



Market Announcement

30 April 2020

iSignthis Limited (ASX: ISX) Update on Suspension from Official Quotation

ASX Limited ('ASX') refers to its 16 March 2020 update in relation to the suspension of ISX's securities from official quotation on ASX. In that update, ASX advised that:

- On 6 December 2019, ASX had sent ISX a draft of its proposed determinations in relation to ISX's compliance with the Listing Rules and that on 24 January 2020 ISX had responded with submissions on this document.
- On 26 February 2020, ASX provided ISX with a further draft of its proposed determinations. This document (the 'Statement of Reasons') took account of ISX's 24 January 2020 submissions. ASX informed ISX that it had until close of trading on 13 March 2020 to provide any further submissions in relation to this draft Statement of Reasons and, failing that, ASX would finalise the Statement of Reasons and provide it to the market before the open of trading on 16 March 2020.
- ISX did not provide any response to ASX's Statement of Reasons by the time set by ASX, nor seek an extension for further time. Consequently, ASX finalised and issued its concluded Statement of Reasons to ISX after the close of trading on 13 March 2020, advising ISX of ASX's determinations in relation to its compliance with the Listing Rules and the reasons for those determinations. ASX also advised ISX that ASX intended to provide the Statement of Reasons to ASIC (which ASX now confirms it has done).
- In the meantime, on 12 March 2020, ISX applied to the Federal Court for an interim injunction to prevent ASX from providing its Statement of Reasons to the market. The matter was before the Court on 13 March 2020 and the Court made orders for the hearing of ISX's application for an injunction to be held on 9 April 2020. The hearing date was subsequently deferred to 16 April 2020.

Earlier today, the Federal Court handed down its decision on ISX's application for an interim injunction. The court dismissed ISX's application for an injunction and ordered ISX to pay ASX's costs.

Accordingly, ASX is now able to release its Statement of Reasons to the market (see attached).

Issued by ASX Limited

For personal use only

ISIGNTHIS LTD ('ISX')

Statement of Reasons

This statement of reasons is given by ASX Limited ('ASX') to ISX as a record of ASX's findings in relation to ISX's compliance with certain ASX Listing Rules.

Unless the Federal Court orders otherwise,¹ this statement of reasons is intended to be published by ASX, a licensed market operator, in the performance of its obligations under the Corporations Act 2001 (Cth)² and its powers, functions and obligations under the ASX Listing Rules. It is intended to ensure that the market operates in a fair, orderly and transparent way by correcting the lack of information, and misinformation, in the market on the matters set out in this statement of reasons.

1. Background

- 1.1. On 2 October 2019, ASX announced that, in consultation with the Australian Securities and Investments Commission ('ASIC') and having regard to the recent volatility in ISX's share price, ASX had determined that it was appropriate to suspend trading in ISX shares with immediate effect under Listing Rule 17.3, pending the outcome of enquiries to be made by ASIC and ASX into a number of issues concerning ISX. The announcement stated that ISX's shares would remain suspended until further notice.³
- 1.2. The suspension decision was made under Listing Rule 17.3.4, which gives ASX the power to suspend trading in an entity's securities where ASX is of the opinion that a suspension is 'appropriate'. The suspension took place in the following context:
 - speculation in the media⁴ as to whether ISX's revenue for the six month period ended 30 June 2018 ('Relevant Period') had met the milestones required to trigger the conversion of certain performance shares⁵ held by iSignthis Ltd,⁶ an entity associated with ISX's board and management, into fully paid ordinary shares in ISX ('Ordinary Shares');
 - the accompanying volatility of ISX's share price;⁷
 - a preliminary review ASX had conducted into ISX's announcements which (among other things) had identified a number of contracts under which ISX was providing services to cryptocurrency

¹ Pursuant to the interlocutory application dated 12 March 2020 lodged by HWL Ebsworth on behalf of ISX in the Federal Court of Australia ('12 March Application').

² Referred to in these reasons as the 'Corporations Act'.

³ See ASX's market announcement dated 2 October 2019, available online at <https://www.asx.com.au/asxpdf/20191002/pdf/44945q9b3s6t63.pdf>.

⁴ For instance, see '*iSignthis plunges on governance concerns*' from the Australian Financial Review on 12 September 2019 (available online at <https://www.afr.com/markets/equity-markets/isignthis-plunges-on-governance-concerns-20190912-p52qjc>) and '*Super hot tech stock drops \$700m after bonuses queried*' from the Sydney Morning Herald on 12 September 2019 (available online at <https://www.smh.com.au/business/companies/super-hot-tech-stock-drops-700m-after-bonuses-queried-20190912-p52qq1.html>).

⁵ Discussed in section 2 of these reasons.

⁶ A company incorporated in the British Virgin Islands: see notes 22 and 23 below and the accompanying text.

⁷ During the month of September 2019, the lowest share price recorded for ISX was \$0.66 (on 19 September 2019), while the highest price was \$1.765 (on 10 September 2019), a difference of 167%. On five trading days, the difference between the intraday highest and lowest share prices was greater than 20% (23% on 11 September 2019, 59% on 12 September 2019, 25% on 13 September 2019, 45% on 19 September 2019 and 21% on 20 September 2019).

On 12 September 2019, ASX sent a price query letter to ISX noting the change in the price of ISX's shares from a high of \$1.66 on 11 September 2019 to a low of \$0.90 on 12 September 2019, together with a significant increase in the volume of ISX's shares traded. The query letter and ISX's response were released on 13 September 2019 and are available online at <https://www.asx.com.au/asxpdf/20190913/pdf/448hcq6209bd10.pdf>.

On 19 September 2019, ASX sent a further price query letter to ISX noting the change in the price of ISX's shares from a closing price of \$1.01 on 18 September 2019 to a low of \$0.66 at the time of writing on 19 September 2019 together with a significant increase in the volume of ISX's shares traded. The query letter and ISX's response were released on 19 September 2019 and are available online at <https://www.asx.com.au/asxpdf/20190919/pdf/448p0dhr51xdvz.pdf>.

exchanges, in the context of ASX's publicly-stated concerns and guidance about listed entities engaging in cryptocurrency-related activities;⁸

- information provided in confidence by ASIC to ASX in a tele-conference on 1 October 2019 that ASIC had concerns with ISX's books and records for the Relevant Period; and
 - advice from ASIC that it was considering launching a formal investigation into ISX's compliance with its disclosure obligations under the Corporations Act.
- 1.3. These matters raised concerns for ASX as to whether ISX was in compliance with its obligations under the Listing Rules and whether trading in ISX shares was taking place in a properly informed market. ASX therefore determined that it should commence its own investigation into ISX's compliance with the Listing Rules. In consultation with ASIC, ASX also determined that it was appropriate to suspend trading in ISX shares with immediate effect under Listing Rule 17.3, pending the outcome of ASIC's and ASX's enquiries.
- 1.4. ISX was advised by telephone before market open on the morning of 2 October 2019 of ASX's decision to suspend trading in its shares.⁹
- 1.5. The factors leading to ISX's suspension (other than the confidential information conveyed to ASX that ASIC had concerns with ISX's books and records for the Relevant Period) were explained to ISX in some detail in a conference call that took place between representatives of ISX and representatives of ASX on 7 October 2019.¹⁰
- 1.6. Since suspending trading in ISX shares, ASX has made the following enquiries of ISX using its power under Listing Rule 18.7 to request information, documents and explanations to enable ASX to be satisfied that ISX, as a listed entity, is and has been complying with the Listing Rules:
- ASX's query letter to ISX dated 2 October 2019 ('First Query Letter'), to which ISX responded on 10 October 2019;¹¹
 - ASX's query letter to ISX dated 15 October 2019 ('Second Query Letter'), to which ISX responded on 25 October 2019;¹²
 - ASX's query letter to ISX dated 31 October 2019 ('Third Query Letter'), to which ISX responded on 15 November 2019;¹³ and
 - ASX's query letter to ISX dated 22 November 2019 ('Fourth Query Letter'), to which ISX responded on 26 November 2019.¹⁴

Together, these letters are referred to in these reasons as 'ASX's Query Letters'.

The First Query Letter largely focused on ASX's queries about ISX's dealings with cryptocurrency exchanges and the drivers and composition of its more recent revenues.¹⁵ In light of the information

⁸ As set out in section 5 of ASX's Compliance Update no 09/17 dated 30 October 2017, section 3 of ASX's Compliance Update no 01/18 dated 16 February 2018 and ASX's Compliance Update no 06/19 dated 1 August 2019.

⁹ Phone call from James Gerraty (senior manager, ASX Melbourne office) to Todd Richards (company secretary, ISX) at 9.49am on 2 October 2019.

¹⁰ The conference call lasted for approximately 1½ hours.

¹¹ Released together on the ASX market announcements platform ('MAP') on 11 October 2019 and available online at <https://www.asx.com.au/asxpdf/20191011/pdf/449dj9z8nnvl9y.pdf>.

¹² Released together on MAP on 28 October 2019 and available online at <https://www.asx.com.au/asxpdf/20191028/pdf/449yb0mzgpmwkw.pdf>.

¹³ Released together on MAP on 18 November 2019 and available online at <https://www.asx.com.au/asxpdf/20191118/pdf/44bnxr9lkyl41.pdf>.

¹⁴ Released together on MAP on 5 December 2019 and available online at <https://www.asx.com.au/asxpdf/20191205/pdf/44cb5nn6x5gmck.pdf>.

¹⁵ Questions 1 and 2 of the First Query Letter asked ISX to list its current and former customers who engaged in cryptocurrency related activities, while question 5 asked for the percentage of ISX's revenue derived from customers

revealed in ISX's response to the First Query Letter, ASX concentrated its subsequent enquiries on whether ISX had met its obligations under the Listing Rules in relation to the conversion of the performance shares discussed in section 2 of these reasons into Ordinary Shares.

- 1.7. Having carefully reviewed ISX's responses to ASX's Query Letters, on 6 December 2019, ASX sent to ISX a draft of ASX's proposed findings which concluded that ISX had committed a number of significant breaches of the Listing Rules.¹⁶ ASX gave ISX until the close of trading on Friday 10 January 2020 to provide any representations it wished to make on the draft findings. On 8 January 2020, at ISX's request, ASX granted ISX an extension to the close of business on Friday 24 January 2020 to provide its representations on the draft findings.
- 1.8. ISX responded to the draft findings on 24 January 2020 ('24 January Submissions').
- 1.9. ASX carefully considered the content of the 24 January Submissions and revised the draft proposed findings in light of those submissions. ASX provided a revised draft of this statement of reasons to ISX for comment on 26 February 2020. ASX gave ISX until the close of trading on Friday 13 March 2020 to provide any further representations it wished to make on the revised draft of this statement.
- 1.10. ISX did not respond to the revised draft of this statement by the deadline set by ASX of close of trading on 13 March 2020.
- 1.11. Having careful regard to the information ASX has received from ISX (including the 24 January Submissions¹⁷), ASX remains of the view that ISX has committed a number of significant breaches of the Listing Rules and that ASX is obliged to refer those breaches to ASIC for consideration of enforcement action.¹⁸
- 1.12. ASX understands that ASIC's enquiries into ISX are ongoing.

2. The Performance Shares

- 2.1. ISX was formerly known as Otis Energy Limited ('Otis Energy').¹⁹
- 2.2. Otis Energy engaged in a back door listing transaction in 2014/2015 in which it acquired 100% of the issued shares of iSignthis BV (a company incorporated in The Netherlands²⁰) and ISX IP Ltd (a company incorporated in the British Virgin Islands²¹), which together carried on a business of providing online identification and payment authentication services ('Acquisition'). The vendor of the shares was iSignthis Ltd, a company incorporated in the British Virgin Islands²² which appears to have been controlled by Mr Nickolas John Karantzis, now the managing director and CEO of ISX.²³

engaged in those activities. Section 3 of Annexure B and footnote 148 below have further information about ISX's response to those questions.

¹⁶ Then described as a 'Statement of draft findings regarding possible ASX Listing Rule and Corporations Act breaches and proposed actions by ASX'.

¹⁷ While ASX has carefully considered all of the matters raised by ISX in its 24 January Submissions, ASX has not individually addressed in these reasons each and every matter raised by ISX in those submissions. ASX has only addressed matters in these reasons which ASX considers to be relevant and reasonably arguable.

¹⁸ Section 792B(2)(c) requires ASX, as a licensed market operator, to give written notice to ASIC as soon as practicable if ASX has reason to suspect that a person has committed, is committing, or is about to commit a significant contravention of ASX's Operating Rules (which includes the ASX Listing Rules) or the Corporations Act. The purpose of the notice is to allow ASIC to consider whether it wishes to investigate, and if thought appropriate to take enforcement action in relation to, the suspected contravention.

¹⁹ Otis Energy changed its name to iSignthis Limited on 22 December 2014: see the Certificate of Registration on Change of Name attached to ISX's announcement titled 'Change of Company Name' lodged on MAP on 30 December 2014 and available online at <https://www.asx.com.au/asxpdf/20141230/pdf/42vsf0s992wfk3.pdf>.

²⁰ KVK Number 60762187.

²¹ Company Number 1842689.

²² Company Number 667231.

²³ These details in this paragraph are taken from Otis Energy's Notice of General Meeting lodged on MAP on 19 November 2014 and available online at <https://www.asx.com.au/asxpdf/20141119/pdf/42tr3xjzcnwfk.pdf>. Among other things,

2.3. The consideration for the Acquisition was:

- 298,333,333 Ordinary Shares;
- 112,222,222 Class A Performance Shares, which would convert on a one for one basis into Ordinary Shares if, within three full financial years of completing the Acquisition, ISX achieved revenue over a 6 month reporting period equivalent, on an annualised basis, to annual revenue of at least \$5,000,000²⁴ ('Milestone A');
- 112,222,222 Class B Performance Shares, which would convert on a one for one basis into Ordinary Shares if, within three full financial years of completing the Acquisition, ISX achieved revenue over a 6 month reporting period equivalent, on an annualised basis, to annual revenue of at least \$7,500,000²⁵ ('Milestone B'); and
- 112,222,223 Class C Performance Shares, which would convert on a one for one basis into Ordinary Shares if, within three full financial years of completing the acquisition, ISX achieved revenue over a 6 month reporting period equivalent, on an annualised basis, to annual revenue of at least \$10,000,000²⁶ ('Milestone C').

2.4. Together the Class A Performance Shares, Class B Performance Shares and Class C Performance Shares are referred to in these reasons as the 'Performance Shares' and Milestone A, Milestone B and Milestone C are referred to as the 'Milestones'.

2.5. The issue of the Performance Shares and their subsequent conversion into Ordinary Shares was approved by a resolution of Otis Energy shareholders passed on 22 December 2014.²⁷

2.6. For the Performance Shares to convert to Ordinary Shares, the applicable Milestone had to be achieved on or before 5.00 pm on the date being 14 days after the release of the audited financial reports for the third full financial year after completion of the Acquisition. This was the financial year ended 30 June 2018. If the applicable Milestone was not met by that time, all of the Performance Shares within the relevant class would be consolidated into one Performance Share and then converted into a single Ordinary Share.²⁸

2.7. ISX completed the Acquisition on 5 March 2015.²⁹

2.8. ISX was re-admitted to the official list of ASX on 16 March 2015.³⁰ At that time, it had 571,373,371 ordinary shares, 18,605,045 quoted options, 1,000,000 unquoted options and the 336,666,667 Performance Shares mentioned above on issue.³¹

that notice proposed a resolution to approve the Acquisition under and for the purposes of ASX Listing Rule 11.1.2 (see resolution 1 in the notice).

²⁴ In other words, revenue of \$2,500,000 for a half year would satisfy Milestone A.

²⁵ In other words, revenue of \$3,750,000 for a half year would satisfy Milestone B.

²⁶ In other words, revenue of \$5,000,000 for a half year would satisfy Milestone C.

²⁷ See resolution 2 of the Notice of General Meeting lodged on MAP on 19 November 2014 and available online at <https://www.asx.com.au/asxpdf/20141119/pdf/42tr3xjzcnwfk.pdf> and the announcement by ISX titled 'Results of General Meeting' dated 22 December 2014 and lodged on MAP on that date, available online at <https://www.asx.com.au/asxpdf/20141222/pdf/42vnfc58wjj46j.pdf>.

²⁸ See the terms of the Performance Shares set out in section 14.2 of ISX's prospectus dated 22 December 2014, available online at <https://www.asx.com.au/asxpdf/20141222/pdf/42vnrb5xpbzf7s.pdf>.

