

## A\$264 million damages claim against ASX for misleading and deceptive conduct

**Melbourne 21<sup>st</sup> August, 2020 :** iSignthis Ltd ("ISX") has filed its amended statement of claim against the ASX Limited ("ASX") in the Federal Court of Australia.

The amended statement of claim now also alleges misleading and deceptive conduct under section 1041H of the Corporations Act by the ASX, by publishing a 'Statement of Reasons' that purported to explain the basis of the suspension of ISX securities since the 2<sup>nd</sup> October 2019.

**ISX is claiming damages now in excess of \$264 million<sup>1</sup>.**

This amount is likely to increase with the passage of time between now and a resolution of the claim, and in the absence of a corrective statement by ASX and an apology.

Mr Karantzis, CEO of ISX, said *"The ASX now needs to demonstrate to the Federal Court that its 'Statement of Reasons' is supported by evidence, and not the mere conjecture that we claim it is.*

*Uniquely, ASX as a market operator may have mislead and deceived the market that it is obligated to maintain on a fair, transparent and orderly basis, throwing doubt on its ability to manage a Tier 1 market.*

*By any measure, the damages claimed and the impact of any adverse finding make this a high stakes and material case for the ASX."*

The amended statement of claim is attached.

**Authorised by the Managing Director and the Chairman of iSignthis Ltd**

<sup>1</sup> Based on today's exchange rates against foreign currencies (€ and \$US)

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/08/2020 1:47:46 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID1315/2019  
File Title: ISIGNTHIS LIMITED v ASX LIMITED  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 21/08/2020 10:59:55 AM AEST

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

Registrar

### Important Information

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

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



**Second Further Amended Statement of Claim**

No. VID1315/2019

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL

**iSignthis Limited (ACN 075 419 715) & Ors**  
**(accordingly to the attached Schedule)**

Applicants

**ASX Limited (ACN 008 624 691)**

Respondent

**A. Background**

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

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

Filed on behalf of (name & role of party)	iSignthis Limited, Applicant		
Prepared by (name of person/lawyer)	Colin Almond		
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- (f) predominantly provides services in Europe which include remote identity verification, payment processing, card acquiring, settlement, IBAN bank accounts, SEPA transfers and eMoney issuance services; and
- (g) is the ultimate holding company of, among others:
  - (i) the Second Applicant (**iSignthis eMoney**) which is, and was at all material times, a company incorporated in the Republic of Cyprus; and
  - (ii) the Third Applicant (**Probanx**) which is, and was at all material times, a company incorporated in the Republic of Cyprus.

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

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

**B. Agreement between ASX and ISX**

3. By an agreement entered into between ASX and ISX, it was agreed that ISX would comply with ASX's Listing Rules in force from time to time (**Listing Rules**) and ASX would quote the shares of ISX on the Australian Securities Exchange in accordance with the Listing Rules.

**PARTICULARS**

The agreement was in writing. It was constituted by:

- (a) Appendix 1A (General admission application and agreement) which was lodged by the company (at the time known as Telco Australia Limited) and accepted by ASX Limited (at the time known as Australian Stock Exchange Limited) in or about November 1998; and
  - (b) the Australian Stock Exchange listing rules in force from time to time.
4. There were terms of the agreement, among others, that:
- (a) in exercising its powers under the Listing Rules, ASX would act:
    - (i) in good faith;
    - (ii) honestly and fairly; and/or
    - (iii) reasonably,
 including, in exercising its power to suspend from quotation the shares of ISX and/or to compel ISX to produce confidential information and documents;
  - (b) in exercising its powers under the Listing Rules, ASX would accord procedural fairness to ISX, including in exercising its power to suspend from quotation the shares of ISX; and
  - (c) ASX would do all that is necessary to enable ISX to have the benefit of the agreement.

**PARTICULARS**

The terms were implied by operation of law.

5. Further, by reason of the matters set out in paragraph 4 above, ASX's power to suspend the shares of ISX from quotation on the Australian Securities Exchange:

- (a) was, and is, to be exercised for the purpose of ensuring current compliance with the Listing Rules so that the market is being operated in accordance with its operating rules; and
- (b) was, and is, not to be exercised for the purpose of punishing ISX in respect of alleged historical compliance issues.

**C. Suspension of ISX's shares from quotation**

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

**PARTICULARS**

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

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

before suspending the quotation of ISX's shares from the Australian Securities Exchange.

**D. Failure to lift the suspension from quotation***(i) First failure to lift the suspension*

9. At 12:38pm on 2 October 2019, ISX received a five page Query Letter from the ASX which contained 15 questions, primarily directed to:

- (a) ISX's customers which were currently operating, or had previously operated, cryptocurrency exchanges; and
- (b) loans to the subsidiary of Etherstack plc;

**(First Query Letter).**

**PARTICULARS**

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

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

**PARTICULARS**

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

11. When it made the media release, ISX did not know, and therefore could not and did not tell the market, the particular reasons for the suspension of its shares from quotation by ASX because:

- (a) ISX had not been given any notice by ASX of its intention to suspend the quotation of ISX's shares;

- (b) ISX had not been given particulars of the alleged issues concerning ISX;
- (c) ISX had not been given the opportunity to address the alleged issues concerning ISX so that it could avoid having its shares suspended from quotation; and
- (d) the questions in the First Query Letter related to historical matters which had no apparent connection to the ISX share price movements which:
  - (i) immediately followed the publication of a report by Ownership Matters Pty Ltd on 10 September 2019, to which ISX had responded on 17 September 2019; and
  - (ii) preceded ISX's shares being suspended from quotation.

12. On 10 October 2019, ISX provided ASX with:

- (a) a four page detailed written response to the First Query Letter for release to the market (**First Market Release**);
- (b) five annexures marked A to E, which contained confidential information not to be released to the market; and
- (c) 79 documents, comprising 670 pages, which were not to be released to the market as they also contained confidential information,

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

### PARTICULARS

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

13. Notwithstanding the First Response, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(ii) *Second failure to lift the suspension*

14. On 15 October 2019, ISX received a twenty-one page Query Letter from the ASX which contained 17 questions (**Second Query Letter**).

#### **PARTICULARS**

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

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

#### **PARTICULARS**

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

16. On 28 October 2019, Mr Tim Hart, the Chairman of ISX, sent a letter to, among others, Mr Dominic Stevens, the Managing Director and Chief Executive Officer of ASX, (**28 October Letter**) which:
- (a) said that the First Query Letter and the Second Query Letter had sought production of a bewildering miscellaneous array of unrelated historical information, much of it immaterial to the price or value of ISX's shares, including:
    - (i) how many clients were referred by a technology business in 2016; and

- (ii) a publicly verifiable licence issued in 2017 by a European Central Bank;
- (b) said that the diversity and disjunctive nature of the information sought gave rise to a reasonable inference that ASX was looking to find a problem, rather than acting on a suspected problem and that at least some of the information was not being sought for the purpose of satisfying ASX that ISX was complying with the Listing Rules;
- (c) asked whether ASIC had given ASX written advice of an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act;
- (d) said that ISX was concerned that ASX was making decisions to continue the suspension of quotation of its shares that took into account irrelevant considerations or were being exercised for an improper purpose;
- (e) expressed concern that information requests had been leaked and received by a short-seller in ISX shares;
- (f) said that ISX was concerned about the security of confidential information, including customer information, which it had supplied to ASX;
- (g) said that ISX was concerned that quotation of its shares was needlessly suspended;
- (h) said that ISX was concerned that a lengthy period of suspension was having reputational damage on the company; and
- (i) asked ASX to immediately lift the suspension of ISX shares.

### **PARTICULARS**

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

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

## PARTICULARS

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

18. On 30 October 2019:

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

## PARTICULARS

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

19. Notwithstanding the First Response, Second Response, 28 October Letter and 30 October Email, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

(iii) *Third failure to lift the suspension*

20. At 3:17pm on 31 October 2019, ISX received a further fifteen page Query Letter from ASX which contained 28 questions and improperly referred to confidential information that ISX had given to ASX (**Third Query Letter**).

**PARTICULARS**

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

21. At 3:21pm on 31 October 2019, HWL sent a letter to Mr Stevens of ASX (**31 October HWL Letter**) which referred to the 28 October Letter and said that ISX:
- (a) was concerned that the ongoing suspension of its shares from quotation (by now its 21<sup>st</sup> trading day) was detrimental to the interests of investors and to the efficacy of the market operated by the ASX;
  - (b) was concerned about the procedural unfairness of the process;
  - (c) was concerned that quotation of its shares was needlessly suspended;
  - (d) had not receive a coherent written explanation as to whether the daily decisions not to lift the suspension from quotation were founded in listing rules 17.3.1 or 17.3.2 or 17.3.3 or 17.3.4, nor the reasons for such decisions;
  - (e) had not been advised whether ASIC has given ASX an opinion under section 794D(1) of the Corporations Act and/or a written direction under section 794D(2) of the Corporations Act;
  - (f) was concerned that the ASX was making decisions that take into account irrelevant considerations or are being exercised for an improper purpose;
  - (g) was concerned that a lengthy period of suspension was having reputational damage on the company; and
  - (h) demanded that the ASX immediately lift the suspension on quotation of ISX's shares given that there is no direction under section 794D(2) of the Corporations Act or an identified current, material, operative breach of the Listing Rules by ISX.

22. Further, the 31 October HWL Letter:

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

#### PARTICULARS

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

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

#### PARTICULARS

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

24. At 6:34pm on 31 October 2019, HWL received an email from Mr Daniel Moran, the Group General Counsel and Company Secretary of ASX, (**31 October ASX Email**) which:

- (a) attached a copy of the Third Query Letter and 31 October ASX Letter; and
- (b) said that he would respond to the substance of the 31 October HWL Letter; and
- (c) asked that any further correspondence be directed to him.

**PARTICULARS**

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

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

**PARTICULARS**

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

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

**PARTICULARS**

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

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

### **PARTICULARS**

ISX refers to and repeats paragraph 17 above and its particulars.

Further, the position of ASX was stated at a meeting held at the Melbourne offices of ASX on 6 November 2019. It was recorded in a file note made by Mr Seyfort of HWL.

