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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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SUPERANNUATION FUND v IOOF HOLDINGS LIMITED  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 24/11/2021 9:39:15 AM AEDT

Registrar

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

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## Amended Statement of claim

No. NSD206 of 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**

Respondent

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## A. PARTIES

### A.1 The applicant and Group Members

1. The applicant brings this claim as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (Cth)* (**FCA Act**).
2. On or about 2 June 2015, the applicant acquired an interest in ordinary shares in the respondent (**IOOF**) on the market operated by ASX Ltd (**ASX**).

#### Particulars

The applicant, in his capacity as trustee of the S McFarlane Superannuation Fund, acquired 2,000 shares in IOOF at an average price per security of \$10.60, for a subtotal of \$21,200 excluding GST and brokerage, which with \$27.23 brokerage and \$2.72 GST came to a total amount paid of \$21,229.95.

3. The applicant brings this claim for and on behalf of himself and the persons identified as group members in the applicant's originating application filed on 28 February 2020 (**Group Members**), being persons who acquired an interest in ordinary shares in IOOF or a long exposure to IOOF shares by entering into equity swap confirmations in respect of IOOF shares during the period 1 March 2014 to 7 July 2015 (**Relevant Period**).
4. Immediately prior to the commencement of this proceeding, the Group Members comprised at least seven persons who have claims against IOOF within the meaning of s 33C of the FCA Act.

### A.2 The respondent

5. IOOF is and was during the Relevant Period:
  - (a) incorporated pursuant to the *Corporations Act 2001 (Cth)* (**Corporations Act**) and capable of being sued;
  - (b) a corporation included in the official list of the ASX whose securities are "ED securities" for the purposes of s 111AE of the Corporations Act;
  - (c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

- (d) subject to and bound by:
    - (i) the ASX Listing Rules; and
    - (ii) s 674(2) of the Corporations Act;
  - (e) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (f) a corporation with the meaning of the *Competition and Consumer Act 2010* (Cth); and
  - (g) engaged in trade or commerce within the meaning of ss 12BA and 12DA(1) of the ASIC Act and ss 2 and 18 of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**ACL**).
6. From in or about 2009 and during the Relevant Period:
- (a) IOOF carried on business as an Australian financial services provider;
  - (b) IOOF offered financial products and portfolio administration services including in relation to investments, superannuation, immediate and deferred annuities, investment trusts, financial planning, stockbroking, estate planning, administration and trustee services;
  - (c) without limiting sub-paragraph (b), IOOF managed money on behalf of others, namely funds under management and administration (**FUMA**) and funds under management, administration, advice and supervision (**FUMAS**);
  - (d) IOOF operated at least part of its business through wholly or partly owned subsidiary companies which included the following companies, who (where indicated below) were the holders of an Australian Financial Services Licence (**AFSL**) issued by the Australian Securities and Investments Commission (**ASIC**) under s 911A of the Corporations Act:
    - (i) Australian Executor Trustees Ltd (AFSL 240023);
    - (ii) Australian Wealth Management Ltd;
    - (iii) Bridges Financial Services Pty Ltd (AFSL 240837);
    - (iv) Consultum Financial Advisers Pty Ltd (AFSL 230323);
    - (v) Executive Wealth Management Financial Services Pty Ltd (AFSL 245451);
    - (vi) IOOF Equity Plan Trust;

- (vii) IOOF Investment Management Ltd;
- (viii) IOOF Investment Services Pty Ltd (AFSL 230703);
- (ix) IOOF Ltd (AFSL 230522);
- (x) IOOF NZ Ltd;
- (xi) IOOF Service Co Pty Ltd (authorised representative of IOOF Investment Services Pty Ltd);
- (xii) Lonsdale Financial Group Ltd (AFSL 246934);
- (xiii) Ord Minnett Financial Planning Pty Ltd (AFSL 237122);
- (xiv) Ord Minnett Ltd (AFSL 237121);
- (xv) Ord Minnett Management Ltd (AFSL 237123);
- (xvi) Perennial Investment Partners Ltd (AFSL 238763);
- (xvii) Plan B Wealth Management Pty Ltd (AFSL 230382);
- (xviii) Questor Financial Services Ltd (AFSL 240829); and
- (xix) from on or about 20 August 2014:
  - (A) SFG Australia Ltd;
  - (B) Shadforth Financial Group Ltd (AFSL 318613);
  - (C) Shadforth Business Advisory Services Pty Ltd;

(e) IOOF had an advice division:

- (i) in which IOOF's research department was situated; and

**Particulars**

Noted in IFL.001.001.0131.