²⁹ See ISX's announcement titled 'Completion of the Acquisition of iSignthis BV and ISX IP Ltd and Re-compliance Confirmations' dated 6 March 2015, which was lodged on MAP on 12 March 2015 and is available online at <https://www.asx.com.au/asxpdf/20150312/pdf/42x78nbff31780.pdf>.

³⁰ See ASX's market announcement dated 12 March 2015, available online at <https://www.asx.com.au/asxpdf/20150312/pdf/42x781080njb74.pdf>.

³¹ See ISX's announcement titled 'Capital Structure and Escrowed Securities' dated 12 March 2015 and lodged on MAP on that same date, which is available online at <https://www.asx.com.au/asxpdf/20150312/pdf/42x787t1m8hfbx.pdf>.

- 2.9. ISX's Appendix 4E and annual accounts for the financial year ended 30 June 2018³² included the following disclosures in relation to the Performance Shares:
- on page 4: 'Revenue for the 6 months from 1st January 2018 to 30th June 2018 was in excess of A\$5.5m.'
 - in note 30 on page 52: '...As at the date of this audited report, all three milestones have been met. The Performance Rights³³ will therefore convert and be issued as fully paid ordinary shares per the terms outlined in the Prospectus dated December 2014 as soon as practically possible.'
- 2.10. On 29 August 2018, ISX lodged an Appendix 3B on MAP,³⁴ which disclosed that 336,666,667 Ordinary Shares were issued on 29 August 2018 'on conversion of certain Performance Rights³⁵ issued previously and converting on achievement of performance milestones' on the basis that 'as at the date of 2018 audited accounts report, all three milestones have been met.'
- 2.11. The Ordinary Shares issued upon the conversion of the Performance Shares are referred to in these reasons as the 'Milestone Shares'.

3. ISX's revenue for the Relevant Period

- 3.1. ISX's total revenue for the Relevant Period amounted to \$5,512,057.³⁶ This was significantly higher³⁷ than the immediately preceding and subsequent half years, in which ISX reported total revenue of \$826,912 and \$1,111,356 respectively.
- 3.2. But for the significant increase in ISX's revenue in the Relevant Period, none of the Milestones would have been met and the Performance Shares would have been converted into just 3 Ordinary Shares rather than the 336,666,667 Ordinary Shares that were ultimately issued.

4. Key contracts contributing to ISX's revenue for the Relevant Period

- 4.1. ISX's revenue for the Relevant Period was substantially underpinned by four contracts entered into by Authenticate BV, a wholly owned subsidiary of ISX, respectively with Corp Destination Pty Ltd ('Corp Destination'), FCorp Services Ltd ('FCorp'), IMMO Servis Group s.r.o. ('IMMO') and Nona Marketing Ltd ('Nona'). These four contracts are discussed in further detail in sections 4.2 to 4.5 below and are referred to collectively in these reasons as the 'Key Contracts'.
- 4.2. **Corp Destination Agreement³⁸ and Variation Letter³⁹**

An agreement styled a 'Service Agreement' was made between Authenticate BV, a wholly owned subsidiary of ISX, and Corp Destination⁴⁰ dated 15 May 2018 ('Corp Destination Agreement').

³² Lodged on MAP on 29 August 2018 and available online at <https://www.asx.com.au/asxpdf/20180829/pdf/43xt0bl3gnm8c3.pdf>.

³³ The reference here to 'Performance Rights' was clearly intended to be a reference to the Performance Shares.

³⁴ Available online at <https://www.asx.com.au/asxpdf/20180829/pdf/43xtrh7zt9gfzh.pdf>.

³⁵ Again, the reference here to 'Performance Rights' was clearly intended to be a reference to the Performance Shares.

³⁶ Within the Relevant Period, \$5,002,479 was attributed to 'contracted service fees'.

³⁷ \$4,685,145 higher than in the December 2017 half year and \$4,400,701 higher than in the December 2018 half year.

³⁸ This is the agreement provided by ISX in response to question 8 of the Third Query Letter.

³⁹ ISX did not provide ASX with a copy of the Corp Destination Agreement or the Variation Letter in response to the Second Query Letter despite being requested in question 2(f) of that letter to provide all contracts relating to revenue during the Relevant Period. The Corp Destination Agreement and the Variation Letter were only provided to ASX after ASX deduced that they existed from ISX's responses to other questions in ASX's Query Letters and specifically asked for a copy of them in question 3 of the Fourth Query Letter.

⁴⁰ Corp Destination was only registered by ASIC as a proprietary company on 19 March 2018, approximately 8 weeks ahead of it entering into the Corp Destination Agreement.

A separate agreement between Authenticate Pty Ltd, a subsidiary of ISX, and Corp Destination (with an 'offer date' of 17 April 2018) for Paydentity and ISXPay services states that Corp Destination 'offers services under Merchant Category Code 6051 "Quasi Cash Merchant" to international based customers from the websites www.oinvest.com and global.itrader.com', and that the services it provides are CFDs, binary options and foreign exchange.

The Corp Destination Agreement provided that *'the Service Provider [Authenticate BV] shall act as development and support independent contractor and shall provide the Company [Corp Destination] with such Services as follows:*

- a. License, Software, Services, Development, Integration & Maintenance.*
- b. Technical support services.*
- c. 6 Months Software Support.*
- d. Training.'*

Integration to the iSignthis platform, project management, deployment to servers and hosting were specifically excluded from the scope of services to be provided.

The fees payable by Corp Destination to Authenticate BV under the Corp Destination Agreement were stated (ex VAT) to be:

- '(a) Trading Platform License per agreed Specification – €270,000/each*
- (b) Training - €2,500*
- (c) End Licensee Support (6 months) - €2,200 per calendar month*
- (d) CRM maintenance (6 months) - €2,200 per calendar month'*

ASX notes that these fees add to €298,900 but for reasons not apparent to ASX the 'Total Commitment' stated in the Corp Destination Agreement, and the amount ISX ultimately invoiced to Corp Destination, was a higher amount of €343,500 (ex VAT).

The payment terms were stated to be:

- '85% of Fees for (a), (b) and (c) due within 7 days of execution*
- 15% upon End User Licensee "Go Live"*
- Maintenance and Support Fees for (d) and (e) [sic]⁴¹ due monthly in arrears'*

On the same day as it entered into the Corp Destination Agreement (15 May 2018), Authenticate BV entered into what was effectively a back-to-back Service Agreement ('First Fino Agreement') with Fino Software Technologies Ltd ('Fino') of Cyprus for Fino to provide to Authenticate BV all of the services Authenticate BV was required to perform under the Corp Destination Agreement. This was despite the Corp Destination Agreement including a warranty by Authenticate BV that it *'will be the sole author of the Services provided to'* Corp Destination.

The First Fino Agreement was on substantially identical terms to the Corp Destination Agreement.

The First Fino Agreement provided that *'the Service Provider [Fino] shall act as development and support independent contractor and shall provide the Company [Authenticate BV] with such Services as follows:*

- a. License, Software, Services, Development, Integration & Maintenance.*
- b. Technical support services.*
- c. 6 Months Software Support.*
- d. Training.'*

The fees payable by Authenticate BV to Fino under the First Fino Agreement were stated (ex VAT) to be:

- '(a) Trading Platform License per agreed Specification – €270,000/each*
- (b) Training - €2,500*

⁴¹ The references to '(d) and (e)' are an obvious error (they appear to mistakenly copy the payment terms in the First Fino Agreement, referred to below) and should refer to '(c) and (d)'.

(c) Integration Support to iSignthis - €19,500/each

(d) End Licensee Support (6 months) - €2,000 per calendar month

(e) CRM maintenance (6 months) - €2,000 per calendar month⁴²

The payment terms were:

'85% of Fees for (a), (b) and (c) due within 7 days of execution

15% upon End User Licensee "Go Live"

Maintenance and Support Fees for (d) and (e) due monthly in arrears'

Based on the fees contracted to be paid (rather than the stated 'Total Commitment' amount), by entering into the Corp Destination Agreement and the First Fino Agreement at the same time, on a net basis, Authenticate BV would have incurred a loss of €17,100 (comprising the extra €200 per month for end licensee support and €200 per month for CRM maintenance that Authenticate BV was charging Corp Destination over what it was paying to Fino for those services, less the €19,500 integration support fees Authenticate BV was to pay to Fino).

ISX also provided to ASX a copy of a variation letter to the Corp Destination Agreement dated 7 June 2018 ('Variation Letter').⁴³

The Variation Letter provided for a variation to the Corp Destination Agreement as follows:

'a. License of Trading Platform software from Company nominated vendor

- Extend License to include expanded CRM*
- Multicurrency facility*
- Localisation to AUD reporting requirements*

b. Set up of above into hosting environment provided by Company, including:

- i. Security*
- ii. Administration*
- iii. Installation of Platform*
- iv. Configuration*
- v. Interface Management with nominated vendor*
- vi. Coordination with ISX Platform Integration team*
- vii. Test*
- viii. Commissioning*

c. Project management of above'

The fee for the additional services under the Variation Letter was '€183,025 (subject to confirmation of features)', with full payment to be made within 7 days of 'acceptance'. This presumably meant within 7 days of acceptance of the Variation Letter. ASX notes, however, the full amount due under the Variation Letter was invoiced to Corp Destination by Authenticate BV on 23 May 2018 and included in ISX's revenue for that month (ie before the parties had even entered into the Variation Letter).

According to the information provided by ISX, Authenticate BV recorded a total of €526,525 of revenue from Corp Destination in the Relevant Period (being the sum of the stated 'Total Commitment' under the Corp Destination Agreement and the fees under the Variation Letter).⁴⁴ That revenue was fully

⁴² These fees add to €316,000 but the 'Total Commitment' stated in the First Fino Agreement was a slightly lower amount of €313,500 (ex VAT).

⁴³ Again, this was only provided to ASX in response to question 3 of the Fourth Query Letter. The copy provided to ASX was executed by Authenticate BV but not by Corp Destination. In the header and in the text it incorrectly referred to Authenticate Pty Ltd, rather than Authenticate BV, as the contracting party.

⁴⁴ Per ISX's response to question 2(a)(iv) of the Second Query Letter.

recognised in the Relevant Period although some of the relevant payments were not received by ISX until November and December 2018 (see Annexure A).⁴⁵

In response to question 3 of the Third Query Letter, ISX stated that Corp Destination 'has not grown as a customer of ISX due to circumstances beyond its control and the control of ISX'. No revenue was recorded from Corp Destination in the December 2017 half year or the December 2018 half year by ISX or any ISX subsidiary.⁴⁶ ASX also understands that ISX did not generate any revenue from Corp Destination in FY 2019.

4.3. FCorp Agreement⁴⁷

An agreement styled a 'Service Agreement' was made between Authenticate BV and FCorp⁴⁸ dated 30 May 2018 ('FCorp Agreement').

The FCorp Agreement was on substantially identical terms to the Corp Destination Agreement.

It provided that 'the Service Provider [Authenticate BV] shall act as development and support independent contractor and shall provide the Company [FCorp] with such Services as follows:

- a. License, Software, Services, Development, Integration & Maintenance.
- b. Technical support services.
- c. 6 Months Software Support.
- d. Training.'

Integration to the iSignthis platform, project management, deployment to servers and hosting were specifically excluded from the scope of the services to be provided.

The fees payable by FCorp to Authenticate BV under the FCorp Agreement were stated (ex VAT) to be:

- (a) Trading Platform License per agreed Specification – €405,000/each
- (b) Training - €2,500
- (c) End Licensee Support (6 months) - €2,200 per calendar month
- (d) CRM maintenance (6 months) - €2,200 per calendar month'

ASX notes that these fees add to €433,900 but for reasons not apparent to ASX the 'Total Commitment' stated in the FCorp Agreement, and the amount ISX ultimately invoiced to FCorp, was a higher amount of €478,500 (ex VAT).

The payment terms were stated to be:

- '50% of Fees for (a), (b) and (c) due within 7 days of execution
- 25% Interim Progress Payment on install to servers
- 25% upon End User Licensee "Go Live"

⁴⁵ In making this observation, ASX is not asserting that the relevant payments had to be received by 30 June 2018 in order to be properly accounted for as revenue in the Relevant Period. Rather the length of time between 30 June 2018 and the date the relevant payments were received raises questions in ASX's view as to whether the work required under the Corp Destination Agreement was substantially completed by 30 June 2018 and therefore whether the revenue derived under that agreement was appropriately recognised in the Relevant Period.

⁴⁶ Per ISX's response to question 2(a)(iv) of the Second Query Letter.

⁴⁷ Referred to in ASX's Query Letters as the 'Second FCorp Agreement'.

⁴⁸ Located at 'Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands'. FCorp (Entity number 95389) only came into existence as a corporation in the Marshall Islands on 28 February 2018 (based on a search via International Registries, Inc.) or 3 months ahead of it entering into the FCorp Agreement.

Maintenance and Support Fees for (d) and (e) [sic]⁴⁹ due in advance, non refundable'

On the same day as it entered into the FCorp Agreement (30 May 2018),⁵⁰ Authenticate BV entered into what was effectively a back-to-back Service Agreement ('Second Fino Agreement') with Fino for Fino to provide to Authenticate BV all of the services Authenticate BV was required to perform under the FCorp Agreement. This was despite the FCorp Agreement including a warranty by Authenticate BV that it '*will be the sole author of the Services provided to*' FCorp.

The Second Fino Agreement was on substantially identical terms to the FCorp Agreement.

The Second Fino Agreement provided that '*the Service Provider [Fino] shall act as development and support independent contractor and shall provide the Company [Authenticate BV] with such Services as follows:*

- a. License, Software, Services, Development, Integration & Maintenance.*
- b. Technical support services.*
- c. 6 Months Software Support.*
- d. Training.'*

The fees payable by Authenticate BV to Fino under the Second Fino Agreement were stated (ex VAT) to be:

- '(a) Trading Platform License per agreed Specification – €395,000/each*
- (b) Training - €2,500*
- (c) Integration Support to iSignthis - €20,500/each*
- (d) End Licensee Support (6 months) - €2,000 per calendar month*
- (e) CRM maintenance (6 months) - €2,000 per calendar month'*

The payment terms were:

- '50% of Fees for (a), (b) and (c) due within 7 days of execution*
- 25% upon installation to servers*
- 25% upon End User Licensee "Go Live"*
- Maintenance and Support Fees for (d) and (e) due monthly in arrears'*

Based on the fees contracted to be paid (rather than the 'Total Commitment' amount in the FCorp Agreement), by entering into the FCorp Agreement and the Second Fino Agreement at the same time, on a net basis, Authenticate BV would have incurred a loss of €8,100 (comprising the additional €10,000 in license fees and €200 per month for end licensee support and €200 per month for CRM maintenance that Authenticate BV was charging FCorp over what it was paying to Fino for those services, less the €20,500 integration support fees Authenticate BV had to pay to Fino).

Authenticate BV recorded a total of €478,500 of revenue from FCorp in the Relevant Period (being the stated 'Total Commitment' under the FCorp Agreement). That revenue was fully recognised in the Relevant Period although one of the relevant payments was not received by ISX until September 2018 (see Annexure A).⁵¹

⁴⁹ The references to '(d) and (e)' are an obvious error (they appear to mistakenly copy the payment terms in the Second Fino Agreement, referred to below) and should refer to '(c) and (d)'.

⁵⁰ The copy of the Second Fino Agreement provided to ASX was not signed by either party. Notably, the Second Fino Agreement specifies the end user licensee as Corp Destination (the end user licensee for the First Fino Agreement) instead of FCorp.

⁵¹ In making this observation, ASX is not asserting that the relevant payments had to be received by 30 June 2018 in order to be properly accounted for as revenue in the Relevant Period. Rather the length of time between 30 June 2018 and the date the relevant payments were received raises questions in ASX's view as to whether the work required under the

No revenue was recorded from FCorp in the December 2017 half year or the December 2018 half year by ISX or any ISX subsidiary, other than €3,737 for e-money account ('EMA') services in the December 2018 half.⁵² However, ISX advised that FCorp did generate revenue in FY 2019 stating 'FCorp and Immo's successors have become large customers, processing over AUD \$35 million (unaudited) GPTV collectively to date in calendar year 2019'.⁵³

ASX asked ISX to provide details of the trading platform provided to FCorp under the FCorp Agreement and the website on which the trading platform was deployed,⁵⁴ but ISX declined to provide this information.

4.4. The IMMO Agreement

An agreement styled a 'Service Agreement' was made between Authenticate BV and IMMO⁵⁵ dated 6 June 2018 ('IMMO Agreement').⁵⁶

The IMMO Agreement was on substantially identical terms to the Corp Destination Agreement and the FCorp Agreement.

