

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/12/2021 4:15:06 PM AEDT 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: Defence - Form 33 - Rule 16.32
File Number: NSD206/2020
File Title: JOHN DOUGLAS MCFARLANE ATF THE S MCFARLANE
SUPERANNUATION FUND v IOOF HOLDINGS LIMITED
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 22/12/2021 4:15:17 PM AEDT

Registrar

Important Information

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

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



Form 33
Rule 16.32

Further Amended Defence

NSD206/2020

Federal Court of Australia
District Registry: New South Wales
Division: General

John Douglas McFarlane ATF the S McFarlane Superannuation Fund
Applicant

~~IOOF Holdings Ltd~~ **Insignia Financial Ltd (ACN 100 103 722)**
Respondent

[Filed pursuant to the orders of Gleeson J dated 30 July 2020](#)

Filed pursuant to the orders of Murphy J dated 23 November 2021

By way of defence to the Amended Statement of Claim dated 23 November 2021, the respondent says as follows:

A PARTIES

A.1 The applicant and Group Members

- 1 The respondent (**IOOF**) admits the allegations in paragraph 1.
- 2 IOOF admits the allegations in paragraph 2.
- 3 IOOF admits the allegations in paragraph 3.
- 4 IOOF does not [know and therefore cannot](#) admit the allegations in paragraph 4.

A.2 The respondent

- 5 IOOF admits the allegations in paragraph 5.
- 6 As to paragraph 6, IOOF:

Filed on behalf of ~~IOOF Holdings Ltd~~ **Insignia Financial Ltd**, the Respondent

Prepared by Domenic Gatto
Law firm **KING & WOOD MALLESONS**
Tel +61 3 9643 4460
Email domenic.gatto@au.kwm.com

Fax +61 3 9643 5999

Address for service

Level 27 Collins Arch, 447 Collins Street, Melbourne VIC 3000
Ref: D Gatto:603-0026962

- (a) admits the allegations in paragraph 6(a);
- (b) admits the allegations in paragraph 6(b);
- (c) admits the allegations in paragraph 6(c);
- (d) as to the allegations in paragraph 6(d):
 - (i) admits the allegations in sub-paragraphs (i), (ii), (iii), (iv), (v), (vii), (ix), (x), (xii), (xiii), (xiv), (xv), (xvi), (xviii);
 - (ii) denies the allegations in sub-paragraphs (vi), (viii), (xi), (xvii), (xix) and says further that:
 - (A) IOOF Equity Plan Trust is not a company;
 - (B) IOOF Investment Services Pty Ltd was not a subsidiary of IOOF during the Relevant Period;
 - (C) IOOF Service Co Pty Ltd was appointed authorised representative of IOOF Investment Services Pty Ltd after the Relevant Period;
 - (D) Plan B Wealth Management Pty Ltd became a subsidiary of IOOF on 29 November 2012;
 - (E) SFG Australia Ltd, Shadforth Financial Group Ltd and Shadforth Business Advisory Services Pty Ltd became subsidiaries of IOOF on 29 September 2014;
- (e) admits the allegations in paragraph 6(e) and says further that:
 - (i) immediately following IOOF's merger with Australian Wealth Management Limited (**AWM**) in May 2009 (**AWM Merger**), IOOF had four business divisions, being (1) Financial Advice and Distribution; (2) Platform Management and Administration; (3) Investment Management; and (4) Asset Management;
 - (ii) during the Relevant Period, IOOF was structured into four divisions, namely: (1) Financial Advice and Distribution Services Division (**Financial Advice Division**); (2) Platform Management and Administration Division; (3) Investment Management Products Division; and (4) Trustee Services Division;
 - (iii) the Financial Advice Division included financial planners and stockbrokers who provide financial advice services to retail and

institutional clients through a variety of financial advice businesses, some of which were dealer groups;

- (iv) the principal financial advice businesses operated by IOOF throughout the Relevant Period were as follows:
 - (A) Bridges Financial Services Limited (**Bridges**), a dealer group;
 - (B) Consultum Financial Advisers Pty Ltd (**Consultum**), a dealer group;
 - (C) Lonsdale Financial Group Limited (**Lonsdale**), a dealer group;
 - (D) Shadforth Financial Group (**Shadforth**), which was not a dealer group; and
 - (E) Ord Minnett Limited (which, during the Relevant Period, was 70% owned by IOOF and 30% owned by J .P Morgan) (**Ord Minnett**), which was not a dealer group.
 - (v) throughout the Relevant Period, each of Bridges, Consultum, Lonsdale and Shadforth held an AFSL;
 - (vi) the Financial Advice Division includes IOOF's Research and Portfolio Construction Team (**IOOF Research Team**), which, at all times following the AWM merger, primarily provided research to the Bridges and Consultum dealer groups;
 - (vii) it refers to and repeats the matters stated below in paragraph 13.
- (f) as to the allegations in paragraph 6(f):
- (i) admits that IOOF's subsidiary companies who held AFSLs were obliged to comply with the conditions on the licence and to comply with the "*financial services laws*" as defined in s 761A of the Corporations Act;