- (ii) which included as business units financial services businesses carried on within the IOOF group pursuant to individual AFSLs;

**Particulars**

See, e.g., IFL.019.001.0136.

(f) IOOF's subsidiary companies who held AFSLs were obliged to comply with the terms and conditions of their AFSLs and all applicable provisions of the Corporations Act and ASIC Act including:

- (i) s 912A(1)(c) – an AFSL holder must comply with financial services laws;
  - (ii) s 912A(1)(d) – an AFSL holder must have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the AFSL and to carry out supervisory arrangements; and
  - (iii) s 912D – an AFSL holder must notify ASIC of a breach or likely breach of *inter alia* s 912A and financial services laws in the Corporations Act and the ASIC Act provided the breach or likely breach is significant, having regard to the number or frequency of similar previous breaches and the impact of the breach or likely breach on the licensee’s ability to provide its financial services;
- (g) consistently with (f) above, IOOF’s subsidiary companies who held AFSLs were exposed to a risk of regulatory action and consequential reputational harm if they did not observe applicable regulatory guidance from ASIC, including:
- (i) ASIC Regulatory Guide 79 when providing research reports, in particular RG79.79: “To analyse financial products well, research report providers need to allocate appropriate resources to each research task. This includes allocating sufficient numbers of staff with suitable qualifications for the research task and setting appropriate timelines for the completion of tasks”; and
  - (ii) ASIC Regulatory Guide 104, in particular RG104.88: “Having adequate technological and human resources is crucial to your ability to demonstrate that you have the capacity to carry on your financial services business in full compliance with the law and to supervise your representatives. Failure to have enough resources may create an unacceptable risk that you may not comply with all of your obligations as a licensee”;
- (h) IOOF, as the parent company of its subsidiary companies who held AFSLs, ought to have procured that those companies complied with the terms and conditions of their AFSLs and all applicable provisions of the Corporations Act (including ss 912A and 912D), ASIC Act and regulatory guidance from ASIC:
- (i) as a matter of good corporate governance;
  - (ii) consistently with general market expectations that IOOF and its subsidiaries would comply with all applicable laws and regulatory guidance;

- (iii) to ensure IOOF's good reputation and standing in its wealth management business, and that of its business insofar as it was conducted through AFSL licensed subsidiaries; and
- (iv) failing which IOOF's business (either for IOOF directly or indirectly via its subsidiaries) would be exposed to a real risk of adverse regulatory action and consequential reputational harm.

7. At the times pleaded in each sub-paragraph below, the following persons were "officers" of IOOF within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules (by virtue of r 19.3(a)) with the following responsibilities:

- (a) Roger Sexton – Chairman from 2012 to the end of the Relevant Period;
- (b) Christopher ("Chris") Kelaher – Managing Director from on or about 30 April 2009 to the end of the Relevant Period;
- (c) Ian Griffiths – Director from in or about April 2009 to the end of the Relevant Period;
- (d) Kevin White – Director from in or about October 2011 to the end of the Relevant Period;
- (e) Jane Harvey – Director from in or about October 2005 to the end of the Relevant Period;
- (f) George Venardos – Director from in or about April 2009 to the end of the Relevant Period;
- (g) Alan Griffiths – Director from in or about July 2014 to the end of the Relevant Period;
- (h) Danielle Corcoran – Company Secretary from in or about April 2009 to the end of the Relevant Period;
- (i) Gary Riordan – General Counsel from in or about July 2006 to the end of the Relevant Period;
- (j) Rob Urwin – Head of Investigations from on or about 30 April 2009 to the end of the Relevant Period;
- (k) Michael Farrell – Group General Manager - Dealerships from in or about early 2013 to the end of the Relevant Period;
- (l) Paul Vine – General Manager Legal, Risk and Compliance from in or about August 2014 to the end of the Relevant Period;

- (m) Matt Drennan – Group Head of Research and Portfolio Constructions from in or about March 2015 to the end of the Relevant Period; and
- (n) Peter Hilton – Head of Research from in or about April 2009 until in or about March 2015 and otherwise employed within IOOF to the end of the Relevant Period.

