

iSignthis Ltd vs ASX Ltd: s1041H alleged breach by ASX and associated damages

Melbourne, 23rd June 2020 : iSignthis Ltd (“the Company”) discloses that the Company has made an application to the Federal Court to:

- Extend our Statement of Claim against the ASX to address the ASX’s Statement of Reasons, and its veracity under s1041H of the Corporations Act.
- Introduce a damages claim for what ISX alleges is the misleading and deceptive conduct by the ASX under s1041H of the Corporations Act.
- Seek initial damages flowing from this specific issue in excess of \$27 million.

The injunction and amended Statement of Claim (SoC) is attached.

The matter is scheduled for 930am 17th July 2020 to be heard by Justice Davies of the Federal Court.

Authorised by N J Karantzis, Managing Director

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/06/2020 4:29:13 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	VID1315/2019
File Title:	ISIGNTHIS LIMITED v ASX LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	17/07/2020, 9:30 AM
Place:	Please check Daily Court List for details



Dated: 19/06/2020 8:48:06 AM AEST

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

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Interlocutory application

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

To Respondent

The Applicant applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place: Level 7, Commonwealth Law Courts, 305 William Street, Melbourne in the State of Victoria

Dated: 2020

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of iSignthis Limited, Applicant

Prepared by Colin Almond

Law firm HWL Ebsworth Lawyers

Tel +61 3 8644 3500

Fax 1300 365 323

Email calmond@hwle.com.au

Ref CA:KLA:957343

Address for Service HWL EBSWORTH LAWYERS

Level 26, 530 Collins Street, Melbourne VIC 3000

DX 564 MELBOURNE

Email: calmond@hwle.com.au

**Interlocutory orders sought**

1. An order pursuant to rule 16.53 of the Federal Court Rules 2011 that the applicant have leave to file and serve its proposed second amended statement of claim in substantially the same form as the document contained in exhibit "CMA-1".
2. Cost of an incidental to the application.

Service on the Respondent

It is intended to serve this application on the Respondent.

Dated: 17 June 2020

A handwritten signature in black ink, appearing to read "Colin Almond", written over a horizontal dotted line.

Signed by Colin Almond
Lawyer for the Applicant

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/06/2020 4:29:13 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: VID1315/2019
File Title: ISIGNTHIS LIMITED v ASX LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 19/06/2020 8:48:09 AM AEST

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

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

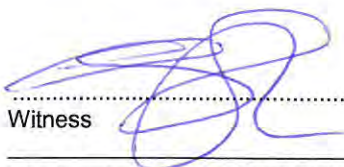
Respondent

Affidavit of: **Colin Michael Almond**
Address: Level 26, 530 Collins Street, Melbourne
Occupation: Solicitor
Date: 17/06/2020

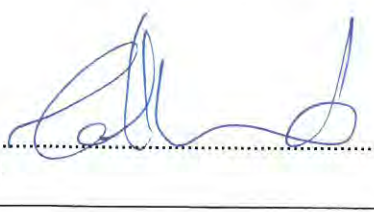
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Witness



Deponent



Filed on behalf of ISIGNTHIS LIMITED, Applicant

Prepared by Colin Almond

Law firm HWL Ebsworth Lawyers

Tel +61 3 8644 3500

Fax 1300 365 323

Email calmond@hwle.com.au

Ref CA:KLA:957343

Address for Service HWL EBSWORTH LAWYERS

Level 26, 530 Collins Street, Melbourne VIC 3000
DX 564 MELBOURNE
Email: calmond@hwle.com.au

[Version 3 form approved 2/05/2019]

I, **Colin Michael Almond** of Level 26, 530 Collins Street, Melbourne in the State of Victoria, Solicitor, make oath and say:

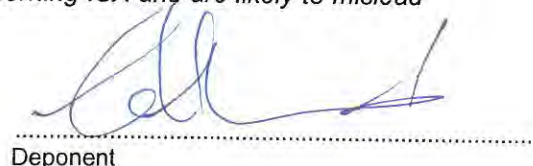
1. I am a partner of HWL Ebsworth Lawyers (**HWLE**), the solicitors acting for the applicant (**ISX**) to this proceeding. I make this affidavit from my own knowledge, except where otherwise indicated.
2. On 29 May 2020, HWLE sent an email to Herbert Smith Freehills (**Freehills**), the solicitors acting for the respondent (**ASX**), which attached ISX's proposed Second Further Amended Statement of Claim and timetabling orders. The email sought, amongst other things, ASX's consent to the filing of the proposed Second Further Amended Statement of Claim. Now produced and shown to me marked "**CMA-1**" is a copy of the email dated 29 May 2020, the proposed Second Further Amended Statement of Claim and the proposed timetabling orders.
3. On 3 June 2020, HWLE received a letter from Freehills which responded to the 29 May 2020 correspondence. Amongst other matters, the letter said that ASX was not prepared to consent to the filing of ISX's proposed Second Further Amended Statement of Claim. Now produced and shown to me marked "**CMA-2**" is a copy of the letter dated 3 June 2020.
4. On 8 June 2020, HWLE sent a letter to Freehills which responded to the matters raised in their letter of 3 June 2020 (CMA-2). The HWLE letter enclosed confidential particulars in relation to paragraphs 73, 93 and 107 of the proposed Second Further Amended Statement of Claim. Insofar as ASX complained that the proposed Second Further Amended Statement of Claim raised "several new issues", the HWLE letter said:

"1.3 For the following reasons, the assertion that our client's proposed Second Further Amended Statement of Claim raises "several new issues" is unfounded:

- a) **First**, since at least 6 December 2019 (when your client provided its Draft Findings), and certainly since 24 January 2020 (when our client provides its Response), your client has known the facts pleaded in paragraphs 84 to 91 of the proposed Second Further Amended Statement of Claim.
- b) **Secondly**, since at least 12 March 2020 your client has known that our client's position is that the Draft Reasons and Final Reasons "do not contain an accurate representation of the facts and circumstances concerning ISX". In this regard, we draw your attention to paragraph 71(d) of the proposed Second Further Amended Statement of Claim, which was included in the Further Amended Statement of Claim filed on 12 March 2020.
- c) **Thirdly**, a fundamental premise of our client's Interlocutory Application was that "the Final Reasons do not contain an accurate representation of the facts and circumstances concerning ISX and are likely to mislead



.....
Witness



.....
Deponent

*the market and other persons who read the document.” In this regard, we draw your attention to paragraph 101 of our client’s written submissions, the affidavits of Anthony Seyfort which were sworn on 12 March 2020 and 19 March 2020 and paragraphs 11, 36, 43, 48 of her Honour’s judgment in relation to our client’s Interlocutory Application (**Judgment**).*

d) **Fourthly**, in paragraph 37 of the Judgment her Honour said that the evidence before the Court showed a serious question to be tried “in respect of the accuracy of particular findings made by ASX as detailed in its statement of reasons” and ASX did not contend to the contrary.

1.4 Plainly, our client’s proposed Second Further Amended Statement of Claim simply pleads these same facts as the basis for the claim that your client engaged in conduct in relation to our client’s shares that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the Corporations Act 2001 (Cth). Accordingly, we invite your client to consent to our client filing the proposed Second Further Amended Statement of Claim and to cease engaging in an exercise that is plainly designed to stall the expeditious progression of the Proceeding.”


5. Now produced and shown to me marked "**CMA-3**" is a copy of the letter dated 8 June 2020, excluding the confidential particulars which will be provided to the Court on a confidential basis prior to the hearing of this application.
6. On 16 June 2020, HWLE received a letter from Freehills which, amongst other matters, said that ASX still did not consent to ISX filing its proposed Second Further Amended Statement of Claim. Now produced and shown to me marked "**CMA-4**" is a copy of the letter dated 16 June 2020.
7. On 17 June 2020, HWLE sent a letter to Freehills which said, amongst other matters, that given ASX’s continuing refusal to consent to the filing of the proposed Second Further Amended Statement of Claim, ISX will now proceed to file an application for leave to do so. Now produced and shown to me marked "**CMA-5**" is a copy of the letter dated 17 June 2020.
8. For the reasons set out above and in the correspondence sent by HWLE to Freehills, ISX seeks leave to file and serve the proposed Second Further Amended Statement of Claim in substantially the same form as the document contained in exhibit "CMA-1".

Witness


Doc ID 742662613/v1

Deponent

Sworn by the deponent
at Melbourne)
in Victoria)
on 17/06/2020)
Before me:


.....
Signature of deponent

.....
Signature of witness

Name of witness: 

Qualification of witness: Lawyer / Justice of the Peace

Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

.....
Witness

.....
Deponent

Certificate identifying annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

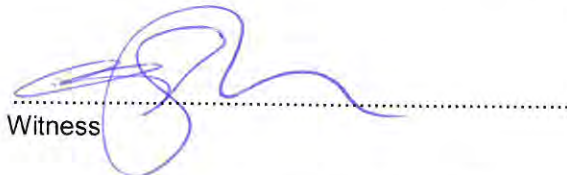
ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

The following 65 pages are the confidential annexure marked "CMA-1" produced and shown to COLIN MICHAEL ALMOND at the time of swearing his affidavit this 17th day of June 2020.


.....
Witness

Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Filed on behalf of ISIGNTHIS LIMITED, Applicant
Prepared by Colin Almond
Law firm HWL Ebsworth Lawyers
Tel +61 3 8644 3500 Fax 1300 365 323
Email calmond@hwle.com.au Ref CA:KLA:957343
DX 564, Melbourne
Address for Service HWL EBSWORTH LAWYERS
Level 26, 530 Collins Street, Melbourne VIC 3000
Email: calmond@hwle.com.au

.....
Witness

.....[Form approved 1/08/2011]
Deponent

Colin Almond

From: Katharine Allen <kallen@hwle.com.au>
Sent: Friday, 29 May 2020 9:03 PM
To: Hastings, Luke
Cc: Anthony Seyfort; Colin Almond; Pondel, Camilla; Smyth, Mark
Subject: iSignthis Limited v ASX Limited | Federal Court of Australia Proceeding VID1315/2019 [HWLE-Matter.C0185794.957343]
Attachments: Further Amended Statement of Claim - 29 May 2020.pdf; Proposed Orders - 29 May 2020.DOCX

Dear Mr Hastings

I refer to the referenced proceeding. I have attached the following documents:

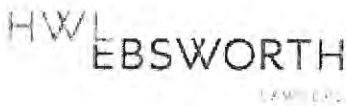
1. proposed second further amended statement of claim; and
2. proposed timetabling orders.