Particulars

Section 912A(1)(a)(b) and (c) of the Corporations Act.

Section 716A of the Corporations Act defines "financial services laws" to include Chapter 7 of the Corporations Act and Division 2 of Part 2 of the ASIC Act.

- (i) further to (f)(i) above, admits that, subject to s 912A(4) of the Corporations Act, IOOF's subsidiary companies who held AFSLs were obliged to comply s 912A(1)(d) of the Corporations Act;

- (ii) further to (f)(i) above, admits that IOOF's subsidiary companies who held AFSLs were obliged to comply s 912D of the Corporations Act in the circumstances provided for in that section;
 - (iii) otherwise denies the allegations in paragraph 6(f) and will rely on the terms of the provisions of the Corporations Act referred to at trial.
- (g) as to the allegations in paragraph 6(g):
- (i) refers to and repeats the matters set out at paragraph 6(f) above;
 - (ii) says that ASIC Regulatory Guides:
 - (A) are policy documents that give guidance to regulated entities and have no binding effect;
 - (B) explain when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act);
 - (C) explain how ASIC interprets the law;
 - (D) describe the principles underlying ASIC's approach;

Particulars

According to ASIC, ASIC Regulatory Guides give guidance to regulated entities by:

- (a) explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act);
- (b) explaining how ASIC interprets the law;
- (c) describing the principles underlying ASIC's approach:

<https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/>

(iii) says that IOOF's subsidiary companies who held AFSLs were exposed to a risk of regulatory action by ASIC if they did not comply with the provisions of the Corporations Act for which ASIC is responsible for enforcing (including the "*financial services laws*" as defined in s 761A of the Corporations Act);

~~(iii)~~ (iv) otherwise does not know and therefore cannot admit the allegations in paragraph 6(g).

- (h) as to the allegations in paragraph 6(h):
- (i) refers to and repeats the matters set out at paragraphs 6(f) and (g) above;

- (ii) otherwise denies the allegations.

7 IOOF admits the allegations in paragraph 7.

B IOOF'S BUSINESS

B.1 Acquisitions and business model

8 As to paragraph 8, IOOF says that:

- (a) in May 2009, it merged with AWM:

Particulars

The AWM Merger was effected by way of a scheme of arrangement under section 411 of the Corporations Act. The scheme of arrangement was approved by the Supreme Court of Victoria in April 2009 and was implemented in May 2009. Under the terms of the scheme of arrangement:

- (a) AWM became a wholly owned subsidiary of IOOF Holdings Ltd;
 - (b) AWM was delisted from the Australian Securities Exchange in May 2009; and
 - (c) IOOF Holdings Ltd was owned approximately 30% by IOOF shareholders and 70% by AWM shareholders.
- (b) from around 2004 until the AWM Merger, Bridges was part of AWM;
 - (c) in June 2008, AWM acquired a 70% interest in Ord Minnett, with J P Morgan holding the remaining 30% in Ord Minnett;
 - (d) accordingly, immediately prior to the AWM Merger in 2009, Bridges and Ord Minnett were both part of the Wealth Management Division of AWM;
 - (e) in 2011, IOOF acquired DKN Financial Group Limited, which included the "DKN Financial Group" and "Lonsdale" businesses;
 - (f) in 2012, IOOF acquired Plan B Group Holdings Limited; and
 - (g) in 2014, IOOF acquired SFG Australia Limited, which included the Shadforth Financial Group;
 - (h) in 2009, IOOF acquired the Skandia and Intech businesses in Australia from OM Group (UK) Limited;
 - (i) it otherwise denies the allegations in paragraph 8.

9 As to paragraph 9, IOOF:

- (a) admits the allegations in paragraph 9(a);

- (b) as to the allegations in paragraph 9(b), save to say that:
- (i) it refers to and repeats the matters set out at paragraph 6(e) above;
 - (ii) at all times following the AWM Merger, the role of the IOOF Research Team had been to provide research to IOOF's financial planners, and primarily those who operated under the AFSLs of the Bridges and Consultum dealer groups,
- it admits the allegations in paragraph 9(b).