The IMMO Agreement provided that 'the Service Provider shall act as development and support independent contractor and shall provide the Company with such Services for two brands hosted on two separate websites, as follow [sic]:

- a. License, Software, Services, Development, Integration & Maintenance.
- b. Technical support services.
- c. 6 months Software Support
- d. Training.'

Integration to the iSignthis platform, project management, deployment to servers and hosting were specifically excluded from the scope of the services to be provided.

The fees payable by IMMO to Authenticate BV under the IMMO Agreement were stated (ex VAT) to be:

- (a) Trading Platform License per agreed Specification – €421,100/each brand
- (b) Training - €2,500/brand
- (c) End Licensee Support (6 months) - €2,200 per calendar month/brand
- (d) CRM maintenance (6 months) - €2,200 per calendar month/brand'

The payment terms were stated to be:

- '50% of Fees for (a), (b) and (c) due within 7 days of execution
- 25% Interim Progress Payment on install to servers
- 25% upon End User Licensee "Go Live"

FCorp Agreement was substantially completed by 30 June 2018 and therefore whether the revenue derived under that agreement was appropriately recognised in the Relevant Period.

⁵² Per ISX's response to question 2(a)(iv) of the Second Query Letter.

⁵³ Per ISX's response to question 3 of the Third Query Letter.

⁵⁴ Question 9 of the Third Query Letter.

⁵⁵ IMMO's address is in Prague in the Czech Republic. It was established and registered as a limited liability company on 24 April 2017 (based on a search of the Czech Republic corporate register).

⁵⁶ The IMMO Agreement was signed on behalf of IMMO by Mr Alan Pešek (per ISX's response to question 6 of the Third Query Letter). According to a search of the Czech Republic corporate register (<https://or.justice.cz/ias/ui/rejstrik>), Mr Pešek ceased to be the managing director (and only director) of IMMO on 1 June 2018, 5 days before signing the IMMO Agreement.

Maintenance and support fees for (d) and (e) [sic]⁵⁷ due in advance, non refundable'

At some stage after entering into the IMMO Agreement,⁵⁸ Authenticate BV entered into what was effectively a back-to-back Service Agreement ('Gibi Agreement') with Gibi Tech Ltd of the Seychelles for Gibi to provide to Authenticate BV all of the services Authenticate BV was required to perform under the IMMO Agreement. This was despite the IMMO Agreement including a warranty by Authenticate BV that it *'will be the sole author of the Services provided to'* IMMO.

The Gibi Agreement was on substantially similar terms to the IMMO Agreement.

The Gibi Agreement provided that *'the Service Provider [Gibi] shall act as development and support independent contractor and shall provide the Company [Authenticate BV] with such Services as follows:*

- 'a. License, Software, Services, Development, Integration & Maintenance to the MT4 server.*
- b. Technical support services.*
- c. Software Support and Training.'*

The fees payable by Authenticate BV to Gibi under the Gibi Agreement were stated (ex VAT) to be:

- '(a) Trading Platform License per agreed Specification – €395,000/each brand ...*
- (b) Training - €2,500/brand*
- (c) Integration Support to iSignthis - €20,500/each brand*
- (d) End Licensee Support (6 months) - €2,000 per calendar month/brand*
- (e) CRM maintenance (6 months) - €2,000 per calendar month/brand'⁵⁹*

The payment terms were:

- '50% of Fees for (a), (b) and (c) due within 7 days of EACH BRAND Purchase Order*
- 25% upon installation to servers (by June 30th 2018)*
- 25% upon End User Licensee "Go Live" (subject to End User dates)*
- Maintenance and Support Fees for (d) and (e) due monthly in arrears'*

Based on the fees contracted to be paid, by entering into the IMMO Agreement and the Gibi Agreement at the same time, on a net basis, ISX would have generated gross profit of just €16,000 (comprising the additional €52,200 in license fees, €200 per month per brand per month for end licensee support and €200 per month per brand per month for CRM maintenance that Authenticate BV was charging IMMO over what it was paying to Gibi for those services, less the €41,000 of integration support fees that Gibi charged to Authenticate BV).

Authenticate BV recorded €900,000 of revenue from IMMO in the month of June 2018. That revenue was fully recognised in the Relevant Period.

No revenue was recorded from IMMO in the December 2017 half or the December 2018 half by ISX or any ISX subsidiary.⁶⁰ However, ISX advised that IMMO's successor, Bitconvert Ltd, did generate revenue in FY 2019 stating *'FCorp and Immo's successors have become large customers, processing over AUD \$35 million (unaudited) GPTV collectively to date in calendar year 2019'*.⁶¹

⁵⁷ The references to '(d) and (e)' are an obvious error (they appear to mistakenly copy the payment terms in the Gibi Agreement, referred to below) and should refer to '(c) and (d)'.

⁵⁸ The Gibi Agreement was dated 7 June 2018 (ie the day after the IMMO Agreement was signed). However, according to the signature block for the agreement, it was signed by Gibi on 26 July 2018 and by Authenticate BV on 27 July 2018.

⁵⁹ The Gibi Agreement also contained a reference to a paragraph (f) stating that *'Items e) and f)' were 'non-refundable, payable in advance per Terms below'*. There were no such terms below.

⁶⁰ Per ISX's response to question 2(a)(iv) of the Second Query Letter.

⁶¹ Per ISX's response to question 3 of the Third Query Letter,

4.5. Nona Agreement

An agreement for marketing management services was made between Nona⁶² and Authenticate BV dated 11 December 2017 ('Nona Agreement').⁶³

The Nona Agreement is only two pages long and describes the services to be provided by Authenticate BV as:

- i) Authenticate BV is to provide marketing management services which would 'drive online traffic to the websites operated by iTrader' (with traffic to be 'driven from outside of the EEA to EEA and Australia'), including the following 'typical services':
 - Consultancy
 - Advertising Medium Selection
 - Placement of advertisements as determined by [Authenticate BV]
 - Identity funnel to iSignthis KYC Services
 - Traffic and Volume Management
 - Demographic targeting and optimisation
 - Affiliate coordination
 - Other services as agreed from time to time'
- ii) Nona is to issue purchase orders each month; and
- iii) ISX's Paydentity services have been contracted separately via a 'sister company' of Nona, Rodeler Ltd.

Nona issued a single purchase order dated 29 January 2018 for the provision of marketing management services for January-March 2018 at a cost of €250,000. The marketing management services to be provided under the purchase order were listed as:

- Consultancy and Advertising Placement
- Traffic and Volume Management
- Demographic targeting and optimisation
- placement of advertisements
- Identity funnel to iSignthis KYC Services
- affiliate coordination'

Authenticate BV invoiced and recorded €252,500 of revenue from Nona in the Relevant Period, which exceeded the amount due under the Nona Agreement and purchase order by €2,500. It is unclear why an additional amount of €2,500 was invoiced.

No revenue was booked from Nona (or its 'sister company' Rodeler Ltd) in the December 2017 half or the December 2018 half by ISX or any ISX subsidiary. ASX also understands that ISX did not generate any revenue from Nona (or its 'sister company' Rodeler Ltd) in FY 2019.

ISX informed ASX that 'ISX did not proceed with this agreement beyond an initial trial because it became apparent that the company was diverging from its core business, despite relying upon the Paydentity™ platform'.⁶⁴

- 4.6. Notably, ISX did not disclose to the market the fact that it had entered into any of the Key Contracts, despite it having previously disclosed customer contracts of less significance.⁶⁵ By ISX declining to

⁶² Located at 'Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands'. Nona (Entity number 84882) came into existence as a corporation in the Marshall Islands on 4 July 2016 and was annulled on 4 October 2018 (based on a search via International Registries, Inc.). However, Nona's website at <http://nonaitd.com/> remains live.

⁶³ The copy of the Nona Agreement provided to ASX was not signed by either party. The footer describes it as 'Side Agreement - Marketing'.

⁶⁴ In its response to question 5 of the Third Query Letter.

⁶⁵ ISX made four standalone announcements regarding contracts with individual customers in 2015 (post relisting), 10 standalone announcements regarding contracts with individual customers in 2016, 17 standalone announcements regarding contracts with individual customers or groups of customers in 2017, and three standalone announcements regarding contracts with individual customers and three standalone announcements regarding contracts with groups of

disclose the Key Contracts, the market was denied important information about them, including in particular the information identified in section 6 of these reasons.

5. The materiality of the Key Contracts

- 5.1. In ASX's opinion, information about each of the Key Contracts was information that a reasonable person would expect to have a material effect on the price or value of the Ordinary Shares and therefore ought to have been disclosed by ISX to the market under Listing Rule 3.1 immediately upon those contracts being signed.⁶⁶
- 5.2. The revenue purportedly generated under each Key Contract in the Relevant Period appears to be substantially higher than the revenue derived in the December 2017, June 2018 and December 2018 half years under any other customer contract that ISX had entered into, with the exception of an agreement with OT Markets Pty Ltd ('OT Markets').⁶⁷
- 5.3. To put that revenue in historical context, it is instructive to examine what percentage of revenue in the December 2017 and December 2018 half years (as well as the critical June 2018 half year) each of the four Key Contracts represented:

	Revenue €	Revenue A\$ ¹	% of Dec 2017 half revenue ²	% of June 2018 half revenue	% of Dec 2018 half revenue ³
Corp Destination Agreement and Variation Letter	526,525	813,040	98%	15%	73%
FCorp Agreement	478,500	738,882	89%	13%	66%
IMMO Agreement	900,000	1,389,746	168%	25%	125%
Nona Agreement	252,500	389,901	47%	7%	35%
TOTAL	2,157,525	3,331,569	403%	60%	300%

¹ Based on €/\$ exchange rate of 1.544.

² Total revenue for December 2017 half was \$826,912.

³ Total revenue for December 2018 half was \$1,111,356.

- 5.4. Further, each Key Contract resulted in material amounts of revenue being received by ISX in the Relevant Period that went a considerable way towards satisfying the Milestones on the Performance Shares.
- 5.5. In total, the four Key Contracts accounted for €2,157,525 (approximately A\$3.3 million), or approximately 60%, of ISX's total revenue for the Relevant Period. Without that revenue, none of the Milestones would have been met, resulting in the Performance Shares converting into a total of just 3 Ordinary Shares rather than 336,666,667 Ordinary Shares.
- 5.6. The achievement of the Milestones and the potential issuance of the Milestone Shares had material implications for the price or value of ISX's shares. The following table illustrates the impact on ISX's issued capital of the issue of the Milestone Shares upon conversion of the various classes of Performance Shares:

	Performance Shares Class A	Performance Shares Class A and B	Performance Shares Class A, B & C
Shares on issue prior to issue of Milestone Shares	668,165,492	668,165,492	668,165,492
Milestone Shares issued on conversion of Performance Shares	112,222,222	224,444,444	336,666,667

customers in the Relevant Period. Individual customers were also identified and commented upon by ISX in quarterly commentaries and investor presentations since relisting.

⁶⁶ See the discussion of when a negotiation or incomplete proposal is regarded as having been completed in section 5.4 of GN 8. As there noted: 'Where an entity is negotiating a transaction with another party or parties, those negotiations will be complete ... when the parties enter into an agreement to implement or give effect to the transaction'.

⁶⁷ Also trading as 'OT Capital Australia', 'OT Capital Investments' and 'OT Capital.com'. Based on information provided in ISX's response to question 2(a)(iv) of the Second Query Letter, OT Markets generated \$1,176,085 of revenue for ISX in the Relevant Period.

	Performance Shares Class A	Performance Shares Class A and B	Performance Shares Class A, B & C
Shares on issue (post issue of Milestone Shares)	780,387,714	892,609,936	1,004,832,159
% increase in shares on issue (on 29 August 2018)	16.8%	33.6%	50.4%
Milestone Shares as % of total shares (at 29 August 2018)	14.4%	25.1%	33.5%
Milestone Shares as % of total shares (at 26 February 2020)	10.3%	20.5%	30.8%

5.7. Hence, ISX's issued capital on 29 August 2018 would have increased by approximately:

- 17% if Milestone A was met (\$2.5 million revenue for the Relevant Period);
- 34% if both Milestones A and B were met (\$3.75 million revenue for the Relevant Period); and
- 50% if all of Milestones A, B and C were met (\$5.0 million revenue for the Relevant Period).

5.8. On any view, a reasonable person would expect those percentage increases in issued capital to have a material effect on the price or value of ISX's shares.

5.9. The table below provides an analysis of the contribution of different combinations of the Key Contracts to the satisfaction of the Milestones for the Performance Shares which, in turn, highlights their individual and collective materiality. For instance:

- If the revenue from all four Key Contracts was excluded, ISX would not have issued any Milestone Shares as none of Milestones A, B or C would have been satisfied.
- If any one of the IMMO Agreement, the Corp Destination Agreement or the FCorp Agreement was excluded, Milestone C would not have been satisfied (i.e. 224,444,444 Milestone Shares would have been issued rather than 336,666,667 Milestone Shares).
- Under several other scenarios, only Milestone A would have been satisfied (i.e. 112,222,222 Milestone Shares would have been issued rather than 336,666,667 Milestone Shares).

	\$	Satisfaction of Revenue Milestones
Total revenue - Relevant Period	5,512,057	
Scenario 1		
Revenue from the Key Contracts	3,331,569	
Total Relevant Period revenue <u>excluding</u> the Key Contracts	2,180,488	Would not have satisfied Milestones A, B or C (i.e. <\$2.5 million).
Scenario 2		
Revenue from Corp Destination Agreement, FCorp Agreement and IMMO Agreement	2,941,668	
Total Relevant Period revenue <u>excluding</u> Corp Destination Agreement, FCorp Agreement and IMMO Agreement,	2,570,389	Would have satisfied Milestone A only (i.e. >\$2.5 million)
Scenario 3		
Revenue from Corp Destination Agreement and IMMO Agreement	2,202,786	
Total Relevant Period revenue <u>excluding</u> the Corp Destination Agreement and IMMO Agreement	3,309,271	Would have satisfied Milestone A only (i.e. >\$2.5 million)
Scenario 4		
Revenue from FCorp Agreement and IMMO Agreement	2,128,628	
Total Relevant Period revenue <u>excluding</u> FCorp Agreement and IMMO Agreement	3,383,429	Would have satisfied Milestone A only (i.e. >\$2.5 million)

	\$	Satisfaction of Revenue Milestones
Scenario 5		
Revenue from Corp Destination Agreement and Nona Agreement	1,202,941	
Total Relevant Period revenue <u>excluding</u> Corp Destination Agreement and Nona Agreement	4,309,116	Would have satisfied Milestones A and B only (i.e. >\$3.75 million)
Scenario 6		
Revenue from Corp Destination Agreement	813,040	
Total Relevant Period revenue excluding Corp Destination Agreement	4,699,017	Would have satisfied Milestones A and B only (i.e. >\$3.75 million)
Scenario 7		
Revenue from FCorp Agreement	738,882	
Total Relevant Period revenue excluding FCorp Agreement	4,773,175	Would have satisfied Milestones A and B only (i.e. >\$3.75 million)
Scenario 8		
Revenue from IMMO Agreement	1,389,746	
Total Relevant Period revenue excluding IMMO Agreement	4,122,311	Would have satisfied Milestones A and B only (i.e. >\$3.75 million)
Scenario 9		
Revenue from Nona Agreement	389,901	
Total Relevant Period revenue excluding Nona Agreement	5,122,156	Would have satisfied Milestones A, B and C (i.e. >\$5.0 million)

6. What ISX should have disclosed about the Key Contracts

6.1. ASX's expectations as to what should be disclosed in relation to a material customer contract are clearly set out in section 4.15 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* ('GN 8'):

'... depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract with a customer to include information about:

- *the name of the customer;*
- *the term of the contract;*
- *the nature of the products or services to be supplied to the customer;*
- *the significance of the contract to the entity;*
- *any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and*
- *any other material information relevant to assessing the impact of the contract on the price or value of the entity's securities.*⁶⁸

6.2. As noted previously, ISX did not disclose to the market the fact that it had entered into any of the Key Contracts, despite it having previously disclosed customer contracts of less significance.⁶⁹ As a consequence, ISX also did not disclose any of the information listed in section 4.15 of GN 8 in relation to the Key Contracts.

6.3. The disclosure of the name of the customer, as referenced in the first bullet point in the passage from GN 8 quoted above, is often particularly significant. It gives the market the opportunity to assess the

⁶⁸ See section 4.15 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* ('GN 8').

⁶⁹ See the text accompanying note 65 above.

character and financial standing of the entity's material customers.⁷⁰ ASX considers that these matters were particularly pertinent in the case of the Key Contracts, given the information about the character and standing of the customers involved in the Key Contracts set out in Annexure B to these reasons.