The further amendments to our client's pleading are set out in blue.

Please let us know if your client consents to our client filing the proposed second further amended statement of claim and the proposed orders being sent to the Court by 3 June 2020.

Regards

Katharine Allen
Senior Associate



Level 26, 530 Collins Street | Melbourne VIC 3000
Phone +61 3 8644 3704
kallen@hwle.com.au | www.hwlebsworth.com.au

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Second Further Amended Statement of Claim

No. VID1315/2019

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

iSignthis Limited (ACN 075 419 715)

Applicant

ASX Limited (ACN 008 624 691)

Respondent

A. Background

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

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

Filed on behalf of (name & role of party)	iSignthis Limited, Applicant		
Prepared by (name of person/lawyer)	Colin Almond		
Law firm (if applicable)	HWL Ebsworth Lawyers		
Tel	+61 3 8644 3500	Fax	1300 365 323
Email	calmond@hwle.com.au	Ref:	CA:KLA:957343

Address for service
(include state and postcode) **HWL EBSWORTH LAWYERS**
Level 26, 530 Collins Street, Melbourne VIC 3000
DX 564 MELBOURNE
Email: calmond@hwle.com.au

[Form approved 01/08/2011]

- (f) predominantly provides services in Europe which include remote identity verification, payment processing, card acquiring, settlement, IBAN bank accounts, SEPA transfers and eMoney issuance services.

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

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

B. Agreement between ASX and ISX

- 3. By an agreement entered into between ASX and ISX, it was agreed that ISX would comply with ASX's Listing Rules in force from time to time (**Listing Rules**) and ASX would quote the shares of ISX on the Australian Securities Exchange in accordance with the Listing Rules.
- 4. There were terms of the agreement, among others, that:
 - (a) in exercising its powers under the Listing Rules, ASX would act:
 - (i) in good faith;
 - (ii) honestly and fairly; and/or

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

PARTICULARS

The terms were implied by operation of law.

5. Further, by reason of the matters set out in paragraph 4 above, ASX's power to suspend the shares of ISX from quotation on the Australian Securities Exchange:
 - (a) was, and is, to be exercised for the purpose of ensuring current compliance with the Listing Rules so that the market is being operated in accordance with its operating rules; and
 - (b) was, and is, not to be exercised for the purpose of punishing ISX in respect of alleged historical compliance issues.

C. Suspension of ISX's shares from quotation

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

PARTICULARS

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

7. ASX exercised its power to suspend the quotation of ISX's shares without first giving ISX any:
- (a) notice of ASX's intention to do so;
 - (b) particulars of the alleged issues concerning ISX; or
 - (c) opportunity to address the alleged issues concerning ISX so that the company could avoid having its shares suspended from quotation.
8. In the circumstances set out in paragraphs 6 and 7 above, ASX failed to:
- (a) accord procedural fairness to ISX; and
 - (b) act in good faith and/or honestly and fairly and/or reasonably,
- before suspending the quotation of ISX's shares from the Australian Securities Exchange.

D. Failure to lift the suspension from quotation

(i) First failure to lift the suspension

9. At 12:38pm on 2 October 2019, ISX received a five page Query Letter from the ASX which contained 15 questions, primarily directed to:
- (a) ISX's customers which were currently operating, or had previously operated, cryptocurrency exchanges; and
 - (b) loans to the subsidiary of Etherstack plc;

(First Query Letter).

PARTICULARS

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

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

PARTICULARS

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

11. When it made the media release, ISX did not know, and therefore could not and did not tell the market, the particular reasons for the suspension of its shares from quotation by ASX because:
- (a) ISX had not been given any notice by ASX of its intention to suspend the quotation of ISX's shares;
 - (b) ISX had not been given particulars of the alleged issues concerning ISX;
 - (c) ISX had not been given the opportunity to address the alleged issues concerning ISX so that it could avoid having its shares suspended from quotation; and
 - (d) the questions in the First Query Letter related to historical matters which had no apparent connection to the ISX share price movements which:
 - (i) immediately followed the publication of a report by Ownership Matters Pty Ltd on 10 September 2019, to which ISX had responded on 17 September 2019; and
 - (ii) preceded ISX's shares being suspended from quotation.
12. On 10 October 2019, ISX provided ASX with:
- (a) a four page detailed written response to the First Query Letter for release to the market (**First Market Release**);
 - (b) five annexures marked A to E, which contained confidential information not to be released to the market; and

- (c) 79 documents, comprising 670 pages, which were not to be released to the market as they also contained confidential information,

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

PARTICULARS

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

13. Notwithstanding the First Response, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- (ii) *Second failure to lift the suspension*
14. On 15 October 2019, ISX received a twenty-one page Query Letter from the ASX which contained 17 questions (**Second Query Letter**).

PARTICULARS

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

15. On 25 October 2019, ISX provided ASX with:
- (a) a twelve page detailed written response to the Second Query Letter which was for release to the market (**Second Market Release**); and
- (b) a further 135 documents, comprising 1721 pages, which were not to be released to the market as they contained confidential information,

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

PARTICULARS

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

16. On 28 October 2019, Mr Tim Hart, the Chairman of ISX, sent a letter to, among others, Mr Dominic Stevens, the Managing Director and Chief Executive Officer of ASX, (**28 October Letter**) which:
- (a) said that the First Query Letter and the Second Query Letter had sought production of a bewildering miscellaneous array of unrelated historical information, much of it immaterial to the price or value of ISX's shares, including:
 - (i) how many clients were referred by a technology business in 2016; and
 - (ii) a publicly verifiable licence issued in 2017 by a European Central Bank;
 - (b) said that the diversity and disjunctive nature of the information sought gave rise to a reasonable inference that ASX was looking to find a problem, rather than acting on a suspected problem and that at least some of the information was not being sought for the purpose of satisfying ASX that ISX was complying with the Listing Rules;
 - (c) asked whether ASIC had given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act;
 - (d) said that ISX was concerned that ASX was making decisions to continue the suspension of quotation of its shares that took into account irrelevant considerations or were being exercised for an improper purpose;
 - (e) expressed concern that information requests had been leaked and received by a short-seller in ISX shares;
 - (f) said that ISX was concerned about the security of confidential information, including customer information, which it had supplied to ASX;

- (g) said that ISX was concerned that quotation of its shares was needlessly suspended;
- (h) said that ISX was concerned that a lengthy period of suspension was having reputational damage on the company; and
- (i) asked ASX to immediately lift the suspension of ISX shares.

PARTICULARS

The 28 October Letter was attached to an email sent at 2:26pm by Mr Hart of ISX to Mr Stevens of ASX. A copy of the email and 28 October Letter was also sent to Mr Gerraty of ASX. A copy of the emails and 28 October Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

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

PARTICULARS

Statements to the effect alleged were made during a telephone conversation between Mr Anthony Seyfort of HWL Ebsworth Lawyers (HWL) and Mr Dean Litis, a Principal Advisor, Listing Compliance (Melbourne), of ASX assigned to monitor and liaise with ISX. Further and better particulars may be provided following discovery.

18. On 30 October 2019:
- (a) Mr Hart of ISX had not received a substantive response to the 28 October Letter; and
 - (b) sent an email to Mr Rick Holliday-Smith, the Chairman of ASX, expressing significant concerns about, among other things, ASX's apparent lack of:
 - (i) due process and procedural fairness; and
 - (ii) understanding of ISX's business sector and technology,
- (30 October Email).**

PARTICULARS

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

19. Notwithstanding the First Response, Second Response, 28 October Letter and 30 October Email, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- (iii) *Third failure to lift the suspension*
20. At 3:17pm on 31 October 2019, ISX received a further fifteen page Query Letter from ASX which contained 28 questions and improperly referred to confidential information that ISX had given to ASX (**Third Query Letter**).

PARTICULARS

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

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

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

22. Further, the 31 October HWL Letter:

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

PARTICULARS

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

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

PARTICULARS

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

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

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

PARTICULARS

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

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

PARTICULARS

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

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

PARTICULARS

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

28. At 3:31pm on 5 November 2019, ISX received an email from Mr Kevin Lewis, the Chief Compliance Officer of ASX, which:
- (a) made various observations about the 1 November Response;
 - (b) said that ISX could either provide an amended response to the Third Query Letter which addressed his observations or elect to have the 1 November Response released to the market; and
 - (c) said that if ISX elected not to provide an amended response the suspension of its shares from quotation would not be lifted.
29. By at least 6 November 2019 and continuing thereafter, the position of ASX was that, even if ISX satisfied ASX's queries, it would not necessarily lift the suspension while an ASIC investigation was underway.
30. On 7 November 2019, HWL received an email from Mr Colin Luxford of ASIC which said that the decision by ASX to suspend ISX from trading on 2 October 2019 was not made with a direction from ASIC.

PARTICULARS

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

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

PARTICULARS

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

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

PARTICULARS

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

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

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

PARTICULARS

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

35. Notwithstanding the First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response and 15 November HWL Letter, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

- (iv) *Fourth failure to lift the suspension and unreasonable exercise of power to compel confidential information*
36. At 3:23pm on 19 November 2019 Mr Moran sent an email to HWL (**19 November ASX Email**) which:
- (a) alleged that ISX had refused to provide the information requested in question 25 of the Third Query Letter;
 - (b) effectively said that ASX would not give the undertaking sought by ISX to keep the sensitive commercial information confidential;
 - (c) asserted that the failure to provide that information was a breach of listing rule 18.7 and that this provided ASX with a further basis to maintain the suspension of ISX's shares; and
 - (d) effectively compelled ISX to produce to ASX sensitive commercial information without any assurance that it would be kept confidential.

