

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 v ASX LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 4/09/2020 5:47:48 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.

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Defence to 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

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 further amended statement of claim filed on ~~4 December 2019 (SOC)~~ 12 March 2020 (ASOC) ~~15 April 2020 (FASOC)~~ 20 August 2020 (2FASOC). Unless the context requires otherwise, the Respondent (**ASX**) adopts the defined terms used in the ~~SOC ASOC FASOC~~ 2FASOC, 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 and repeated in this defence.

A. Background

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

Filed on behalf of (name & role of party)	The Respondent		
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2. ASX admits the allegations in paragraph 2 of the ~~SOC~~~~ASOC~~~~FASOC~~~~2FASOC~~ 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~~, 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, cll 1, 5, 7

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

4. ASX denies the allegations in paragraph 4 of the ~~SOC~~~~ASOC~~~~FASOC~~~~2FASOC~~.

Particulars

ASX refers to paragraph 3 above and paragraph 52 below

5. In response to paragraph 5 of the ~~SOCASOC FASOC~~^{2FASOC}, 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

6. In response to paragraph 6 of the ~~SOCASOC FASOC~~^{2FASOC}, 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}, 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.

8. ASX denies the allegations in paragraph 8 of the ~~SOCASOC FASOC~~ 2FASOC.

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, 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, 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}, 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}, 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~~FASOC2FASOC.

Alleged second failure to lift the suspension

14. In response to paragraph 14 of the ~~SOCASOC FASOC~~FASOC2FASOC, 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~~FASOC2FASOC, 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~~FASOC2FASOC, 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.
18. In response to paragraph 18 of the ~~SOCASOC FASOC~~ 2FASOC, 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.

Alleged third failure to lift the suspension

20. In response to paragraph 20 of the ~~SOCASOC FASOC~~ 2FASOC, 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, 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, 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.

24. In response to paragraph 24 of the ~~SOCASOC FASOC~~^{2FASOC}, 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}.
26. In response to paragraph 26 of the ~~SOCASOC FASOC~~^{2FASOC}, 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.
27. In response to paragraph 27 of the ~~SOCASOC FASOC~~^{2FASOC}, 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~~ FASOC-2FASOC, 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~~ FASOC-2FASOC, 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~~ FASOC-2FASOC, ASX:

- (a) refers to and relies on the terms of the email from Mr Luxford on 7 November 2019 for their full force and effect; and
- (b) otherwise admits the allegations in the paragraph.

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

32. In response to paragraph 32 of the ~~SOCASOC FASOC~~^{2FASOC}, 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}, 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}, 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 and otherwise denies the allegations in paragraph 35 of the ~~SOCASOC FASOC~~^{2FASOC}.

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}, 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}, 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}, 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}, 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}, 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}, 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}, 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 and otherwise denies the allegations in paragraph 43 of the ~~SOCASOC FASOC~~^{2FASOC}.

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}, 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}, 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}, 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}, 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}, 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

49. ASX denies the allegations in paragraph 49 of the ~~SOCASOC FASOC~~^{2FASOC}.

50. ASX denies the allegations in paragraph 50 of the ~~SOCASOC FASOC~~^{2FASOC}.

51. ASX denies the allegations in paragraph 51 of the ~~SOCASOC FASOC~~ 2FASOC 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 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 Market Announcement, iSignthis Limited (ASX:ISX) ASX query letter and ISX's responses, 25 May 2020

51A. In further answer to paragraph 51 of the 2FASOC, 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, 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, ASX 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.

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.

55. ASX denies the allegations in paragraph 55 of the ~~SOCASOC FASOC~~2FASOC.

56. ASX denies the allegations in paragraph 56 of the ~~SOCASOC FASOC~~2FASOC.

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, 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 6 to 8 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.

59. ASX denies the allegations in paragraph 59 of the ~~SOCASOC FASOC~~ 2FASOC.

Alleged decision to suspend ISX's shares from quotation

60. ASX denies the allegations in paragraph 60 of the ~~SOCASOC FASOC~~ 2FASOC.

Alleged decisions to not reinstate ISX's shares to quotation

61. ASX denies the allegations in paragraph 61 of the ~~SOCASOC FASOC~~ 2FASOC.

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.

62A. In further answer to the allegations in paragraphs 57 to 62 of the ~~SOCASOC FASOC~~ 2FASOC, 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, 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;
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, 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, 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's points of emphasis).