## B. IOOF'S BUSINESS

### B.1 Acquisitions and business model

8. From in or about 2008 to and including the Relevant Period, IOOF merged with or acquired a number of financial services businesses (**Acquisitions**).

#### Particulars

- i. IOOF merged with or acquired the following businesses and/or companies:
    - A. Australian Wealth Management Ltd (**AWM**), an amalgamation of:
      - 1. Bridges Financial Services Pty Ltd; and
      - 2. Australian Executor Trustees Ltd;
    - B. a 70% interest in Ord Minnett (through AWM);
    - C. Skandia Australia (/ Global One);
    - D. DKN;
    - E. Lonsdale Group;
    - F. Plan B (Australia and New Zealand);
    - G. MyAdviser; and
    - H. Shadforth Financial Group / SFG Australia.
  - ii. IOOF made other acquisitions during this time – e.g. Intech Pty Ltd which was on-sold to Morningstar Australasia.
9. At the time of the Acquisitions, including throughout the Relevant Period, IOOF had as part of its overall business model a strategy (**Roll Up Model**) of seeking to grow in size and value:
- (a) through its vertically integrated wealth management model for advice, platforms and funds management by combining IOOF's own organic growth with value accretive acquisitions of complementary financial services businesses; and
  - (b) using IOOF's existing infrastructure (including its research department) to service both the pre-existing and newly acquired businesses and thereby to rationalise duplication and improve efficiencies of its services and functions.



### Particulars

- i. In IOOF's Annual Report dated 30 September 2008, IOOF's then chief executive officer Tony Robinson said that IOOF would pursue "greater process efficiency, effectiveness and reliability allowing us to operate more competitively and produce better levels of service", and "We will also continue to work to identify appropriate acquisition opportunities" (p 5). IOOF noted in that document that "One of the principal objectives of each of the [IOOF] business units is to continue to build on existing client relationships whilst seeking new opportunities for direct sales, alliances and business partnerships" and "All of our efforts – both internally as our corporate services groups build the operating platform, and externally as we maximise our customer value proposition – will continue to be focused on measured growth and expansion" (p 9).
- ii. The Roll Up Model was evident in IOOF's announcement of the "Strategic rationale" for its merger with AWM in a "Merger presentation" document dated 24 November 2008, in which seven rationales were stated by IOOF: "(1) Stronger vertically-integrated business spanning entire wealth management value chain; (2) Combination of highly complementary businesses; (3) Improved industry position and scale benefits from greater operating base ... ; (4) Enhanced financial size and capacity; (5) Material cost and revenue synergies expected; (6) Experienced Board and Management team; (7) Opportunity to leverage legislated growth in superannuation" (p 3).
- iii. In the scheme booklet dated 17 March 2009 for the merger between IOOF and AWM, the following was said (p 32):

#### 4.4 Outlook

The Merged Entity will be positioned to take advantage of the long term organic growth prospects of the wealth management industry, in particular, the high growth superannuation sector.

Additional growth opportunities are expected from industry consolidation and other corporate opportunities. AWM has demonstrated its ability to capitalise upon industry consolidation and has undertaken a number of strategic acquisitions which have been successfully integrated and added significant value to its business. The Merged Entity is expected to seek acquisition opportunities across the wealth management industry, such as the acquisition OM Business ...

The Merged Entity is expected to capture material cost synergies available from the Merger. Revenue growth opportunities are also expected from the Merger. The combination of these is expected to enhance the Merged Entity's future earnings.