PARTICULARS

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

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

PARTICULARS

The Fourth Query Letter was attached to an email sent by Mr Gerraty of ASX to Mr Richards of ISX, and a copy to Mr Karantzis, Ms Elizabeth Warrell and Mr Hart of ISX as well as Mr Litis of ASX. A copy of the email and Fourth Query

Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment

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

PARTICULARS

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

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

PARTICULARS

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

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

PARTICULARS

The 25 November HWL Letter was attached to an email sent on behalf of Mr Almond of HWL to Mr Moran of ASX. A copy of

the email and the 25 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the further information provided in the letter is confidential. By referring to this information, ISX does not waive its confidentiality or its right to protect that confidentiality.

42. At 4:37pm on 26 November 2019, ISX:
- (a) provided ASX with a four page written response to the Fourth Query Letter which was for release to the market (**Fourth Market Release**); and
 - (b) a further 34 documents, comprising 177 pages, which were not to be released to the market as they contained confidential information,
- (together, the **Fourth Response**).
43. Notwithstanding the First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response, 15 November HWL Letter, 22 November HWL Letter and Fourth Response, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- (v) *Failure to respond within a reasonable period of time and unfounded allegations made by ASX*
44. At 10:05am on 27 November 2019, HWL received a letter from Mr Moran (**First 27 November ASX Letter**) which wrongly suggested by implication that ISX had sought to avoid its obligations under the Listing Rules by providing him with the confidential information.

PARTICULARS

The First 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL. The First 27 November ASX Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

45. At 10:06am on 27 November 2019 HWL received a second letter from Mr Moran (**Second 27 November ASX Letter**) which said that:
- (a) ASX anticipated providing its draft findings to ISX by the end of the next week;
 - (b) if those findings were adverse, then ISX would be given a reasonable opportunity to respond to them;
 - (c) ASX would have regard to any relevant information that ISX provided in response, and would also consider any proposal put by ISX in order to address matters raised in the draft findings;
 - (d) ASX would then make its findings; and
 - (e) whether this resulted in the reinstatement of ISX's shares to quotation would depend on matters including the nature of ASX's findings and any proposals put by ISX to address such matters to ASX's satisfaction.

PARTICULARS

The Second 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL. The Second 27 November ASX Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

46. At 9:13am on 28 November 2019, HWL sent a letter to Mr Moran (**First 28 November HWL Letter**) which said, as was the fact, that:
- (a) by now ASX had had more than a reasonable opportunity to consider the documents and information which had been given to it by ISX;
 - (b) ISX did not accept that ASX making findings about past compliance with the Listing Rules was relevant to ISX's request to have the suspension of its shares from quotation lifted;

- (c) the leisurely timetable indicated in the Second 27 November ASX Letter was unreasonable and detrimental to ISX as it failed to:
- (i) accord the appropriate degree of urgency to this matter, particularly given that ISX's shares had now been suspended from quotation for almost two months;
 - (ii) acknowledge that the ASX had been in possession of most of the requested information and documents since at least 15 November 2019; and
 - (iii) acknowledge that at the end of the following week there would only be two working weeks left before the Christmas break, when most offices would close for at least three weeks;
- (d) in the circumstances, ISX required ASX to provide its draft findings by 1:00pm on Monday, 1 December 2019, so that it would have a reasonable opportunity to consider them with a view to having the protracted suspension of its shares from quotation lifted well before the Christmas break.

PARTICULARS

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

47. At 10:19am on 28 November 2019, HWL sent a second letter to Mr Moran (**Second 28 November HWL Letter**) which:
- (a) observed (as was the fact) that his veiled suggestion that ISX was seeking to avoid its obligations under the rules by providing him with its response to question 25 of the Third Query Letter was extraordinary, unfounded and disingenuous given the recent correspondence concerning the leak of information from the ASX;
 - (b) detailed the recent correspondence in relation to the leak of information;

- (c) observed (as was the fact) that the First 27 November ASX Letter ignored that context and ISX's legitimate concern to protect its sensitive commercial information, which he had effectively compelled ISX to provide in response to question 25 of the Third Query Letter;
- (d) rejected his attempt to obscure ISX's legitimate concern to protect its sensitive commercial information;
- (e) rejected his attempt to evade any responsibility to ensure that appropriate safeguards were in place to protect the confidentiality of the sensitive commercial information which had been given to him; and
- (f) again reiterated that ISX would hold him and ASX liable for the irreparable loss and damage that it would suffer if any of the sensitive commercial information was either released to the market or disseminated to any third party, including the media.

PARTICULARS

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

48. Notwithstanding the First 28 November HWL Letter, ASX:
- (a) did not provide its draft findings by 1:00pm on Monday, 1 December 2019, so that ISX would have a reasonable opportunity to consider them with a view to having the suspension of its shares from quotation lifted well before the Christmas break; and
 - (b) has failed to lift the suspension and permit the quotation of ISX's shares on the Australian Securities Exchange.
49. In the circumstances set out in paragraphs 9 to 48 above, ASX has failed to act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules as it has:
- (a) failed to forthwith tell ISX the precise steps it needs to take in order to have the suspension lifted and its shares reinstated for quotation;

- (b) failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange notwithstanding:
 - (i) the First Market Release, Second Market Release, Third Market Release and Fourth Market Release; and
 - (ii) all of the confidential information and documents given by ISX to ASX in response to the First Query Letter, Second Query Letter, Third Query Letter and Fourth Query Letter;
 - (c) failed to ensure that ISX was treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation; and
 - (d) compelled ISX, against its will, to produce to ASX sensitive commercial information without first:
 - (i) undertaking to keep that information confidential; or
 - (ii) giving ISX an assurance that it had implemented appropriate safeguards to protect ISX's confidentiality so that it would not be released to the market or leaked to third parties, including the media.
50. By reason of the matters set out in paragraphs 9 to 49 above, ASX has breached its implied obligations to:
- (a) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
 - (b) do all that is necessary to enable ISX to have the benefit of the agreement.
51. In the circumstances set out in paragraphs 9 to 50 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

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

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

52. Further, by reason of the matters set out in paragraphs 6 to 51 above, ASX has failed to meet its obligations under its operating rules and ISX is aggrieved by the contravention.
53. In the circumstances set out in paragraphs 6 to 52 above, ISX is entitled to an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

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

54. Further, by reason of the matters set out in paragraphs 9 to 51 above, ASX has failed to:
- (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and
 - (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.
55. By reason of the matters set out in paragraph 54 above, ASX has contravened section 792A(a) of the Corporations Act.
56. In the circumstances set out in paragraphs 9 to 51 and 54 to 55 above, ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

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

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

57. Further, in the circumstances set out in:
- (a) paragraphs 6 to 8 above, ASX decided to suspend the quotation of ISX's shares on the Australian Securities Exchange; and
 - (b) paragraphs 9 to 48 above, ASX decided to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

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

PARTICULARS

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

- A. The ASX is permitted to operate the Australian Securities Exchange by reason of the Market Licence granted to it by the Minister who can:
 - a) pursuant to section 794A(1) of the Corporations Act, give the ASX a written direction to do specified things that the Minister believes will promote compliance by ASX if the Minister considers that the ASX is not complying with its obligations as a market licensee; and
 - b) pursuant to section 794B(1) of the Corporations Act, give ASX a written notice requiring it to give ASIC a special report on specified matters.
- B. In granting the Market Licence and in disallowing a change to the operating rules of the ASX, the Minister must have regard to whether it would be in the public interest to do so: sections 798A(1)(a), 798A(1)(b) and 798A(2)(g) of the Corporations Act.

- C. The Listing Rules are supervised by the ASIC and the Minister by reason of, inter alia:
- a) section 793C of the Corporations Act, which provides a statutory means for enforcing compliance with the Listing Rules;
 - b) section 793D of the Corporations Act, which requires ASX to lodge with ASIC written notice any of changes to the Listing Rules; and
 - c) section 793E of the Corporations Act, which requires ASIC to send a copy of the notice to the Minister, who may disallow all or a specified part of the change.

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

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

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

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

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

61. By reason of the matters set out in paragraphs 9 to 48 above, there was no evidence or other material to justify the making of each decision to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

62. Further, by reason of the matters set out in paragraphs 9 to 48 above, each decision to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange was an improper exercise of power because it:
- (a) was an exercise of power that was so unreasonable that no reasonable person could have so exercised the power; and/or
 - (b) took into account irrelevant considerations being:
 - (i) past conduct of ISX; and/or
 - (ii) the fact that ASIC is presently conducting an investigation in relation to ISX; and/or
 - (c) failed to take into account relevant considerations being:
 - (i) the First Market Release, Second Market Release, Third Market Release and Fourth Market Release, after each had been made; and
 - (ii) the confidential information and documents after it had been given by ISX to ASX in response to the First Query Letter, Second Query Letter, Third Query Letter and Fourth Query Letter; and/or
 - (d) constituted an exercise of power for a purpose other than a purpose for which the power was conferred in circumstances where ASIC had not given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act.

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

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

PARTICULARS

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

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

64. On 17 December 2019 ISX told ASX, among other things, as is the fact that:

(a) it is not the function of ASX to make and publish “findings” in relation to the alleged conduct of ISX, particularly in circumstances where:

(i) it is for ASIC to consider and determine whether there is sufficient evidence (and therefore a proper basis) to commence legal proceedings against ISX for alleged breaches of the Corporations Act and/or the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act); and

(ii) if legal proceedings are commenced, it is for the Court to determine whether there has been any contravention of the Corporations Act and/or ASIC Act based on cogent admissible evidence to the requisite standard of proof, not based on mere supposition, conjecture or conspiracy theories;

(b) ASX would be acting beyond its responsibility for “operational matters” and therefore acting ultra vires if it were to usurp the role of ASIC and the Courts in supervising compliance with the Corporations Act and ASIC Act;

and further that:

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

(d) ISX had no objection to ASX referring matters concerning the supervision of the market, including the conduct of persons in relation to the market, to ASIC; and

(e) ISX would in due course respond to ASX’s allegations so that a complete and accurate representation of the facts and circumstances concerning ISX could, if considered by ASX to be necessary, be referred to ASIC for its attention.

