance rights was not material to the price or value of ISX's shares

19. ISX disputes that the conversion of the performance rights to ordinary shares was material to the price or value of its shares.
20. ISX applied ASX Guidance Note 8 in the ISX Response and demonstrated that, based on ASX's own guidelines, there was no material movement in the price of ISX's shares when the achievement of the Milestones was announced. In the ASX Reasons ASX attributed different meanings to "price" and "value" when determining the material effect of information, which has no foundation in fact or law.
21. Relevantly, in Guidance Note 8 ASX acknowledges that:
- (a) the information needs to be looked at in context, rather than in isolation;
 - (b) instead of undertaking the hypothetical task, ASX will "*generally look to the actual effect that the information had on the market price of the entity's securities when it was finally announced to the market*";
 - (c) ASX will generally apply the materiality guidelines that formerly appeared in the Australian Accounting Standards as a reasonable measure of materiality;
 - (d) therefore if the information appears to have moved the market price of the entity's securities (relative to the prices in the market generally or in the entity's sector) by "*roughly 5% or less*",³ ASX will generally regard that as confirmation that the information was not market sensitive; and
 - (e) where the price movement is between 5% and 10%, ASX will have regard to a number of factors to determine whether the information should be regarded as market sensitive and, for smaller entities would generally expect this to result in a materiality threshold "*that is 10% or close to it*".⁴
22. On 22 June 2018 ISX told the market that:

³ Section 8.7 of Guidance Note 8.

⁴ Section 8.7 of Guidance Note 8.

*“...cash receipts for Half Two (H2) are now in excess of **Three Million Seven Hundred and Fifty Dollars (\$3,750,000)**.*

Subject to audit, the receipts will satisfy the Milestone A and Milestone B requirements for issue of Class A and Class B Performance Rights under Section 14.2 of the iSignthis Ltd Prospectus dated 22 December 2014.

The Company is not as yet in a position to provide guidance on Milestone C target of Five Million Dollars (\$5,000,000) audited revenue target, as End of Financial Year June 2018 invoicing will be the determining factor.”

23. On 21 June 2018 ISX’s share price closed at \$0.16. On 22 June 2018 ISX’s share price rose to \$0.17. Thereafter, until 10 July 2018, ISX’s share price remained between \$0.17 and \$0.18. That is significant because, as ISX told ASX in the ISX Response, the release of this information had a positive impact of 5.8% on ISX’s share price and given the small size of ISX at the time, this confirmed that the information was in fact *not* market sensitive.
24. On 31 July 2018 ISX told the market, among other things, that based on the unaudited revenue for the 6 months from 1 January 2018 to 30 June 2018, it estimated that the requirements for all three tranches of the performance rights would be met such that 336,666,667 ordinary shares would be issued in the September quarter period, taking the total number of shares on issue for the company to 1,004,832,159.
25. On 30 July 2018 ISX’s share price closed at \$0.215. On 31 July 2018 ISX’s share price closed at \$0.205. Again, ISX told ASX that given the small size of ISX at the time, this 4.8% decline confirmed that the information released to the market on 31 July 2018 was *not* market sensitive.

When considered in context the revenue from the alleged “Key Contracts” was not material

26. ISX also disputes that the revenue derived from the alleged “Key Contracts” was itself material in financial terms when looked at in the context of ISX’s financial year and the anticipated GPTV revenue.
27. On 24 April 2018 ISX changed its financial year end from 30 June to 31 December. From that point forward ISX considered materiality by reference to the financial year ending 31 December. For example, by 4 June 2018 ISX had told the market that it anticipated GPTV totalling \$550 million in the 6 month period ending 31 December 2018. By 31 July 2018 this figure had risen to \$600 million.
28. Further, ISX maintains that ASX has failed to take into account the fact that it is actual GPTV which affects the price or value of its shares because before ISX achieved revenue through actual GPTV, its share price remained relatively static between \$0.14 and \$0.17 whereas ISX’s share price rose when it was able to demonstrate to the market that its platforms actually worked and it was able to convert anticipated GPTV into actual GPTV.

29. This issue may need to be the subject of expert evidence at trial.

The 3 August 2018 'representation'

30. In finding that the alleged <15% Representation “*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*” ASX failed to take into account the relevant considerations set out above and otherwise in the ISX Response and took into account irrelevant considerations. Fundamentally, ISX says that when those relevant considerations are taken into account the finding has no foundation in fact or law.