- iv. On 16 May 2014, when announcing IOOF's acquisition of SFG Australia, IOOF's Managing Director, Chris Kelaher, said: "This transaction is a continuation of IOOF's ongoing, long-term strategy of pursuing value accretive acquisitions." IOOF's investor presentation of that date noted (p 12): "Significant synergies expected through the rationalisation of overlapping cost bases" by "Removing duplicate support infrastructure and ASX listing structure" and "Centralising and consolidating shared services functions". IOOF's investor presentation also noted (p 13): "Consistent with IOOF's stated strategy of growth through value accretive acquisitions and its vertically integrated wealth management model".

- v. In the explanatory memorandum dated 27 June 2014 for the scheme of arrangement for IOOF's acquisition of SFG Australia, IOOF's then current intentions for the combined group were stated to include (p 53): "integrate the operations of SFGA into IOOF in an effort to remove duplication, extract synergies and make those operations more efficient and profitable and improve and expand the range of offerings available to clients"; "consolidate and migrate SFGA's IT systems into IOOF's technology environment, leveraging IOOF's IT systems to provide modern IT infrastructure and service and capability improvements with reduced cost"; and "centralise and consolidate shared services functions and remove duplicate support infrastructure to improve efficiency and enhance economies of scale".
  - vi. In an investor presentation dated 22 August 2014, the Managing Director of IOOF, Chris Kelaher identified:
    - A. at p 28 – IOOF's "Strategy execution" of pursuing "Organic growth", "Productivity" (which included "Efficiencies through scale, synergies and continuing technology developments & enhancements") and "Accretive acquisition" (viz. "Look for growth and value based acquisitions across the value chain" and "Consistent delivery of timely value accretion"); and
    - B. at p 31 – IOOF's "Outlook", which included "Further increase in scale increases opportunities and accelerates investment in future growth", "Efficiency remains a key part of our strategy", "Strong balance sheet available for further acquisitions" and "Higher FUMA starting base provides a solid platform for continued growth in performance".
  - vii. In an investor presentation dated 26 February 2015, the Managing Director of IOOF, Chris Kelaher, identified:
    - A. at p 25 – the same "Strategy execution" of "Organic growth", "Productivity" and "Accretive acquisition" as in the August 2014 presentation particularised above; and
    - B. at p 29 – IOOF's "Outlook" which included "Strong balance sheet available for further acquisitions" and "Higher FUMA starting base provides a solid platform for continued growth in performance".
  - viii. These particulars may be supplemented after expert evidence.
10. During the period from in or about 2008 to and including the Relevant Period, IOOF represented to the market that in pursuit of the Roll Up Model, it successfully maintained and developed its businesses (including those acquired pursuant to the Acquisitions) by:
- (a) integrating core shared services and functions (including distribution, advice, platform and investment);
  - (b) rationalising duplicated services, products and business functions;
  - (c) pursuing further complementary value accretive business acquisitions;
  - (d) growing its FUMAS and the gross margin levied on asset balances; and

- (e) leveraging a largely fixed cost base against IOOF's increased scale.

### Particulars

- i. IOOF attested to these actions in its contemporaneous statements to the market. The applicant repeats the Particulars to paragraph 9 above. See further, e.g., IOOF's annual results announced on 26 August 2010 at pp 4 ("Results overview", including figures for growth in FUMA and FUMAS), 6 ("Business simplification progress"), 7 ("Focus on adviser driven growth"), 8 ("Potential North acquisition"), 22 ("Outlook 2010/11", which notes "Acquisitions examined on an opportunistic, value accretive and strategically sound basis") and 23 ("Progress over last 12 months", with items grouped under the subheadings "Integration", "Simplification" and "Future growth").
- ii. These particulars may be supplemented after expert evidence.

## B.2 Research department

11. During the Relevant Period, IOOF had a research department situated in its advice division.
12. During the Relevant Period, IOOF's research department *inter alia*:
  - (a) provided advice and general recommendations to advisers across the IOOF dealer network;
  - (b) had as an objective the dissemination of well researched and articulated recommendations and investment portfolio options to support IOOF's dealer network in providing financial advice to clients;
  - (c) published research reports including in respect of managed funds and equities;
  - (d) constructed model portfolios including in respect of managed funds and equities;
  - (e) reported on the theoretical performance of its model portfolios in comparison to various indexes and which included reports on the buy model performance of the IOOF Advice Equities Model versus the ASX300 Accumulation Index;
  - (f) managed the dealer groups' Approved Product List (**APL**), being a list of financial products to be considered by representatives when providing advice to clients;
  - (g) undertook initial due diligence and recommendations to include, and thereafter monitored the performance of, products (including term deposits, domestic and global funds, exchange traded funds and listed securities) on the IOOF Investment Platform, which was available to external AFSL holders and/or authorised representatives who were part of IOOF's dealer network and to dealer groups within IOOF including Bridges Financial Services and Associates, Consultum Financial Advisers and Shadforth Financial Group Ltd;