66. In response to paragraph 66 of the ASOC ~~FASOC~~2FASOC, 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, 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, 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's 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, 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, 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, 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, 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.
71. ASX denies the allegations in paragraph 71 of the ASOC ~~FASOC~~ 2FASOC.
72. In response to paragraph 72 of the ASOC ~~FASOC~~ 2FASOC, 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, 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 April 2020
<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/April/Letter%20to%20Shareholders%20-%20Federal%20Court%20Action.pdf?hsLang=en>)

iSignthis, Letter to Shareholders: ASX Directions, 1 May 2020
<https://www.isignthis.com/hubfs/Investor%20Documents%202020/Announcements/2020/May/Letter%20to%20Shareholders.pdf?hsLang=en>)

iSignthis, iSignthis announcement to shareholders, 4 May 2020
<https://www.isignthis.com/resources-blog/isignthisresponse>); including link to iSignthis' official response to ASX's Statement of Reasons, 1 May 2020
https://www.isignthis.com/hubfs/Investor%20Documents%202020/ISX_Formal%20response%20to%20ASX%20reasons%5B1%5D.pdf?hsLang=en)

- (d) on 1 May 2020, ISX sent a Letter to Shareholders regarding the directions made by ASX, which referred to ASX's Final Reasons. The Letter to Shareholders was circulated publicly on social media on and from 1 May 2020;

Particulars

iSignthis, Shareholders Update re ASX Directions, 1 May 2020

HotCopper, Letter to Shareholders : ASX Directions

(<https://hotcopper.com.au/threads/letter-to-shareholders-asx-directions.5375701/>), 1 May 2020

- (e) on 4 May 2020, ISX published on its website an announcement to shareholders including the “Full ISX Official Response to the ASX SoR”;

ISX’s claims about ASX’s decision-making procedures

- (f) on 25 May 2020, ASX made an announcement to the ASX Market under ISX’s code releasing a copy of a 7 May 2020 Query Letter from ASX to ISX and related correspondence, which included responses from ISX making claims to the effect that ASX engaged in “*an outrageous abuse of ASX’s powers*”, pursued matters that were “*not an appropriate use of ASX’s powers*”, that there were “*errors in ASX’s Statement of Reasons*”, that ASX had “*refused to publish [ISX’s] response*”, and that ISX did not have “*confidence that the ASX is acting in good faith*”, all of which conveyed that ASX’s position in relation to ISX, including its Final Reasons, was a contested issue;

Termination of relationship with Visa

- (g) on 29 April 2020, ISX announced to the ASX market that “*processing to merchants across the Visa network was also suspended for parts of March pending response to Visa re queries on ASX ‘investigation’, concerns re ‘derogatory media’ and other matters*”;

Particulars

ISX Appendix 4C, 29 April 2020

- (h) by no later than 1 May 2020, it was publicly reported that Visa’s anti-money-laundering division had suspended the Second Applicant;

Particulars

Visa Global Registry of Service Providers, as updated on 1 May 2020

Australian Financial Review, *Rear Window*, 4 May 2020, citing Visa’s website

- (i) by no later than 29 May 2020, it was publicly reported that Visa had removed ISX and the Second Applicant from its Global Registry of Service Providers;

Particulars

Visa Global Registry of Service Providers, as updated on 29 May 2020

Other payments processing issues

- (j) on 29 April 2020, it was publicly reported by ISX that ISX failed to process transactions across a number of card schemes.

Particulars

ISX Appendix 4C, 29 April 2020

Ongoing ASIC Investigation

- (k) since October 2019 and as at 30 April 2020, it was publicly known that ISX was the subject of regulatory investigation by the Australian Securities and Investments Commission;

APRA and RBA regulatory applications

- (l) it was publicly known:
 - (i) from at least 5 July 2019, that ISX had applied for an Authorised Deposit-taking Institution (ADI) licenses from the Australian Prudential Regulation Authority and an exchange settlement account from the Reserve Bank of Australia;
 - (ii) at all times since 5 July 2019 that ISX had not been granted an ADI licence or exchange settlement account;

Particulars

ISX ASX Announcement, Australian Licensing Update, 5 July 2019

Sydney Morning Herald, *iSignthis party put on hold by watchdogs*, 5 October 2019

Australian Financial Review, *iSignthis backs NSX with stake*, 21 February 2020

Other matters

- (m) it was publicly reported on and from October 2019 that several ISX customers were linked with alleged regulatory breaches;

Particulars

Danish bank, KAB, was charged with violations of Danish money-laundering regulations: Sydney Morning Herald, *iSignthis party put on hold by watchdogs*, 5 October 2019.

AGM Markets, OT Capital and Ozifin were subject to freezing orders in Australia, and regulatory action by US and Israeli authorities: Australian Financial Review, *iSignthis source of revenue is “deceptive”*, 29 October 2019; The Times of Israel, *Australia stock market probe hints at magnitude of alleged Israeli scam industry*, 30 October 2019; Sydney Morning Herald, *Three iSignthis clients face US, Israeli legal action*, 1 November 2019; Sydney Morning Herald, *Executives linked to iSignthis customer face US fraud charges*, 18 November 2019; Sydney Morning Herald, *'Make YOU Rich': Court finds iSignthis customers ran fake bitcoin ads*, 3 March 2020.

XtraderFX was raided by Austrian and German police in February 2019 after they suspected it snared customer deposits and showed traders fake profits, encouraging them to deposit more funds; ISX was processing bank transfers from customers of XtraderFX as recently as 2019: Australian Financial Review, *iSignthis and the high risk, high reward online payments game*, 18 November 2019.