ASX further considers that the disclosure of the nature of the products or services to be supplied to the customer by ISX, as referenced in the third bullet point in the passage from GN 8 quoted above, was also particularly pertinent in the case of the Key Contracts, noting that:

- the Key Contracts were, in ASX's view, 'out of the ordinary' in the sense that:
 - they involved the provision of services (platform development services and marketing management services) that were not part of ISX's core business;⁷¹
 - ISX has not provided similar services to any other customers before or since;⁷² and
 - the Key Contracts all involved the provision of one-off services over a short period with fixed fees, in contrast to the identity verification and transactional processing business that ISX normally undertakes; and
- in the case of the Corp Destination, FCorp and IMMO Agreements, ISX itself did not have the capabilities to meet its obligations under those agreements and had to sub-contract substantially all of its responsibilities under those agreements to third party contractors, who in turn charged ISX fees substantially equivalent to the fees receivable by ISX under the agreements.

⁷⁰ The character of an entity's customers can also go to the quality of the revenue being generated by the entity from those customers and the sustainability of the entity's business model. This point is well demonstrated by the recent decision of the Federal Court of Australia in *ASIC v One Tech Media Ltd* [2020] FCA 46 (available online at <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0046>) involving an entity that provided payment agency services to binary option operators.

⁷¹ In its 24 January Submissions, ISX submitted that the Key Contracts were not 'out of the ordinary' and were part of ISX's core business. This was on the basis that its business was 'provider of software and services' and that:

'The deployment and integration of software to various platforms (including trading, banking, payment, accounting and ecommerce platforms) is part of ISX's core business. The services offered by ISX cannot be provided in isolation because ISX provides services to entities which face retail customers. The platform of ISX's customer which "sells" a service to the ultimate customer (for example, a trading platform for CFDs) must be able to interface with the "payment" platform of ISX (known as ISXPay®), potentially the identity platform of ISX (known as Paydentity™) and more recently the Core Banking Platform of ISX (known as Probanx®).'

ASX does not accept these submissions for the following reasons.

First, these submissions cannot apply to the Nona Agreement, which on its face involved the provision of 'marketing services' rather than the provision of any software or software-related services.

Secondly, each of the Corp Destination, FCorp and IMMO Agreements specifically excluded integration with the iSignthis platform from the scope of work to be provided under the agreement.

Thirdly, ISX itself has stated that it has not provided similar services to any other customer before or since the Relevant Period (see note 72 and the accompanying text below).

Fourthly, the description of ISX's business as 'provider of software and services' is clearly too broad to fairly describe its core business.

Notably, ISX's financial statements for the year ended 30 June 2018 (available online at <https://www.asx.com.au/asxpdf/20180829/pdf/43xt0bl3gnm8c3.pdf>) described its principal activities as:

'iSignthis Ltd is an Australian headquartered business with patented technology used to significantly enhance online payment security and to electronically verify identities by way of a dynamic, digital and automated system. The system assists obligated entities under Anti Money Laundering ("AML") and Counter Terrorism Funding ("CTF") legislation to meet their compliance requirements and to ensure rapid and convenient on boarding of their customers. iSignthis also assists online merchants with mitigating Card Not Present ("CNP") fraud and providing CNP liability shift, within the framework of the card scheme rules and applicable regulatory regimes. The consolidated entity has been granted USA, European, South African, Portuguese, Singaporean and Australian patents and has patents pending in several other key jurisdictions including China, Hong Kong, South Korea, Canada, Brazil and India. The Company is licensed by the Central Bank of Cyprus as an EEA authorised eMoney Institution, offering card acquiring in the EEA, Australia and New Zealand.'

⁷² Per ISX's response to question 7 of the Fourth Query Letter.

On this last point, ASX would note that based on the limited information supplied by ISX to ASX so far, it is not clear to ASX whether ISX personally performed its obligations under the Variation Letter or the Nona Agreement, or whether it subcontracted those obligations to a third party as well.

- 6.4. In its response to question 3 of the Third Query Letter and in its 24 January Submissions, ISX stated that it had not disclosed the names of the counterparties to the Key Contracts in light of a policy it had adopted at the beginning of 2018 of generally not announcing new merchant names. This policy was set out in an announcement entitled 'ISXPay®: Australian payment processing and funds settlement update' dated 5 February 2018, which stated:

'The Company has elected to focus on selected merchants as they provided scale, and a higher gross margin than the anticipated average. ...

*The Company will no longer announce merchants by name, but will report based on sector / actual results, in order to preserve merchant confidentiality and Company's [sic] commercial positioning.'*⁷³

This policy could not override ISX's disclosure obligations under the Listing Rules and the Corporations Act. A listed company cannot escape its obligation to disclose particular information under Listing Rule 3.1 by announcing that it does not intend to disclose that information.

Further, this policy cannot explain why ISX chose not to disclose other material information about the Key Contracts – it only explains ISX's decision not to disclose the names of the customers involved in the Key Contracts.

- 6.5. Annexure B sets out information about the character and standing of the customers under the Key Contracts to which ASX has had regard in formulating this statement of reasons. ISX's failure to disclose to the market material information about the Key Contracts, including in particular the names of the customers who had entered into the Key Contracts, has had the flow-on effect that as the information set out in Annexure B has emerged about ISX's customers, the market has not been afforded the opportunity to assess, with reference to that information, the character and standing of those customers and the impact that may have on the price or value of ISX's shares.
- 6.6. ISX's failure to disclose the Key Contracts and its stated 'policy' of not naming customers in announcements necessarily raises concerns that there may be other market sensitive contracts that ISX has entered into which either have not been disclosed, or have not been adequately disclosed, to the market. ISX's policy of not naming customers in announcements also necessarily raises concerns as to whether the market has a proper understanding of the customer sectors in which ISX is operating.⁷⁴

7. ISX's representations that the Key Contracts were not material

- 7.1. In its response to question 3 of the Third Query Letter, ISX made representations that the Key Contracts were not material to the price or value of its securities and therefore were not required to be disclosed under Listing Rule 3.1. ASX has given due consideration to these representations but does not agree with them. ISX's representations (set out in italics) and ASX's reasons for not agreeing with them are set out in sections 7.2 to 7.8 of these reasons below. ISX also made additional submissions about the materiality of the Key Contracts in its 24 January Submissions. ASX has similarly given due consideration to these submissions but does not agree with them. ISX's submissions and ASX's reasons for not agreeing with them are summarised in sections 7.9 to 7.14 of these reasons below.
- 7.2. *ISX did not release the key terms of these customer agreements because at the time it entered into each agreement the significance of the contract to the company was not known. In particular, at the time, ISX did not have a reasonable factual basis to make a statement about the projected revenue which may have been derived from that customer. Accordingly, if ISX had made such a statement to the market it could have potentially been misleading.*

⁷³ Available online at <https://www.asx.com.au/asxpdf/20180205/pdf/43rblf0h2s4dd2.pdf>.

⁷⁴ Noting that until ISX gave customer sector information to ASX in response to question 2 of the Second Query Letter, ISX had not lived up to its undertaking in the announcement quoted in the text at note 73 above to 'report based on sector'.

This is not factually correct. The Key Contracts all provided for the provision of one-off services over a short period with fixed fees that generated significant revenue. Unlike other agreements entered into by ISX, there was no variable fee component (such as volume or transaction based fees) in the Key Contracts. The contracted fees under each of the Key Contracts were known at the time the contract was executed.

- 7.3. *Since it commenced business ISX has signed hundreds of contracts with customers, with the aim that each one will grow to become a large customer and generate large Gross Processed Turnover Volume (GPTV). However it was, and it still is, very difficult to anticipate the pace at which a customer will grow, if at all, and therefore contribute to ISX's actual revenue. For example, FCorp and Immo's successors have become large customers, processing over AUD \$35 million (unaudited) GPTV collectively to date in calendar year 2019, however each individually is still not considered material in terms of the rapidly growing actual GPTV which is now in excess of AUD \$1.9 billion (annualised/unaudited), and increasing. In contrast, other customers have generated less transactional activity for ISX. One such customer is Corp Destination Pty Ltd, which has not grown as a customer of ISX due to circumstances beyond its control and the control of ISX.*

As set out in section 5 of these reasons, in ASX's opinion, information about each of the Key Contracts was information that a reasonable person would expect to have a material effect on the price or value of the Ordinary Shares and therefore ought to have been disclosed by ISX to the market under Listing Rule 3.1 immediately upon those contracts being signed. This applied regardless of whether the counterparty might, or might not, grow to become a 'large customer' and generate 'large GPTV' over time by using ISXPay services.

- 7.4. *ISX considers that it is the actual sustainable GPTV which affects the price or value of its shares. ISX understands that market analysts share this view. Further, it is supported by an analysis of the market announcements made by ISX in the period from 2015 to 2018. During that period ISX made numerous announcements about the development of its business. In particular, it made announcements in relation to the deployment of its network and its capabilities. It also provided updates in relation to its intellectual property, regulatory approvals, business alliances (such as with banks and credit card issuers), new product offerings, signing of customer contracts and anticipated GPTV. However, none of these announcements materially affected the price or value of ISX's shares.*

The market announcements in the period from 2015 to 2018 are not in issue. They may or may not have been market sensitive. They have no bearing on whether the Key Contracts were market sensitive and therefore should have been disclosed to the market when they were signed in 2018.

ASX also does not accept the contention that actual sustainable GPTV is the (impliedly sole) factor that affects the price or value of ISX's shares. There are many factors that can affect the price or value of an entity's securities.

- 7.5. *ISX ... does not consider the one-off technical integration fees to be material. Rather, it regards the evergreen long-term payment and electronic money services relationship delivered via its Payidentity™ and ISXPay® platforms as being the material relationship and the material value-driver. For example, the actual gross profit from the establishment phase of the arrangements with the customers identified in 3a, 3b and 3c of the question [ie Corp Destination, FCorp and IMMO] was a modest \$120,000 (approximately). When compared with the long-term gross profit or ongoing Merchant Services Fee that would be derived from the services agreements, it was not material.*

ASX does not agree. As set out in the section 5 of these reasons, in ASX's opinion, information about each of the Key Contracts was information that a reasonable person would expect to have a material effect on the price or value of the Ordinary Shares and therefore ought to have been disclosed by ISX to the market under Listing Rule 3.1 immediately upon those contracts being signed.

- 7.6. *At the beginning of 2018 ISX adopted a policy of generally not announcing new customer names (not to be confused with business partner names). In this regard, on 5 February 2018,⁷⁵ ISX told the market that:*

⁷⁵ ASX notes that this new policy was announced just a month or two ahead of the signing of three of the Key Contracts.

“The Company will no longer announce merchants by name, but will report based on sector / actual results, in order to preserve merchant confidentiality and Company’s [sic] commercial positioning.”

Accordingly, ISX disclosed to the market its practical interpretation and application of GN8 and it has followed that practice ever since.

As mentioned in section 6.4 of these reasons, a listed company cannot escape its obligation to disclose particular information under Listing Rule 3.1 by announcing that it does not intend to disclose that information.

7.7. *Further, for the reasons set out below, ISX considered that GN8 was inapplicable in the manner that is now suggested by the ASX.*

First, ISX holds its Euro deposits at Central Banking facilities in the European Union and an ISX operating subsidiary is licensed as an electronic money institution. As such, it is a specialist sub-type of credit institution and deposit taking type institution under European law, which can:

- issue electronic money;*
- issue International Bank Accounts (IBANs) to customers and hold their funds in exchange for electronic money;*
- process payments from major card schemes such as Visa, MasterCard, JCB, Diners, Discover, and ChinaUnionpay of which it is a principal member institution of each; and*
- make interbank payments that are accessible via the SWIFT.org issued Bank Institution Code (BIC) of ISEMCY22XXX via the Single Euro Payment Area network.*

It is therefore not usual for such institutions to reveal customer names or customer data without the customer’s consent, as customer privacy is preserved under various European Union banking related and privacy laws. ISX understands that Australian banks and other financial institutions which are listed on the ASX are subject to similar laws and restrictions.

This submission is not pertinent to the issues in question. The services ISX agreed to provide under the Key Contracts were not services of the type mentioned by ISX in the preceding paragraphs (namely banking and payments services). They were the platform development services and marketing management services summarised in section 4 of these reasons.

Further, as companies, the counterparties to the Key Contracts are not parties who can claim the protection of European privacy laws.

7.8. *Secondly, for the reasons set out ... above, ISX did not consider any one customer contract to be material, particularly in advance of actual GPTV being processed and therefore confirmed.*

In these circumstances, throughout 2018 ISX told both the ASX and the market that it was signing early customer contracts without announcing names, pricing, integration dates or other similar terms. Each of the following announcements contained direct references to customer contracts without naming particular customers:

- 22 August 2017, “First Australian Card Acquiring Contracts Execute for Retail Merchants”*
- 4 September 2017, “ISX Pay: Further Australian card acquiring/processing contracts executed”*
- 11 October 2017, “ISX Pay: Further Australian card acquiring/processing contracts executed”*
- 8 November 2017, “ISX Pay: Further Australian card acquiring/processing contracts executed”*
- 5 February 2018, “ISX Pay: Australian payment processing & funds settlement update”*
- 26 February 2018, “ISX Pay: Four Major EEA/EU based merchants Contracted”*
- 7 March 2018, “First European Based Merchant Transacting”*
- 26 April 2018, “Report to shareholders for the Quarter Ended 31st March 2018”*
- 4 June 2018, “Interim Update”*
- 4 June 2018, “EMA’s: Launch and First Contracts”*
- 3 September 2018, “GPTV Update”*
- 6 February 2019, “ISX Pay: Australian Card Processing Facilities”*
- 14 February 2019, “Australian Merchant Onboarding Update”*
- 3 April 2019, “ISX Pay EEA Card Processing Update’ (referred to over 100 agreements)*
- Other later and generic business progress announcements*

Some other announcements named customers where that was the desire of the customers. For example, in some instances a new business wanted it to be known that it was gaining transaction assurance by using ISX's well-regarded technologies.

The disclosure obligation in Listing Rule 3.1 applies to information that a reasonable person would expect to have a material effect on the price or value of a company's securities. If a contract is not of that character, no information is required to be disclosed about the contract under Listing Rule 3.1, including the name of the counterparty. It seems likely that many of the contracts referred to in the announcements listed above would not have been required to be disclosed under Listing Rule 3.1 and therefore the fact that ISX did not mention the name of the counterparty in the relevant market announcement was perfectly acceptable.

However, for the reasons set out in section 5 of these reasons, in ASX's opinion, information about each of the Key Contracts was information that a reasonable person would expect to have a material effect on the price or value of the Ordinary Shares and therefore ought to have been disclosed by ISX to the market under Listing Rule 3.1 immediately upon those contracts being signed. The information required to be disclosed included any information about the identity of the counterparties to the Key Contracts that a reasonable person would expect to have a material effect on the price or value of ISX's shares.

- 7.9. In its 24 January Submissions, ISX disputed ASX's determination that the Key Contracts required disclosure under Listing Rule 3.1, on the basis that ASX had failed to consider information about the Key Contracts in context and had looked at them in isolation, contrary to the approach stated in section 4.3 of GN 8.⁷⁶ ASX does not accept this submission. Sections 5.2 to 5.7 of these reasons clearly demonstrate that ASX has considered the surrounding context in which the Key Contracts were entered into, the substantial increase in revenue they contributed during the Relevant Period and the impact of that revenue on the Milestones.
- 7.10. In its 24 January Submissions, ISX also stated that ASX had failed to take into account the actual effect that information about the Key Contracts had on the market price of ISX's shares, referencing the commentary in section 8.7 of GN 8 about the 5%/10% thresholds that ASX generally uses to determine whether a continuous disclosure breach ought to be referred to ASIC.⁷⁷ Again, ASX does not accept this

⁷⁶ Section 4.3 of GN 8 states:

'In assessing whether or not information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1, the information needs to be looked at in context, rather than in isolation, against the backdrop of:

- *the circumstances affecting the entity at the time;*
- *any external information that is publicly available at the time; and*
- *any previous information the entity has provided to the market (eg, in a prospectus or PDS, under its continuous or periodic disclosure obligations or by way of earnings guidance).'*

⁷⁷ Section 8.7 of GN 8 states:

'In deciding whether or not to refer a potential contravention of Listing Rule 3.1 and/or section 674 to ASIC, ASX will need to form a view on whether the information in question was market sensitive. As mentioned previously, the test for determining this is set out in section 677 of the Corporations Act. Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of an entity's securities if the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of" those securities. Applying this test literally would require ASX to put itself into the shoes of persons who commonly invest in securities at the time the information was required to be disclosed under Listing Rules 3.1 and 3.1A and hypothetically form a view on whether the information would have influenced their decision to acquire or dispose of the entity's securities at that time.