31. ASX failed to take into account and apply the applicable legal principles which require the representation to be considered by reference to its circumstances and context. In particular, ASX failed to take into account:

- (a) the context in which the statement was made, including the information which ISX gave ASX in relation to the KAB, Worldline and Apple issues faced by ISX;
- (b) the fact that when the statement was made on 3 August 2018 it was consistent with the facts and expectations known at the time such that ISX:
 - (i) reasonably expected that its capability to process GPTV was imminent;
 - (ii) had not yet fully appreciated the impact which the KAB, Worldline and Apple issues would have on its ability to generate revenue from actual GPTV; and
 - (iii) expected that actual GPTV processed during the last 6 months of 2018 would have been in the order of that which was ultimately achieved in early 2019;
- (c) the fact that the revenue from each separate agreement was not considered to be material because:
 - (i) on 24 April 2018 ISX changed its financial year end from 30 June to 31 December;
 - (ii) from that point forward ISX considered materiality by reference to the financial year ending 31 December; and
 - (iii) it still expected to receive significant GPTV revenue in the six months ending on 31 December 2018. For example, by 4 June 2018 ISX had told the market that it anticipated GPTV totalling \$550 million in the 6 month period ending 31 December 2018. By 31 July 2018 this figure had risen to \$600 million;

and,

(d) the fact that the statement was made in the context of ISX being able to process GPTV, which became irrelevant when ISX subsequently announced on 26 September 2018 that it would not be able to process GPTV, and that it had deferred doing so until its Tier 1 network was completed.

32. Further, in finding that the representation made on 3 August 2018 was market sensitive, ASX took into account a research report dated 1 March 2018 in relation to ISX's December 2017 half result. This irrelevant consideration was not disclosed to ISX in the draft of ASX's findings such that ISX was not given an opportunity to address the error in the ISX Response.

Dated: 1 May 2020

Subject: FW: ISX Formal Response to ASX Reasons
Date: Saturday, 2 May 2020 at 12:32:28 pm Australian Eastern Standard Time
From: John Karantzis
To: Daniel Moran
CC: Janine Ryan, Anthony Seyfort, Kevin Lewis, directors, exec, legal
Attachments: image001.png, image002.png, image003.png, image004.png, image005.png, image006.png, image007.png, image008.png, image009.png, image010.png, image011.png, image012.png, image013.png, image014.png, image015.png, image016.png, image017.png, image018.png, image019.png, image020.png, image021.png, image022.png, image023.png, image024.png, image025.png

Dear Daniel

You should probably be aware of the below email exchange.

We hope that this is resolved pre-market open Monday.

It looks exactly the way it looks.

Have a great weekend.

Regards

John Karantzis
CEO

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From: John Karantzis
Date: Friday, 1 May 2020 at 6:05 pm
To: James Gerraty <ASX>
Cc: legal <legal>, Anthony Seyfort <HWLE>, Dean Litis <ASX>, directors <ISX>
Subject: Re: ISX Formal Response to ASX Reasons

James

With respect, ASX has no role to review the suitability of our response to ASX's reasons.

Paragraph 81 of ASX's written submissions to the Federal Court said:

"...to the extent that ISX considers ASX's conclusions to be erroneous or unwarranted, it can publish such facts as it considers the market, and those with whom it deals (including regulators), ought to possess." (emphasis added)

This censorship by the ASX must stop. The ASX must separate its role as market operator, with that of being a respondent for damages in Federal Court.

Regards

John Karantzis

CEO

456 Victoria Parade, East Melbourne
Victoria 3002 Australia

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From: James Gerraty <ASX>

Date: Friday, 1 May 2020 at 5:51 pm

To: John Karantzis

Cc: legal >, Anthony Seyfort <hwle>, Dean Litis <ASX>

Subject: RE: ISX Formal Response to ASX Reasons

Dear John

ASX is reviewing the announcement to determine if it is suitable for release.

We will keep you informed on our progress.

Regards

James

From: John Karantzis
Sent: Friday, 1 May 2020 3:09 PM
To: James Gerraty (ASX)
Cc: Anthony Seyfort HWLE
Dean Litis (ASX)
Subject: ISX Formal Response to ASX Reasons

EXTERNAL EMAIL: Do not click on links or open attachments unless you trust the sender

Dear James

I uploaded the attached over an hour ago.

Under the circumstances, I would expect prompt release – noting that this is the Company’s reply to the ASX’ SOR.

In order to avoid yet another letter to shareholders as a consequence of the ASX being uncooperative and blocking ISX’s use of the MAP to disseminate information to its shareholders, can you please release ASAP.

We note that whilst ASX may have an adverse opinion on our communications, it should not be using its power as market operator to block such, as it is clearly a further conflict of interest to do so.

Regards

John Karantzis
CEO

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