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

The meeting was attended in person by:

- (a) Mr Karantzis, Mr Scott Minehane and Ms Elizabeth Warrell of ISX;
- (b) Mr Seyfort of HWL; and
- (c) Mr Gerraty and Mr Litis of ASX.

The meeting was attended by video conference by Mr Lewis, Mr Moran and Ms Janine Ryan of ASX.

The meeting was attended by telephone by Mr Luke Hastings of Herbert Smith Freehills.

30. On 7 November 2019, HWL received an email from Mr Colin Luxford of ASIC which said that the decision by ASX to suspend ISX from trading on 2 October 2019 was not made with a direction from ASIC.

#### PARTICULARS

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

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

#### PARTICULARS

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

32. Between 3:27pm and 3:39pm on 15 November 2019, ISX:
- (a) provided ASX with an eighteen page detailed written response to the Third Query Letter which was for release to the market (**Third Market Release**);
  - (b) provided ASX with a one page annexure, which was not for release to the market;
  - (c) told ASX that the requisite documents had already been provided as part of the 1 November Response; and

- (d) told ASX that in relation to question 25 of the Third Query Letter:
- (i) it was concerned to protect the confidentiality of its sensitive commercial information;
  - (ii) it was also concerned to comply with its obligations under the Listing Rules and placate any concerns which the ASX may have; and
  - (iii) given the leak of information from the ASX, it would provide the information upon ASX giving an undertaking to keep the information confidential,
- (together, the **Third Response**).

### PARTICULARS

The Third Response was attached and contained in two emails sent by Mr Karantzis of ISX to Mr Gerraty of ASX. A copy of the emails and Third Response is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the one page annexure contains confidential information. By referring to that document, ISX does not waive its confidentiality therein or its right to protect that confidentiality.

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

## PARTICULARS

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

35. Notwithstanding the First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response and 15 November HWL Letter, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- (iv) *Fourth failure to lift the suspension and unreasonable exercise of power to compel confidential information*
36. At 3:23pm on 19 November 2019 Mr Moran sent an email to HWL (**19 November ASX Email**) which:
- (a) alleged that ISX had refused to provide the information requested in question 25 of the Third Query Letter;
  - (b) effectively said that ASX would not give the undertaking sought by ISX to keep the sensitive commercial information confidential;
  - (c) asserted that the failure to provide that information was a breach of listing rule 18.7 and that this provided ASX with a further basis to maintain the suspension of ISX's shares; and
  - (d) effectively compelled ISX to produce to ASX sensitive commercial information without any assurance that it would be kept confidential.

## PARTICULARS

The 19 November ASX Email was sent by Mr Moran of ASX to Mr Almond of HWL. A copy of the email was also sent to Ms Katharine Allen and Mr Seyfort of HWL. A copy of the 19 November ASX Email is in the possession of the solicitors

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

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

### PARTICULARS

The Fourth Query Letter was attached to an email sent by Mr Gerraty of ASX to Mr Richards of ISX, and a copy to Mr Karantzis, Ms Elizabeth Warrell and Mr Hart of ISX as well as Mr Litis of ASX. A copy of the email and Fourth Query Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment

38. At 5:00pm on 22 November 2019, HWL sent a letter to Mr Moran (**22 November HWL Letter**) which attached the confidential information in response to question 25 of the Third Query Letter and said, as was the fact, that:
- (a) ISX had not refused to provide information in response to question 25 of the Third Query Letter;
  - (b) ISX had sought to first put in place a regime to protect the confidential information in circumstances where information previously given by it to ASX had been leaked to third parties, including the media;
  - (c) in the circumstances, the position adopted by ISX was justified and reasonable whereas the position adopted by ASX in relation to the undertaking sought by ISX was unjustified and unreasonable;
  - (d) ISX was concerned to have its shares returned to quotation forthwith;
  - (e) ISX therefore had no option but to accede to the illegitimate pressure being applied to it by ASX and provide the confidential information in response to question 25 without the undertaking; and

- (f) that he and ASX were on notice that if any of the sensitive commercial information is either released to the market without the written consent of ISX or disseminated to any third party, including the media, ISX would suffer irreparable loss and damage and would hold him and ASX liable for that loss and damage.

39. The 22 November HWL Letter further:

- (a) asked ASX to confirm that it would now lift the suspension of ISX's shares from quotation without any further delay; and
- (b) observed that, notwithstanding the APRA investigation into Westpac Banking Corporation Limited and the subsequent media reports earlier in that week, ASX had not suspended or threatened to suspend trading in that company's shares.

#### PARTICULARS

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

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

#### PARTICULARS

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

41. At 5:14pm on 25 November 2019, HWL sent a letter to Mr Moran (**25 November HWL Letter**) which:

- (a) observed, as was the fact, that the 25 November ASX Email failed to confirm that Mr Moran had communicated the confidential information to the Listings Compliance

team on a confidential basis or that appropriate safeguards had been put in place to protect its confidentiality;

- (b) reiterated that ISX would hold him and ASX liable for the irreparable loss and damage that it would suffer if any of the commercially sensitive information was either released to the market or disseminated to any third party, including the media; and
- (c) provided further confidential information in order to update one figure in the confidential attachment to the 22 November HWL Letter.

### PARTICULARS

The 25 November HWL Letter was attached to an email sent on behalf of Mr Almond of HWL to Mr Moran of ASX. A copy of the email and the 25 November HWL Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment. ISX maintains that the further information provided in the letter is confidential. By referring to this information, ISX does not waive its confidentiality or its right to protect that confidentiality.

42. At 4:37pm on 26 November 2019, ISX:
  - (a) provided ASX with a four page written response to the Fourth Query Letter which was for release to the market (**Fourth Market Release**); and
  - (b) a further 34 documents, comprising 177 pages, which were not to be released to the market as they contained confidential information,
 (together, the **Fourth Response**).
43. Notwithstanding the First Response, Second Response, 28 October HWL Letter, 30 October Email, 31 October HWL Letter, 1 November Response, Third Response, 15 November HWL Letter, 22 November HWL Letter and Fourth Response, ASX failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

- (v) *Failure to respond within a reasonable period of time and unfounded allegations made by ASX*

44. At 10:05am on 27 November 2019, HWL received a letter from Mr Moran (**First 27 November ASX Letter**) which wrongly suggested by implication that ISX had sought to avoid its obligations under the Listing Rules by providing him with the confidential information.

#### PARTICULARS

The First 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL.

The First 27 November ASX Letter is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

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

#### PARTICULARS

The Second 27 November ASX Letter was attached to an email sent by Mr Moran of ASX to Mr Almond and Mr Seyfort of HWL. The Second 27 November ASX Letter is in the possession

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

46. At 9:13am on 28 November 2019, HWL sent a letter to Mr Moran (**First 28 November HWL Letter**) which said, as was the fact, that:

- (a) by now ASX had had more than a reasonable opportunity to consider the documents and information which had been given to it by ISX;
- (b) ISX did not accept that ASX making findings about past compliance with the Listing Rules was relevant to ISX's request to have the suspension of its shares from quotation lifted;
- (c) the leisurely timetable indicated in the Second 27 November ASX Letter was unreasonable and detrimental to ISX as it failed to:
  - (i) accord the appropriate degree of urgency to this matter, particularly given that ISX's shares had now been suspended from quotation for almost two months;
  - (ii) acknowledge that the ASX had been in possession of most of the requested information and documents since at least 15 November 2019; and
  - (iii) acknowledge that at the end of the following week there would only be two working weeks left before the Christmas break, when most offices would close for at least three weeks;
- (d) in the circumstances, ISX required ASX to provide its draft findings by 1:00pm on Monday, 1 December 2019, so that it would have a reasonable opportunity to consider them with a view to having the protracted suspension of its shares from quotation lifted well before the Christmas break.

### **PARTICULARS**

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

47. At 10:19am on 28 November 2019, HWL sent a second letter to Mr Moran (**Second 28 November HWL Letter**) which:

- (a) observed (as was the fact) that his veiled suggestion that ISX was seeking to avoid its obligations under the rules by providing him with its response to question 25 of the Third Query Letter was extraordinary, unfounded and disingenuous given the recent correspondence concerning the leak of information from the ASX;
- (b) detailed the recent correspondence in relation to the leak of information;
- (c) observed (as was the fact) that the First 27 November ASX Letter ignored that context and ISX's legitimate concern to protect its sensitive commercial information, which he had effectively compelled ISX to provide in response to question 25 of the Third Query Letter;
- (d) rejected his attempt to obscure ISX's legitimate concern to protect its sensitive commercial information;
- (e) rejected his attempt to evade any responsibility to ensure that appropriate safeguards were in place to protect the confidentiality of the sensitive commercial information which had been given to him; and
- (f) again reiterated that ISX would hold him and ASX liable for the irreparable loss and damage that it would suffer if any of the sensitive commercial information was either released to the market or disseminated to any third party, including the media.

### **PARTICULARS**

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

48. Notwithstanding the First 28 November HWL Letter, ASX:
- (a) did not provide its draft findings by 1:00pm on Monday, 1 December 2019, so that ISX would have a reasonable opportunity to consider them with a view to having the suspension of its shares from quotation lifted well before the Christmas break; and
  - (b) has failed to lift the suspension and permit the quotation of ISX's shares on the Australian Securities Exchange.
49. In the circumstances set out in paragraphs 9 to 48 above, ASX has failed to act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules as it has:
- (a) failed to forthwith tell ISX the precise steps it needs to take in order to have the suspension lifted and its shares reinstated for quotation;
  - (b) failed to lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange notwithstanding:
    - (i) the First Market Release, Second Market Release, Third Market Release and Fourth Market Release; and
    - (ii) all of the confidential information and documents given by ISX to ASX in response to the First Query Letter, Second Query Letter, Third Query Letter and Fourth Query Letter;
  - (c) failed to ensure that ISX was treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation; and
  - (d) compelled ISX, against its will, to produce to ASX sensitive commercial information without first:
    - (i) undertaking to keep that information confidential; or
    - (ii) giving ISX an assurance that it had implemented appropriate safeguards to protect ISX's confidentiality so that it would not be released to the market or leaked to third parties, including the media.
50. By reason of the matters set out in paragraphs 9 to 49 above, ASX has breached its implied obligations to:

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

51. In the circumstances set out in paragraphs 9 to 50 above, ISX has suffered, and continues to suffer, loss and damage.