10 Subject to the matters stated above in paragraphs 8 and 9, IOOF admits the allegations in paragraph 10.

11 IOOF admits the allegations in paragraph 11, and refers to and repeats the matters stated above at paragraphs 6(e) and 9(b).

12 Save to say that Shadforth Financial Group Ltd is not a dealer group, IOOF admits the allegations in paragraph 12.

13 As to paragraph 13, IOOF says that:

- (a) it refers to and repeats the matters stated in paragraphs 6 and 8 above;
- (b) from 16 June 2008 until the AWM Merger in May 2009, Peter Hilton was employed by AWM as "Head of Research" for Bridges, which was part of the Wealth Management Division of AWM;
- (c) in particular, Bridges was a financial planning organisation within AWM which provided advice on wealth creation, superannuation and pensions, and stockbroking services, and had a dedicated research team (**Bridges Research Team**), which Mr Hilton headed up;
- (d) prior to the AWM Merger, IOOF's Financial Planning Division included Consultum, a dealer group business providing financial planning support services to financial advisers, which also had a dedicated research team (**Consultum Research Team**). Mr David Kilmer was "Head of Research" for Consultum;
- (e) following the AWM Merger, Bridges and Consultum continued to operate their respective businesses, including the Bridges Research Team and the Consultum Research Team, and in particular:
- (f) Mr Kilmer remained as Head of Research for Consultum and Mr Hilton remained as Head of Research for Bridges;

- (g) research reports prepared by the Bridges Research Team were provided to financial planners in the Bridges dealer group, and research reports prepared by the Consultum Research Team were provided to financial planners in the Consultum dealer group;
- (h) Mr Kilmer ceased his employment with Consultum in July 2013, following which the remaining members of the Consultum Research Team joined the Bridges Research Team to form one research team (i.e., the IOOF Research Team);
- (i) in March 2015, Mr Matthew Drennan was appointed Group Head of Research and Portfolio Construction in the IOOF Research Team. Mr Drennan was formerly the Chief Investment Officer of SFG when IOOF acquired SFG in August 2014;
- (j) following Mr Drennan's appointment as Group Head of Research and Portfolio Construction in the IOOF Research Team in March 2015, Mr Hilton commenced reporting to Mr Drennan;
- (k) during the Relevant Period, Bridges and Consultum were small parts of IOOF's business, contributing less than 10% of IOOF's total profit;
- (l) it admits that Mr Hilton was the Research representative on the PIC during the Relevant Period;
- (m) it says that Mr Hilton was named as a responsible manager under Questor Financial Services Ltd's AFSL from in or about October 2004 until in or about April 2014;
- (n) it otherwise denies the allegations in paragraph 13.

C STATEMENTS BY IOOF CONCERNING ITS VALUE AND GROWTH

14 Subject to the matters stated at paragraph 9(b) above, IOOF admits the allegations in paragraph 14.

D IOOF'S MARKET VALUE

15 As to paragraph 15, IOOF:

- (a) admits that, during the Relevant Period and to the present time:
 - (i) the financial market operated by the ASX was and is regulated by the ASX Listing Rules, in the sense that an entity admitted to the official list maintained by the ASX (**Listed Entity**) must comply with the ASX Listing Rules;

- (ii) a Listed Entity was and is required to comply with sub-section 674(2) of the Corporations Act if that sub-section applied or applies to the entity by reason of sub-section 674(1) of the Corporations Act;
 - (iii) sections 1041H of the Corporation Act, 12DA of the ASIC Act and 18 of the ACL can apply to the conduct of a Listed Entity;
- (b) otherwise does not [know and therefore cannot](#) admit the allegations in paragraph 15.
- 16 IOOF does not [know and therefore cannot](#) admit the allegations in paragraph 16, including because many of the allegations are so vague and general that it is not possible to understand what is in fact alleged.