- (h) provided services to:
  - (i) external AFSL holders and/or authorised representatives who were part of IOOF's dealer network; and
  - (ii) dealer groups within IOOF;
- (i) provided investment recommendations for the IOOF platforms, which recommendations were reviewed and approved by the Product Investment Committee (**PIC**), with the platforms available to external AFSL holders and/or authorised representatives who were part of IOOF's dealer network and to dealer groups within IOOF;
- (j) provided advice to the PIC in relation to:
  - (i) IOOF's Platform Investment menu's construction and review;
  - (ii) reviewing and making recommendations on investment objectives and strategies;
  - (iii) liquidation and stress testing reporting; and
  - (iv) performance reporting for investment options on the IOOF Platform;
- (k) advised and assisted registrable superannuation entity licensees and responsible entities within the IOOF group to meet their regulatory obligations; and
- (l) reviewed investment objectives and monitored performance of investment options to meet the requirements of Prudential Standard SPS 530 Investment Governance.

#### **Particulars**

- i. PwC Interim Review Report – Review of regulatory breach reporting processes and the control environment within the research advice division of the IOOF Group dated 28 August 2015: IFL.001.001.0120 at 0131, 0135, 0137.
- ii. Regarding the model portfolios, IFL.017.002.8512 records Danielle Corcoran (on Chris Kelaher's instruction) seeking a PwC review of one particular portfolio on 19 March 2014, 6.13pm and refers to multiple models ("other models that are out there").

#### 13. Peter Hilton:

- (a) was employed in the IOOF business from in or about April 2009 to the end of the Relevant Period;

- (b) worked in the research department at IOOF from in or about April 2009 to the end of the Relevant Period;
- (c) was Head of Research at IOOF from in or about April 2009 until in or about March 2015;
- (d) was the Research representative on the PIC during the Relevant Period; and
- (e) was named as a responsible manager under IOOF's AFSL from in or about April 2009 until in or about May 2014.

### **C. STATEMENTS BY IOOF CONCERNING ITS VALUE AND GROWTH**

14. In early 2014 and during the Relevant Period, IOOF made statements to the ASX concerning its value and growth based in each case on its Roll Up Model.

#### **Particulars**

Particulars of these statements are set out in detail in **Annexure A**. The list may be supplemented after expert evidence.

### **D. IOOF'S MARKET VALUE**

15. During the Relevant Period and to the present time, the ASX was and is a market:
- (a) regulated by the ASX Listing Rules (in particular r 3.1), the Corporations Act (in particular ss 674 and 1041H), the ASIC Act (in particular s 12DA) and the ACL (in particular s 18); and
  - (b) in which publicly available information relevant to the price or value of IOOF's shares was and is reflected in IOOF's share price shortly after such information is made available to the ASX and when the market is open for the ASX's market participants to trade in IOOF's shares.
16. During the Relevant Period, the market value of IOOF's shares was based on and/or materially affected by the following:
- (a) IOOF's good standing and reputation;
  - (b) IOOF's history since at least 2009 of successfully exploiting the Roll Up Model;
  - (c) an expectation that IOOF would be able to continue to progress the Roll Up Model in the future;
  - (d) the quality of IOOF's management;

- (e) the strength, governance and compliance record of IOOF's vertically integrated structure;
- (f) the secular growth of its funds under management in the environment of compulsory superannuation and an aging population;
- (g) the increased demand for financial advice in the complicated regulatory environment in which IOOF operated;
- (h) IOOF's history of acquisitions capitalising on scale opportunities, cost synergies, and cost controls;
- (i) IOOF's history of increased fund inflows and revenue generated from cross-selling in its vertically integrated structure;
- (j) IOOF's perceived culture and history of responsible governance and regulatory compliance in its different businesses (including its wealth management business) in the highly regulated milieu in which it operated;
- (k) IOOF's under-gearred balance sheet with the financial ability to fund further acquisitions;
- (l) IOOF's high margins;
- (m) IOOF's loyal customer base; and
- (n) IOOF's strong name recognition, including with respect to its various brands and product names including those used in the dealer groups within the IOOF group.