### PARTICULARS

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

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

52. Further, by reason of the matters set out in paragraphs 6 to 51 above, ASX has failed to meet its obligations under its operating rules and ISX is aggrieved by the contravention.

### PARTICULARS

By reason of the matters set out in paragraphs 6 to 51 above,  
ASX has breached its obligations under listing rule 17.3  
(which, by reason of section 761A of the Corporations Act, is  
part of the operating rules).

53. In the circumstances set out in paragraphs 6 to 52 above, ISX is entitled to an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

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

54. Further, by reason of the matters set out in paragraphs 9 to 51 above, ASX has failed to:

- (a) apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner; and

## PARTICULARS

By reason of the matters set out in paragraphs 9 to 51 above, ASX has failed to apply listing rule 17.3 (which, by reason of section 761A of the Corporations Act, is part of the operating rules) in a fair manner and treat ISX in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.

- (b) ensure that ISX is treated in a like manner as other participants who have been, or are presently, the subject of a regulatory investigation.

- 55. By reason of the matters set out in paragraph 54 above, ASX has contravened section 792A(a) of the Corporations Act.
- 56. In the circumstances set out in paragraphs 9 to 51 and 54 to 55 above, ISX is entitled to an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.

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

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

- 57. Further, in the circumstances set out in:
  - (a) paragraphs 6 to 8 above, ASX decided to suspend the quotation of ISX's shares on the Australian Securities Exchange; and
  - (b) paragraphs 9 to 48 above, ASX decided to not lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- 58. Each of the decisions was made pursuant to the Listing Rules:
  - (a) purportedly in the performance of a public duty to ensure that the market is fair, orderly and transparent as required by section 792A(a) of the Corporations Act; or
  - (b) in the exercise of a power which has a public element.

## PARTICULARS

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

- A. The ASX is permitted to operate the Australian Securities Exchange by reason of the Market Licence granted to it by the Minister who can:
  - a) pursuant to section 794A(1) of the Corporations Act, give the ASX a written direction to do specified things that the Minister believes will promote compliance by ASX if the Minister considers that the ASX is not complying with its obligations as a market licensee; and
  - b) pursuant to section 794B(1) of the Corporations Act, give ASX a written notice requiring it to give ASIC a special report on specified matters.
- B. In granting the Market Licence and in disallowing a change to the operating rules of the ASX, the Minister must have regard to whether it would be in the public interest to do so: sections 798A(1)(a), 798A(1)(b) and 798A(2)(g) of the Corporations Act.
- C. The Listing Rules are supervised by the ASIC and the Minister by reason of, inter alia:
  - a) section 793C of the Corporations Act, which provides a statutory means for

enforcing compliance with the Listing Rules;

- b) section 793D of the Corporations Act, which requires ASX to lodge with ASIC written notice any of changes to the Listing Rules; and
- c) section 793E of the Corporations Act, which requires ASIC to send a copy of the notice to the Minister, who may disallow all or a specified part of the change.

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

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

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

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

## PARTICULARS

The irrelevant considerations were:

- (a) statements, comments and opinions expressed by representatives of ASIC with whom representatives of ASX consulted before making the decision to suspend the quotation of ISX's shares; and/or

- (b) speculation in the media, premised on the erroneous report published by Ownership Matters Pty Ltd (ACN 152 996 739).

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

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

## PARTICULARS

- (a) The purpose of the power is to ensure that the market is a fair, orderly and transparent market.
- (b) The power was exercised because ASIC is presently conducting an investigation in relation to ISX, being a purpose for which the power was not conferred in the circumstances.

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

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

## PARTICULARS

The letter and the Draft Findings were attached to an email sent by Mr Kevin Lewis of ASX to Mr Timothy Hart of ISX. A copy of the email, letter and Draft Findings is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

64. On 17 December 2019 ISX told ASX, among other things, **as is the fact** that:
- (a) it is not the function of ASX to make and publish “findings” in relation to the alleged conduct of ISX, particularly in circumstances where:
    - (i) it is for ASIC to consider and determine whether there is sufficient evidence (and therefore a proper basis) to commence legal proceedings against ISX for alleged breaches of the Corporations Act and/or the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
    - (ii) if legal proceedings are commenced, it is for the Court to determine whether there has been any contravention of the Corporations Act and/or ASIC Act based on cogent admissible evidence to the requisite standard of proof, not based on mere supposition, conjecture or conspiracy theories;

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

and further that:

- (c) if ASX published its “*findings*” it would likely mislead the market (particularly as the ASIC investigation was still ongoing) and ISX would likely suffer irreparable loss and damage, even if a Court ultimately determined that those “*findings*” were unfounded;
- (d) ISX had no objection to ASX referring matters concerning the supervision of the market, including the conduct of persons in relation to the market, to ASIC; and
- (e) ISX would in due course respond to ASX’s allegations so that a complete and accurate representation of the facts and circumstances concerning ISX could, if considered by ASX to be necessary, be referred to ASIC for its attention.

### PARTICULARS

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

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

- (a) it was not usurping the role of either ASIC or the Courts;
- (b) it did not agree with the position of ISX that it does not have the power to make or publish “*findings*”;
- (c) the matters set out in its draft “*findings*” were directly relevant to its obligations as a licensed market operator, including its obligations with respect to the operation of a fair, orderly and transparent market, and monitoring and enforcement of compliance with the Listing Rules;

- (d) under listing rule 18.7A, it may publish correspondence between it and a listed entity, if it has reserved the right to do so and considers it necessary for an informed market;
- (e) it reserved the right to publish its draft "*findings*", subject to considering and making appropriate changes, having regard to any representations that may be made by ISX; and
- (f) it reserved the right to make an announcement in relation to the draft "*findings*".

### PARTICULARS

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

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

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

and
- (b) sought an undertaking from ASX that it would not make any announcement which either disclosed the Draft Findings or directly or indirectly referred to the Draft Findings without first giving ISX two business days' written notice of its intention to do so, together with a copy of ASX's proposed announcement.

### PARTICULARS

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

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

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

### PARTICULARS

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

68. On or about 24 January 2020, ISX:

- (a) sent its written response to ASX's draft "*findings*" (**ISX Response**) under cover of a letter from HWL Ebsworth Lawyers;
- (b) said that its response was given:
  - (i) so that a complete and accurate representation of the facts and circumstances concerning ISX is given to ASIC for its consideration; and
  - (ii) without prejudice to all of its rights against ASX;
- (c) said that it objected to ASX making and publishing "*findings*";

- (d) noted that on 23 December 2019 ASX had refused to give an undertaking to ISX not to publish its “*findings*”; and
- (e) said that if ASX maintained its intention to publish findings a timetable should be fixed for dealing with an injunction application by ISX to restrain publication.

### PARTICULARS

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

69. Further, the ISX Response said, among other things, that the Draft Findings:
  - (a) failed to take into account relevant considerations given to ASX by ISX and took into account irrelevant considerations;
  - (b) made allegations which had no proper factual or legal basis; and
  - (c) made allegations based on mere supposition, conjecture or conspiracy theories which ought not to be made.
70. On 26 February 2020 ASX gave ISX a document entitled “[*Draft*] *Statement of Reasons*” (**Draft Reasons**), whereby ASX said that it intended to direct ISX to:
  - (a) make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;
  - (b) engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review; and

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

- (i) Options/CFDs/FX;
  - (ii) Crypto/digital currency;
  - (iii) Online gambling; ~~and~~
  - (iv) Online video gaming;
  - (v) Credit providers;
  - (vi) Travel services; and
  - (vii) Other,
- (the Directions).**

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

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

71. The Draft Reasons and the Final Reasons:

- (a) fail to take into account relevant considerations raised in the ISX Response;

### **PARTICULARS**

The relevant considerations in the ISX Response which have not been taken into account are as follows:

- (a) ASX has no power to make directions under Listing Rule 18.8 because that rule is void and unenforceable for inconsistency with sections 792B, 793C and 1101B of the Corporations Act.
- (b) Where a market operator such as ASX has reason to suspect that a person has committed, is committing, or is about to commit a significant contravention of the market operating rules (in this case, the Listing Rules) or the Corporations Act, ASX ought give a written

notice to ASIC under section 792B(2)(c) of the Corporations Act or make application to a Court for appropriate injunctive relief, rather than embark upon its own investigation with a view to publishing “*findings*” in circumstances where:

- (i) the ASX lacks the statutory investigatory powers possessed by ASIC;
  - (ii) by reason of the absence of those powers, any investigatory findings are at risk of being incomplete, unreliable, incorrect and/or misleading;
  - (iii) the publication of incomplete, unreliable, incorrect and/or misleading investigatory findings by ASX would be inconsistent with ASX’s obligations under section 792A(1)(a) of the Corporations Act to do all things necessary to ensure that the market is a fair, orderly and transparent market; and
  - (iv) companies listed on the Australian Securities Exchange have no right of appeal from any investigatory findings made and published by ASX, given that the ASX Appeal Tribunal was abolished on 24 December 2015.
- (c) In this particular case ASIC has commenced an investigation into matters that include those that are the subject of the Final Reasons; in those circumstances it is not appropriate for ASX to conduct a parallel investigation and, further, to publish findings that are incomplete, unreliable, incorrect and/or misleading.
- (d) By reason of its lack of proper investigatory powers, the Final Reasons contain incomplete and/or speculative “*findings*” and it is not appropriate that those “*findings*” be released to the market in circumstances where ISX wishes to challenge them in this proceeding. Examples include paragraphs 9.2, 9.9, 9.10, 9.12, 10.2 and 10.3 of the Final Reasons.

- (e) By reason of the ongoing suspension of the shares of ISX, there is no need to publish the findings in the Final Reasons.
- (f) It is not the proper function of ASX to construe the terms of a contract between ISX and its shareholders.
- (g) In considering a draconian direction such as the appointment of an independent expert under Listing Rule 18.8(l) (ASX Draft Reasons, paragraph 12.5), ASX has failed to take into account that ISX has responded fully and in detail to each of ASX's four query letters.
- (h) In finding that "*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*" and that "*the Key Contracts were all 'out of the ordinary', involving the provision of services...that were not part of ISX's core business*", ASX has failed to take into account the relevant considerations raised in the ISX Response, including the following:
- (i) Delivering software is part of ISX's ordinary business.
  - (ii) Standard & Poor's includes ISX in the General Industry Classification "*Application Software*".
  - (iii) ISX's key objective was, and still is, to generate diverse recurrent transactional (known as "clip the ticket") revenue, otherwise known as GPTV revenue, and to achieve that objective ISX has to on-board customers.
  - (iv) To on-board customers ISX had to demonstrate and replicate the integration of its technology with the technologies used by its customers, including their trading platforms, Customer Relationship Management and accounting systems.