E INFORMATION KNOWN TO IOOF

E.1 March 2014 complaint

- 17 As to paragraph 17, IOOF admits, that on or about 4 March 2014, an employee in the IOOF business made a number of allegations to IOOF concerning conduct within the IOOF Research Team, and says further that:
- (a) as to paragraph 17(a), it says that on 2 April 2014, Mr Max Riaz (who was an equities analyst in IOOF's Financial Advice Division) sent an email to Mr Rob Urwin (who was Head of Investigations at IOOF) in which he alleged that Mr Hilton gave favourable treatment to large clients by calling his favourite planners and getting his clients out of Templeton Global Growth fund when he thought the stock was expensive while leaving other clients in there facing the risk, and otherwise denies the allegations in paragraph 17(a);
 - (b) it admits the allegations in paragraphs 17(b) to 17(i);
 - (c) it otherwise denies the allegations in paragraph 17.
- 18 IOOF admits that it was aware of the March 2014 complaint for the purposes of r 19.12 of the ASX Listing Rules on 4 March 2014.

E.2 Investigation into the March 2014 complaint

- 19 IOOF admits the allegations in paragraph 19.

E.3 Historical Information

20 As to paragraph 20, IOOF:

- (a) admits that in March 2014 it knew that, in or around December 2008, an employee in the AWM business had raised possible concerns with AWM about potential front running of research reports (**Front Running**) relating to the share trading activity of Mr Peter Hilton (who was head of the Bridges Research Team at AWM at the time);
- (b) says further that, between late December 2008 and early April 2009, AWM investigated those Front Running allegations and, at the completion of its investigations, concluded that:
 - (i) the share trading did not amount to Front Running;
 - (ii) however, the fact that Mr Hilton was trading in securities through his wife's account could give rise to a potential conflict of interest with his role as Head of Research; and
 - (iii) Mr Hilton had failed to seek prior approval from AWM for the trades and failed to disclose the trades to AWM.
- (c) admits the allegations in paragraph 20(a), and says further that the 2009 First and Final Warning Letter was given to Mr Hilton at the conclusion of the investigation referred to above in (b);
- (d) denies the allegations in sub-paragraphs 20(c1) to (c3);
- (e) as to the allegations in sub-paragraphs 20(c4) to (c8), save to say that IOOF admits that, in 2009, it:
 - (i) investigated whether an AWM employee named Edward Youds was in possession of price sensitive information when he purchased shares in the Entertainment Media and Telecoms Company (**ETC**) in 2009;
 - (ii) concluded that Mr Youds was not in possession of price sensitive information when he purchased ETC shares, and accordingly the matter was not reported to ASIC;
 - (ii) concluded that Mr Youds' purchase of ETC shares was in breach of the Bridges Chinese Walls Policy and Code of Conduct (Personal Trading) policy, and accordingly Mr Youds was issued with a first and final warning in relation to inappropriate share trading and donated the proceeds of profit from the sale of the ETC shares (approximately \$1,850) to a charity designated by AWM,

it otherwise denies the allegations in sub-paragraphs 20(c4) to (c8);

- (f) admits the allegations in sub-paragraph 20(c9);
- (g) admits the allegations in sub-paragraph 20(c10);
- (h) save to say that IOOF admits that, from March 2014, it knew or ought to have known that, since 2009, two planners who were both authorised representatives of Bridges Financial Services Pty Ltd were banned, and one of those two was also sentenced to a term of imprisonment, but says that this information was generally available, it denies the allegations in sub-paragraph 20(c11);

Particulars

Mr Justin Robert Fraser was banned in June 2011.

Mr Alan Leslie Brown was banned and sentenced to a term of imprisonment in November 2009.

ASIC Banned and Disqualified Persons Register.

ASIC release dated 29 June 2011 titled "11-129AD ASIC bans Queensland financial adviser".

ASIC release dated 14 December 2009 titled "09-251AD ASIC permanently bans Sydney financial adviser".

- (d) otherwise denies the allegations in paragraph 20.

20A Further to paragraph 20, IOOF says that:

- (a) on 30 March 2015, IOOF engaged PricewaterhouseCoopers (**PwC**) to investigate and report on the allegations that Mr Hilton had engaged in Front Running through research reports;
- (b) the review period was 22 December 2008 to March 2015;
- (c) at the completion of its investigation, PwC concluded that there was no evidence of Front Running by Mr Hilton in the review period;

Particulars

PwC Report dated May 2015 entitled "*IOOF Holdings Limited – Forensic Assistance – Bridges matter*" [IFL.001.001.0217].

- (d) in July 2015, ASIC commenced inquiries into allegations made against IOOF, including allegations that Mr Hilton had engaged in Front Running;
- (e) as part of these inquiries, ASIC's market surveillance team undertook a thorough review of the circumstances and trades involved in relation to the Front Running allegations;

- (f) on 8 July 2016, ASIC announced that it had finalised its inquiries, and that it had decided not to take any further action (**ASIC Announcement**).