## **E. INFORMATION KNOWN TO IOOF**

### **E.1 March 2014 complaint**

17. On or about 4 March 2014, an employee in the IOOF business made a number of allegations to IOOF of serious misconduct within and by IOOF (**March 2014 complaint**), includingnamely:

- (a) that the Head of Research, Peter Hilton, gave selective and preferential treatment to some of his particular planners and clients by providing them with price-sensitive information whilst leaving other planners and/or clients to face known risks;
- (b) that since at least the 2009-2010 financial year, IOOF had materially overstated the performance of its model portfolio (known as the "Buy Model") as compared with the ASX's performance in both internal and external publications, with the material overstatement arising from IOOF's under-provision in the model for the

proper cost base and that the resulting overstated performance numbers were marketed to clients and planners;

- (c) ~~breach~~that there had been breaches of password security to and within the research department, including that the Head of Research, Peter Hilton, ordered the complainant to use the Head of Research's network password to sign off on non-disclosure forms for capital transactions;
- (d) that IOOF plagiarised third party research reports and distributed that research without attribution or taking the time to verify that the research was accurate and/or had a reasonable basis;
- (e) that IOOF's research department was inadequately resourced, leading to shortcuts being taken such as the alleged plagiarism, with only two analysts in the department:
  - (i) covering all of the ASX200 stocks plus other equities which might come onto that index; and
  - (ii) during reporting season being expected to produce reports on approximately 300 companies over a three week period, equating to approximately 14 stock reports per day;
- (f) that there had been bullying, intimidation and isolation of subordinate employees in the research department by the Head of Research, Peter Hilton;
- (g) that the Head of Research, Peter Hilton, had since at least in or about 2010 instructed staff to complete his online Kaplan and eLearning modules for him;
- (h) that the Head of Research, Peter Hilton, imposed impractical deadlines for research reports during reporting seasons which placed client investments at risk by not giving due consideration to the results, a practice which ASIC explicitly warned against and then became a source of intimidation and harassment; and
- (i) ~~withholding of~~that bonus payments had been withheld for improper / bullying reasons.

#### **Particulars**

- i. The complaint was made by Max Riaz (Equities Analyst, Advice Division) to (at least) Danielle Corcoran and Rob Urwin in discussions and subsequent email correspondence. The date of 4 March 2014 is recorded in IOOF's timeline of events - research document dated 8 July 2015: IFL.006.025.9961.
- ii. As to each of the above sub-paragraphs, see:

- (a) IFL.017.002.8479;
- (b) IFL.017.002.8482 and IFL.017.002.8514;
- (c) IFL.017.002.8479, IFL.017.002.8569 and IFL.017.002.8613;
- (d) IFL.017.002.8480;
- (e) IFL.017.002.8480;
- (f) IFL.017.002.8481 and IFL.017.002.8613;
- (g) IFL.017.002.8613 and IFL.017.002.8675;
- (h) IFL.017.002.8613; and
- (i) IFL.017.002.8613.

18. IOOF was aware of the March 2014 complaint for the purposes of r 19.12 of the ASX Listing Rules on:

- (a) 4 March 2014;
- (b) alternatively – a date between 4 and 19 March 2014 which is not presently known by the applicant; or
- (c) alternatively – 19 March 2014.