Instead of undertaking that hypothetical task, ASX will generally look to the actual effect that the information had on the market price of the entity's securities when it was finally announced to the market and assess for itself whether or not the information in fact had a material effect on the market price. For these purposes, ASX will generally apply the materiality guidelines that formerly appeared in the Australian Accounting Standards as a reasonable measure of materiality. Thus, if the information appears to ASX to have moved the market price of the entity's securities (relative to prices in the market generally or in the entity's sector) by roughly:

- *10% or more, ASX will generally regard that as confirmation that the information was market sensitive and therefore refer a potential breach of Listing Rule 3.1 and section 674 to ASIC;*
- *5% or less, ASX will generally regard that as confirmation that the information was not market sensitive and therefore not refer the matter to ASIC.'*

submission. It does not take into account that ISX did not disclose material information about the Key Contracts until it finally responded to ASX's Query Letters. At that time, ISX's Ordinary Shares had been suspended from trading for some time and so it has not been possible to observe the impact that the information about the Key Contracts may have had on the price or value of ISX's Ordinary Shares.

- 7.11. ISX further stated in its 24 January Submissions that ISX disclosed to the market '*the effect of the [Key Contracts], including their impact on the conversion of the performance rights⁷⁸ to ordinary shares.*' It pointed to the statement in its announcement entitled '*Cash Receipts – Performance Rights*' dated 22 June 2018⁷⁹ that:

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

Subject to audit, the receipts will satisfy the Milestone A and Milestone B requirements for issue of Class A and Class B Performance Rights⁸⁰ under Section 14.2 of the iSignthis Ltd Prospectus dated 22 December 2014.

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

and the statements in its Appendix 4C for the quarter ended 30 June 2018⁸¹ that:

'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 our suppliers, which meant that growth was intentionally subdued until such time as the Company was satisfied that it had resolved the issue. ...

The Company considers that based on the unaudited revenue for the 6 months from 1st January 2018 to 30th June 2018, estimated as being in excess of the A\$5m Target Milestone, it will meet the requirements of Tranche 1,2 and 3 of the Performance Rights.⁸² On this basis, 336,666,667 Ordinary shares will be issued in the September quarter period, taking the total number of shares on issue for the Company to 1,004,832,159.'

ISX noted that on 21 June 2018 its share price closed at \$0.16 and on 22 June 2018 its share price rose to \$0.17, an increase of only 5.8%. Thereafter, until 10 July 2018, ISX's share price remained between \$0.17 and \$0.18.⁸³ Accordingly, ISX submitted that the release of the information on 22 June 2018 about its revenue meeting Milestones A and B had a positive impact of just 5.8% on ISX's share price. Since the change in the market price of its shares was less than the 10% materiality threshold suggested for smaller companies in section 8.7 of GN 8, it submitted that this confirmed that the information released to the market on 22 June 2018 was in fact not market sensitive.

ISX further noted that its share price on 30 July 2018 closed at \$0.215 and on 31 July 2018 closed at \$0.205, a decrease of only 4.8%, and posited that it was '*more than likely on a balance of probabilities that the information [released on 31 July 2018] concerning the impact on ISX's GPTV caused its share price to decline by 4.8%*'. Again, since the change in the market price of its shares was less than the 10% materiality threshold suggested for smaller companies in section 8.7 of GN 8, ISX submitted that this confirmed that the information released to the market on 31 July 2018 was not market sensitive.

⁷⁸ Again, the reference here to 'Performance Rights' was clearly intended to be a reference to the Performance Shares.

⁷⁹ Available online at <https://www.asx.com.au/asxpdf/20180622/pdf/43vz7084jkxxt4.pdf>.

⁸⁰ Again, the reference here to 'Performance Rights' was clearly intended to be a reference to the Performance Shares.

⁸¹ Lodged on MAP on 31 July 2018 and available online at <https://www.asx.com.au/asxpdf/20180731/pdf/43wxp6kw3f286k.pdf>.

⁸² Again, the reference here to 'Performance Rights' was clearly intended to be a reference to the Performance Shares.

⁸³ ASX would observe that it issued a price query to ISX on 12 July 2018 regarding an increase in the market price of its Ordinary Shares on that date from a low of 18.5 cents to a high of 22.0 cents (available online at <https://www.asx.com.au/asxpdf/20180713/pdf/43whdh0tsy07gp.pdf>). ISX responded that it did not know of any reason to explain the increase in the price of its shares.

ASX does not accept ISX's submissions on these issues. As mentioned previously, the Key Contracts should have been disclosed to the market immediately upon those contracts being signed.⁸⁴ They were all signed well before the announcements ISX made to the market on 22 June and 31 July 2018.

Further, Listing Rule 3.1 refers to both the 'price' and 'value' of an entity's securities and requires information to be disclosed if a reasonable person would expect the information to have a material effect on the *value* of its securities. In this regard, the issue of just the Milestone A and B Shares would have resulted in an increase in the number of Ordinary Shares on issue of 33.6% and the issue of the Milestone A, B and C Shares together in fact resulted in an increase in the number of Ordinary Shares on issue of 50.4%, in each case for nil consideration. All other things being equal, this could have been expected to result in a very significant notional decline in ISX's shares price. The fact that ISX's share price did not materially decline when information about the forthcoming issue of the Milestone Shares was disclosed indicates that the market attributed significant value to the fact that ISX had met the revenue Milestones and its business appeared to be on a significant upwards trajectory.

- 7.12. ASX's position in section 7.11 above is illustrated in the following table (using the same share prices as ISX used in its submissions mentioned in that section):

	Milestone B	Milestone C
Assumed shares on issue prior to announcement that the Milestone was met	780,387,714 ¹	892,609,936
Market price pre-announcement that the Milestone was met	\$0.16 ²	\$0.215 ³
Implied market capitalisation pre-announcement that the Milestone was met	\$124,862,034	\$191,911,136
Milestone Shares to be issued	112,222,222	112,222,223
Shares on issue post issue of Milestone Shares	892,609,936	1,004,832,159
Market price post-announcement that the Milestone was met	\$0.17 ⁴	\$0.205 ⁵
Implied market capitalisation post-announcement that the Milestone was met	\$151,743,689	\$205,990,593
Percentage increase in market capitalisation	21.5%	7.3%

¹ This assumes, in ISX's favour, that the market may have already factored in the likelihood that ISX's revenue for the Relevant Period would exceed Milestone A, based on its revenue performance for the quarter ended 31 March 2018.⁸⁵

² As at 21 June 2018.

³ As at 22 June 2018.

⁴ As at 30 July 2018.

⁵ As at 31 July 2018.

Cumulatively, the implied market capitalisation of ISX increased from \$124,862,034 on 22 June 2018 prior to any announcements that Milestone B had been met to \$205,990,593 on 31 July 2018 after the announcement that Milestone C would also be met, an increase of 65% in just over a month.

- 7.13. ASX's position in section 7.11 above is also reinforced by the following observations of Mr Martyn Jacobs of Patersons Securities Limited, the main analyst covering ISX, in his research report dated 26 June 2018 in relation to ISX's 22 June 2018 announcement (emphasis added):

'Isignthis (ISX) announced that it has qualified for at least the first and second tranches of the c.336m performance shares (ISXAB). This indicates that ISX has achieved the minimum revenue threshold of \$3.75m for 2H18, or \$7.0m on an annualised basis. ISX also indicated it was not yet clear whether it had achieved the final tranche which requires revenue of \$5m for 2H18. It noted that it needed to wait until the end of month invoices were collated. Our interpretation is that ISX is close to achieving the \$5m revenue target (c.\$10.0m annualised). If this is correct, it suggests that ISX has generated c.\$3.5m revenue in the June qtr or c.\$14.0m on an annualised run-rate

⁸⁴ See note 66 above.

⁸⁵ Based on the unaudited revenue ISX reported for the March 2018 quarter of \$1.48 million and the accompanying commentary in ISX's Appendix 4C released on MAP on 26 April 2018 (available online at <https://www.asx.com.au/asxpdf/20180426/pdf/43thbslgq59xp1.pdf>).

basis, as compared with c.\$0.7m reported in FY17. Achieving such revenue levels would indicate that ISX has finally hit profitability and should attract a new level of investor interest. It would also suggest an earnings upgrade could be warranted for our FY19 forecasts. The recent transaction banking announcements are a sign of positive progress and we expect this new activity has had some influence in the forthcoming June qtrly.

While qualifying for the third tranche would result in a c.12.1% expansion of the issued share capital, over and above our current forecast, we think the implication of growth and profitability is worth the additional dilution when viewed from a one to two year time horizon.

- 7.14. ASX would also observe that ISX was aware of the materiality of the Key Contracts to the market in light of the following statements it made in the announcement titled 'Interim Update', which was released on MAP on 4 June 2018 (emphasis added):

'PERFORMANCE RIGHTS

The Company has received numerous questions from shareholders and analysts regarding the performance rights and revenues. The Company will not make commentary on this matter prior to the milestone date, noting that the milestone date set under the prospectus in 2014 is the end of June 2018. The performance milestone outcome will be reported post audit. However, unaudited revenue will be reported with the 30 June 2018 Appendix 4C quarterly update, due no later than 31st July 2018. This will provide preliminary guidance as to revenues and likely outcome of performance share issue.'

8. A material representation about the composition of ISX's revenue

- 8.1. In an analyst briefing on 3 August 2018, ISX represented that one-off fees and one-off setups (integrations) accounted for less than 15% of ISX's revenue (the '<15% Representation').⁸⁶ The full extract from the written briefing materials follows:

'One off Fees / One off Setups (Integrations) < 15% of revenue (recur on each new agreement) - Invoiced at milestone on 30 day terms

The Company provides an integration service to some contracted clients. These integration services relate to the CRM platforms that our clients required in order for volume to flow between the Consumer the Merchant and iSignthis.

The service is offered in order to bring forward revenue with our merchants, as their internal resources would need to be diverted in order to connect, where we have capacity to do this from them. While this is a lower margin revenue item than other product offerings it does allow for higher margin products to commence operation sooner.'

- 8.2. ASX has obtained a copy of the recording of the Analyst Briefing on 3 August 2018 in which Mr Karantzis responds to a question asking 'what percentage of the revenue last quarter was from upfront and one off fees?' and answers: 'we have actually cited a figure in the pack of less than 15%', thereby emphasising and reinforcing the <15% Representation.
- 8.3. The market sensitivity of the <15% Representation is apparent from the following observations of Mr Martyn Jacobs of Patersons Securities Limited, the main analyst covering ISX, in his research regarding ISX:
- Research report dated 1 March 2018 in relation to ISX's December 2017 half result (emphasis added):

'In 2H18, settlement activity is expected to dominate the revenue and earnings profile, with c.65% of revenues in the 3Q18 to date being settlement related.

ISX has moved to the monetisation phase of its business, and is gaining significant traction that should be reflected in 2H18 and beyond.'

⁸⁶ See ISX's announcement titled 'Analyst Brief - August 2018' released on MAP on 3 August 2018, available online at <https://www.asx.com.au/asxpdf/20180803/pdf/43x1yivbg5gvvz.pdf>.

- Research report dated 1 August 2018 in relation to ISX's June 2018 quarter Appendix 4C (emphasis added):

GPTV (Gross Processed Turnover Value or settlement book in short-hand) increased c.50% from c.\$400m to c.\$600m in the qtr. This strong level of growth occurred despite two European merchants operating in Australia engaged in litigation with ASIC, resulting in the termination of those licensee arrangements and deduction off the actual settlement book to arrive at the reported figure. Underlying momentum is thus strong.

Based on the June qtr cash receipts number annualised, ISX is generating a net revenue margin of c.175bp.

Based on qtrly revenue annualised, the margin would be c.263bp and indicates the pricing power attributable to the ISX service.'

... it would be helpful for the market to know what % of the June qtr revenue can be classified as recurring business activity as opposed to one-off in nature. Assuming it is a high portion, understanding this point would assist the market's understanding of the underlying business momentum being experienced by the company. We hope to have this question answered on Friday's conference call ...'

- Research email dated 6 August 2018 in relation to the Analyst Call on 6 August 2018 (emphasis added):

'Following the release of the June qtr cash flow statement, we dialed into the conference call today and provide a few observations

Recurring business activity constituted c.85% of revenues, with the balance being one-off integration related revenues. This should provide the market with confidence that ISX has genuinely met the threshold to achieve all three tranches of the performance shares.'

- 8.4. ASX also notes that ISX essentially re-iterated the <15% Representation in its response to questions 2(a)(ii) and 2(b)(ii) of the Second Query Letter which disclosed that 'Integration/Set Up' accounted for only \$26,860 of revenue generated in the Relevant Period. It was only in response to ASX's follow up question (question 10 of the Third Query Letter) that ISX disclosed that \$2,923,960 should have been classified as 'Integration/Set up services' and that 'the previous response was mistaken'.
- 8.5. ASX considers the <15% Representation was market sensitive (as indicated by the analyst's question and observations mentioned in sections 8.2 and 8.3 of these reasons respectively). It was also false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts. As noted in section 5.5 of these reasons, the 'one-off fees/one off set ups' under the Key Contracts accounted for approximately 60% of ISX's revenue for the Relevant Period.
- 8.6. By making the <15% Representation, ASX considers that ISX triggered an obligation under Listing Rule 3.1 to make corrective disclosure to the market and, by failing to make corrective disclosure, ISX breached that rule.

9. Were the Milestones validly met?

- 9.1. In its 24 January Submissions, ISX submitted that the references to 'revenue' in the Milestones should be interpreted in accordance with Australian Accounting Standards and that since the revenue derived in the Relevant Period had been audited twice by a registered company auditor⁸⁷ who had issued unqualified audit reports opining that ISX's financial statements were compliant with Australian Accounting Standards, this should be sufficient to satisfy ASIC, ASX and the market that the Milestones

⁸⁷ Once in the audit for the financial year ended 30 June 2018 and again in the audit for the financial year ended 31 December 2018, ISX having changed its financial year end from 30 June to 31 December in the interim.

were met and the Performance Shares were therefore legitimately converted into the Milestone Shares.⁸⁸

- 9.2. ASX does not accept this submission. ASX considers there is a reasonable argument that, properly construed, the reference to 'revenue' in the Milestones meant ordinary business revenue and excluded revenue generated solely or predominantly for the purpose of meeting the Milestones.⁸⁹ Based on the materials that have been presented by ISX to ASX thus far, in ASX's view, there are serious questions to be determined as to whether the revenue derived by ISX under the Key Contracts was ordinary business revenue or whether it was generated solely or predominantly for the purpose of meeting the Milestones.⁹⁰ The factors that in ASX's view give rise to these serious questions are set out in sections 9.3 to 9.9 of these reasons below.

⁸⁸ See also ISX's announcement titled 'Response to Ownership Matters Pty Ltd Report' released on MAP on 17 September 2019 and available online at: <https://www.asx.com.au/asxpdf/20190917/pdf/448lrdp92q083r.pdf>.

⁸⁹ Alternatively, ASX considers that there is a reasonable argument that it was an implied term of the Performance Shares that the Milestones had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the Milestones. In this regard, it could not reasonably have been in contemplation of the parties when the terms of the Performance Shares were originally agreed between ISX (then Otis Energy) and the original holders, and subsequently approved by ISX's shareholders, that it would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue Milestones.

ASX would note that if the position in the text or in the preceding paragraph is correct, and if it were the case that the revenue was generated solely or predominantly for the purpose of meeting the milestones, then the issue of the Milestone Shares arguably breached Listing Rule 10.11 (as that rule was in force in 2018).

While the ownership of the Milestone Shares is not entirely clear from the public record, it would seem that at least some of the Milestone Shares were issued to parties referred to in Listing Rule 10.11.1 or 10.11.2 (as those rules were in force in 2018). Accordingly, under Listing Rule 10.11, the issue of the Milestone Shares to those parties would have required the approval of ISX shareholders by way of an ordinary resolution unless ISX could avail itself of an exception in Listing Rule 10.12 (as then in force). The only relevant exception at the time was exception 7 in Listing Rule 10.12 ('the person receives the securities on the conversion of convertible securities'), noting that the Performance Shares were convertible securities for the purposes of the Listing Rules.