Particulars

ASIC media release dated 8 July 2016 was entitled “ASIC’s *inquiry into IOOF*” and included the following statements:

In July 2015 ASIC commenced inquiries into allegations made against I.O.O.F. Holdings Limited and its subsidiaries (IOOF), including issues raised by a former employee of IOOF. The allegations have also been the subject of several media articles and an inquiry by the Parliamentary Joint Committee on Corporations and Financial Services.

ASIC has now finalised its inquiries.

Some of the allegations concerned an IOOF staff member's involvement in insider trading when they traded in securities prior to the release of IOOF research reports relating to those securities. ASIC's market surveillance team has completed a thorough review of the circumstances and trades involved. This review determined that the release of the research reports had no material effect on the price of the relevant securities and there was no other evidence to warrant the commencement of a formal investigation. As such we have decided to take no further action in relation to these allegations.

21 As to paragraph 21, IOOF:

- (a) refers to and repeats the matters set out above in paragraphs 20 and 20A;
- (b) otherwise denies the allegations in paragraph 21;
- (c) says further or alternatively that, to the extent that the applicant relies on matters or information in the nature of an opinion which it alleges IOOF or officers of IOOF ought to have (but did not) in fact hold, then IOOF was not aware of such matters or information for the purposes of Listing Rule 3.1 which is therefore not engaged.

E.4 March 2014 Information

22 As to paragraph 22, IOOF:

- (a) as to the allegations in paragraph 22(a):
 - (i) says that, as a result the investigation conducted by IOOF into the March 2014 complaint, IOOF concluded that some of the allegations the subject of that complaint were substantially true;

- (ii) otherwise denies the substance of the facts alleged in paragraph 22(a) and denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of those matters;

Particulars

The allegations included within the March 2014 complaint which IOOF concluded were substantially true were those the subject of sub-paragraphs 17(b), (c), (d) and (g) above (i.e., overstating the performance of the hypothetical “Buy Model”, breach of password access, failure to properly attribute third party research reports in research presentations, and instructing a direct report to complete Kaplan and eLearning training): Research Corrective Action Plan [IFL.006.025.9960].

See also the letter from IOOF to Mr Hilton dated 1 May 2014 which stated as follows:

This letter confirms the numerous formal discussions with either Danielle Corcoran or myself that commenced on 10 March 2014 and have continued over the last few weeks regarding a number of allegations that had been brought to our attention. Issues outlined during our last discussion are highlighted below:

1. *Claims of bullying, harassment and isolation within the Research team.*
2. *Sharing passwords for SWORD and the eLearning system.*
3. *Instructing a direct report to complete Kaplan and eLearning on your behalf.*
4. *Plagiarising and incorrect sourcing of research data received from JP Morgan.*
5. *Misrepresenting outperformance data.*

I have considered your responses to each of the matters highlighted above and have found that your actions warrant a final warning with respect to items 2 and 3.

As discussed, the expectation going forward is that you ensure completion of all items of the attached corrective action plan.

All other items had been dismissed however there are some process improvements required or the division.

Please be aware that failure to improve and maintain adequate improvement in the above areas may result in termination of your employment.

- (b) denies the substance of the facts alleged in paragraph 22(b) and denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of those matters;

- (c) denies the substance of the facts alleged in paragraph 22(c) and denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of those matters;
- (d) as to the allegations in paragraph 22(d), it:
 - (i) admits that IOOF did not notify the recipients of the hypothetical model portfolio known as the “IOOF Advice Equities Model” (the recipients being financial planners in the Bridges network) that, in or around March 2014, IOOF had identified errors in the methodology that had been used to calculate the hypothetical performance figures included in the model;
 - (ii) says further that the model was a hypothetical portfolio of listed securities and managed funds, and did not reflect the actual performance of any of IOOF’s managed funds or investment products;
 - (iii) accordingly, the errors identified did not reflect or create any errors in the actual performance of any of IOOF’s managed funds or investment products or result in any loss suffered by any IOOF client;
 - (iv) otherwise denies the allegations therein;
- (e) as to the allegations in paragraph 22(e), it:
 - (i) says that the substance of the “plagiarism” allegation referred to above at paragraph 17(d) (and which formed part of the March 2014 complaint) was that IOOF has published research reports that contained material prepared by JP Morgan which either was obtained improperly or, if obtained properly, was used without giving adequate attribution;
 - (ii) as a result of the March 2014 investigation, IOOF concluded that this allegation was without substance because:
 - (A) Ord Minnett was 30% owned by JP Morgan, with the remaining 70% owned by IOOF;
 - (B) Ord Minnett had an agreement with JP Morgan dated 22 May 2008 which allowed Ord Minnett to use JP Morgan’s research material;
 - (C) Part 4 of that agreement provides that Ord Minnett, and its related bodies corporate (which at the time included IOOF and Bridges) “*may use the JPM Research Services as the basis for conducting and producing independent and suitably adapted*