PARTICULARS

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

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

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

PARTICULARS

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

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

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

PARTICULARS

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

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

- (a) could not provide the undertaking as it would amount to an undertaking by ASX not to comply with its statutory obligations as a licensed market operator; and
- (b) had no intention of publishing the Draft Findings before ISX has responded to them or the time for ISX to respond had elapsed.

PARTICULARS

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

68. On or about 24 January 2020, ISX:

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

PARTICULARS

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

69. Further, the ISX Response said, among other things, that the Draft Findings:

- (a) failed to take into account relevant considerations given to ASX by ISX and took into account irrelevant considerations;
- (b) made allegations which had no proper factual or legal basis; and
- (c) made allegations based on mere supposition, conjecture or conspiracy theories which ought not to be made.

70. On 26 February 2020 ASX gave ISX a document entitled “[Draft] Statement of Reasons” (Draft Reasons), whereby ASX said that it intended to direct ISX to:

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

(the Directions).

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

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

71. The Draft Reasons and the Final Reasons:

- (a) fail to take into account relevant considerations raised in the ISX Response;
- (b) take into account irrelevant considerations notwithstanding the ISX Response;
- (c) contain reasons, notwithstanding the ISX Response, that:
 - (i) have no foundation in fact or law;
 - (ii) are based on supposition and conjecture;
 - (iii) are founded on facts which have been conflated to justify the conclusions;
- (d) do not contain an accurate representation of the facts and circumstances concerning ISX;
- (e) are likely to mislead the market and other persons who read the document; and
- (f) contain findings which do not justify the making of the directions.

72. In the circumstances set out in paragraph 71 above, if ASX publishes the Draft Reasons and/or the Final Reasons and/or makes the directions it will breach In the circumstances pleaded in paragraphs 63 to 71 above, the publication of the Final Reasons and the giving of the Directions caused ASX to breach its implied obligations to:

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

73. In the circumstances set out in paragraphs 68 to 72 above, ISX has suffered loss and damage. were the Draft Reasons and/or the Final Reasons to be published and the directions made, ISX will suffer irreparable loss and damage.

PARTICULARS

ISX has lost customers and key partners, the details of which will be provided in confidential particulars. Further and better particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.

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

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

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

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

Listing Rule 18.8 is invalid for inconsistency with the Corporations Act

76. On or about 10 October 2019 ASX purported to change the Listing Rules by, inter alia, amending listing rule 18.8.

77. On 1 December 2019 the amendments to listing rule 18.8 purported to come into effect.
78. By purporting to amend listing rule 18.8 ASX sought to confer on itself the power to require an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing that in ASX's opinion is necessary to ensure or facilitate compliance with the Listing Rules, including (without limitation):
- (a) not to enter into or perform an agreement or transaction that would breach the Listing Rules (listing rule 18.8(c));
 - (b) to cancel or reverse an agreement or transaction entered into in breach of the Listing Rules (listing rule 18.8(d)); and
 - (c) to engage an independent expert to review the entity's policies and processes to comply with the Listing Rules and to release to the market the findings of, and any changes the entity proposes to make to its compliance policies and processes in response to, the review (listing rule 18.8(l)).
79. By reason of the matters set out in paragraphs 76 to 78 above, ASX sought to confer upon itself power to:
- (a) make formal findings (without any hearing or right of appeal) that an entity has breached the Listing Rules;
 - (b) publish its formal findings and reasons to the market;
 - (c) effectively compel an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing, even if it is unfairly prejudicial to the entity or any other person without the need to apply to the Court for relief pursuant to sections 793C and/or 1101B of the Corporations Act; and
 - (d) bypass the function of ASIC to investigate a potential contravention of the Listing Rules.
80. In the circumstances set out in paragraph 79 above, listing rule 18.8 is repugnant to, or inconsistent with, the scheme for the enforcement of the Listing Rules established by Part 7.2, Division 3 and section 1101B of the Corporations Act and is therefore ultra vires and/or invalid.

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

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

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

G. Misleading or deceptive conduct by ASX

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

83. The Final Reasons said in substance that:

- (a) in 2018 ISX's core business was identity verification and transaction processing and did not include the provision of "*platform development services*" (**First Representation**);
- (b) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was artificial or contrived, generated solely or predominantly for the purpose of meeting the milestones (**Second Representation**);
- (c) the revenue derived from the four contracts was not properly recognised in the financial year ending 30 June 2018 (**Third Representation**);
- (d) the payments pursuant to the four contracts were suspect as they were made by third parties (**Fourth Representation**);
- (e) the revenue milestones were not validly met (**Fifth Representation**);
- (f) the conversion of the performance rights to ordinary shares was material to the price or value of ISX's shares (**Sixth Representation**);
- (g) the signing of each of the four contracts was material to the price or value of ISX's shares and ought to have been disclosed by ISX (**Seventh Representation**); and
- (h) the <15% Representation "*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*" (**Eighth Representation**).

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

PARTICULARS

- A. ISXPay® facilitates payment in the online “*ecosystem*”.
- B. ISX’s Paydentity™ verifies the identity of the customer in the ecosystem.
- C. Software that can take an order includes a trading platform or an ecommerce platform.

- (e) therefore before ISX could provide identity verification and/or transaction processing services to a customer it had to:
 - (i) update and/or extend its technology platforms; and
 - (ii) integrate its technology platforms with the other two parts of the online “ecosystem” for the benefit of its customer so that they all talked to each other;

and
- (f) in the circumstances set out in paragraphs 84(a) to (e) above, the supply of platform development services was part of ISX’s core business as it could not provide the identity verification and transaction processing services to a customer without first supplying the software and integration services.

85. The Second Representation was false as:

- (a) ISX chose to focus on providing its identity verification and transaction processing services to entities with anti-money laundering obligations (**AML regulated entities**);
- (b) during 2017:
 - (i) ISX approached AML regulated entities and discovered that they:
 - A. had no interest in changing the status quo;
 - B. were not prepared to assume any risk associated with integrating ISX’s Paydentity™ and ISXPay® with the platforms that they were already using; and
 - C. would only consider using ISX’s Paydentity™ and ISXPay® if they were already integrated with either a CRM system, trading platform or eCommerce platform;
 - (ii) ISX approached popular CRM, cashier, trading, gaming and ecommerce platforms such as Shopify, Tradologic, PlayTech, DevCode, Praxis, MetaTrader4/5, Panda and Antelope and was told by each of them that they

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

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

PARTICULARS

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

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

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

- (r) in the circumstances set out in paragraphs 85(a) to (q) above, the revenue earned from these three contracts was not generated solely or predominantly for the purpose of meeting the milestones as these contracts were central to:
 - (i) ISX establishing itself as an entity able to provide identity verification and transaction processing services to AML regulated entities;
 - (ii) gaining valuable knowledge that it has since been able to deploy for subsequent customers; and
 - (iii) gaining substantial revenue from GPTV.

86. The Third Representation was false as:

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

- (g) Grant Thornton said that:
- (i) they were satisfied as to the current process of reporting and treatment of revenue;
 - (ii) an increase in revenue contributed to a strong focus by them on revenue; and
 - (iii) they were satisfied that the revenue was accurately recorded and that revenue targets in place and disclosed in the Prospectus had been met;

PARTICULARS

A. The statements were made at the Audit Committee Meeting held on 23 August 2018 (**August 2018 Meeting**), which was attended by Scott Minahane, Tim Hart, Barnaby Egerton-Warburton and Todd Richards of ISX, Brad Taylor and Brad Krafft of Grant Thornton and Mathew Watkins of Leydin Freyer.

B. The statements are recorded in section 3.2 of the Minutes of the August 2018 Meeting (**Minutes**). A copy of the Minutes is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

and,

- (h) in the circumstances set out in paragraphs 86(a) to (g) above, the correct accounting treatment was to record those fees as revenue during the financial year ending on 30 June 2018.

87. The Fourth Representation was false as:

- (a) at all material times SEPAGA E.M.I. LIMITED (**SEPAGA**) and OrangeTrust S.R.O (**OrangeTrust**) were electronic money institutions authorised by European financial regulators to, among other things, send payments on behalf of others;

- (b) at all material times each of Corp Destination, FCorp, Immo and Authenticate BV held an electronic money account with iSignthis eMoney Ltd;
- (c) the payments in respect of the agreement between Corp Destination and Authenticate BV were:
 - (i) debited from the electronic money account of Corp Destination held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and
 - (ii) in one instance made directly into the bank account of Authenticate BV held with ABN AMRO;
- (d) the payments in respect of the agreement between FCorp and Authenticate BV were debited from the electronic money account of FCorp held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (e) the payments in respect of the agreement between Immo and Authenticate BV were:
 - (i) made by Immo directly into the bank account of Authenticate BV held with ABN AMRO;
 - (ii) debited from the electronic money account of Immo held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and
 - (iii) debited from the electronic money account of Immo held with OrangeTrust and transferred to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (f) the payments in respect of the agreement with Nona were sent by SEPAGA on behalf of Nona to the bank account of Authenticate BV held with ABN AMRO; and
- (g) in the circumstances set out in paragraphs 87(a) to (f) above, the payments were not suspect as they were made with money belonging to each of the respective counterparties to the agreements with Authenticate BV.

88. The Fifth Representation was false as:

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

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

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

PARTICULARS

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

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

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

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

PARTICULARS

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

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

PARTICULARS

- A. On 30 July 2018 the price of ISX's shares closed at \$0.215.
- B. On 31 July 2018 the price of ISX's shares declined by \$0.01 to \$0.205.
- (j) in the circumstances set out in paragraphs 89(a) to (i) above, the conversion of the performance rights to ordinary shares was not material to the price or value of ISX's shares.

90. The Seventh Representation was false as:

- (a) it is actual GPTV which affects the price or value of ISX's shares, not revenue from platform development services;
- (b) the revenue which ISX was to receive from each contract was insignificant when properly considered in context, both temporally and relative to the company's anticipated and actual GPTV;
- (c) the conversion of the performance rights to ordinary shares was not material to the price or value of ISX's shares such that each contract which contributed to that conversion being triggered (through the achievement of the milestones set out in the Prospectus) was not material to the price or value of ISX's shares; and

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ISX refers to and repeats paragraph 89 above.