- (v) The deployment and integration of ISX's products to various platforms (including trading, banking, payment, accounting and ecommerce platforms) is part of ISX's core business, in that:
- A. ISX provides services to entities which face retail customers; and
  - B. to "sell" payment services to each customer, ISX's products first need to be integrated with the Customer Relationship Management system of the customer or the platform which the customer uses to take orders or both.
- (vi) In 2017 ISX had been trying to enter the online market but met resistance from vendors of online platforms as well as potential customers which were already using those platforms.
- (vii) In late 2017 and early 2018 ISX was presented with an advantageous business development opportunity which it could use to enter the online market.
- (viii) ISX, through its wholly own Dutch subsidiary Authenticate BV, did in fact integrate ISX's Paydentity™ and ISXPay® products with:
- A. a third party integrated Customer Relationship Management system (**CRM system**) and trading platform which it obtained from Fino Software Technologies Ltd (**FinoSoft**); and
  - B. a third party integrated CRM system and exchange platform which it obtained from Gibi Tech Ltd (**Gibi Tech**).
- (ix) Authenticate BV had to purchase the third party CRM systems integrated with either a trading platform or exchange platform because Authenticate BV and ISX did not have them, could not

build them and could not integrate ISX's products into them without first obtaining them.

- (x) Gibi Tech and FinoSoft are unrelated to Authenticate BV and ISX and are unrelated to each of ISX's customers and the customers' directors and shareholders.
  - (xi) The purchase of goods wholesale is an extremely common practice. It is not unusual for companies to acquire goods and either add a retail mark-up under a wholesale arrangement or add value to the goods before on-selling them for a profit.
  - (xii) ISX made a profit of approximately €150,000 from the four agreements, in addition the revenue from those agreements contributed towards the company's overheads and the cost of ISX's technical services personnel.
- (i) In finding that *"there are serious questions...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"*, ASX failed to take into account the relevant considerations raised in the ISX Response, including the following:
- (i) The revenue earned by ISX in the second half of the financial year ending 30 June 2018 was derived from arms-length third parties who were independent of ISX and each other, in that there was no connection whatsoever between the shareholders, directors and officers of each entity.
  - (ii) Each of those arms-length third parties certified that the contractual obligations had been met by 30 June 2018 by providing a signed Certificate of Practical Completion to that effect and a signed twenty-one page Payment Card Industry Data Security Standard Assessment and Attestation.

- (iii) Invoices were issued before 30 June 2018 in respect of each customer's irrevocable binding legal obligation to pay the fees due under the agreement and none of the customers disputed the invoices.
- (iv) Before 30 June 2018, Corp Destination Pty Ltd paid 38% of the fees due under the agreement, Nona Marketing Ltd paid 100% of the fees due under the agreement, FCorp Services Ltd paid 63% of the fees due under the agreement and Immo Servis Group S.R.O paid 87% of the fees due under the agreement.
- (v) The revenue earned by ISX in the second half of the financial year ending 30 June 2018 was the subject of two audits performed by Grant Thornton.
- (vi) During the audits no information was withheld from Grant Thornton and their two audits were unqualified.
- (vii) Grant Thornton confirmed that the revenue satisfied AASB 118, AASB 111 and AASB 15.
- (viii) Grant Thornton was satisfied that the revenue was accurately recorded and that revenue targets in place and disclosed in the Prospectus dated 22 December 2014 had been met.
- (j) In finding that section 8.7 of its own Guidance Note 8 does not apply because ISX's shares were already suspended when ISX provided its response to ASX's four query letters, ASX failed to take into account:
  - (i) its own assertions that "[t]he achievement of the Milestones and the potential issuance of the Milestone Shares had material implications for the price or value of ISX's shares" and "none of the Milestones would have been met" without the revenue from the "Key Contracts"; and

- (ii) therefore, the fact that on its own case it is the impact of the announcements concerning the achievement of the Milestones which are relevant to observe, and at that time ISX's shares were not suspended.
- (k) In the circumstances set out in paragraph (j) above:
- (i) ASX failed to take into account section 8.7 of its own Guidance Note 8 and the movements of ISX's share price when ISX made announcements on 22 June 2018 and 31 July 2018, including in relation to the conversion of the performance rights into ordinary shares; and/or
- (ii) evidence that it is actual GPTV which affects the price or value of ISX's shares.
- (l) In finding that the <15% Representation "*was false and materially misleading, as it did not properly account for the one-off payments under the Key Contracts*" ASX failed to take into account the relevant considerations in paragraphs 24 to 27, 51 to 53 and 93 of the ISX Response.
- (m) In finding that it is "*appropriate to publish*" the Final Reasons to "*correct the lack of information and misinformation in the market places*" ASX failed to take into account the concerns raised by ISX in the ISX Response that ASX would in fact be misleading the market due to the errors identified in the ISX Response.
- (b) take into account irrelevant considerations notwithstanding the ISX Response;

### PARTICULARS

The irrelevant considerations taken into account by ASX notwithstanding the ISX Response are as follows:

- (a) Information provided in confidence by ASIC to ASX which has not been disclosed to ISX and in respect of which ISX has not had an

opportunity to consider and comment. This consideration was not disclosed to ISX in the Draft Findings.

- (b) That the revenue from all, or any one, of the agreements can, or should be, excluded or disregarded.
- (c) In respect of Corp Destination Pty Ltd and FCorp Services Ltd, the length of time between 30 June 2018 and the date the relevant payments were received, the relevant consideration being the Accounting Standards applied by ISX's auditors.
- (d) That Authenticate BV may have incurred a loss in respect of the agreement with Corp Destination Pty Ltd, in circumstances where ISX was trying to overcome resistance in relation to its entry into the online market.
- (e) That Authenticate BV may have incurred a loss in respect of the agreement with FCorp Services Ltd, in circumstances where ISX was trying to overcome resistance in relation to its entry into the online market.
- (f) In finding that the <15% Representation made on 3 August 2018 was market sensitive, ASX took into account a research report dated 1 March 2018 in relation to ISX's December 2017 half result. Again, this consideration was not disclosed to ISX in the Draft Findings.
- (g) The finding that "*ASX uncovered evidence to suggest that ISX may also have breached Listing Rules 3.19A, 3.19B, 4.3A, 4.3B, 4.10.3, 10.11, 12.5 and 19.11A*", particularly given that ASX concedes that its enquires were focused on other matters.
- (h) Annexure A – Information concerning the invoicing and payments under the "*Key Contracts*".
- (i) Annexure B - Information concerning the customers under the "*Key Contracts*".

- (c) contain reasons, notwithstanding the ISX Response, that:

- (i) have no foundation in fact or law;

### PARTICULARS

The reasons which have no foundation in fact or law are as follows:

- (a) There is no foundation in fact or law for ASX's finding that it gave ISX notice of the suspension. Eleven minutes notice before suspension of ISX's shares, which did not in fact disclose the reasons, is not proper notice.
- (b) There is no foundation in fact for ASX's finding that the "Key Contracts" were "out of the ordinary" because ISX "has not provided similar services to any other customers before or since". ASX relies on ISX's response to question 7 of the Fourth Query Letter. The answer to that question does not support the finding because the question asked by ASX, and therefore the answer given by ISX, was substantially narrower.
- (c) There is no foundation in fact for ASX's finding 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".
- (d) There is no foundation in fact for ASX's findings that the revenue was generated solely or predominantly for the purpose of meeting the Milestones.
- (e) There is no foundation in fact or law for ASX's finding that "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 predominately for the purpose of meeting the Milestones." ASX has failed to consider the facts in the ISX Response and apply the legal principles relevant to construing contracts.
- (f) There is no foundation in fact or law for ASX's finding 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.” ASX has failed to consider the facts in the ISX Response and apply the legal requirements for the implication of a term into a contract.*

- (g) *There is no foundation in fact for ASX’s finding that “it could not reasonably have been in contemplation of the parties when the terms of the Performance Shares were originally agreed between ISX (then Otis Energy) and the original holders...that it would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue of the Milestones”. Before shareholders passed the resolutions on 22 December 2014, they were told by the independent expert that conversion of the performance rights into ordinary shares was linked to turnover and not to profitability such that the incentive to grow revenue could come at the expense of profits (see paragraphs 2.10 and 12.19 of the Expert Report).*
- (h) *There is no foundation in fact for ASX’s finding that ISX structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar fee predominantly to generate revenue for the purpose of meeting the Milestones. The finding fails to take into account the facts in the ISX Response, including the matters mentioned in paragraph 9.8 of the Final Reasons and, in particular, the fact that having acquired the licence in the customer’s name ISX then deployed the trading software into the cloud environment and integrated its products with that software.*
- (i) *There is no foundation in fact for ASX’s finding that the revenue was not properly recognised in the financial year ended 30 June 2018.*

- (j) There is no foundation in fact or law for ASX's finding that different meanings are attributed to "*price*" and "*value*" when determining the material effect of information.
- (k) Given the relevant considerations in paragraphs (h) and (i) under paragraph 71(a) above which ASX failed to take into account, there is no foundation in fact for ASX's conjecture that ISX must have structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially similar fee predominantly to generate revenue for the purpose of meeting the Milestones.
- (l) There is no foundation in fact or law for ASX's finding that the "*<15% Representation...was also false and materially misleading*" when considered in context.
- (m) There is no foundation in fact or law for ASX's finding that "[b]y making the *<15% Representation*, ASX considers that ISX triggered an obligation under Listing Rule 3.1 to make corrective disclosure to the market".
- (ii) are based on supposition and conjecture;

### PARTICULARS

The reasons based on supposition and conjecture are as follows:

- (a) ASX surmises that "*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...that it would be acceptable for ISX to enter into arrangements to generate revenue solely or predominantly for the purpose of meeting the revenue of the Milestones*".
- (b) ASX surmises that ISX structured the contractual arrangements so that it first contracted to obtain software from the reseller and then contracted to supply it to the end client for a substantially

similar fee because it did so predominantly to generate revenue for the purpose of meeting the Milestones.