OML Research for their exclusive distribution to their own Retail Client base”;

- (D) Ord Minnett used JP Morgan research material in the preparation of its own research reports, which are subsequently shared with IOOF, which Ord Minnett was entitled to do as a related party of IOOF;
 - (E) IOOF removed the Ord Minnett branding from the research reports, and then properly attributed the research is to a specific, named research analyst from IOOF who had reviewed the Ord Minnett Research and prepared the IOOF research report;
 - (F) each IOOF research report also stated that the research has been approved by the IOOF Head of Research;
 - (G) it follows that IOOF complied with RG 79, and in particular was not obliged to disclose the identity of the original provider of the research (RG 79.30);
- (iii) it was also alleged as part of the “plagiarism” allegation referred to above at paragraph 17(d) (and which formed part of the March 2014 complaint) that IOOF research presentations had used third-party proprietary information (from non-JP Morgan sources) in research presentations to financial planners in the IOOF network, without proper attribution of the source of the material, and without the inclusion of any disclaimer;
 - (iv) as part of the March 2014 investigation, IOOF reviewed a number of presentations which were found to contain material that had not been appropriately attributed;
 - (v) as a consequence, the Research Corrective Action Plan prepared in April 2014 [IFL.006.025.9960] included action in respect of research presentations;
 - (vi) otherwise denies the allegations therein;
- (f) as to the allegations in paragraph 22(f), it:
 - (i) denies the substance of the matters alleged as the “Historical Information” and denies that IOOF’s research department’s activities were not in accordance with Regulatory Guide 79, and refers to and repeats the matters stated in paragraph 22(e) above;
 - (ii) admits that ASIC was not notified of the allegations referred to;

- (iii) says further that IOOF was not required to notify ASIC of these matters;
- (g) as to the allegations in paragraph 22(g), it:
- (i) says that the substance of the March 2014 complaint referred to in paragraph 17(g) above was that Mr Hilton failed to complete his online learning modules (“**e-Quip**”) and mandatory continuous education programs (“**KAPLAN**”), and that he requested junior employees to complete these on his behalf;
 - (ii) IOOF’s investigation of this complaint in March and April 2014 concluded that there was substance to the complaint, and that Mr Hilton’s failure to complete his online e-learning modules amounted to a breach of internal IOOF training policies;
 - (iii) a number of performance management consequences were imposed on Mr Hilton as a result, including the following:
 - (A) he received a warning letter dated 1 May 2014;
 - (B) his status as “Responsible Manager” was removed;
 - (C) he lost his entitlement to a bonus;
 - (D) he was required to complete a mandatory 12 hours of KAPLAN training by 30 June 2014, and to re-sit all e-learning modules, under the supervision of another staff member;
 - (iv) as stated above at paragraph 13, in March ~~2014~~2015 Mr Drennan was appointed as Head of Research and Portfolio Construction and Mr Hilton commenced reporting to Mr Drennan;
 - (v) otherwise denies the allegations in paragraph 22(g);
- (h) it denies the substance of the facts alleged in paragraph 22(h) and denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of those matters;
- (i) as to the allegations in paragraph 22(i), it:
- (i) denies the substance of the matters alleged;
 - (ii) refers to and repeats the matters stated above at paragraph 22(e) above;
 - (iii) denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of the matters alleged;

- (j) as to the allegations in paragraph 22(j), it denies the substance of the matters alleged and denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of those matters;-
- (k) as to the allegations in paragraph 22(k), it denies that, while investigating the March 2014 complaint, IOOF knew or ought to have known of the matters alleged.

23 As to paragraph 23, IOOF:

- (a) denies the allegations therein;
- (b) refers to and repeats the matters set out above in paragraph 22;
- (c) says further or alternatively that, to the extent that the applicant relies on matters or information in the nature of an opinion which it alleges IOOF or officers of IOOF ought to have (but did not) in fact hold, IOOF was not aware of such matters or information for the purposes of Listing Rule 3.1 which is therefore not engaged.