(iSignthis processed payments and ran authentication checks for gambling and sports betting sites run by Araxio Development NV (Zetcasino, Alfcasino, Wazamba and Malina Casino, and sports betting site Librabet). Almost all of these sites are banned by the Cyprus gaming authority according to its blocked gaming sites: Australian Financial Review, *iSignthis and the high risk, high reward online payments game*, 18 November 2019.

FCorp was reported on 19 December 2019 to have been ordered to stop trading by the German financial regulator and the subject of a warning by Australian regulators to consumers that FCorp may be running an online trading scam: Sydney Morning Herald, *iSignthis customer in hot water over licence*, 19 December 2019.

Maxi EFX Global AU Pty Ltd, which operates the EuropeFX platform, was reported on 2 January 2020 to have had assets frozen on application by ASIC: Sydney Morning Herald, *Latest iSignthis customer has assets frozen*, 2 January 2020.

EuropeFX, a direct iSignthis customer, was accused of operating an unlicensed investment scheme in Australia that has allegedly caused harm to consumers: Sydney Morning Herald, *Rabbitohs sponsor, iSignthis customer under criminal investigation*, 17 January 2020.

Rodeler and Hoch Capital, a Cypriot online broker, was banned from operating in the UK by the Financial Conduct Authority. Rodeler and Hoch Capital had been banned from providing financial services in France in August 2016 (the ban was lifted in July 2017) and was placed on the Ontario Securities Commission's Warning List in April 2013. Rodeler and Hoch Capital was an iSignthis customer in early 2017: Australian Financial Review, *iSignthis CEO John Karantzis plays the Wirecard*, 5 July 2020.

- (n) from at least 24 January 2020, it was known that Gadens was investigating a class action against ISX for breach of continuous disclosure obligations, misleading or deceptive conduct, and breach of directors' duties;

Particulars

Gadens website regarding ISX investigation
(<https://classactions.gadens.com/Actions/Details/13>)

Sydney Morning Herald, *iSignthis faces shareholder class action*,
29 January 2020

- (o) from at least 8 May 2020, it was known that ISX acquired Probanx, which was publicly reported to have earlier set up or advised nine fake Gambian banks involved in defrauding hundreds of millions of dollars from real, state-owned banks;

Particulars

Australian Financial Review, *Rear Window*, 8 May 2020

- (p) at all material times, ISX and its operations have attracted significant adverse media and other scrutiny;
- (q) other circumstances may be identified after discovery.

73A. In further answer to paragraph 73 of the 2FASOC, 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, 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, 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, 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, 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, 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, ASX repeats paragraphs 76 to 78 above and denies the allegations in the paragraph.
80. In response to paragraph 80 of the ~~FASOC~~ 2FASOC, ASX repeats paragraph 79 above and denies the allegations in the paragraph.
81. In response to paragraph 81 of the ~~FASOC~~ 2FASOC, ASX repeats paragraph 80 above and denies the allegations in the paragraph.

G. Alleged misleading or deceptive conduct by ASX

82. In response to paragraph 82 of the 2FASOC, 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, 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 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 Representation were expressed to be ASX's "consider[ation]"; and
- (xii) by reason of the matters in sub-paragraphs (i) to (xi) above, any representation conveyed by the Final Reasons in relation to the matters alleged to constitute the First to Eighth 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.

- 84. ASX denies the allegations in paragraph 84 of the 2FASOC.
- 85. ASX denies the allegations in paragraph 85 of the 2FASOC.
- 86. ASX denies the allegations in paragraph 86 of the 2FASOC.
- 87. ASX denies the allegations in paragraph 87 of the 2FASOC.
- 88. ASX denies the allegations in paragraph 88 of the 2FASOC.
- 89. ASX denies the allegations in paragraph 89 of the 2FASOC.
- 90. ASX denies the allegations in paragraph 90 of the 2FASOC.
- 91. ASX denies the allegations in paragraph 91 of the 2FASOC and says further that at no time has ISX corrected or withdrawn the "<15% Representation".
- 92. In response to paragraph 92 of the 2FASOC, ASX repeats paragraphs 82 to 91 above and denies the allegations in the paragraph.
- 93. In response to paragraph 93 of the 2FASOC, 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, 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 (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, 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, 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, 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, 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.
100. In response to paragraph 100 of the 2FASOC, 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, 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, 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, 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:

- (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, ASX repeats paragraphs 95 to 104 above and denies the allegations in the paragraph.
106. In response to paragraph 106 of the 2FASOC, ASX repeats paragraphs 95 to 105 above and denies the allegations in the paragraph.
107. In response to paragraph 107 of the 2FASOC, 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, 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, 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, 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, ASX repeats paragraphs 95 to 106 above and denies the allegations in the paragraph.

111. In response to paragraph 111 of the 2FASOC, ASX repeats paragraph 110 above and denies the allegations in the paragraph.

112. In response to paragraph 112 of the 2FASOC, ASX repeats paragraphs 110 and 111 above and denies the allegations in the paragraph.

Date: ~~28 February~~ ~~3-15 April~~ 4 September 2020



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.

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 2020



Signed by Luke Hastings
Lawyer for the Respondent