- (c) ASX surmises that 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.
- (d) ASX surmises that ISX structured the contractual arrangements solely or predominantly to generate revenue for the purpose of meeting the Milestones and questions whether ISX was acting as an agent for the re-sellers rather than as principal in its own right.
- (e) ASX surmises that the length of time between 30 June 2018 and the date the relevant payments were received raises questions as to whether the work required under the agreements with Corp Destination Pty Ltd and FCorp Services Ltd was substantially completed by 30 June 2018 and therefore appropriately recognised in the financial year ended 30 June 2018.
- (f) ASX surmises that the Certificates of Practical Completion suggest that ISX’s auditors were concerned.
- (g) ASX surmises that the Certificates of Practical Completion may not be reliable.
- (h) ASX surmises that “*the revenue Milestones were not validly met despite the audit certificates for the Relevant Period*”.
- (i) ASX speculates as to why ISX’s share price did not materially decline when information about the forthcoming issue of the Milestone Shares was disclosed.
- (j) ASX surmises in the absence of supporting evidence that there “*may be other market sensitive contracts that ISX has entered into which have not been disclosed*”.

- (k) ASX surmises that *“the factual underpinning for ISX’s submission mentioned in section s9.1 and 10.1 of these reasons may well be missing”*.
- (l) ASX surmises 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.”*
- (m) ASX surmises that 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”* ISX’s shares.
- (n) ASX surmises that *“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”*.
- (o) ASX surmises that the auditors were concerned about the fact that the relevant websites were not live *“may have been of concern to ISX’s auditor”*.
- (p) ASX surmises that notwithstanding the Certificate of Practical Completion ISX’s obligations under the agreement with Immo Servis Group S.R.O were not in fact performed by 30 June 2018.
- (iii) are founded on facts which have been conflated to justify the conclusions;

### **PARTICULARS**

The reasons which are founded on facts (or alleged facts) which have been conflated to justify the conclusions are as follows:

- (a) ASX finds that the *“Key Contracts”* were *“out of the ordinary”* by conflating the following alleged facts:
- (i) the services were not part of ISX’s core business (which is denied);
- (ii) similar services had not been provided before or since (which is denied);

- (iii) each service was provided over a short period of time; and
  - (iv) each service was provided for a fixed fee.
- (b) ASX finds that the information about the character and standing of certain customers is relevant by conflating alleged facts about those customers which have arisen at distinctly different points in time.
- (c) ASX finds that there is a serious question to be determined that the revenue was generated solely or predominantly for the purpose of meeting the Milestones by conflating the alleged facts in paragraphs 9.3 to 9.9 of the Final Reasons.
- (d) ASX finds that the Milestones were not validly met despite the audit certificates for the financial year ended 30 June 2018 by conflating the alleged deficiencies in the Certificates of Practical Completion (set out in sections 9.13 and 9.14 of the Final Reasons) with:
- (i) the terms of agreements in section 4 of the Final Reasons;
  - (ii) ASX's own analysis in section 9 of the Final Reasons; and
  - (iii) ASX's assertions in Annexure A of the Final Reasons about the payments which were made.
- (e) ASX finds that the "*<15% Representation...was also false and materially misleading*" by conflating the facts associated with that allegation with the allegations concerning the "*Key Contracts*".
- (d) do not contain an accurate representation of the facts and circumstances concerning ISX;

## PARTICULARS

By reason of ASX's failures referred to in paragraphs 71(a) to 71(c) of the Amended Claim, as particularised above, the Draft Reasons and

the Final Reasons do not contain an accurate representation of the facts and circumstances concerning:

- (a) the suspension of ISX's shares;
- (b) the business of ISX;
- (c) the integration of ISX's products into third party platforms for Corp Destination Pty Ltd, FCorp Services Ltd and Immo Servis Group S.R.O;
- (d) the achievement and recognition of revenue by ISX in the financial year ended 30 June 2018;
- (e) the integrity of the audits undertaken by Grant Thornton of ISX's financial accounts for the financial years ended 30 June 2018 and 31 December 2018;
- (f) the achievement of the Milestones by ISX and subsequent conversion of the performance rights into ordinary shares;
- (g) the effect which the achievement of the Milestones had on the price or value of ISX's shares;
- (h) the impact of actual GPTV on the price or value of ISX's shares;
- (i) the representation made on 3 August 2018 at an analyst briefing; and
- (j) the state of ISX's books and records.

(e) are likely to mislead the market and other persons who read the document; and

(f) contain findings which do not justify the making of the directions.

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

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

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

### PARTICULARS

- A. By publishing the Final Reasons which contained the false representations, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly Group AB (**Trustly**), a Swedish payments institution. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
  - (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
  - (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Paydentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions took place between John Karantzis and Adam Bowman over digital voice communication devices.

- (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
- (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.
- (e) On 12 May 2020:
- (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
  - (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
- (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
- (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “the investigations”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.
- B. Further, since 30 April 2020, the value of ISX’s shares in Probanx and iSignthis eMoney, or the amount of the distributions it would receive, has diminished by reason of the following:

- (a) On 13 June 2017 Probanx and Golden Anchor Ventures Limited (**Golden Anchor**) executed a written agreement for the licensing of Probanx's Core banking software. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which immediately followed, on 1 May 2020 Golden Anchor (trading as Payments 88) terminated the contract with Probanx. The termination was communicated orally during a telephone conversation between Ran Zangi of Golden Anchor and Christodoulos Georgiou of Probanx. Prior to the termination, Probanx was to receive a monthly fee of €1,100 for an anticipated period of at least 5 years.
- (b) On about 29 January 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders. On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.
- (c) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in

respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.

- (d) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.
- (e) By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW GP Limited, VGW Malta Limited and VGW Games Limited (together, **VGW**).
  - (i) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
    - A. USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
    - B. *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;

- C. *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;
- D. *plus* USD5,000 per month in transfer fees; and
- E. *less* USD8,000 per month in dedicated costs to service the agreement.
- (ii) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.
- (iii) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Payidentity™ and payment platform known as ISXPay® with the systems of VGW.
- (iv) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
- (v) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
- (vi) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.

- (vii) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (viii) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told Andrew Karantzis that he first had to speak with his Chief Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (ix) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.
- (f) By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland Holdings Ltd (**Lottoland**).
- (i) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
- A. €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;

- B. *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
- C. *plus* €5,000 per month in transfer fees; and
- D. *less* €3,000 per month in dedicated costs to service the agreement.
- (ii) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland. The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (iii) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email from David Gill of Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.
- (iv) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (v) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (vi) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis,

Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.

(vii) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.

(viii) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

- C. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.
- D. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

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

74. Further, by reason of the matters set out in paragraphs 68 to 71 above, ~~by the delivery of the Draft Reasons and/or the publication of those reasons in draft or final form and~~ by the delivery of the Final Reasons and/or publication of those reasons, ASX:
- (a) has failed ~~and/or threatens to fail~~ to meet its obligations under the operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) and ISX ~~will be~~ is a person aggrieved by that failure;

- (b) has contravened ~~and/or threatens to contravene~~ the operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) and ISX ~~will be~~ is a person aggrieved by the contravention; and/or
- (c) in breach of section 792A(a), has failed ~~and/or threatens to fail~~ to apply its operating rules (which, by reason of section 761A of the Corporations Act, include the Listing Rules made by ASX) in a fair manner and ensure that ISX is treated in a like manner as other participants.
75. In the circumstances set out in paragraph 74 above, ISX is entitled to an order pursuant to section 793C(2), 1101B(1) and/or 1324(1)(4) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the codes ISX and ASX. ~~restraining ISX from making the directions and publishing the Draft Reasons and/or Final Reasons.~~

*Listing Rule 18.8 is invalid for inconsistency with the Corporations Act*

76. On or about 10 October 2019 ASX purported to change the Listing Rules by, inter alia, amending listing rule 18.8.
77. On 1 December 2019 the amendments to listing rule 18.8 purported to come into effect.
78. By purporting to amend listing rule 18.8 ASX sought to confer on itself the power to require an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing that in ASX's opinion is necessary to ensure or facilitate compliance with the Listing Rules, including (without limitation):
- (a) not to enter into or perform an agreement or transaction that would breach the Listing Rules (listing rule 18.8(c));
- (b) to cancel or reverse an agreement or transaction entered into in breach of the Listing Rules (listing rule 18.8(d)); and
- (c) to engage an independent expert to review the entity's policies and processes to comply with the Listing Rules and to release to the market the findings of, and any changes the entity proposes to make to its compliance policies and processes in response to, the review (listing rule 18.8(l)).

79. By reason of the matters set out in paragraphs 76 to 78 above, ASX sought to confer upon itself power to:
- (a) make formal findings (without any hearing or right of appeal) that an entity has breached the Listing Rules;
  - (b) publish its formal findings and reasons to the market;
  - (c) effectively compel an entity listed on the Australian Securities Exchange to do or refrain from doing any act or thing, even if it is unfairly prejudicial to the entity or any other person without the need to apply to the Court for relief pursuant to sections 793C and/or 1101B of the Corporations Act; and
  - (d) bypass the function of ASIC to investigate a potential contravention of the Listing Rules.
80. In the circumstances set out in paragraph 79 above, listing rule 18.8 is repugnant to, or inconsistent with, the scheme for the enforcement of the Listing Rules established by Part 7.2, Division 3 and section 1101B of the Corporations Act and is therefore ultra vires and/or invalid.
81. By reason of the matters set out in paragraph 80 above, ASX has no power to:
- (a) give the ~~three-d~~Directions referred to in paragraphs 70 and 70A above ~~or any other directions under listing rule 18.8;~~
  - (b) publish the ~~Draft Reasons in draft or final form and/or the~~ Final Reasons supporting the making of the Directions or disclose information contained therein to anyone except ASIC on a confidential basis.
- G. Misleading or deceptive conduct by ASX**
82. The Final Reasons related to the listed shares of ISX, being a financial product within the meaning of section 763A of the Corporations Act.
83. The Final Reasons said in substance that:

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

### PARTICULARS

- A. The First Representation was made in paragraphs 6.3 and 9.3 of the Final Reasons.
- B. The Second Representation was made in paragraphs 9.2 and 9.9 of the Final Reasons.
- C. The Third Representation was made in paragraphs 9.10 and 10.3 of the Final Reasons and footnotes 45, 51 and 115 of the Final Reasons.
- D. The Fourth Representation was made in section 1 of Annexure A to the Final Reasons.