E.5 Compromised Model Information

24 As to paragraph 24, IOOF denies the allegations therein and refers to and repeats the matters stated above at paragraphs 20 to 23.

25 As to paragraph 25, IOOF denies the allegations therein and refers to and repeats the matters stated above at paragraphs 20 to 24.

E.6 Further ‘final warning’ letter and the December 2014 complaint

26 As to paragraph 26, IOOF:

- (a) admits the allegations therein;
- (b) says further that the letter was dated 1 May 2014 with the subject “Final Warning” and stated as follows:

This letter confirms the numerous formal discussions with either Danielle Corcoran or myself that commenced on 10 March 2014 and have continued over the last few weeks regarding a number of allegations that had been brought to our attention. Issues outlined during our last discussion are highlighted below:

1. *Claims of bullying, harassment and isolation within the Research team.*
2. *Sharing passwords for SWORD and the eLearning system.*
3. *Instructing a direct report to complete Kaplan and eLearning on your behalf.*

4. *Plagiarising and incorrect sourcing of research data received from JP Morgan.*
5. *Misrepresenting outperformance data.*

I have considered your responses to each of the matters highlighted above and have found that your actions warrant a final warning with respect to items 2 and 3.

As discussed, the expectation going forward is that you ensure completion of all items of the attached corrective action plan.

All other items had been dismissed however there are some process improvements required or the division.

Please be aware that failure to improve and maintain adequate improvement in the above areas may result in termination of your employment.

27 As to paragraph 27, IOOF:

- (a) admits the allegations therein;
- (b) refers to and repeats the matters stated above in paragraph 26.

28 IOOF admits the allegations in paragraph 28.

29 As to paragraph 29, save to say that the letter dated 22 December 2014 [IFL.017.001.4615] was not received by IOOF until 2 March 2015, it admits the allegations therein.

30 IOOF admits the allegations in paragraph 30.

31 As to paragraph 31, IOOF:

- (a) denies the allegations therein;
- (b) refers to and repeats the matters stated above in paragraphs 20 to 25 and says that the allegations said to comprise the Historical Information, the March 2014 Information, the Compromised Model Information and the December 2014 complaint were not substantiated, save for the specific matters referred to above in the particulars to paragraph 22(a)(ii) in relation to the March 2014 Information.

32 As to paragraph 32, IOOF:

- (a) admits that, in a report prepared for the IOOF Risk & Compliance Committee Meeting on 28 July 2014, Michael Farrell, Group General Manager – Dealerships, stated that “*Our licenses are increasingly included in ASIC’s surveillance activity given representations amongst large, medium and small sized dealer groups.*” [IFL.019.001.0001@.0140];

- (b) otherwise denies the allegations in paragraph 32.

F EFFECT OF THE INFORMATION KNOWN TO IOOF

33 IOOF denies the allegations in paragraph 33 and says further that:

- (a) it refers to and repeats the matters stated above in paragraphs 20 to 25 and says that the allegations said to comprise the Historical Information, the March 2014 Information and the Compromised Model Information were not substantiated, save for the specific matters referred to in the particulars to paragraph 22(a)(ii) above in relation to the March 2014 Information;
- (b) further or alternatively to paragraph 33(a) above, even if the Historical Information, the March 2014 Information and the Compromised Model Information existed (which is denied) and was information of which IOOF was aware (which is denied), it was not information (in the combinations alleged in paragraphs 33(a) and (b) or otherwise):
- (i) that was material to the price or value of IOOF's shares during the Relevant Period; or
- (ii) information that, during the Relevant Period, a reasonable person would expect to have a material effect on the price or value of IOOF shares, within the meaning of ASX Listing Rule 3.1;
- (c) further or alternatively to paragraphs 33(a) and (b) above, the information alleged to be comprised of the Historical Information, the March 2014 Information and the Compromised Model Information fell within an exception to Listing Rule 3.1 as set out in Listing Rule 3.1A, because the information as pleaded:
- (i) comprised matters of supposition or that are insufficiently definite to warrant disclosure; and/or
- (ii) was generated for internal management purposes; and
- (iii) was confidential and the ASX had not formed the view that it had ceased to be confidential; and
- (iv) was information that a reasonable person would not expect to be disclosed.

G ONGOING INFORMATION

34 As to paragraph 34, IOOF:

- (a) denies the allegations in sub-paragraphs 34(a) and (b) and refers to and repeats the matters stated above in paragraphs 20 to 25;
- (b) admits the allegation in sub-paragraph 34(c) but says that, even if the pleaded Historical Information, the March 2014 Information and the Compromised Model Information existed (which is denied) and was information of which IOOF was aware (which is denied), IOOF was not required to disclose that information, for the reasons set out above at paragraph 33.