ISX shareholders passed a resolution on 22 December 2014 approving the issue of the Performance Shares, and the issue of the Ordinary Shares on conversion of the Performance Shares, for the purposes of section 611 item 7 of the Corporations Act and for 'all other purposes' (see resolution 2 of the Notice of General Meeting lodged on MAP on 19 November 2014 and available online at <https://www.asx.com.au/asxpdf/20141119/pdf/42tr3xjzcnwfk.pdf> and the announcement by ISX titled 'Results of General Meeting' dated 22 December 2014 and lodged on MAP on that date, available online at <https://www.asx.com.au/asxpdf/20141222/pdf/42vnfc58wjj46j.pdf>).

ASX is prepared to accept that, on its face, this resolution impliedly included an approval to the issue of the Performance Shares, as well as the issue of the Milestone Shares on conversion of the Performance Shares, for the purposes of Listing Rule 10.11. However, to the extent the resolution purported to approve the issue of the Milestone Shares, it did not meet the timing requirements in Listing Rule 10.13.3, which requires the relevant issue to occur within one month of the resolution. It therefore could not have been a valid approval of the issue of the Milestone Shares for the purposes of Listing Rule 10.11.

For the issue of the Milestone Shares to comply with Listing Rule 10.11, therefore, ISX had to fall back on exception 7 in Listing Rule 10.12 ('the person receives the securities on the conversion of convertible securities'). Implicitly this means the person receives the securities on the conversion of convertible securities *in accordance with their terms*. Hence, if the position in the text or in the first paragraph of this note is correct and the Milestones were met by revenue generated solely or predominantly for the purpose of meeting the Milestones rather than ordinary business revenue, this would not have been in accordance with the terms of the Performance Shares and therefore outside of exception 7 in Listing Rule 10.12.

⁹⁰ If it were ultimately determined that ISX did enter into the Key Contracts solely or predominantly for the purpose of meeting the Milestones, there would be an issue for ASIC to determine in terms of whether that conduct breached sections 181(1) or 182(1) of the Corporations Act. Section 181(1) imposes a statutory duty on directors and officers of corporations to exercise their powers and discharge their duties in good faith in the interests of the corporation and for a proper purpose. Section 182 prohibits a director, secretary, officer or employee of a corporation from improperly using their position to gain an advantage for themselves or someone else or to cause detriment to the corporation.

- 9.3. In ASX's view, the Key Contracts were all 'out of the ordinary', involving the provision of services (the platform development services and marketing management services detailed in section 4 of these reasons) that were not part of ISX's core business.⁹¹
- 9.4. Prior to the Relevant Period ISX had not entered into, and since the Relevant Period ISX has not entered, any equivalent agreements with other customers.⁹²
- 9.5. The Corp Destination, FCorp and IMMO Agreements were all entered into and claimed by ISX to have been substantially performed within a short period (approximately 1½ months, 1 month and 3 weeks respectively) just prior to the end of the Relevant Period.
- 9.6. The Nona Agreement (entered into in December 2017) was also claimed by ISX to have been performed within a short period (2-3 months) at the beginning of the Relevant Period.
- 9.7. ISX did not have the capabilities to meet its obligations under the Corp Destination, FCorp and IMMO Agreements⁹³ and had to sub-contract substantially all of its responsibilities under those agreements to third party contractors (Fino and Gibi), who in turn charged it fees substantially equivalent to the fees receivable by ISX under the agreements. In other words, the revenue on those agreements was in each case largely offset by the expenses charged to it by the third party contractors.
- 9.8. In its response to questions 8 and 9 of the Third Query Letter, ISX described its substantive role under the Corp Destination, FCorp and IMMO Agreements as being '*to provide a secure cloud environment to PCI DSS requirements*' and that this required ISX to:
- *establish and configure a secure cloud environment consistent with ISX's PCI DSS and ISO27001 requirements;*
 - ***acquire a licence of off-the-shelf trading software on behalf of the customer in the customer's name;*** [emphasis added]
 - *deploy the off-the-shelf trading software to the cloud environment;*
 - *modify ISX's data input and outputs to accept and transmit data to the trading software;*
 - *test and put into production, with data shared between the Payidentity™ platform and the "Trading Platform"; and*
 - *at the customer's request, process payments, undertake identity verification and electronically share data with the trading platform.'*

ISX estimated that it took about 10 man-days for each customer to deploy the environment, and around 3 man-days to deploy the licence into each environment and that this work was completed by mid-June 2018.⁹⁴

When asked by ASX to provide a copy of the licences of the '*off-the-shelf trading software*' acquired '*on behalf of the customer in the customer's name*' mentioned in the statement highlighted above,⁹⁵ ISX responded:

'The licences and activation codes were transferred to ISX's customers directly by the trading platform licence resellers. Accordingly, ISX has never had a copy of these licences and therefore cannot give them to the ASX.'

- 9.9. This begs the question – if the relevant trading platform software licences were in fact directly provided by the licensed re-sellers (Fino and Gibi) to the end-user customer, why did ISX structure the contractual arrangements so that it first contracted to obtain the software from the re-seller for a substantial

⁹¹ See note 71 above.

⁹² Per ISX's response to question 7 of the Fourth Query Letter.

⁹³ As mentioned in section 6.3 of these reasons, it is not clear to ASX whether ISX personally performed its obligations under the Variation Letter or the Nona Agreement, or whether it subcontracted those obligations to a third party as well.

⁹⁴ Per ISX's response to question 11 of the Third Query Letter.

⁹⁵ See question 4 of the Fourth Query Letter and ISX's response.

licensing fee and then contracted to supply it to the end-client for a substantially similar licensing fee? One possible answer must be that it did so solely or predominantly to generate revenue for the purpose of meeting the Milestones.⁹⁶

- 9.10. Even if ISX's contention that the revenue received under the Key Contracts was ordinary business revenue ultimately proves to be correct, having regard to the matters raised in sections 9.5, 9.6 and 9.11 to 9.14 of, and Annexure A to, these reasons, there are serious questions in ASX's view as to whether the work required under those contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was properly recognised in the Relevant Period.
- 9.11. ISX has provided ASX with three 'certificates of practical completion' relating to the Corp Destination Agreement, FCorp Agreement and IMMO Agreement ('Certificates of Practical Completion'), which it says evidences their completion by 30 June 2018. The Certificates of Practical Completion all state that 'all work required' under the respective Agreements 'have [sic] been satisfactorily completed by the 30th June 2018.' The certificates for the FCorp Agreement and the IMMO Agreement are dated 25 July 2018, while the certificate for the Corp Destination Agreement is dated 14 August 2018.
- 9.12. ASX notes that none of these agreements required the production of a Certificate of Practical Completion, raising questions as to why, and at whose request, they were generated.

In its response to ASX's Third Query Letter, ISX gave the following explanation for obtaining the Certificates of Practical Completion:

'ISX is concerned to comply with its obligations under the Listing Rules and placate any concerns which the ASX may have in relation to the revenue which it derived from these customers. Accordingly, ISX confirms that it obtained a certificate of practical completion from each customer before the revenue was recorded in its books. ISX understands that its auditors have reviewed those certificates of practical completion.'

It expanded upon this statement in its 24 January Submissions as follows:

*'ISX discussed the suitability of a Certificate of Practical Completion with its auditors as a means of certifying compliance with AASB 118, AASB 111 and AASB 15. Subsequently, ISX produced a standard template for execution by all of its customers. These certificates complemented the twenty-one page PCI DSS Assessment and Attestation which was also signed by ISX's customers.'*⁹⁷

In other words, the Certificates of Practical Completion were produced by ISX for the purposes of satisfying ISX's auditor that the Key Contracts in question had been practically completed by 30 June 2018 and therefore it was appropriate to recognise the revenue derived under those contracts in the Relevant Period which, in turn, counted towards the satisfaction of the Milestones.

9.13. ASX further notes that:

- The three Certificates of Practical Completion use the same template produced by ISX.
- They all state that the respective agreements were dated 30 May 2018. However, the Corp Destination Agreement was dated 15 May 2018 and the IMMO Agreement was dated 6 June 2018.⁹⁸
- The copy of the certificate for the FCorp Agreement that ISX has provided to ASX is not signed.

⁹⁶ The fact that the relevant trading platform software licences were directly provided by the licensed re-sellers to the end-user customer without any involvement by ISX potentially raises a further question as to whether ISX was acting as an agent for the re-sellers, rather than as principal in its own right, when it entered into the Key Contracts with Corp Destination, FCorp and IMMO. If so, that could have significant implications for the amount of revenue ISX recognised in relation to those contracts.

⁹⁷ ISX did not supply a copy of the PCI DSS Assessments and Attestations signed by the customers.

⁹⁸ ISX stated in its 24 January Submissions that this was a typographical error made by ISX when the template was produced and then copied.

- The certificate for the IMMO Agreement was signed on behalf of IMMO by Mr Alan Pešek. According to a search of the Czech Republic corporate register, Mr Pešek ceased to be a director of IMMO on 1 June 2018, 54 days before he signed the certificate for the IMMO Agreement.⁹⁹
- With one exception, the Certificates of Practical Completion all state that the 'go live' date of relevant website is to be advised, *'as these are dependent on factors outwith the control of Authenticate'*. The one exception is 'Brand A' under the IMMO Agreement, namely www.thechange.io, which the relevant certificate states *'has already gone live'*.

The fact that the Certificates of Practical Completion specifically reference and seek to explain away the fact that the relevant websites of Corp Destination, FCorp and IMMO (other than www.thechange.io) were not live as at the date of the Certificates of Practical Completion – let alone as at 30 June 2018 – suggests that this issue may have been of concern to ISX's auditor. It is also an issue of continuing concern for ASX.¹⁰⁰

- 9.14. In relation to the IMMO Agreement, in particular, Authenticate BV was substantially reliant on Gibi and its sub-contractor(s) in order to be able to perform its obligations under the IMMO Agreement. The Gibi Agreement was only signed by Gibi on 26 July 2018 and by Authenticate BV on 27 July 2018.¹⁰¹

ASX asked for copies of the invoices rendered to ISX by Gibi.¹⁰² The invoices that ISX provided were dated 17 August, 18 September, 20 November and 11 December 2018 and total €617,796.08, while a further invoice of US\$203,500 (discounted to US\$200,000) from a sub-contractor for *'studying platform services'* is dated 1 July 2018.¹⁰³

This information gives ASX pause to question whether ISX's obligations under the IMMO Agreement were in fact performed by 30 June 2018, notwithstanding the Certificate of Practical Completion provided in relation to that agreement.

10. The audits of the revenue Milestones

- 10.1. As mentioned in section 9.1 of these reasons, in its 24 January Submissions, ISX submitted that the references to 'revenue' in the Milestones should be interpreted in accordance with Australian Accounting Standards and that since the revenue derived in the Relevant Period had been audited twice by a registered company auditor¹⁰⁴ who had issued unqualified audit reports opining that ISX's financial statements were compliant with Australian Accounting Standards, this should be sufficient to satisfy

⁹⁹ See note 56 above.

¹⁰⁰ In its 24 January Submissions, ISX submitted that:

'... the actual activation date (otherwise known as the actual "go live" date) was not a relevant consideration or a requirement under each of the agreements as this date was at the sole discretion of ISX's customer and depended on numerous factors outside of ISX's control, such as regulatory licensing (where applicable), marketing and the customer's own operational readiness', and

'... to achieve "Completion" ISX only had to provide a secure cloud environment which complied with the PCI DSS, deploy a licence from a third party trading platform to the cloud environment, integrate its Paydentity™ KYC and ISXPAY® services to the platform and demonstrate to the satisfaction of the customer that the services could "go live" when the customer was ready to do so'.

This submission does not sit comfortably with the payment terms in the relevant Key Contracts (as set out in sections 4.2, 4.3 and 4.4 of these reasons). There is no reference in any of the Key Contracts to the term 'Completion' or payments being due upon 'Completion'. The relevant instalments were expressly stated to be due upon *'End User Licensee "Go Live"'*.

¹⁰¹ As mentioned in note 58 above, while the Gibi Agreement was dated 7 June 2018 (ie the day after the IMMO Agreement was signed), according to the signature block for the agreement, it was signed by Gibi on 26 July 2018 and by Authenticate BV on 27 July 2018.

¹⁰² See question 4 of the Fourth Query Letter.

¹⁰³ ASX notes that the invoices provided by ISX from Gibi (and a sub-contractor) do not appear to equate to the total fees due under the Gibi Agreement. Further, the payment details on the invoices from Gibi specify payment to an unnamed beneficiary with what appears to be Bayline Trading Limited's IBAN: see the various references to Bayline in section 1.A of Annexure A and section 1 of Annexure B.

¹⁰⁴ See note 87 above.

ASIC, ASX and the market that the Milestones were met and the Performance Shares were therefore legitimately converted into the Milestone Shares.¹⁰⁵

10.2. As mentioned in section 1.2 of these reasons, ASIC provided information in confidence to ASX in a tele-conference on 1 October 2019 that ASIC had concerns with ISX's books and records for the Relevant Period. Accordingly, the factual underpinning for ISX's submission mentioned in sections 9.1 and 10.1 of these reasons may well be missing.

10.3. ASX notes that ISX's auditor acknowledged that revenue recognition was the most significant Key Audit Matter in its audit report on ISX's financial statements for both the financial year ended 30 June 2018¹⁰⁶ and the financial year ended 31 December 2018.¹⁰⁷

ISX has assured ASX that all of its books and records, including the four Key Contracts, were made available to its auditor for the purposes of its audits of ISX's financial statements for the Relevant Period.¹⁰⁸

ISX has presented to ASX the Certificates of Practical Completion that it provided to its auditor as evidence that the three Key Contracts in question had been practically completed, and the revenue from those Key Contracts was therefore appropriately recognised in full, in the Relevant Period. Given the obvious deficiencies with those certificates identified in sections 9.13 and 9.14 of these reasons and the information about the Key Contracts that ASX has been able to glean from its enquiries set out in sections 4 and 9 of, and in Annexure A to, these reasons, ASX remains concerned that the revenue Milestones were not validly met despite the audit certificates for the Relevant Period.

11. ISX's offer to escrow some of the Milestone Shares

11.1. In an open letter to ASX dated 17 December 2019, the solicitors for ISX strongly objected to ASX's decision to publish the findings of its investigations to the market and conveyed the following offer to ASX:

'... in order to forthwith lift the suspension of ISX's shares from quotation, we are instructed that all of the directors and officers of ISX who received ordinary shares from the conversion of the performance rights and Red 5 Solutions Limited, are prepared to escrow those ordinary shares which they currently hold for a period of 6 months. This represents 84% of the ordinary shares which converted from the performance rights (being 282,750,000 of the 336,666,667 issued to directors, officers, staff and Red 5 Solutions Limited). The remaining ordinary shares have either been sold (the vast majority having been sold by the Chief Operating Officer when he resigned from the company) or are too dispersed among staff members to be included in the proposed 6 month escrow arrangement.'

11.2. ASX responded to this offer by letter dated 20 December 2019 as follows:

'ASX is unlikely to consider that ISX's securities could be reinstated to quotation without appropriate disclosure to ensure that the market is informed. Your letter suggests, but does not expressly state, that ISX's proposal is made on the basis that ASX does not publish its finalised findings. Would you please confirm if that is ISX's proposal? If so, you should also detail the disclosure to the market that ISX considers would provide a suitable basis for the reinstatement of ISX's securities to quotation. Please note that any such disclosure would need, at a minimum, to appropriately inform the market with respect to:

- *The four key contracts referred to in our draft findings*
- *The matters under review by ASX and ASIC and the potential consequences for ISX shareholders if those matters result in enforcement action by ASIC.*

¹⁰⁵ See also note 88 above.

¹⁰⁶ Available online at <https://www.asx.com.au/asxpdf/20180829/pdf/43xt0bl3gnm8c3.pdf>.

¹⁰⁷ Available online at <https://www.asx.com.au/asxpdf/20190329/pdf/443wnqlOpmtwtq.pdf>.

¹⁰⁸ ISX stated that this was the case in its 24 January Submissions: *'[ISX's auditor] was given access to all of ISX's books and records, including the four [Key Contracts]. No information was withheld from [ISX's auditor]'.*

In order that ASX can properly consider this proposal, please also provide the following additional information:

- *Details of the current holders of the 282,750,000 Milestone Shares that are proposed to be escrowed, including how and when those holders acquired their shares and for what consideration*
- *Details of the 53,916,667 Milestone Shares which you say have been sold, including: details of the persons who were issued these shares, how and when and for what consideration they were issued these shares, how and when and for what consideration they sold these shares, and, if they sold these shares through an off market transaction, to whom they were sold*
- *A copy of ISX's share register evidencing the information referred to in the previous two bullet points*
- *Draft terms of the proposed escrow arrangement, including the terms on which the Milestone Shares will be released from escrow and the applicable terms if, before the expiry of the escrow period, ASIC commences proceedings concerning the issue of the Milestone Shares.*

Without representing that any proposal put forward by ISX will be acceptable to ASX, and subject to any representations that may be made by ISX with respect to the matters set out in ASX's draft findings, in view of the seriousness of those matters and the ongoing ASIC investigation, an escrow period of 12 months is more likely to be considered suitable by ASX. Please also confirm if ISX is prepared to procure a 12 month escrow period for the Milestone Shares.