- (d) in the circumstances set out in paragraphs 90(a) to (c) above, the fact that ISX had entered into each contract was not material to the price or value of ISX's shares.
91. The Eighth Representation was false as:
- (a) the reference to "*<15% of revenue*" was made in the context of the company explaining its products and "*cash to revenue lag*", not the composition of its revenue;

- (b) as at 3 August 2018, ISX still:
- (i) had not yet fully appreciated the impact which the KAB, Worldline and Apple issues would have on its ability to generate revenue from actual GPTV;
 - (ii) reasonably expected that its capability to process GPTV was imminent; and
 - (iii) expected to receive significant GPTV revenue in the six months ending on 31 December 2018;

PARTICULARS

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

and,

- (c) in the circumstances set out in paragraphs 91(a) and (b) above, in context the statement was not false and materially misleading.
92. In the circumstances set out in paragraphs 82 and 83 above and each of paragraphs 84 to 91 above, ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the Corporations Act.
93. By reason of the matters set out in paragraph 92 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

ISX has lost customers and key partners, the details of which will be provided in confidential particulars. Further and better particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.

94. By reason of the matters set out in each of paragraphs 92 and 93 above, ISX is entitled to:
- (a) an order pursuant to section 1041I of the Corporations Act for its loss and damage; and/or
 - (b) an order pursuant to section 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.

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

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

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

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

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

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

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

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

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

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- A. The statement in paragraph 101(a) was in writing. It was contained in an email sent at 11:04pm by John Karantzis of ISX to Kevin Lewis of ASX.
 - B. The document was uploaded to the Market Announcements Platform at 11:01pm on 4 May 2020.
102. On 10 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX's amended official response to ASX's "*Statement of Reasons*" which contained such facts that ISX considered the market ought to possess.

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

103. The Second Refusal:
- (a) said that on its face the statement that ISX “*denies representing at an analyst briefing on 3 August 2018 that one-off fees and one-off set ups accounted for less than 15% of ISX’s revenue*” was “*plainly misleading*”; and
 - (b) otherwise failed to give any specific reasons for ASX’s refusal to release ISX’s official response on the Market Announcements Platform under the ISX code.
104. The statement in paragraph 103(a) above:
- (a) was identical to paragraph 23(d)(ii) of the written submissions filed in support of the Interlocutory Application;
 - (b) was not alleged to be misleading at any stage of the Interlocutory Application; and
 - (c) was not alleged to be misleading in the First Refusal.
105. In the circumstances set out in paragraphs 95 to 104 above, the Second Refusal was not made in good faith, fairly and/or reasonably.
106. By reason of the matters set out in paragraphs 95 to 105 above, ASX has breached its implied obligations to:
- (a) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
 - (b) do all that is necessary to enable ISX to have the benefit of the agreement.
107. In the circumstances set out in paragraphs 95 to 106 above, ISX has suffered, and continues to suffer, loss and damage.

PARTICULARS

ISX has lost customers and key partners, the details of which will be provided in confidential particulars. Further and better particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.

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

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

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

110. Further, by reason of the matters set out in paragraphs 95 to 106 above, ASX has failed to:
- (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and
 - (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.
111. By reason of the matters set out in paragraph 110 above, ASX has contravened section 792A(a) of the Corporations Act.
112. In the circumstances set out in paragraphs 110 and 111 above, ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith publish ISX's amended official response to ASX's "Statement of Reasons" on the Market Announcements Platform under the ISX code.

AND ISX CLAIMS AGAINST ASX

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

~~directing ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its~~

~~responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;~~

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

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

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

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

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

J. A declaration that ASX has no power to:

- (i) direct ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;
- (ii) direct ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review;

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

- Options/CFDs/FX;
- Crypto/digital currency;
- Online gambling; and
- Online video gaming;
- Credit providers;
- Travel services; and
- Other,

or;

(iv) give any other direction purportedly pursuant to listing rule 18.8; or

(v) publish the Final Reasons supporting the Directions or disclose information contained therein to anyone except ASIC on a confidential basis.

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

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

~~L.M.~~ An order pursuant to section 793C(2), 1101B(1)(d) and/or 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.

~~L.N.~~ A declaration that ASX failed, in breach of the agreement, to act in good faith and/or honestly and fairly and/or reasonably by refusing to allow ISX to publish its amended official response to ASX's "Statement of Reasons" on the Market Announcements Platform under the ISX code.

~~L.O.~~ A declaration that ASX failed to meet its obligations under its operating rules.

~~N.P.~~ Alternatively to paragraph M above, an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to publish ISX’s amended official response to ASX’s “*Statement of Reasons*” on the Market Announcements Platform under the ISX code.

~~Q.Q.~~ A declaration that ASX contravened section 792A(a) of the Corporations Act.

~~P.R.~~ Alternatively to paragraph P above, an order pursuant to section 1324(1) of the Corporations Act requiring ASX to publish ISX’s amended official response to ASX’s “*Statement of Reasons*” on the Market Announcements Platform under the ISX code.

~~Q.S.~~ Damages.

~~R.T.~~ Such other relief as the Court considers to be appropriate.

~~S.U.~~ Costs.

Dated: ~~4 December 2019 12 March 2020 26 March 2020~~ June 2020

P W Collinson

J S Mereine

.....
HWL Ebsworth Lawyers
Solicitors for the Applicant

Certificate of lawyer

I Colin Almond certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: June 2020

Signed by
Lawyer for the Applicant

Federal Court of Australia

District Registry: Victoria

Division: General

No. VID1315/2019

ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

DRAFT MINUTE OF ORDER

JUDGE: JUSTICE DAVIES

DATE OF ORDER: 2020

WHERE MADE: MELBOURNE

THE COURT ORDERS THAT:

1. The proceeding be set down for trial on September 2020 for an estimate of 5 to 6 days.
2. By 4:00pm on 3 June 2020 the Applicant shall file and serve its Second Further Amended Statement of Claim.
3. By 4:00pm on 17 June 2020 the Respondent shall file and serve its Defence to the Second Further Amended Statement of Claim.
4. By 4:00pm on 24 June 2020 the Applicant shall make discovery of documents in the categories enumerated in Schedule A.
5. By 4:00pm on 24 June 2020 the Respondent shall make discovery of documents in the categories enumerated in Schedule B.
6. By 4:00pm on 15 July 2020, the parties are to file and serve witness outlines for each lay witness they intend to call at the hearing of this proceeding.
7. By 4:00pm on 15 July 2020, the Applicant shall file and serve any expert reports upon which it intends to rely together with all supporting documentation.

8. By 4:00pm on 29 July 2020, the Respondent shall file and serve any expert reports upon which it intends to rely together with all supporting documentation.
9. By 4:00pm on 7 August 2020, the experts retained by the parties are to confer and provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.
10. The proceeding be referred to a mediator to be agreed between the parties such mediation to take place by 14 August 2020.
11. The mediator not later than 17 August 2020 report back to the Court whether the mediation is concluded.
12. The Applicant prepare a Court Book containing the following documents:
 - a) the current pleadings including requests for and particulars;
 - b) all documents, in date order, which any party expects to tender in evidence in chief or refer to in cross-examination.
13. By 4:00pm on 19 August 2020, the Applicant provide the Respondent with a draft Court Book index.
14. By 4:00pm on 21 August 2020, the Respondent provide the Applicant with any required additions to the draft Court Book index.
15. By 4:00pm on 25 August 2020, the Applicant serve on the Respondent and file for the use of the judge a copy of the Court Book.
16. By 4:00pm on 1 September 2020, the parties file and serve an outline of opening submissions.
17. The proceeding be listed for a pre-trial conference two weeks prior to the commencement of the trial.
18. There is liberty to apply.
19. Costs be reserved.

Schedule A

1. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing the phone call on 2 October 2019 between James Gerraty and Todd Richards.
2. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing ISX's consideration of and response to the 12 September Price Query and the 19 September Price Query.
3. Any documents between 2 October 2019 and 6 December 2019, including from phone messaging and instant messaging platforms, recording or evidencing ISX's understanding of, or other communications regarding, the reasons for its suspension.
4. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing the phone call on 2 October 2019 between Tim Hart and James Gerraty.
5. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing the phone call on 7 October 2019 between ISX, HWLE and ASX.
6. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing the phone call on 29 October 2019 between Anthony Seyfort and Dean Litis.
7. Any documents, including from phone messaging and instant messaging platforms, recording or evidencing the phone call on 6 November 2019 between ISX, HWLE, ASX and HSF.

Schedule B

1. Appendix 1A (General admission application and agreement) which was lodged by the company (then known as Telco Australia Limited) and accepted by ASX Limited (ASX) (then known as Australian Stock Exchange Limited) in or about November 1998.
2. Documents that record any communications between ASX and the Australian Securities & Investments Commission (ASIC) in the period between 1 September 2019 and 2 October 2019 in relation to:
 - (a) ISX; and/or
 - (b) ASX's decision to suspend the quotation of ISX's shares on the Australian Securities Exchange.
3. Documents that record the information provided by ASIC to ASX during the telephone conference on 1 October 2019.
4. Documents created on or before 2 October 2019 that record advice from ASIC that it was considering launching a formal investigation into ISX's compliance with its disclosure obligations under the Corporations Act.
5. Documents created on or before 2 October 2019 which record any reason for the decision made by ASX to suspend the quotation of ISX's shares on the Australian Stock Exchange.
6. Documents created on or before 2 October 2019 that record:
 - (a) any enquiries made; and/or
 - (b) facts found by ASX,which formed the basis for ASX opinion under Listing Rule 17.3 prior to suspending trading in ISX's securities.
7. Documents created on or before 1 October 2019 that record any consideration by ASX of ISX's share price fluctuation between 1 September 2019 and 1 October 2019.
8. Documents created in the period between 1 September 2019 and 1 October 2019 that record any review by ASX of ISX's announcements.
9. Documents created in the period between 1 September 2019 and 1 October 2019 that record any review by ASX of media speculation in relation to ISX, including about:
 - (a) ISX's revenue for the six-month period to 30 June 2018; and/or
 - (b) whether ISX's revenue for the six month period to 30 June 2018 had met the milestones required to trigger the conversion of the performance rights.