- E. The Fifth Representation was made in paragraph 10.3 of the Final Reasons.
- F. The Sixth Representation was made in paragraphs 5.6 to 5.8 and 7.10 to 7.11 of the Final Reasons.
- G. The Seventh Representation was made in paragraphs 7.5, 7.8 and 12.1 of the Final Reasons.
- H. The Eighth Representation was made in paragraphs 8.5 and 12.3 of the Final Reasons.

84. The First Representation was false as, at all material times:

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

## PARTICULARS

- For personal use only
- A. ISXPay® facilitates payment in the online “ecosystem”.
  - B. ISX’s Payidentity™ verifies the identity of the customer in the ecosystem.
  - C. Software that can take an order includes a trading platform or an ecommerce platform.
- (e) therefore before ISX could provide identity verification and/or transaction processing services to a customer it had to:
- (i) update and/or extend its technology platforms; and
  - (ii) integrate its technology platforms with the other two parts of the online “ecosystem” for the benefit of its customer so that they all talked to each other;
- and
- (f) in the circumstances set out in paragraphs 84(a) to (e) above, the supply of platform development services was part of ISX’s core business as it could not provide the identity verification and transaction processing services to a customer without first supplying the software and integration services.
85. The Second Representation was false as:
- (a) ISX chose to focus on providing its identity verification and transaction processing services to entities with anti-money laundering obligations (**AML regulated entities**);
  - (b) during 2017:
    - (i) ISX approached AML regulated entities and discovered that they:
      - A. had no interest in changing the status quo;

- B. were not prepared to assume any risk associated with integrating ISX's Paydentity™ and ISXPay® with the platforms that they were already using; and
- C. would only consider using ISX's Paydentity™ and ISXPay® if they were already integrated with either a CRM system, trading platform or eCommerce platform;
- (ii) ISX approached popular CRM, cashier, trading, gaming and ecommerce platforms such as Shopify, Tradologic, PlayTech, DevCode, Praxis, MetaTrader4/5, Panda and Antelope and was told by each of them that they were not interested in assuming the integration risk without an assurance that customers would purchase the end product; and
- (iii) therefore ISX needed to find:
- A. customers who were prepared to assume the integration risk alongside ISX and use the modified third party platform with ISX's integrated Paydentity™ and ISXPay®;
- B. find vendors of platforms within the online “ecosystem” that it could partner with to integrate ISXPay® and Paydentity®; or
- C. a combination of both customers and vendors;
- (c) in anticipation of securing customers, in late 2017 and early 2018 ISX worked to integrate its products into popular third party trading platforms at its own risk;
- (d) at about this time ISX was approached by a number of individuals who were each looking to start up their own online trading businesses and needed to build the whole online “ecosystem”;
- (e) on about 17 April 2018, ISX, through its wholly owned subsidiary Authenticate BV, offered to provide ISXPay® and Paydentity™ to one of the start-up businesses, which by this time had been incorporated as Corp Destination Pty Ltd (**Corp Destination**);

(f) in late April 2018 ISX was in a position to undertake the work required to integrate Paydentity™ and ISXPay® into a third party trading platform but Corp Destination said that:

- (i) the company did not yet have the necessary personnel and/or know how to deploy the third party CRM system and trading platform; and
- (ii) it was going to take them between 6 to 12 months to acquire the necessary personnel and/or know how to build and deploy the third party CRM system and trading platform;

### PARTICULARS

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

- (g) in those circumstances ISX, through its wholly owned Dutch subsidiary Authenticate BV, offered to also deploy the requisite cloud based environment and install the third party CRM system and trading platform for Corp Destination;
- (h) Corp Destination accepted that offer and Authenticate BV proceeded to:
  - (i) build and configure the secure cloud environment, which complied with PCI DSS and ISO27001 standards;
  - (ii) purchase from Fino Software Technologies Ltd (**FinoSoft**) the integrated CRM system and trading platform required by Corp Destination;
  - (iii) install the integrated CRM system and trading platform supplied by FinoSoft in the cloud environment which Authenticate BV had built;
  - (iv) integrate the Paydentity™ and ISXPay® platforms so that they would talk to the integrated CRM system and trading platform;
  - (v) test the online “ecosystem” to ensure that everything worked; and
  - (vi) demonstrate to the satisfaction of Corp Destination that the services could “go live” when Corp Destination was ready to do so;

- (i) shortly after Authenticate BV agreed to build the whole online “*ecosystem*” for Corp Destination other start-up businesses, such as FCorp Services Ltd (**FCorp**) and Immo Servis Group S.R.O (**Immo**), also engaged Authenticate BV to build a whole online “*ecosystem*” for them;
- (j) in FCorp’s case, Authenticate BV purchased an integrated CRM system and trading platform from FinoSoft;
- (k) in Immo’s case, Authenticate BV was required to obtain a different integrated CRM system and exchange platform from Gibi Tech Ltd (**Gibi Tech**) because it held the licences for the specific CRM system and exchange platform required by Immo;
- (l) the contracts which Authenticate BV entered into with Gibi Tech and FinoSoft were for CRM systems integrated with either a trading platform or exchange platform, which Authenticate BV and ISX did not have and could not build such that Authenticate BV needed to purchase them in order to integrate ISX’s Paydentity™ and ISXPay® platforms;
- (m) Gibi Tech and FinoSoft are unrelated to Authenticate BV and ISX and unrelated to each of ISX’s customers and the customers' directors and shareholders;
- (n) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was derived from arms-length counterparties who were independent of ISX and each other;
- (o) by integrating ISX’s platforms with third party CRM systems integrated with either a trading platform or exchange platform in the second half of the financial year ended 30 June 2018:
  - (i) ISX gained valuable knowledge that it has since been able to deploy for subsequent customers who have elected to use the same or similar third party CRM system integrated with either a trading platform or exchange platform; and
  - (ii) this has enabled ISX to connect new customers using, or who are wanting to use, the same or similar third party CRM system integrated with either a trading platform or exchange platform much faster than it would otherwise have been able to do;

- (p) the platforms of FCorp and the two different brands of Immo (now trading as Bitconvert and thechange.io) have since gone live, which has resulted in ISX processing more than \$35m of Gross Processed Turnover Volume (**GPTV**) between these customers and receiving combined revenue of more than A\$800,000 (unaudited) in 2019;
- (q) ISX would not have earned the revenue referred to in paragraph 85(p) above if Authenticate BV had not entered into the agreements with FCorp and Immo;
- (r) in the circumstances set out in paragraphs 85(a) to (q) above, the revenue earned from these three contracts was not generated solely or predominantly for the purpose of meeting the milestones as these contracts were central to:
  - (i) ISX establishing itself as an entity able to provide identity verification and transaction processing services to AML regulated entities;
  - (ii) gaining valuable knowledge that it has since been able to deploy for subsequent customers; and
  - (iii) gaining substantial revenue from GPTV.

86. The Third Representation was false as:

- (a) the services were delivered by 30 June 2018;
- (b) the invoices were issued before 30 June 2018 in respect of each customer's irrevocable binding legal obligation to pay the fees due under their agreement;
- (c) Australian Accounting Standard AASB No.15 allows for the practice of wholesale purchase and resale without any value add;
- (d) in this case, value was added as:
  - (i) ISX's wholly owned subsidiary, Authenticate BV, deployed the CRM system integrated with either a trading platform or exchange platform into the secure cloud environments which it built to comply with the PCI DSS and then integrated the Payidentity™ and ISXPay® platforms so that they would all talk to each other; and

- (ii) a profit of approximately €150,000 was made across the four contracts, in addition to contributing towards the company's overheads and covering the cost of ISX's technical services personnel;
- (e) the revenue earned by ISX in the second half of the financial year ending 30 June 2018 was the subject of the audit performed by Grant Thornton;
- (f) Grant Thornton confirmed that the revenue satisfied Australian Accounting Standards AASB No.118, AASB No. 111 and AASB No.15;
- (g) Grant Thornton said that:
  - (i) they were satisfied as to the current process of reporting and treatment of revenue;
  - (ii) an increase in revenue contributed to a strong focus by them on revenue; and
  - (iii) they were satisfied that the revenue was accurately recorded and that revenue targets in place and disclosed in the Prospectus had been met;

### PARTICULARS

- A. The statements were made at the Audit Committee Meeting held on 23 August 2018 (**August 2018 Meeting**), which was attended by Scott Minahane, Tim Hart, Barnaby Egerton-Warburton and Todd Richards of ISX, Brad Taylor and Brad Krafft of Grant Thornton and Mathew Watkins of Leydin Freyer.
- B. The statements are recorded in section 3.2 of the Minutes of the August 2018 Meeting (**Minutes**). A copy of the Minutes is in the possession of the solicitors acting for ISX and may be inspected during business hours by appointment.

and,

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

87. The Fourth Representation was false as:

- (a) at all material times SEPAGA E.M.I. LIMITED (**SEPAGA**) and OrangeTrust S.R.O (**OrangeTrust**) were electronic money institutions authorised by European financial regulators to, among other things, send payments on behalf of others;
- (b) at all material times each of Corp Destination, FCorp, Immo and Authenticate BV held an electronic money account with iSignthis eMoney Ltd;
- (c) the payments in respect of the agreement between Corp Destination and Authenticate BV were:
  - (i) debited from the electronic money account of Corp Destination held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and
  - (ii) in one instance made directly into the bank account of Authenticate BV held with ABN AMRO;
- (d) the payments in respect of the agreement between FCorp and Authenticate BV were debited from the electronic money account of FCorp held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (e) the payments in respect of the agreement between Immo and Authenticate BV were:
  - (i) made by Immo directly into the bank account of Authenticate BV held with ABN AMRO;
  - (ii) debited from the electronic money account of Immo held with iSignthis eMoney Ltd and credited to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd; and

- (iii) debited from the electronic money account of Immo held with OrangeTrust and transferred to the electronic money account of Authenticate BV held with iSignthis eMoney Ltd;
- (f) the payments in respect of the agreement with Nona were sent by SEPAGA on behalf of Nona to the bank account of Authenticate BV held with ABN AMRO; and
- (g) in the circumstances set out in paragraphs 87(a) to (f) above, the payments were not suspect as they were made with money belonging to each of the respective counterparties to the agreements with Authenticate BV.