Consistently with our previously stated position, ASX would consult with ASIC in relation to any proposal put to it by ISX concerning its reinstatement to quotation. This would include confirming with ASIC that the terms of any proposed escrow arrangement and announcement were acceptable to it.'

This remains ASX's position.

- 11.3. ISX has not responded to ASX's letter dated 20 December 2019 beyond stating in its 24 January Submissions that, in light of ISX's detailed responses to ASX's Query Letters, the market is fully informed about the four Key Contracts, that ISX's offer ought to have been accepted by ASX and that ASX's failure to do so was unreasonable.
- 11.4. ASX does not agree that the market has been fully informed about the Key Contracts as a consequence of the publication of the ASX's Query Letters and ISX's responses. In ASX's opinion, the information concerning the Key Contracts set out in section 4 of these reasons ought to have been clearly disclosed by ISX to the market. The market should not have to try to distil that information from ASX's lengthy Query Letters and ISX's lengthy and sometimes incomplete or argumentative responses. Hence, ASX has determined that it is appropriate to publish this statement of reasons to correct the lack of information, and misinformation, in the market on the matters set out in it.
- 11.5. Further, ASX has not acted unreasonably by not accepting ISX's offer. ASX's response to ISX's offer in its letter to ISX dated 20 December 2019 was clearly reasonable in the circumstances. ASX could not, acting responsibly as a market operator, have allowed ISX's shares to resume trading without the market being properly informed of the concerns ASX has identified with the Key Contracts, as well as the matters under review by ASX and ASIC and the potential consequences for ISX shareholders if those matters result in enforcement action by ASIC.

12. Conclusions

a) ISX's failure to disclose the Key Contracts breached Listing Rule 3.1

- 12.1. For the reasons set out in section 5 of these reasons, ASX considers that ISX breached Listing Rule 3.1 by failing to disclose to the market the fact that it had entered into the Key Contracts and their material terms. ASX is correcting the lack of information in the market on this issue by the release of these

reasons and will be referring the breach of Listing Rule 3.1 to ASIC under and in accordance with section 792B(2)(c) of the Corporations Act.¹⁰⁹

- 12.2. Based on the its enquiries to date, there are two material matters concerning the Key Contracts that ASX has not been able to determine and that the release of these reasons alone will therefore not address.

As mentioned in section 6.3 of these reasons, it is not clear to ASX whether ISX personally performed its obligations under the Variation Letter or the Nona Agreement, or whether it subcontracted those obligations to a third party. ASX intends to make directions under Listing Rule 18.8 in relation to these matters as soon as it is able to.¹¹⁰

b) ISX's failure to correct the <15% Representation breached Listing Rule 3.1

- 12.3. For the reasons set out in section 8 of these reasons, ASX considers that ISX breached Listing Rule 3.1 by failing to correct the <15% Representation once it had been made. ASX is correcting the misinformation in the market on this issue by the release of these reasons and will be referring the breach of Listing Rule 3.1 to ASIC under and in accordance with section 792B(2)(c) of the Corporations Act.¹¹¹

c) Disclosures about other material contracts and customer sectors

- 12.4. As set out in section 6.6 of these reasons, ISX's failure to disclose the Key Contacts and its stated 'policy' of not naming customers in announcements necessarily raises concerns that there may be other market sensitive contracts that ISX has entered into which either have not been disclosed, or have not been adequately disclosed, to the market. ISX's policy of not naming customers in announcements also necessarily raises concerns as to whether the market has a proper understanding of the customer sectors in which ISX is operating. ASX intends to make directions under Listing Rule 18.8 in relation to these matters as soon as it is able to.¹¹²

d) Other potential Listing Rule breaches

- 12.5. For completeness, during the course of its enquiries, ASX uncovered evidence to suggest that ISX may also have breached Listing Rules 3.19A, 3.19B, 4.3A, 4.3D, 4.10.3, 10.11, 12.5 and 19.11A. However, at this stage, ASX has concentrated its enquiries on whether ISX met its obligations under the Listing Rules in relation to the conversion of Performance Shares into the Milestone Shares, given the significance of that matter.

e) ISX's ongoing suspension

- 12.6. Unless the Federal Court orders otherwise,¹¹³ ASX considers that it is appropriate for ISX's shares to remain suspended pursuant to Listing Rule 17.3.4 and not reinstated to trading until:

- the matters referred to in these statement of reasons are satisfactorily disclosed to the market; and
- acceptable measures are put in place so that the current holders of the Milestone Shares (other than those who were bona fide purchasers for value of those shares on-market) are not able to sell them for a reasonable period while ASIC has an opportunity to pursue its investigations and to determine whether it wishes to take action against those involved in the issue of the Milestone Shares.

On this last point, ASX would note that the Milestone Shares account for approximately 31% of the Ordinary Shares currently on issue and that if ASX were to reinstate ISX shares to trading now, it would allow the holders of the Milestone Shares to immediately sell them on-market and walk away with the proceeds in circumstances where there are serious questions to be answered about the legitimacy of their issue. ASX would further note that, in the 26 February 2020 draft of this statement of reasons, ASX

¹⁰⁹ See note 18 above.

¹¹⁰ Noting the injunctions sought in the 12 March Application.

¹¹¹ See note 18 above.

¹¹² Again, noting the injunctions sought in the 12 March Application.

¹¹³ Pursuant to the 12 March Application.

For personal use only

invited ISX to re-engage with ASX in relation to the offer referred to in section 11.1 of these reasons and to respond to the matters raised in ASX's letter to ISX dated 20 December 2019 referred to in section 11.2 of these reasons. ISX has chosen not to take up this invitation.

ANNEXURE A

Information Concerning the Invoicing and Payments under the Key Contracts

This Annexure A sets out information concerning the invoicing and payments under the Key Contracts to which ASX has had regard in formulating this statement of reasons.

1. Inconsistencies in invoicing and payments

In its Third Query Letter, ASX asked for copies of invoices and bank statements to confirm the payments received by ISX under the four Key Contracts.¹¹⁴

The information provided revealed a number of anomalies.¹¹⁵

A. Corp Destination Agreement and Variation Letter

The 'Total Commitment' under the Corp Destination Agreement was stated to be €343,500 (ex VAT), although, as mentioned in section 4.2 of these reasons, that amount did not accord with the individual line items in the agreement (€298,900). When the 'Total Commitment' amount was added to the fees due under the Variation Letter, the total amount owing by Corp Destination was €526,525.

Authenticate BV issued the following invoices to Corp Destination:

- Invoice dated 23 May 2018 for €475,000 (85% of the 'Total Commitment' under the Corp Destination Agreement plus the fees under the Variation Letter) with the 85% of the 'Total Commitment' due within 7 days of execution of the agreement dated 15 May 2018.
- Invoice dated 18 June 2018 for €51,525 (15% of the 'Total Commitment') due 'upon End User Licensee "Go Live"'.

The invoiced amounts were not strictly calculated as per the individual line items in the Corp Destination Agreement as they included the maintenance and support fees which were due monthly in arrears (rather than 85% within 7 days of execution and 15% upon 'go live'). The full amount of the 23 May 2018 invoice does not appear to have been paid in accordance with the invoice terms.

ISX identified the following payments totalling €508,099.04, which ISX said were made on behalf of Corp Destination into ISX Group corporate bank accounts in payment of the invoices:

- Bayline Trading Limited:¹¹⁶ €200,000 into Authenticate BV's bank account on 25 May 2018;
- An unnamed entity: €107,318 via a payment services provider located in Malta into iSignthis Emoney Limited's client account with AstroBank on 21 November 2018;¹¹⁷

¹¹⁴ Per question 7a) and b) of the Third Query Letter.

¹¹⁵ ASX would observe that the fact it has identified a number of anomalies with the payment of invoices in this Annexure A should not be taken to mean that ASX considers that the relevant invoices had to be paid by 30 June 2018 in order to be properly accounted for as revenue in the Relevant Period. Rather the anomalies with the payments raise issues in ASX's view as to whether the work required under the Key Contracts was substantially completed by 30 June 2018 and therefore whether the revenue derived under those contracts was appropriately recognised in the Relevant Period. This includes, but is not limited to, the substantial delays in the payment of the full amount of some invoices until well after 30 June 2018 and the up-front recognition in the Relevant Period of the revenue for end licence support and CRM services that were contracted to be provided mostly in the following half year period.

¹¹⁶ See section 1 of Annexure B to these reasons above.

¹¹⁷ The date on the bank statement appears to be 16 November 2018.

- Via a payment services provider in the Czech Republic: €100,004¹¹⁸ into Authenticate BV's central bank account on 12 December 2018¹¹⁹ – for reasons which are not apparent to ASX, the relevant bank transaction record also includes a reference to Albius Ltd of 5 Aksakove Street, Sofia;¹²⁰ and
- An unnamed entity via the same payment services provider in the Czech Republic noted above:¹²¹ €100,777¹²² into iSignthis Emoney Limited's client account with AstroBank on 13 December 2018.¹²³

ISX has said that it does not know of any relationship between Corp Destination and Bayline Trading or Albius Ltd.¹²⁴

On the basis of the customer contracts and the revenue schedules provided by ISX to ASX, Corp Destination does not appear to have opened an EMA with ISX. Accordingly, it is unclear to ASX why two of the payments were made into iSignthis Emoney Limited's client account with AstroBank, an omnibus account for receiving e-money payments on behalf of ISX's customers.

There is a resulting underpayment of €18,425.96 due under the Corp Destination Agreement and Variation Letter and the associated invoices, which according to ISX was outstanding at '31/11/2018' [sic].¹²⁵

B. FCorp Agreement

The 'Total Commitment' under the FCorp Agreement was stated to be €478,500 (ex VAT), although, as mentioned in section 4.3 of these reasons, that amount did not accord with the individual line items in the agreement.

Authenticate BV issued the following invoices to FCorp and included Authenticate BV's bank details on each invoice:

- Invoice dated 30 May 2018 for €239,500 (50% of the 'Total Commitment') due within 7 days
- Separate invoices dated 18 June 2018 for:
 - an 'interim progress payment' of €119,625 (25% of the 'Total Commitment')
 - progress payment for go live of €93,225 (which appears to be calculated as a balancing item)
 - monthly service fees of €26,400 – payable in advance

The invoiced amounts were not strictly calculated as per the individual line items in the FCorp Agreement.

ISX identified the following payments totalling €506,077.23 in the bank statements for iSignthis eMoney Limited as coming from the following parties into FCorp's EMA, which ISX has advised were then direct debited by ISX in payment of the invoices with FCorp's authority:

- 1/TRX – Systems: €279,355 on 19 June 2018
- Margetek's Project: €21,033 on 28 June 2018¹²⁶

¹¹⁸ Curiously, this was the same amount as invoiced by Gibi to Authenticate BV under the Gibi Agreement on 11 December 2018.

¹¹⁹ Per ISX's response to question 2(b) of the Fourth Query Letter.

¹²⁰ Albius Ltd in Sofia has been linked to Nona Marketing Ltd by the Financial Markets Authority in New Zealand: see <https://www.fma.govt.nz/news-and-resources/warnings-and-alerts/nona-marketing-limited-and-albius-limited/>. For other links, see the references to Albius Ltd section 1.D of this Annexure A.

¹²¹ The bank statement entry also included the words 'Czech Agreement' [sic].

¹²² Curiously, again, this was the same amount as invoiced by Gibi to Authenticate BV under the Gibi Agreement on 11 December 2018, in a separate invoice to the one mentioned in note 118 above.

¹²³ The date on the bank statement appears to be 7 December 2018.

¹²⁴ Per ISX's response to question 2(b) of the Fourth Query Letter.

¹²⁵ Per ISX's response to question 2(c) of the Fourth Query Letter.

¹²⁶ Per ISX's response to question 2(b) of the Fourth Query Letter.

- An unnamed entity via a payment services provider located in Azerbaijan: €205,689 on 13 September 2018

ISX has said that it does not know of any relationship between FCorp and 1/TRX – Systems or Margeteks Project.¹²⁷

ISX has not identified any direct debits by ISX from FCorp's EMA relating to the payment of the invoices.

ISX has advised that the additional amount of €27,577.23 (i.e. the excess of the three payments over the invoiced amount) was carried forward in FCorp's EMA.¹²⁸

In the detailed breakdown of ISX's trade receivables balances at 30 June 2018 provided in response to question 2(c) of the Second Query Letter, ISX stated that €299,500 was outstanding at 30 June 2018 under the FCorp Agreement. However, this does not appear to reconcile with the above payment amounts and timing identified by ISX, which indicate that €178,112 would have been outstanding at 30 June 2018.

C. The IMMO Agreement

The 'Total Commitment' under the IMMO Agreement was €900,000 (ex VAT) (or €450,000 per brand).

Authenticate BV issued the following invoices to IMMO and included Authenticate BV's bank details on each invoice:

- Two invoices (one for Brand A and one for Brand B) dated 6 June 2018 for €218,400 each (50% of the 'Commitment' per brand) due within 7 days of execution of the agreement
- Two further invoices (one for Brand A and one for Brand B) dated 6 June 2018 for €109,200 each (25% of the 'Commitment' per brand) due 'at time of installation'
- Two invoices (one for Brand A and one for Brand B) dated 18 June 2018 for €96,000 each stated to be 'progress invoice per contract' due within 7 days of execution of the agreement
- Two further invoices (one for Brand A and one for Brand B) dated 18 June 2018 for €26,400 each for monthly support fees due within 7 days of execution of the agreement

The invoiced amounts were not strictly calculated as per the individual line items in the IMMO Agreement.

ISX identified three payments totalling €452,000 in the bank statements for Authenticate BV which came directly from IMMO.

ISX identified the following further payments totalling €446,096.31 in the bank statements for iSignthis eMoney Limited as coming from the following parties into IMMO's EMA, which ISX has advised were then direct debited by ISX in payment of the invoices with IMMO's authority:

- 1/TRX – Systems: €315,752 on 20 June 2018
- Anjalli Limited (this company appears to have been located in Wales and dissolved in January 2019): €19,992 on 22 June 2018
- Hong Kong Lanhai: €110,353 on 20 July 2018

ISX has said that it does not know of any relationship between IMMO and these entities.¹²⁹

ISX has not advised why an amount of €1,903.69 due under the IMMO Agreement remained outstanding at '31/11/2018' [sic].¹³⁰

ISX has not identified any direct debits by ISX from IMMO's EMA relating to the payment of the invoices.

¹²⁷ Per ISX's response to question 2(c) of the Fourth Query Letter.

¹²⁸ Per ISX's response to question 2(b) of the Fourth Query Letter.

¹²⁹ Per ISX's response to question 2(c) of the Fourth Query Letter.

¹³⁰ Per ISX's response to question 2(b) of the Fourth Query Letter.

In the detailed breakdown of ISX's trade receivables balances at 30 June 2018 provided in response to question 2(c) of the Second Query Letter, ISX stated that IMMO had a credit balance of €9,132 at 30 June 2018. However, this does not appear to reconcile with the above payment amounts and timing identified by ISX which indicate that €112,256 would have been outstanding at 30 June 2018.

D. The Nona Agreement

The total amount due under the Nona Agreement and related purchase order was €250,000.

ISX issued an invoice to Nona dated 28 March 2018 for €252,500 with the payment terms stated to be '30 Days from Invoice'. It is unclear why an additional amount of €2,500 was invoiced.

ISX identified payments of €100,000 on 25 April 2018 and €152,500 on 21 May 2018 into Authenticate BV's bank account. The bank statements indicate that these payments were from Sepaga EMI Limited and included the description 'ROC Marketing Services'. Based on ISX's statements in paragraph 72 of the 24 January Submissions, it appears that Nona had an EMA with Sepaga EMI Limited, a Cypriot payment service provider, and directed Sepaga to pay monies it had received into its EMA from ROC Marketing Services to Authenticate BV in payment of the invoices.