H DISCLOSURE OF THE INFORMATION KNOWN TO IOOF

35 As to paragraph 35, IOOF:

- (a) refers to and repeats the matters stated above in paragraphs 20 to 25 and says that the allegations said to comprise the Historical Information, the March 2014 Information and the Compromised Model Information were not substantiated, save for the specific matters referred to in the particulars to paragraph 22(a)(ii) above in relation to the March 2014 Information;
- (b) admits that the Fairfax Media press articles referred to in Annexure B made the allegations set out in Annexure B, but denies that those allegations amounts to the “disclosure” of the pleaded Historical Information, the March 2014 Information and the Compromised Model Information, for the reasons stated above in sub-paragraph (a);
- (c) admits that IOOF’s Managing Director at the time made the statements set out in Annexure B when appearing before the Australian Senate Economics References Committee, but denies that those statements amounted to the “disclosure” of the pleaded Historical Information, the March 2014 Information and the Compromised Model Information, for the reasons stated above in sub-paragraph (a);
- (d) otherwise denies the allegations in paragraph 35.

36 IOOF does not [know and therefore cannot](#) admit the allegations in paragraph 36.

37 As to paragraph 37, IOOF admits that, on 22 June 2015, its closing share price fell by 13.32% from its last closing price on 19 June 2015, but otherwise denies the allegations in paragraph 37.

38 IOOF admits the allegations in paragraph 38.

I CONTRAVENING CONDUCT

I.1 Continuous disclosure

39 IOOF denies the allegations in paragraph 39 and refers to and repeats the matters stated above in paragraph 33.

I.2 Misleading or deceptive conduct

40 As to the allegations in paragraph 40, IOOF:

- (a) refers to and repeats the matters stated above in paragraphs 20 to 25 and says that the allegations said to comprise the Historical Information, the March 2014 Information and the Compromised Model Information were not substantiated, save for the specific matters referred to in the particulars to paragraph 22(a)(ii) above in relation to the March 2014 Information;
- (b) denies any market misapprehension during the Relevant Period about IOOF's business and/or the success of its implementation of the IOOF's strategy of seeking to grow in size and value as alleged in paragraph 9 above (i.e., the alleged "Roll Up Model");
- (c) denies that the applicant or the Group Members have suffered any loss or damage by reason of the conduct alleged against IOOF in the Statement of Claim;
- (d) denies that the applicant or the Group Members are entitled to any compensation pursuant to s 1041I(1) of the Corporations Act, s 12GF(1) of the ASIC Act or s 236 of the ACL by reason of the conduct alleged against IOOF in the Statement of Claim;
- (e) otherwise denies the allegations in paragraph 40.

41 As to the allegations in paragraph 41, IOOF:

- (a) says that the allegations said to comprise the Historical Information, the March 2014 Information and the Compromised Model Information were not substantiated, save for the specific matters referred to in the particulars to paragraph 22(a)(ii) above in relation to the March 2014 Information;
- (b) denies that any of the statements referred to were false;

- (c) to the extent the statements were statements of opinion, says that it had a reasonable basis for that opinion, being the investigations referred to above which IOOF conducted in response to the complaints raised, the results of those investigations, the engagement of PwC as referred to in the statements, and the results of PwC's investigations;
- (d) denies that the applicant or the Group Members have suffered any loss or damage by reason of the conduct alleged against IOOF in the Statement of Claim;
- (e) denies that the applicant or the Group Members are entitled to any compensation pursuant to s 1041I(1) of the Corporations Act, s 12GF(1) of the ASIC Act or s 236 of the ACL by reason of the conduct alleged against IOOF in the Statement of Claim;
- (f) otherwise denies the allegations in paragraph 41.

J LOSS AND DAMAGE

- 42 IOOF denies the allegations in paragraph 42.
- 43 IOOF denies the allegations in paragraph 43.
- 44 IOOF admits the allegations in paragraph 44.

Date: 22 December 2021



.....
Domenic Gatto
Lawyer for the Respondent
King & Wood Malleons

This pleading was prepared by Nicholas Owens SC and Brad Holmes with the assistance of King & Wood Malleons.

Certificate of lawyer

I Domenic Gatto certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 22 December 2021



.....
Domenic Gatto
Lawyer for the Respondent
King & Wood Mallesons