88. The Fifth Representation was false as:

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

### PARTICULARS

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

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

## PARTICULARS

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

- (e) by reason of the matters set out in paragraphs 88(a) to (d) above:
  - (i) “*revenue*” in the Prospectus is properly construed in accordance with the Australian Accounting Standards; and
  - (ii) there was no, and there could not be, any basis for implying a term in the Prospectus that the milestones for the conversion of the performance rights to ordinary shares “*had to be met by ordinary business revenue and not revenue generated solely or predominantly for the purpose of meeting the Milestones*”;
- (f) by reason of the matters set out in paragraphs 85(a) to (q) above, the revenue was not generated solely or predominantly for the purpose of meeting the milestones;
- (g) by reason of the matters set out in paragraphs 86(a) to (g) above, the revenue was properly recognised by ISX during the financial year ending on 30 June 2018;
- (h) by reason of the matters set out in paragraph 87(a) to (f) above, the revenue received by ISX was not suspect; and
- (i) in the circumstances set out in paragraphs 88(a) to (h) above, the revenue milestones were validly met.

89. The Sixth Representation was false as:

- (a) “*price*” and “*value*” are synonymous when determining the effect that information had on the market price of an entity’s securities;
- (b) the actual effect that the information had on the market price of the entity’s securities when it was finally announced to the market is the relevant enquiry not a hypothetical analysis;

- (c) information is generally considered not to be market sensitive if it appears to have moved the market price of the entity's securities (relative to the prices in the market generally or in the entity's sector) by roughly 5% or less; and
- (d) the materiality threshold is 10%, or close to it, for smaller entities;

### **PARTICULARS**

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

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

### **PARTICULARS**

- A. On 21 June 2018 the price of ISX's shares closed at \$0.16.
- B. On 22 June 2018 the price of ISX's shares rose by \$0.01 to \$0.17.
- (h) on 31 July 2018 ISX told the market that:
  - (i) the GPTV processed by the company did not experience the growth expected by the company due to a number of unforeseeable events, including technical issues with its suppliers; and

- (ii) based on the unaudited revenue for the 6 months from 1 January 2018 to 30 June 2018, it estimated that the requirements for all three tranches of the performance rights would be met such that 336,666,667 ordinary shares would be issued in the September quarter period, taking the total number of shares on issue for the company to 1,004,832,159;
- (i) the information set out in paragraph 89(h) above had a negative impact on ISX's share price of 4.8%, which is significantly less 10%; and

#### **PARTICULARS**

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

90. The Seventh Representation was false as:

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

#### **PARTICULARS**

ISX refers to and repeats paragraph 89 above.

- (d) in the circumstances set out in paragraphs 90(a) to (c) above, the fact that ISX had entered into each contract was not material to the price or value of ISX's shares.

91. The Eighth Representation was false as:

- (a) the reference to "<15% of revenue" was made in the context of the company explaining its products and "cash to revenue lag", not the composition of its revenue;
- (b) as at 3 August 2018, ISX still:
- (i) had not yet fully appreciated the impact which the KAB, Worldline and Apple issues would have on its ability to generate revenue from actual GPTV;
  - (ii) reasonably expected that its capability to process GPTV was imminent; and
  - (iii) expected to receive significant GPTV revenue in the six months ending on 31 December 2018;

#### PARTICULARS

A. On 4 June 2018 ISX told the market that it anticipated GPTV totalling \$550 million in the 6 month period ending 31 December 2018.

B. By 31 July 2018 this figure had risen to \$600 million.

and,

- (c) in the circumstances set out in paragraphs 91(a) and (b) above, in context the statement was not false and materially misleading.

92. In the circumstances set out in paragraphs 82 and 83 above and each of paragraphs 0 to 91 above, ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in breach of section 1041H of the Corporations Act.

93. By reason of the matters set out in paragraph 92 above, each of the Applicants has suffered, and continue to suffer, loss and damage.

## PARTICULARS

- A. By publishing the Final Reasons which contained the false representations, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
- (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
  - (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Payidentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions took place between John Karantzis and Adam Bowman over digital voice communication devices.
  - (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
  - (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.
  - (e) On 12 May 2020:

- (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
- (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “*due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams*”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
- (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
- (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “*the investigations*”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.
- B. Since 30 April 2020, Probanx has lost the following customers:
- (a) On 13 June 2017 Probanx and Golden Anchor executed a written agreement for the licensing of Probanx’s Core banking software. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which immediately followed, on 1 May 2020 Golden Anchor (trading as Payments 88) terminated the contract with Probanx. The termination was communicated orally during a telephone conversation between Ran Zangi of Golden Anchor and Christodoulos Georgiou of Probanx. Prior to the

termination, Probanx was to receive a monthly fee of €1,100 for an anticipated period of at least 5 years.

- (b) On about 29 January 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders. On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.

C. Since 30 April 2020, iSignthis eMoney has lost the following customers:

- (a) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.

- (b) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.
- D. By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW.
- (a) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
- (i) USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
  - (ii) *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;
  - (iii) *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;
  - (iv) *plus* USD5,000 per month in transfer fees; and
  - (v) *less* USD8,000 per month in dedicated costs to service the agreement.

- (b) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.
- (c) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Paydentity™ and payment platform known as ISXPay® with the systems of VGW.
- (d) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
- (e) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
- (f) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.
- (g) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (h) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told Andrew Karantzis that he first had to speak with his Chief Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.

- (i) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.
- E. By publishing the Final Reasons which contained the false representations, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland.
- (a) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
- (i) €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
- (ii) *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
- (iii) *plus* €5,000 per month in transfer fees; and
- (iv) *less* €3,000 per month in dedicated costs to service the agreement.
- (b) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland. The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (c) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email from David Gill of

Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.

- (d) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (e) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (f) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (g) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (h) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

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

- G. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

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

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

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

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

**PARTICULARS**

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

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

**PARTICULARS**

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

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

### PARTICULARS

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

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

### PARTICULARS

- A. The statement in paragraph 101(a) was in writing. It was contained in an email sent at 11:04pm by John Karantzis of ISX to Kevin Lewis of ASX.

- B. The document was uploaded to the Market Announcements Platform at 11:01pm on 4 May 2020.

102. On 10 May 2020 ASX refused to allow ISX to publish, on the Market Announcements Platform under the ISX code, ISX's amended official response to ASX's "*Statement of Reasons*" which contained such facts that ISX considered the market ought to possess.

### PARTICULARS

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

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

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

107. In the circumstances set out in paragraphs 95 to 106 above, ISX has suffered, and continues to suffer, loss and damage.

### PARTICULARS

- A. By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused ISX and iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Trustly Group AB (**Trustly**), a Swedish payments institution. This commercial arrangement would have generated a net profit of approximately €1,900,000 to €2,900,000 per annum for an anticipated period of 5 years.
  - (a) On or about 16 August 2017 iSignthis eMoney and Trustly entered into a Partner Agreement with the intention of establishing a mutually beneficial business relationship. The Partner Agreement was in writing.
  - (b) In the period from mid-October 2019 to mid-November 2019 John Karantzis and Adam Bowman of Trustly discussed a commercial arrangement to create a real time payment and gambling ecosystem that could be integrated with bet taking software. As part of the arrangement ISX would provide its identity verification platform known as Paydentity™, iSignthis eMoney would provide electronic money accounts and its merchant payment notification system and Trustly would provide its open banking push payment system, as an alternative to MasterCard, Visa and American Express. The discussions took place between John Karantzis and Adam Bowman over digital voice communication devices.

- (c) From about 19 December 2019 to 4 May 2020 work was undertaken to integrate each of the components provided by ISX, iSignthis eMoney and Trustly.
- (d) By 4 May 2020 integration was close to completion and ISX was preparing to go live with Trustly.
- (e) On 12 May 2020:
  - (i) ISX and iSignthis eMoney were ready to onboard merchants for tests in a live environment; and
  - (ii) Trustly told ISX that its compliance team was concerned about ASX suspending trading in its shares “*due to the majority of ISX’s revenue earned in 2018 originated from the firms suspected of running scams*”. It is to be inferred that this statement was derived from the Final Reasons which contained the false representations. The statement was in writing. It was contained in an email sent by Ivica Antunovic of Trustly.
- (f) On 15 May 2020 ISX and iSignthis eMoney remained ready to test a live Trustly processing account.
- (g) On 27 May 2020 Trustly told ISX and iSignthis eMoney that it had decided not to work with them because of “*the investigations*”. It is to be inferred that this statement is a reference to ASX’s investigations that culminated in the Final Reasons which contained the false representations. The communication was in writing, contained in an email from Ivica Antunovic.

B. Further, since 30 April 2020, the value of ISX’s shares in Probanx and iSignthis eMoney, or the amount of the distributions it would receive, has diminished by reason of the following:

- (a) On about 29 January 2019 UAB Baltic Banking Service and Phoenix Payments Ltd executed a written agreement for the licensing of software to carry out SEPA SCT payment orders.

On 29 November 2019, following the acquisition of UAB Baltic Banking Services by ISX, the agreement was assigned to Probanx. The assignment was in writing. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, and the negative publicity which followed, on 25 June 2020 Phoenix Payments Ltd terminated the contract with six months' notice. The termination was in writing. It was contained in a letter from Gert Koppel, General Manager of Phoenix Payments Ltd. Prior to the termination, Probanx was to receive a monthly fee of €1,400 for an anticipated period of at least 5 years.