ISX has said that it does not know any relationship between Nona and ROC Marketing Services.¹³¹

Therefore, with the exception of three payments totalling €452,000 in relation the IMMO Agreement which were deposited by IMMO into an ISX group bank account, the entries in the bank statements highlighted by ISX to ASX as being payments of amounts owing under the Key Contracts have been made by:

- a third party (ie someone other than the customer under the Key Contract) depositing funds into an ISX group bank account; or
- a third party depositing funds into the customer's EMA with ISX which ISX has then debited in payment of the amounts owing to it; or
- a third party payment service provider pursuant to arrangements that ISX has not properly explained.

The payments made under the Key Contracts were often piecemeal (ie there were multiple payments in relation to a single invoice). Further, the aggregate payments identified by ISX under the Corp Destination Agreement and the IMMO Agreement did not equate to the total amount due under the applicable invoices, while the payments identified for the FCorp Agreement resulted in a balance being carried forward in FCorp's EMA.

These features of the payments made under the Key Contracts remain a matter of concern for ASX.

2. Absence of remittance advices

In its Third Query Letter, ASX asked for copies of remittance advices to confirm the payments received by ISX from its customers under the four Key Contracts.¹³² In its response, ISX purported to enclose copies of remittance advices but in fact did not do so.

When asked again for a copy of the remittance advices in the Fourth Query Letter, ISX advised that:

*'ISX does not have the remittance advices. They have not been provided by the customers.'*¹³³

without any further explanation.

When ASX indicated in its first draft of this document that the absence of remittance advices raised serious concerns for ASX, ISX countered in its 24 January Submissions with the following statement ('Remittance Statement'):

'... remittance advices:

- (a) are largely from a bygone era of cheques and manual payments, which was not the case in relation to ISX's customers;*

¹³¹ Per ISX's response to question 2(c) of the Fourth Query Letter.

¹³² Per questions 7a) of the Third Query Letter.

¹³³ Per ISX's response to question 2a) of the Fourth Query Letter.

- For personal use only
- (b) *are not customary in ISX's sector;*
 - (c) *are not issued for amounts paid into an account of an ISX customer as the incoming SWIFT message provides the requisite detail; and*
 - (d) *ISX was authorised to debit the relevant customer's e-money account for payment of the invoices such that there was no need for a "remittance advice".'*

ASX notes that all of ISX's invoices issued under the Key Contracts included in the bottom left hand corner under 'Bank Details' the following notation:

'Remittance Advice: accounts@isignthis.com'

Accordingly, ISX's own invoices contradict the claim in (a) and (b) above.

ISX has not produced the relevant SWIFT messages to substantiate its claim in (c) above, when it could readily have done so.

Further, ASX understands that: (i) the payments for Nona Agreement were made directly into Authenticate BV's bank account; (ii) Corp Destination did not have an EMA with ISX;¹³⁴ and (iii) Nona did not have an EMA with ISX at the time the relevant payments were made.¹³⁵ Accordingly, (d) above in the Remittance Statement cannot be correct in relation to Corp Destination or Nona.

The absence of any remittance advices or alternative supporting payment documentation evidencing any of the payments under the Key Contracts remains a matter of concern for ASX.

¹³⁴ On the basis of the customer contracts and the revenue schedules provided by ISX to ASX, Corp Destination does not appear to have opened an EMA with ISX.

¹³⁵ Nona's EMA with ISXPay was only opened in June 2018. According to the information provided by ISX, the payments under the Nona Agreement were made directly into Authenticate BV's bank account in April and May 2018.

ANNEXURE B

Information Concerning the Customers under the Key Contracts

This Annexure B sets out information about the character and standing¹³⁶ of the customers under the Key Contracts to which ASX has had regard in formulating this statement of reasons.

ISX's failure to disclose to the market material information about the Key Contracts, including in particular the names of the customers who had entered into the Key Contracts, has had the flow-on effect that as the information set out in this Annexure B has emerged about ISX's customers, the market has not been afforded the opportunity to assess, with reference to that information, the character and standing of those customers and the impact that may have on the price or value of ISX's shares.

1. Corp Destination

The materials provided to ASX in response to its Query Letters included an agreement between Corp Destination and Authenticate Pty Ltd dated 17 April 2018 for the provision of Payidentity and ISXPay services. This agreement refers to Corp Destination offering CFDs, binary options and foreign exchange services to international based customers via two websites: www.oinvest.com and www.global.itrader.com.¹³⁷ The Nona Agreement refers to Nona offering services via 'the iTrader.com web properties'.¹³⁸ It seems reasonable to infer that this could be evidence of a link between Corp Destination and Nona.

According to the material available on that website, the 'iTrader' branded website at <https://global.itrader.com> is currently operated by Bayline Global World Ltd, a UK company, and Bayline Trading Ltd, which the website states is a 'Belize Investment Firm regulated by the International Financial Services Commission of Belize'.¹³⁹ As noted in Annexure A to these reasons, Bayline Trading Limited apparently made a payment on behalf of Corp Destination under the Corp Destination Agreement.

In a further link to 'iTrader', ISXPay entered into an agreement with Hoch Capital Ltd ('Hoch') on 22 February 2018 for 'Payment Facilitation/Marketing' which generated revenue from Hoch in the Relevant Period and the December 2018 half year. The agreement states that Hoch 'offers services under Merchant Category Code 6211 "Securities Brokers/Dealers" from the website(s) www.hochcapital.com, www.itrader.com'. The sole shareholder of Hoch appears to be Mr Roland Teman.¹⁴⁰ Mr Teman is also the sole director of Bayline Global World Ltd.¹⁴¹

A former significant ISX customer, OT Markets,¹⁴² also appears to have links to 'iTrader'. The Federal Court judgment *ASIC v AGM Markets Pty Ltd* [2018] FCA 1119,¹⁴³ notes that OT Markets was controlled by Mr Ido Fishman, a resident of Cyprus, who has been named as the Chairman and CEO of iTrader's Israeli operations and who was arrested in 2016 in connection with his involvement in binary option scams (see <https://www.timesofisrael.com/israeli-authorities-raid-binary-options-firm-arrest-ceo-salespeople/> and <https://www.timesofisrael.com/israel-announces-groundbreaking-indictment-of-binary-options-company/>). It seems reasonable to infer that this could be evidence of a link between Corp Destination and OT Markets.

¹³⁶ As mentioned in note 70 above, the character of an entity's customers can go to the quality of the revenue being generated by the entity from those customers and the sustainability of the entity's business model. This point is well demonstrated by the recent decision of the Federal Court of Australia in *ASIC v One Tech Media Ltd* [2020] FCA 46 (available online at <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0046>) involving an entity that provided payment agency services to binary option operators.

¹³⁷ Per the agreement between Authenticate Pty Ltd and Corp Destination for 'Enhanced Payment Gateway with AML KYC Identity Option & Payment Facilitation' with an 'offer date' of 17 April 2018 (see sub-paragraph D(i) of the Third Query Letter).

¹³⁸ The Nona Agreement states that the marketing management services would 'drive online traffic to the websites operated by iTrader' (with traffic to be 'driven from outside of the EEA to EEA and Australia').

¹³⁹ Per <https://global.itrader.com> as at 24 February 2020.

¹⁴⁰ Source: ISX Merchant Application Form from Hoch Capital.

¹⁴¹ Source: Companies House UK search.

¹⁴² See note 67 above.

¹⁴³ ASX acknowledges that this court judgment was delivered after OT Markets had become a customer of ISX.

On 13 February 2018, ASIC published media release 18-036MR (available online at <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-036mr-asic-obtains-interim-injunctions-and-warns-investors-against-agm-markets-ot-markets-and-ozifin-trade-financial/>) warning the public not to deal with OT Markets in relation to trading in margin FX contracts for difference and bitcoin CFDs and expressing concern that it was operating without an Australian financial services licence and was otherwise engaging in conduct that is misleading or deceptive, and/or unconscionable.¹⁴⁴

2. FCorp

ASIC's website includes an advisory page in relation to FCorp (last updated on 3 June 2019¹⁴⁵) at: <https://www.moneysmart.gov.au/scams/companies-you-should-not-deal-with/unlicensed-companies-list/f/corp-services-ltd>, which advises that FCorp is also known as 'RI Markets' and that:

'ASIC advises this company [FCorp] could be involved in a scam. Do not deal with this business as it is unlicensed in Australia.

The business listed below [FCorp] has made unsolicited calls or sent emails about investing, financial advice, credit or loans and does not hold a current Australian Financial Services (AFS) licence or an Australian Credit licence from ASIC.'

On 12 December 2019, Germany's Federal Financial Supervisory Authority (BaFin) issued a notice ordering FCorp to cease cross-border proprietary trading immediately (see https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Verbrauchermitteilung/unerlaubte/2019/meldung_191216_FCorp-Service-Ltd_Rimarkets_en.html), and noted that:

'On its trading platform www.rimarkets-fx.com (former www.rimarkets.com), the company offers German customers financial contracts for differences (CFDs) based on underlying assets such as stocks, currencies, indices and commodities.

The company is thus conducting proprietary trading within the meaning of section 1 (1a) sentence 1 no. 4 (c) of the German Banking Act (Kreditwesengesetz – KWG) on a commercial basis without the authorisation required under section 32 (1) of the KWG. It is therefore conducting unauthorised trading.'

On 20 December 2019, the Financial Conduct Authority (UK) published a warning notice on its website in relation to RI Markets (see <https://www.fca.org.uk/news/warnings/ri-markets>) which advised:

'Almost all firms and individuals offering, promoting or selling financial services or products in the UK have to be authorised by us.

However, some firms act without our authorisation and some knowingly run investment scams.

This firm is not authorised by us and is targeting people in the UK. Based upon information we hold, we believe it is carrying on regulated activities which require authorisation.'

3. IMMO

ISX has disclosed that IMMO was the predecessor entity to Bitconvert Ltd of Malta,¹⁴⁶ which is engaged in cryptocurrency activities via the websites www.bitconvert.com and www.thechange.io, and that both of those websites use the trading platforms provided by ISX's subsidiary Authenticate BV under the IMMO Agreement.¹⁴⁷ Since the services provided under the IMMO Agreement facilitated the launch of IMMO's successor's cryptocurrency exchanges, the revenue of €900,000 (~A\$1,389,746) derived under the IMMO Agreement during the Relevant Period should have been classified as revenue from customers engaged in cryptocurrency related activities (rather than ISX's classification in 'financial services'). Including the IMMO revenue increases ISX's reported revenue from customers engaged in cryptocurrency related activities during

¹⁴⁴ ASX acknowledges that this media release was published after OT Markets had become a customer of ISX.

¹⁴⁵ ASX acknowledges that this advisory (and those of BaFin and the FCA) were published after Authenticate BV had entered into the FCorp Agreement.

¹⁴⁶ Bitconvert Ltd was registered with ASIC as a foreign company on 1 February 2019 (ARBN 631 033 577). Its local agent is listed as Authenticate Pty Ltd, a subsidiary of ISX, effective 28 December 2018.

¹⁴⁷ See section 4.4 of these reasons above for further details.

the Relevant Period to 30.2%,¹⁴⁸ which ASX considers to be of concern given its publicly-stated concerns and guidance about listed entities engaging in cryptocurrency-related activities.¹⁴⁹

4. Nona

ASIC's website has an advisory page in relation to Nona (last updated on 27 November 2017) at: <https://www.moneysmart.gov.au/scams/companies-you-should-not-deal-with/unlicensed-companies-list/n/nona-marketing-ltd>, which advises that Nona is also known as 'FTO Capital' and that:

'ASIC advises this company [Nona] could be involved in a scam. Do not deal with this business as it is unlicensed in Australia.'

The business listed below [Nona] has made unsolicited calls or sent emails about investing, financial advice, credit or loans and does not hold a current Australian Financial Services (AFS) licence or an Australian Credit licence from ASIC.'

There are also various materials available on the internet regarding FTO Capital, including the following article from the *Herald-Sun* on 18 May 2018: <https://www.heraldsun.com.au/news/law-order/conmen-have-swindled-tens-of-thousands-of-dollars-from-victims-in-phone-scam/news-story/ffa893bf5acb96245647d9fc773de12f>.

In addition, the Financial Markets Authority in New Zealand has linked Nona to Albius Ltd located in Sofia, Bulgaria and issued a warning (last updated 1 January 2011): see <https://www.fma.govt.nz/news-and-resources/warnings-and-alerts/nona-marketing-limited-and-albius-limited/>. As noted in Annexure A to these reasons, a payment was apparently made in relation to the Corp Destination Agreement by a Czech payments service provider on behalf of Corp Destination. For reasons which are not apparent to ASX, the relevant bank transaction record also records a reference to Albius Ltd.

The Nona Agreement also states that *'Payidentity services have been contracted separately...with the sister Company, Rodeler Ltd.'*

On 3 April 2013, the Ontario Securities Commission included Rodeler Limited on its 'Warning List' (see https://www.osc.gov.on.ca/en/Investors_wl_20140403_rodeler-limited.htm).

On 2 August 2016, Autorité des Marchés Financiers (AMF) announced that it had banned Rodeler Limited from providing financial services in France (see https://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2016?docId=workspace%3A%2F%2FspacesStore%2F35a247e-e20d-42c3-8b3d-b354794a2a70&langSwitch=true). The ban was later lifted effective 3 July 2017 (see https://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2017?docId=workspace%3A%2F%2FspacesStore%2F4c014867-6d17-4699-9bad-4a489b1d2dea).

On 23 December 2019, the Cyprus Securities and Exchange Commission, advised that CONSOB had published a press release regarding its adoption of a precautionary measure against Rodeler Limited with *'the prohibition of exercising activities in the Republic of Italy'* (see <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=381b1dee-fcf3-46de-ba6a-4007d7fd3006> and http://www.consob.it/documents/46180/46181/press_release_20191223.pdf/f2692984-085f-4837-8a5d-53db9db7d665).

¹⁴⁸ Questions 1 and 2 of the First Query Letter asked ISX to list its current and former customers who engaged in cryptocurrency related activities, while question 5 asked for the percentage of ISX's revenue derived from customers engaged in those activities. In its response to the First Query Letter ISX disclosed that 65.7% (or \$546,991) of its December 2017 half year revenue and 3.8% (or \$210,717) of its revenue in the Relevant Period was derived from customers engaged in cryptocurrency activities. ASX notes that ISX did not include IMMO in its responses to questions 1 or 2 or in these percentage revenue figures.

In response to the Second Query Letter, ISX disclosed that IMMO was a customer during the Relevant Period (question 2(a)(iv)). Subsequently, ISX's responses to question 9 of the Third Query Letter and question 6 of the Fourth Query Letter indicated that IMMO was the predecessor entity to Bitconvert Ltd.

¹⁴⁹ See note 8 above.

5. ISX's submissions as to the relevance of the information in this Annexure

In its 24 January Submissions, ISX submitted that the information about the counterparties to the Key Contracts set out in this Annexure B was irrelevant and potentially misleading for the following reasons:

- ISX has not done, and does not do, business with Nona or FCorp in Australia and accordingly information about them not being licenced in Australia is irrelevant;¹⁵⁰
- information published about FCorp on 3 June 2019 could not have been taken into account by ISX or its shareholders in early 2018 (when ISX entered into the FCorp Agreement); and
- ISX dealt with OT Markets in Australia when it was licenced by ASIC and ASIC's records did not record Ido Fishman as an individual in control of the company. Moreover, the judgment relied on by ASX was published on 27 July 2018 and could not have been taken into account by ISX or its shareholders any earlier.

ASX does not agree with these submissions. ASX is not suggesting that ISX should have taken into account all of the information set out in this Annexure B in determining whether or not ISX should have entered into the Key Contracts in 2018. Rather ASX is concerned that the market was not given material information about the identity of the counterparties to the Key Contracts. This has had the flow-on effect that as the information set out in this Annexure B has emerged about ISX's customers, the market has not been afforded the opportunity to assess, with reference to that information, the character and standing of those customers and the impact that may have on the price or value of ISX's shares.¹⁵¹

In this regard it is worth noting that the revenue derived by ISX in the Relevant Period from Corp Destination, FCorp, IMMO and Nona under the Key Contracts accounted for approximately 60% of ISX's revenue for that period. If the revenue derived by ISX in the Relevant Period from OT Markets is added in, these five customer accounted for over 80% of ISX's revenue for that period.

¹⁵⁰ ASX questions the accuracy of this response by ISX in relation to Nona, noting that the marketing management services to be provided by Authenticate BV to Nona were intended to 'drive online traffic to the websites operated by iTrader', with traffic to be 'driven from outside of the EEA to EEA and Australia' (see section 4.5).

¹⁵¹ See note 70 and the accompanying text above.