10. Documents that record any communication between ASX and ASIC in relation to the 12 September Price Query (as defined in [7(b)] of the Amended Defence).
11. Documents that record any communication between ASX and ASIC in relation to the 13 September ISX Response (as defined in [7(c)] of the Amended Defence).
12. Documents that record any communication between ASX and ASIC in relation to the 19 September Price Query (as defined in [7(d)] of the Amended Defence).
13. Documents that record or refer to the telephone conversation at 9:49am on 2 October 2019, including any file note made by James Gerraty:
 - (a) for the purpose of; and/or
 - (b) during,the telephone conversation.
14. Documents that record or refer to the telephone conversation at 2:24pm on 2 October 2019, including any file note made by James Gerraty:
 - (a) for the purpose of; and/or
 - (b) during;the telephone conversation.
15. Documents that record any communication between ASX and ASIC in relation to each decision made by ASX to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
16. Documents (excluding those already given to ISX) that record any reason for each decision made by ASX to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
17. File notes made by James Gerraty, Dean Litis, Kevin Lewis and/or Clare Porta:
 - (a) for the purpose of; and/or
 - (b) during,the telephone call held at approximately 10:15am on 7 October 2019.
18. Documents that record or refer to the telephone call held at approximately 10:15am on 7 October 2019.
19. File notes made by Dean Litis:
 - (a) for the purpose of; and/or
 - (b) during,the telephone conversation on 29 October 2019 with Anthony Seyfort.

20. Documents that record or refer to the telephone conversation on 29 October 2019 between Anthony Seyfort and Dean Litis.
21. File notes made by James Gerraty, Dean Litis, Kevin Lewis, Daniel Moran, Janine Ryan and/or Luke Hastings:
 - (a) for the purpose of; and/or
 - (b) during;the meeting on 6 November 2019.
22. Documents that record or refer to the meeting on 6 November 2019.
23. Documents that record any communication between ASX and ASIC in relation to ASX reinstating ISX's shares to quotation.
24. Documents that record any communication between ASX and ASIC in relation to ASX's draft "findings" that were given to ISX on 6 December 2019.
25. Documents that record any communication between ASX and ASIC in relation to the response given by ISX to ASX on 24 January 2020 (**ISX Response**).
26. Documents (excluding those already given to ISX) that record or refer to any consideration given by ASX to the:
 - (a) 12 September Price Query (as defined in [7(b)] of the Amended Defence);
 - (b) 13 September ISX Response (as defined in [7(c)] of the Amended Defence);
 - (c) 19 September Price Query (as defined in [7(d)] of the Amended Defence);
 - (d) First Market Release (as defined in [12(a)] of the FASOC);
 - (e) Second Market Release (as defined in [15(a)] of the FASOC);
 - (f) Third Market Release (as defined in [32(a)] of the FASOC);
 - (g) Fourth Market Release (as defined in [42(a)] of the FASOC); and/or
 - (h) ISX Response.
27. Documents that record any communication between ASX and ASIC in relation to ASX's Draft Reasons which were given to ISX on 26 February 2020.
28. Documents that record the requisite opinion of ASX under Listing Rule 17.3:
 - (a) on 2 October 2019, when it first suspended trading in ISX's shares; and
 - (b) in the period from 2 October 2019 to date, on each further occasion that ASX decided to not reinstate trading in ISX's shares.

29. The recording of the Analyst Briefing on 3 August 2018.
30. Documents that record any consideration given by ASX to the Ownership Matters report dated 10 September 2019, including any communication between ASX and Ownership Matters about that report or its subject matter.
31. Documents that record or refer to any consideration given by ASX to ISX's announcement on 17 September 2019 in response to the Ownership Matters report.
32. Documents that record any communication between ASX and ASIC in relation to ASX's decision to publish the Draft Reasons and/or the Statement of Reasons.
33. Documents (excluding those already given to ISX) that record any reason for the decision made by ASX to publish the Draft Reasons and/or Statement of Reasons.
34. Documents that record any reason for the decision made by ASX to amend the "Draft Reasons" before ASX gave ISX the Statement of Reasons.

Certificate identifying annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

The following 2 pages are the confidential annexure marked "CMA-2" produced and shown to COLIN MICHAEL ALMOND at the time of swearing his affidavit this 17th day of June 2020.

.....
Witness 

Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Filed on behalf of ISIGNTHIS LIMITED, Applicant

Prepared by Colin Almond

Law firm HWL Ebsworth Lawyers

Tel +61 3 8644 3500 Fax 1300 365 323

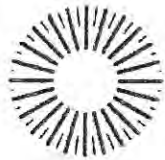
Email calmond@hwle.com.au Ref CA:KLA:957343

DX 564, Melbourne

Address for Service **HWL EBSWORTH LAWYERS**
Level 26, 530 Collins Street, Melbourne VIC 3000
Email: calmond@hwle.com.au

.....
Witness

.....[Form approved-1/08/2011]
Deponent



HERBERT
SMITH
FREEHILLS

Colin Almond
HWL Ebsworth Lawyers
Level 26, 530 Collins St
Melbourne VIC 3000
calmond@hwle.com.au

3 June 2020
Matter 82692955
By Email

Dear Mr Almond

Private and Confidential

**iSignthis Limited v ASX Limited – Federal Court Proceeding No.
VID1315/2019**

We refer to Ms Allen's email received on Friday 29 May 2020 at 9:03pm, attaching your client's proposed Second Further Amended Statement of Claim (**2FASOC**) and proposed orders.

Our client does not consent to the proposed orders and is not presently in a position to consent to your client having leave to file the proposed 2FASOC.

Proposed 2FASOC

The proposed 2FASOC contains a significantly broader and different case from that which was pleaded in earlier iterations of the Statement of Claim. In particular, the proposed 2FASOC would introduce a new cause of action alleging that ASX engaged in misleading or deceptive conduct by reason of representations alleged to be contained in ASX's Statement of Reasons.

The proposed 2FASOC would raise several new issues, which would affect the scope and conduct of the proceeding and which our client requires time to consider. Our client's preliminary view is that the proper preparation for hearing of the broad case sought to be propounded in the proposed 2FASOC would require significantly more time for the various pre-trial steps than is allowed in your proposed orders.

You will appreciate that when potential trial dates were raised by your counsel in court on 30 April 2020, the case your client then propounded was one which the Court held involved "only review [of] the reasons for legal error" ([2020] FCA 567 at [39]). It appears from the proposed 2FASOC, especially the allegations at [84]-[91] that your client wishes to conduct a detailed factual case about the accuracy of eight representations alleged to have been made by ASX. The amendments to [64] also seek to introduce a factual case not previously pleaded.

We expect that the broader and new claim contemplated by the proposed 2FASOC will significantly increase the length, scope and cost of litigation, including the scope of discovery and evidence. The discovery categories so far provided by ASX are not adequate to deal with the new claims in the proposed 2FASOC and further time will be required for our client to consider what additional discovery will be necessary. Your client's willingness to give proper discovery, including of documents presently overseas or held by its subsidiaries and other related bodies corporate, is likely to have a significant bearing on the question of whether leave to amend to introduce this new case should be granted.

Our client is giving further consideration to whether it will consent to the proposed 2FASOC being filed.

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In order to properly consider its position, ASX requires further information and requests that you provide the following:

- 1 the particulars referred to at [73], [93], [107] of the proposed 2FASOC;
- 2 the number of lay witnesses from whom ISX intends to adduce evidence and a general indication of the subject matter of their evidence;
- 3 the number of expert witnesses from whom ISX intends to adduce evidence;
- 4 the matters on which that expert witness or witnesses would be asked to opine;
- 5 the further categories and sources of discovery your client proposes to give relating to the proposed new claims.

Other matters in relation to proposed orders

For the above reasons, none of the orders proposed by your client is appropriate. There are two further matters we highlight in relation to the regime for evidence.

In relation to lay evidence, there is no reason why the usual course should not be followed of your client filing its lay evidence before the defendant files its lay evidence. Nor is there any reason why the lay evidence should not take the form of affidavits rather than witness outlines.

In relation to expert evidence, apart from a tentative reference in its submissions on its interlocutory application (at [96]), your client has not previously raised with us the necessity for expert evidence in this proceeding. Your proposed orders would allow ASX two weeks to file responsive evidence to expert reports on matters and, indeed, in areas of expertise that you have not foreshadowed even now. That is obviously unworkable and inconsistent with the Expert Evidence Practice Note (GPN-EXPT).

Yours sincerely

Luke Hastings
Partner
Herbert Smith Freehills
+61 2 9225 5903
+61 414 234 236
luke.hastings@hsf.com

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Certificate identifying annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019


ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

The following 3 pages are the confidential annexure marked "CMA-3" produced and shown to COLIN MICHAEL ALMOND at the time of swearing his affidavit this 17th day of June 2020.

Witness: 

Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Filed on behalf of		ISIGNTHIS LIMITED, Applicant	
Prepared by		Colin Almond	
Law firm		HWL Ebsworth Lawyers	
Tel	+61 3 8644 3500	Fax	1300 365 323
Email	calmond@hwle.com.au	Ref	CA:KLA:957343
DX	564, Melbourne		
Address for Service HWL EBSWORTH LAWYERS			
Level 26, 530 Collins Street, Melbourne VIC 3000			
Email: calmond@hwle.com.au			

Witness Deponent [Form approved 1/08/2014]

Our Ref: CMA:KLA:957343

8 June 2020

Mr Luke Hastings
Herbert Smith Freehills
ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

Email: luke.hastings@hsf.com

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Mr Hastings

**iSignthis Limited v ASX Limited
Federal Court Proceeding No.VID1315/2019 (Proceeding)**

We refer to the email sent by Katharine Allen of our office to you on 29 May 2020 (**Email**) and your letter dated 3 June 2020, which was received by email at 7:18pm that evening (**Letter**).

Our Email concerned two issues, namely, our client's proposed Second Further Amended Statement of Claim and proposed orders for the further conduct of the Proceeding.

Your Letter has conflated those two issues.