- (b) On 16 October 2018 iSignthis eMoney and Insight Group OU executed a written agreement for the provision of payment facilitation and identity services. On 14 December 2018 iSignthis eMoney and Insight Group OU executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response on the Market Announcements Platform, and the negative press which followed, on 4 May 2020 Insight Group OU terminated its relationship with iSignthis eMoney in respect of its OlympusMarkets brand. The termination was in writing. It was contained in a letter from Vlad Alexandru Dragota on behalf of Insight Group OU to iSignthis eMoney. Prior to receiving the termination notice anticipated net profit from this customer was €200,000 per annum for an anticipated period of 5 years.
- (c) On 3 January 2020 iSignthis eMoney and Aicrypto Ltd executed a written agreement for eMoney issuance. As a result of ASX publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response on the Market Announcements Platform, and the negative publicity which followed, on 5 May 2020 Aicrypto Ltd

closed its customer account with immediate effect. The closure was communicated in writing. It was contained in a letter from Max Robbins to iSignthis eMoney. Prior to receiving the notice anticipated net profit from this customer was €10,000 per month for an anticipated period of 5 years.

- (d) By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with VGW GP Limited, VGW Malta Limited and VGW Games Limited (together, **VGW**).
- (i) This commercial arrangement would have generated a net profit of approximately USD1,410,333.32 per month, for an anticipated period of 5 years, calculated as follows:
- A. USD580,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
  - B. *plus* USD416,666.66 per month, being 1% of an anticipated inflow of USD41,666,666 per month into the two electronic money accounts;
  - C. *plus* USD416,666.66 per month, being 1% of USD41,666,666 in respect of foreign exchange conversation fees to Euro, which is the denomination of the currency held in the electronic money accounts;
  - D. *plus* USD5,000 per month in transfer fees; and
  - E. *less* USD8,000 per month in dedicated costs to service the agreement.
- (ii) On 23 December 2019 VGW GP Limited signed a Merchant Application Form.

- (iii) In the period from 18 February 2020 to 14 April 2020 work was undertaken to integrate the identity verification platform known as Paydentity™ and payment platform known as ISXPay® with the systems of VGW.
- (iv) On about 16 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of payment facilitation and eMoney issuance and identity services.
- (v) On about 21 April 2020 iSignthis eMoney and VGW GP Limited executed a written agreement for the provision of eMoney and Client eMoney Payment Service eMoney accounts. iSignthis eMoney also executed written eMoney and eMoney redemption agreements with each of VGW Malta Limited and VGW Games Limited.
- (vi) On about 29 April 2020 integration was effectively complete and iSignthis eMoney was ready to go live with VGW.
- (vii) On 4 May 2020 Christopher Koch, the Chief Financial Officer of VGW GP Limited, told Andrew Karantzis that his company was concerned about ISX in light of the Statement of Reasons released by ASX. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (viii) On 6 May 2020 Andrew Karantzis told Christopher Koch that they should go live and Christopher Koch told Andrew Karantzis that he first had to speak with his Chief Executive Officer. The statement to the effect alleged was made during a telephone call between Christopher Koch and Andrew Karantzis.
- (ix) Since 6 May 2020 the system has not gone live and no revenue has been generated from this commercial arrangement. It is to be inferred that VGW decided not to

go live because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

- (e) By publishing the Final Reasons which contained the false representations and refusing to allow ISX to publish its official response, alternatively its amended official response, on the Market Announcements Platform, ASX caused iSignthis eMoney to lose the opportunity to earn revenue from a commercial arrangement with Lottoland Holdings Ltd (**Lottoland**).
- (i) When fully established and operational this commercial arrangement would have generated a net profit of approximately €1,227,000 per month, for an anticipated period of 5 years, calculated as follows:
- A. €850,000 per month for the provision of payment facilitation and eMoney issuance and identity services;
  - B. *plus* €375,000 per month, being 1.5% of an anticipated inflow of €25,000,000 per month into the electronic money account;
  - C. *plus* €5,000 per month in transfer fees; and
  - D. *less* €3,000 per month in dedicated costs to service the agreement.
- (ii) In about February 2020 iSignthis eMoney discussed entering into a commercial arrangement with Lottoland. The discussions took place between Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (iii) On 7 May 2020 Lottoland told iSignthis eMoney that it was super keen to progress with iSignthis eMoney. The statement was in writing. It was contained in an email

from David Gill of Lottoland to Chris Henry and Mark Fisscher of iSignthis eMoney.

- (iv) On 12 May 2020 Lottoland confirmed that it wanted to progress with iSignthis eMoney and requested the commercial and legal terms. The statement to the effect alleged was made during a Skype call attended by Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (v) On 14 May 2020 Chris Henry sent an email to David Gill and Allyson Spindler which attached documents that were to be completed and returned to him.
- (vi) On about 15 May 2020 Lottoland asked iSignthis eMoney to explain the recent legal issues experienced by its parent company. The statement was in writing. It was contained in an email from Allyson Spindler to Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill of Lottoland.
- (vii) On 20 May 2020 Lottoland said that it was concerned about the issues raised by ASX in its Statement of Reasons about iSignthis eMoney's parent company in Australia. The statement to the effect alleged was made during a Skype call attended by Andrew Karantzis, Chris Henry and Mark Fisscher of iSignthis eMoney and David Gill and Allyson Spindler of Lottoland.
- (viii) Since 20 May 2020 discussions between iSignthis eMoney and Lottoland have ceased. It is to be inferred that Lottoland ceased the discussions with iSignthis eMoney because it was concerned about the issues raised about ISX in the Final Reasons which contained the false representations.

- C. Further particulars of the loss and damage will be provided after discovery and/or the filing of expert evidence.

- D. A copy of the written documents and communications referred to above are in the possession of the solicitors acting for the applicants and may be inspected during business hours by appointment.

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

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

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

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

#### **AND ISX CLAIMS AGAINST ASX**

- A. A declaration that ASX failed, in breach of the agreement, to accord procedural fairness to ISX and act in good faith and/or honestly and fairly and/or reasonably before suspending the quotation of its shares on the Australian Securities Exchange.

- B. A declaration that ASX failed, in breach of the agreement, to act in good faith and/or honestly and fairly and/or reasonably by not lifting the suspension and reinstating ISX's shares for quotation on the Australian Securities Exchange.
- C. A declaration that ASX failed to meet its obligations under its operating rules.
- D. An order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to forthwith lift the suspension and reinstate ISX's shares for quotation on the Australian Securities Exchange.
- E. A declaration that ASX contravened section 792A(a) of the Corporations Act.
- F. Further or alternatively to paragraph D above, an order pursuant to section 1324(1) of the Corporations Act requiring ASX to forthwith lift the suspension and reinstate the quotation of ISX's shares on the Australian Securities Exchange.
- G. Further or alternatively to paragraphs D and F above, an order:
- (i) setting aside the decisions not to lift the suspension and reinstate ISX's shares for quotation on the Australian Securities Exchange, with effect from the date of the order; and
  - (ii) directing ASX to forthwith reinstate ISX's shares for quotation on the Australian Securities Exchange.
- H. ~~An order permanently restraining ASX from:~~ A declaration that by publishing the Final Reasons and giving the Directions, ASX breached its implied obligations to:
- (i) act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules; and
  - (ii) do all that is necessary to enable ISX to have the benefit of the agreement.
- ~~directing ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;~~

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

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

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

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

- I. A declaration that listing rule 18.8 is ultra vires and/or invalid.
- J. A declaration that ASX has no power to:
  - (i) direct ISX to make an announcement to the market, satisfactory to ASX, with information as to whether Authenticate BV subcontracted some or all of its responsibilities under the Variation Letter and the Nona Agreement to third party contractors and, if so, what services were provided by the third party contractors and what fees were charged by those contractors to Authenticate BV;
  - (ii) direct ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with listing rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to the review;
  - (iii) direct ISX to include in each quarterly activity report it gives to ASX under listing rule 4.7C a breakdown by sector of the revenue ISX has derived from customers during the applicable quarter divided into the following sectors:

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

or;

- (iv) give any other direction purportedly pursuant to listing rule 18.8; or
  - (v) publish the Final Reasons supporting the Directions or disclose information contained therein to anyone except ASIC on a confidential basis.
- K. A declaration that ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.
- L. Damages pursuant to section 1041I of the Corporations Act.
- M. An order pursuant to section 793C(2), 1101B(1)(d) and/or 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.
- N. A declaration that ASX failed, in breach of the agreement, to act in good faith and/or honestly and fairly and/or reasonably by refusing to allow ISX to publish its amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.
- O. A declaration that ASX failed to meet its obligations under its operating rules.
- P. Alternatively to paragraph M above, an order pursuant to sections 793C(2) and/or 1101B(1)(d) of the Corporations Act directing ASX to publish ISX's amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.

- Q. A declaration that ASX contravened section 792A(a) of the Corporations Act.
- R. Alternatively to paragraph P above, an order pursuant to section 1324(1) of the Corporations Act requiring ASX to publish ISX's amended official response to ASX's "*Statement of Reasons*" on the Market Announcements Platform under the ISX code.
- S. Damages.
- T. Such other relief as the Court considers to be appropriate.
- U. Costs.

**AND ISIGNTHIS EMONEY LTD AND PROBANX SOLUTIONS LTD CLAIM AGAINST ASX**

- V. A declaration that ASX engaged in conduct in relation to the shares of ISX that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.
- W. Damages pursuant to section 1041I of the Corporations Act.
- X. An order pursuant to section 1324(1) of the Corporations Act requiring ASX to remove the Final Reasons from its Market Announcements Platform and publish a corrective statement on the Market Announcements Platform under the ISX code and ASX code.
- Y. Such other relief as the Court considers to be appropriate.
- Z. Costs.

**Dated: ~~12 March 2020~~ 26 March 2020 17 August 2020**

**P W Collinson**

**J S Mereine**

**HWL Ebsworth Lawyers**  
Solicitors for the Applicants

**Schedule of Parties**

**iSignthis Limited (ACN 075 419 715)**

First Applicant

**iSignthis eMoney Ltd**

**(a company incorporated in Republic of Cyprus allocated number HE348009)**

Second Applicant

**Probanx Solutions Ltd**

**(a company incorporated in the Republic of Cyprus allocated number HE111921)**

Third Applicant

**ASX Limited (ACN 008 624 691)**

Respondent

**Certificate of lawyer**

I Colin Almond certify to the Court that, in relation to the Second Further Amended Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 17 August 2020

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Signed by Colin Almond, Partner  
HWL Ebsworth Lawyers  
Lawyer for the Applicants