1. Proposed Second Further Amended Statement of Claim

- 1.1. At this stage of the Proceeding, the only matter somewhat relevant to the question of whether our client should be permitted to amend its claim is the anticipated confidential particulars under paragraphs 73, 93 and 107. Accordingly, attached is a copy of those confidential particulars.
- 1.2 The other issues raised in your Letter, such as our client's willingness to make discovery, the number of lay witnesses to be called by our client and the subject matter of their evidence, the number of expert witnesses to be called and the subject matter of their evidence, are irrelevant.
- 1.3 For the following reasons, the assertion that our client's proposed Second Further Amended Statement of Claim raises "*several new issues*" is unfounded:
 - (a) **First**, since at least 6 December 2019 (when your client provided its Draft Findings), and certainly since 24 January 2020 (when our client provides its

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Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 740056213/v1

Level 26, 530 Collins Street, Melbourne VIC 3000 Australia
PO Box 3, Collins Street West VIC 8007 Australia
DX 564 Melbourne

Telephone +61 3 8644 3500
Facsimile 1300 365 323 (Australia) +61 2 8507 6582 (International)
hwlebsworth.com.au

ABN 37 246 549 189

Response), your client has known the facts pleaded in paragraphs 84 to 91 of the proposed Second Further Amended Statement of Claim.

- (b) **Secondly**, since at least 12 March 2020 your client has known that our client's position is that the Draft Reasons and Final Reasons "*do not contain an accurate representation of the facts and circumstances concerning ISX*". In this regard, we draw your attention to paragraph 71(d) of the proposed Second Further Amended Statement of Claim, which was included in the Further Amended Statement of Claim filed on 12 March 2020.
 - (c) **Thirdly**, a fundamental premise of our client's Interlocutory Application was that "*the Final Reasons 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.*" In this regard, we draw your attention to paragraph 101 of our client's written submissions, the affidavits of Anthony Seyfort which were sworn on 12 March 2020 and 19 March 2020 and paragraphs 11, 36, 43, 48 of her Honour's judgment in relation to our client's Interlocutory Application (**Judgment**).
 - (d) **Fourthly**, in paragraph 37 of the Judgment her Honour said that the evidence before the Court showed a serious question to be tried "*in respect of the accuracy of particular findings made by ASX as detailed in its statement of reasons*" and ASX did not contend to the contrary.
- 1.4 Plainly, our client's proposed Second Further Amended Statement of Claim simply pleads these same facts as the basis for the claim that your client engaged in conduct in relation to our client's shares that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the *Corporations Act 2001* (Cth). Accordingly, we invite your client to consent to our client filing the proposed Second Further Amended Statement of Claim and to cease engaging in an exercise that is plainly designed to stall the expeditious progression of the Proceeding.
- 1.5 Please let us know **by 12:00pm on Wednesday, 10 June 2020**, if your client consents to our client filing the proposed Second Further Amended Statement of Claim, failing which we intend to forthwith apply for leave to do so as your client will by then have had more than a week to consider the document.

2. Proposed Orders

- 2.1 The proposed orders attached to our Email were intended to progress the Proceeding. We observe that you have not proposed any alternative orders.
- 2.2 Insofar as discovery is concerned, our client is well aware of its obligations. Our client's discovery categories were sent to you on 28 April 2020. To date, we have not receive a response. At present, for the reasons set out in paragraphs 1.2 to 1.4 above, we do not anticipate that those categories will need to change. We will confirm our client's position after your client has filed its defence to our client's Second Further Amended Statement of Claim and the facts in issue are clearly defined.

- 2.3. Insofar as the lay evidence is concerned, we do not agree that the "*usual course*" is for evidence to be given by affidavit and staggered as suggested. Rather, it is now common practice for evidence to be given *viva voce* and for outlines of the intended evidence to be exchanged. That is particularly so when witnesses will give evidence about alleged conversations, which is the case in this Proceeding, at least insofar as the suspension of our client's shares is concerned.
- 2.4. Finally, at this time we anticipate that expert witnesses will be required. However, until your client has filed its defence to our client's Second Further Amended Statement of Claim so the facts in issue are clearly defined, we cannot take the issue any further.

Please let us have your response **by 12:00pm on Wednesday, 10 June 2020.**

Yours faithfully



Colin Almond
Partner
HWL Ebsworth Lawyers

+61 3 8644 3564
calmond@hwle.com.au



Katharine Allen
Senior Associate
HWL Ebsworth Lawyers

+61 3 8644 3704
kallen@hwle.com.au

Certificate identifying annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

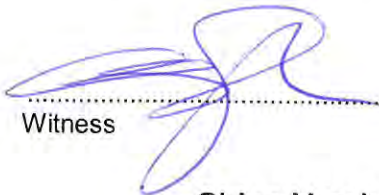
ISIGNTHIS LIMITED (ACN 075 419 715)

Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

The following 5 pages are the confidential annexure marked "CMA-4" produced and shown to COLIN MICHAEL ALMOND at the time of swearing his affidavit this 17th day of June 2020.


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Witness

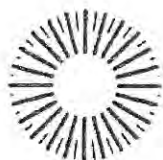
Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Filed on behalf of ISIGNTHIS LIMITED, Applicant
Prepared by Colin Almond
Law firm HWL Ebsworth Lawyers
Tel +61 3 8644 3500 Fax 1300 365 323
Email calmond@hwle.com.au Ref CA:KLA:957343
DX 564, Melbourne

Address for Service HWL EBSWORTH LAWYERS
Level 26, 530 Collins Street, Melbourne VIC 3000
Email: calmond@hwle.com.au

.....
Witness

.....[Form approved 1/08/2011]
Deponent



HERBERT
SMITH
FREEHILLS

Colin Almond
HWL Ebsworth Lawyers
Level 26, 530 Collins St
Melbourne VIC 3000
calmond@hwle.com.au

16 June 2020
Matter 82692955
By Email

Dear Mr Almond

Private and Confidential

iSignthis Limited v ASX Limited – Federal Court Proceeding No. VID1315/2019

We refer to the letter and particulars received under cover of Ms Allen's email dated Monday, 8 June 2020 at 5:28pm. We also refer to your client's (**ISX**) Notice of Annual General Meeting to be held on 17 July 2020 (**AGM**) announced to the market on Friday, 12 June 2020 at 12:52pm (**Notice of Meeting**).

1 Proposed delisting

Resolution 6 in the Notice of Meeting is a shareholders' resolution to delist ISX from the official list of the Australian Securities Exchange (**ASX**). According to the Notice of Meeting, the directors of ISX support that resolution, and recommend that ISX shareholders vote in favour of the resolution to delist. The consequence of that resolution passing would appear to be that ISX will apply to ASX to be removed from the official list.

Resolution 7 in the Notice of Meeting is a shareholders' resolution that ISX apply for admission to the official list of another premium exchange. The directors similarly support this resolution and recommend that ISX shareholders vote in favour of the resolution to list on another exchange.

In the present proceeding, as reflected in both the Further Amended Statement of Claim (**FASOC**) and proposed Second Further Amended Statement of Claim (**2FASOC**), ISX seeks relief to the effect that the suspension of trading in its shares be lifted and its shares be reinstated for quotation. A substantial proportion of the pleadings is devoted to the suspension decision and alleged decisions not to lift the suspension. Further, in commencing the present proceeding, ISX's announcement to the market dated 5 December 2019 stated that it *'has commenced legal proceedings against ASX Limited in the Federal Court of Australia to challenge the decisions made by [ASX] to suspend, and not reinstate, the Company's shares for quotation'*, and that ISX commenced proceedings *'in order to lift the suspension of ISX's shares'*.

If Resolution 6 is passed at the AGM, serious doubt would be cast on the utility of the present proceeding, whether on the FASOC or the proposed 2FASOC. At the very least, ISX would need to make substantial further amendments to the FASOC, which are not reflected in the proposed 2FASOC.

In circumstances where:

- the utility of the proceeding may be affected by the outcome of the AGM;
- the AGM will be held in less than five weeks from now; and
- ISX wishes to amend its pleadings in any event,

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there does not appear to be utility in progressing the matter towards a hearing until the status of the proceeding is known with greater certainty after the AGM.

Our client reserves its position with respect to any amendment and in relation to costs thrown away by your client's changes in position.

2 Letter dated 8 June 2020

Putting to one side the issues arising from ISX's proposed delisting from ASX, we note that your letter of 8 June 2020 does not respond to the questions raised in our letter dated 3 June 2020 in relation to evidence and discovery. Contrary to the suggestion in your letter that the issue of orders for the further conduct of the proceeding is separate from the issue of leave to file the proposed 2FASOC, those issues are closely related. For the reasons explained below, the ability of our client to have proper discovery informs whether leave should be granted to file the proposed 2FASOC. Further, and in circumstances where your client is seeking leave and a timetable through to trial at the same time, the nature of the evidence that ISX proposes to adduce is also related to the question of leave to amend.

Moreover, the particulars provided by your client (which your client claims to be confidential) are inadequate for the reasons explained below.

3 Leave to file the proposed 2FASOC

As explained in our letter of 3 June 2020, in the absence of the requested information, ASX is not in a position to consent to ISX having leave to file the proposed 2FASOC nor to give meaningful consideration to the proposed orders. We again note the further uncertainties created by ISX's proposal to delist from ASX and list on another exchange.

The proposed amendments in the 2FASOC contain a significantly broader case from that pleaded in earlier iterations of the Statement of Claim. By contrast, the claim as currently pleaded focuses on whether our client was in breach of alleged duties, which the Court held involved "only review [of] the reasons for legal error" ([2020] FCA 567 at [39]).

The proposed 2FASOC raises several new substantive issues which affect the scope and conduct of the proceeding. These issues include the new cause of action alleging that ASX engaged in misleading or deceptive conduct by reason of representations alleged to be contained in ASX's Statement of Reasons published on 30 April 2020 (**Final Reasons**). That new cause of action calls for a detailed factual case about the accuracy of eight representations alleged to have been made by ASX, the loss or damage that is said to flow from the alleged misrepresentations and whether that loss or damage arises from the alleged misrepresentations or some other cause.

Similarly, the amendments at paragraph [64] also seek to introduce a factual case not previously pleaded. The 2FASOC also identifies further alleged bases of loss and damage.

It appears that ISX intends to allege that the Final Reasons contained representations of fact and that those representations were misleading or deceptive because the true facts were different. Although you have not answered the questions in our letter of 3 June 2020 which were directed to evidence, we apprehend that ISX may propose to adduce, in support of its allegations as to the true facts, evidence that was not provided to ASX in its investigation. This is despite ISX having had multiple opportunities to respond to ASX's query letters and opportunities to comment on drafts of the Statement of Reasons, including a final opportunity which ISX chose not to take up.

If, as we apprehend, ISX seeks to litigate the facts de novo under the guise of a claim for misleading or deceptive conduct, then ASX will require disclosure of all documents relevant to the issues sought to be litigated in the 2FASOC and it will be necessary to formulate further discovery categories.



It appears that many relevant documents will be held not by ISX itself but by its related entities, including foreign entities such as Authenticate BV, iSignthis eMoney Ltd and Probanx Solutions Ltd (see, by way of example, paragraphs 85(e), 85(g)-(m), 85(q), 86(d), 87(a)-(g) of the proposed 2FASOC and the confidential particulars provided on 8 June 2020).

Given potential limitations on the enforcement of the court's processes outside of Australia, ASX will require assurances to be given by ISX on the record that discovery from related bodies corporate will be forthcoming, including assurances that those entities will not seek to avoid production of documents in purported reliance on foreign privacy laws, and that ISX will not claim to be unable to obtain documents from its related entities. ASX requires these assurances because of well-founded apprehensions that the provision of relevant materials possessed by related bodies corporate may be resisted or otherwise not be forthcoming. Those apprehensions arise in part from:

- ISX's refusal to provide, or delay in providing, documents requested by ASX under ASX Listing Rule 18.7, including most recently in relation to the suspension of ISX's participation in the Visa network; and
- ISX's failure to provide information about the ownership of, and dealings in, the 'performance shares' and the 'milestone shares' requested by ASX so that ASX can give proper consideration to ISX's escrow proposal.

In addition to the above reasons, the information requested in our 3 June 2020 letter is necessary to enable our client and the Court to understand the impact the proposed 2FASOC would have on the efficient and just resolution of the proceedings if leave were granted. In particular, it presently seems to us that a hearing this year is unrealistic.

4 Costs

To date, ASX has incurred significant costs in defending this proceeding. The Court has made an order for costs in ASX's favour. As described above, the case outlined by the proposed 2FASOC is a significantly broader one than that currently pleaded and will require ASX to incur further significant costs.

In light of this, please provide an explanation of ISX's financial capacity to meet any future adverse costs orders.

ASX is also concerned that the proposed resolution seeking delisting of ISX will result in substantial wasted costs arising from elements of your client's case falling away.

Our client reserves its position with respect to costs.

5 Requests for information

5.1 Evidence and discovery

We repeat our requests for further information about your client's case, without which information our client cannot come to an informed view on the proposed 2FASOC or an appropriate timetable:

- 1 the number of lay witnesses from whom ISX intends to adduce evidence and a general indication of the subject matter of their evidence;
- 2 the number of expert witnesses from whom ISX intends to adduce evidence;
- 3 the matters on which that expert witness or witnesses would be asked to opine; and
- 4 the further categories and sources of discovery your client proposes to give relating to the proposed new claims.

5.2 Request for Particulars regarding loss and damage

We note the particulars of your client's loss and damage referred to at [73], [93], [107] of the proposed 2FASOC provided on 8 June 2020. Those particulars are inadequate as they do not put our client on notice of the case they have to meet as it is not apparent how the asserted loss of some customers by Probanx Solutions Ltd and iSignthis eMoney Ltd constitutes loss by ISX, nor whether the customers said to have been lost otherwise had contracts with Probanx Solutions Ltd and iSignthis eMoney Ltd.

Accordingly, the particulars need to be supplemented to address the following matters:

- 1 the relationship between ISX and Probanx Solutions Ltd;
- 2 the relationship between ISX and iSignthis eMoney Ltd;
- 3 with respect to the 5 customers listed at A, the relationship between ISX, Probanx Solutions Ltd or iSignthis eMoney Ltd and those customers immediately prior to the closure of their accounts or termination of their relationship;
- 4 with respect to the 5 customers listed at A:
 - a the nature of the services being provided by ISX, Probanx Solutions Ltd or iSignthis eMoney Ltd to those customers immediately prior to the closure of their accounts or termination of their relationship;
 - b the nature of the services expected to be provided by ISX, Probanx Solutions Ltd or iSignthis eMoney Ltd to those customers into the future; and
 - c the method of calculation which results in the estimated fees particularised in A(a)(iii), A(b)(iii), A(c)(iii), A(d)(iii) A(e)(iii) and C(b);
- 5 if any of those customers were in contractual relationships with ISX, Probanx Solutions Ltd or iSignthis eMoney Ltd, details of the relevant contract/s;
- 6 with respect to the phone calls particularised in A(a)(ii), A(b)(ii) and A(c)(ii):
 - a the time that those phone calls occurred; and
 - b details of the substance of the conversations;
- 7 information linking the termination of the 5 contracts and the loss of the Trustly Group AB opportunity to the alleged misrepresentations by ASX.

Please also provide us with copies of the written communications referred to in A(d)(ii), A(e)(ii), and C(e).

5.3 Particulars of misleading or deceptive representations

Paragraph [83] sets out 8 representations which are alleged to have been made in the Final Reasons. Please specify, for each of the alleged representations, the paragraphs of the Final Reasons that ISX alleges conveys the representation.



HERBERT
SMITH
FREEHILLS

Yours sincerely

Luke Hastings
Partner
Herbert Smith Freehills

+61 2 9225 5903
+61 414 234 236
luke.hastings@hsf.com

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Certificate identifying annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 1315/2019

ISIGNTHIS LIMITED (ACN 075 419 715)

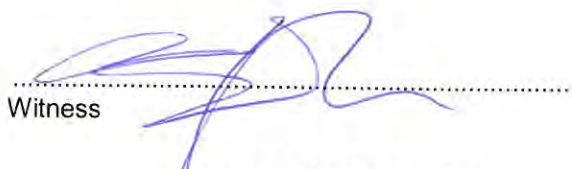
Applicant

ASX LIMITED (ACN 008 624 691)

Respondent

The following 2 pages are the confidential annexure marked "CMA-5" produced and shown to COLIN MICHAEL ALMOND at the time of swearing his affidavit this 17th day of June 2020.

Witness



Chloe Versha Singh
Level 26, 530 Collins Street,
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Filed on behalf of ISIGNTHIS LIMITED, Applicant

Prepared by Colin Almond

Law firm HWL Ebsworth Lawyers

Tel +61 3 8644 3500 Fax 1300 365 323

Email calmond@hwle.com.au Ref CA:KLA:957343

DX 564, Melbourne

Address for Service **HWL EBSWORTH LAWYERS**
Level 26, 530 Collins Street, Melbourne VIC 3000
Email: calmond@hwle.com.au

[Form approved 1/08/2011]

Our Ref: CMA:KLA:957343

17 June 2020

Mr Luke Hastings
Herbert Smith Freehills
ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

Email: luke.hastings@hsf.com

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Dear Mr Hastings

**iSignthis Limited v ASX Limited
Federal Court Proceeding No.VID1315/2019 (Proceeding)**

We refer to previous correspondence and, in particular, your letter dated 3 June 2020, our letter dated 8 June 2020 and your letter dated 16 June 2020.

Your letter dated 16 June 2020 raises specious matters in relation to our client's proposed Second Further Amended Statement of Claim in yet a further attempt to delay and frustrate the advancement of the Proceeding.

In the circumstances, we do not propose to address each and every matter raised in your letter. Suffice to say:

1. The issue of delisting, raised in section 1 of your letter, is irrelevant to whether our client should be allowed to file its proposed Second Further Amended Statement of Claim. The matters raised in your letter concern parts of the pleading which are not new and to which your client has already pleaded.
2. Sections 2 and 5.1 of your letter merely repeat matters which have already been addressed in our earlier correspondence. As stated in our letter dated 8 June 2020, issues such as our client's willingness to make discovery, the number of lay witnesses to be called by our client and the subject matter of their evidence, the number of expert witnesses to be called and the subject matter of their evidence, are irrelevant to whether our client should be allowed to file its proposed Second Further Amended Statement of Claim.
3. Section 3 of your letter also repeats matters which have already been addressed in our earlier correspondence. For the reasons set out in paragraph 1.3 of our letter dated 8 June 2020, the assertion that our client's proposed Second Further Amended Statement of Claim raises "*several new issues*" is unfounded. We do not propose to repeat those reasons again.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 742429313/v1

Level 26, 530 Collins Street, Melbourne VIC 3000 Australia
PO Box 3, Collins Street West VIC 8007 Australia
DX 564 Melbourne

Telephone +61 3 8644 3500
Facsimile 1300 365 323 (Australia) +61 2 8507 6582 (International)
hwlebsworth.com.au

ABN 37 246 549 189

4. The suggestion in section 4 of your letter that your client is not aware of our client's financial position is derisory.
5. The matters raised in section 5.2 of your letter are not proper requests for further and better particulars. In sum, they are either irrelevant (for example, the time that the phone calls occurred) or they seek the evidence by which our client intends to prove its damages. Insofar as paragraph 6(b) is concerned, the request is embarrassing as the substance of the conversation has already been pleaded.

Plainly your client is intent on engaging in prevarication and delay, which is inconsistent with its obligations under sections 37M and 37N of the *Federal Court Act 1976* (Cth), and therefore has no intention of ever consenting to our client filing its proposed Second Further Amended Statement of Claim. Accordingly, in order to progress the Proceeding our client will now apply for leave to file its Second Further Amended Statement of Claim and, in due course, also seek an order against your client for its costs of and incidental to that application.

Yours faithfully



Colin Almond
Partner
HWL Ebsworth Lawyers

+61 3 8644 3564
calmond@hwle.com.au



Katharine Allen
Senior Associate
HWL Ebsworth Lawyers

+61 3 8644 3704
kallen@hwle.com.au