#### **Particulars**

The March 2014 complaint was made on 4 March 2014 to an officer of IOOF, Danielle Corcoran: IOOF's timeline of events - research document dated 8 July 2015: IFL.006.025.9961. There was email correspondence between the complainant and Ms Corcoran dated 10 and 12 March 2014 which contemplates the March 2014 complaint having been made and started to have been investigated by the time of those emails: IFL.017.002.8613 and IFL.017.002.8514. Alternatively, if IOOF was not aware of the complaint through Ms Corcoran, the complaint was raised within IOOF and was contemplated in an email from Ms Corcoran at 6.13pm on 19 March 2014 which referred to express feedback and direction from Chris Kelaher: IFL.017.002.8512. Similarly, in an email from Rob Urwin at 10.32am on 20 March 2014 he referred to "consideration from the Managing Director, Chris Kelaher": IFL.017.002.8488. Thus at least by 19 March 2014, IOOF was aware of the March 2014 complaint through Mr Kelaher.

## **E.2 Investigation into the March 2014 complaint**

19. Between 4 March 2014 and 16 April 2014, officers within IOOF:
- (a) investigated the March 2014 complaint;
  - (b) provided an update to the Board of IOOF on or about 25 March 2014; and
  - (c) settled a "Research Corrective Action Plan" on or about 16 April 2014, which was provided to the Board of IOOF.



### Particulars

IFL.006.025.9961 and IFL.006.025.9960. IOOF's HR department reported to the Board in "March 2014" that "an investigation is currently underway": IFL.017.001.0162. The fact of an investigation can also be inferred from email correspondence at, e.g., IFL.017.002.8613, IFL.017.002.8512-8514 and IFL.017.002.8488.

### E.3 Historical Information

20. ~~While investigating the~~ From 4 March 2014 ~~complaint~~, IOOF knew or ought to have known that there also existed publicly undisclosed information relating to historical misconduct within and by IOOF dating back to at least 2009 (**Historical Information**), ~~including~~ namely:
- (a) that on 19 May 2009, the Head of Research, Peter Hilton, had been given a "First and Final Warning" letter (**2009 First and Final Warning Letter**) for "improper share trading", which:
    - (i) stated "your behaviour and actions warrant a formal warning";
    - (ii) stated "In general, if you are to continue in this role, your performance / behaviour needs to improve, along with your ability to achieve set goals and demonstrate leadership qualities";
    - (iii) noted that the "expectations going forward" were that the Head of Research:
      - (A) provide a current register of interest quarterly;
      - (B) obtain approval from his manager for all future share or investment transactions; and
      - (C) attend compulsory training in "Chinese Walls, Insider Trading, Personal Trading, Code of Conduct and Conflicts of Interest" by an ASX Responsible Executive; and
    - (iv) stated "Please be aware that failure to improve and maintain adequate improvement in the above areas may result in immediate termination of your employment";
  - (b) that the Head of Research, Peter Hilton, had engaged in improper share trading before 19 May 2009 which resulted in the 2009 First and Final Warning Letter being issued to him on that date;

(c) that the Head of Research, Peter Hilton, had continued to engage in improper share trading after receipt of the 2009 First and Final Warning Letter and before the time of the March 2014 complaint; ~~and~~

(c1) that in and since 2009 there had been multiple incidents within IOOF had of impropriety or possible impropriety, where the impropriety arose from one of the following:

(i) information barrier breaches (or “Chinese wall” breaches);

(ii) non-compliance with IOOF’s staff trading policy;

(iii) IOOF staff taking placement allocations ahead clients;

(iv) failure to manage conflicts of interest;

(v) data integrity and cybersecurity failures;

(vi) failures of compliance oversight,

and are recorded in one or more of:

(A) the IOOF breach registers;

(B) documents passing between IOOF and ASIC during the course of the inquiries undertaken by ASIC that commenced in or about July 2015;

(C) documents passing between IOOF and PWC during the course of the investigations undertaken by PWC that commenced in or about March 2015 and July 2015;

(c2) that Peter Hilton’s wife, or Peter Hilton on behalf of his wife, had bought and sold securities between 1995 and 2014 in companies or businesses at times where:

(i) for positive or confirmatory research about those companies or businesses (in particular research introducing or maintaining a high volume of buy recommendation) – purchases of securities preceded, and sales or a holding of securities followed; and

(ii) for negative research about those companies or businesses (in particular research introducing a sell recommendation or withdrawing a buy recommendation) – sales preceded,

research released by IOOF covering those companies or businesses, in particular:

(iii) an investment in Toll Holdings in or about 2009;

- (iv) an investment in the ING Office Fund in or about 2009;
- (v) an allocation of shares in the Platinum Asset Management float in or about 2008;
- (c3) that Shirlene Hilton, being the wife or a relative of Peter Hilton:

  - (i) made an approximate \$69,000 profit by Peter Hilton selling shares in Platinum Asset Management on her behalf on 28 May 2007, being shares that he had caused to be allocated to her on 17 May 2007 from the allocation for IOOF's customers in circumstances where Peter Hilton did not disclose a conflict of interest;
  - (ii) made an approximate \$8,182 profit by Peter Hilton selling shares in Challenger Infrastructure Fund on 19 and 20 July 2007, being shares that he had caused to be allocated to her on 19 July 2007 from the allocation for IOOF's customers where Peter Hilton did not disclose a conflict of interest; and/or
  - (iii) bought Macquarie Convertible Preferences Shares on or about 8 July 2008 because Peter Hilton bought them on her behalf, and then sold them on 13 November 2008 because Peter Hilton sold them on her behalf, in circumstances where Peter Hilton published two positive reports on those shares on or about 9 July 2008 and 12 August 2008 and did not disclose a conflict of interest;
- (c4) that in or about 2009 there was an insider trading and/or market manipulation incident in relation to the Malaysian entity Entertainment Media and Telecoms Company (ETC), involving IOOF staff and:

  - (i) a crossing of more than 24 million shares in ETC between IOOF's Manifest Balanced Equity Fund and Questor Financial Services;
  - (ii) the crossing coincided with IOOF subsidiary Bridges initiating coverage on ETC;
  - (iii) a staff member at IOOF placed personal trades in ETC before the crossing; and
  - (iv) the crossing pushed up the share price of ETC, allowing the staff member to trade his personal shares for a profit;
- (c5) that there was an IOOF investigation into the ETC incident pleaded in (c4) above which led to:

(i) a first and final warning being issued to a staff member for inappropriate share trading in ETC; and

(ii) a request for the staff member to donate the proceeds of profit from the sale of the ETC shares to a charity designated by Australian Wealth Management;

(c6) that ASIC was not notified of the ETC incident pleaded in (c4) above;

(c7) that the failure to notify ASIC of the ETC incident pleaded in (c4) above was in breach of ASIC's Regulatory Guide 238 which required the reporting of suspicious activity;

(c8) that IOOF:

(i) investigated Edward Youds, a former employee, for insider trading in or about 2009;

(ii) issued a first and final warning letter to Edward Youds in 2009;

(iii) did not notify ASIC of the investigation or outcome of the investigation into Edward Youds;

(c9) that IOOF:

(i) investigated Amit Malgri, a former employee, for insider trading in or about 2009;

(ii) concluded that Amit Malgri's trades the subject of the investigation were outside embargo parameters; and

(iii) did not notify ASIC of the investigation or outcome of the investigation into Amit Malgri;

(c10) that on or about 16 December 2013 a branch manager and financial planner at Bridges wrote to the research division of IOOF:

I refer your email sent just now and was wondering if someone from Research could explain why you are recommending we place 50 per cent of our clients' managed fund portfolios into funds that have consistently underperformed their respective Morningstar Benchmarks. ... From the research reports issued this morning, I believe these recommended funds have exceeded the benchmark on just two out of 36 occasions. ... Surely not??? What's going on here, I can't help but feel our research department has finally been compromised!!

(c11) that since 2009 IOOF financial planning subsidiary companies (including without limitation Consultum Financial Advisers Pty Ltd) had been the subject of regulatory action by ASIC, with:

(i) a number of planners banned; and

(ii) at least one planner sentenced to prison;

(d) that IOOF had at least 16 breaches of its own risk policies (including unit pricing errors) as particularised below, at least one or more of which were reported to APRA but not disclosed to the market.

### Particulars

- i. For sub-paragraphs (a)-(c11): The 2009 First and Final Warning Letter is at MAU.004.001.0111. IOOF knew or ought to have known the matters in (a) and (b) because the March 2014 complaint was made against the Head of Research and this information was or ought to have been kept on his personnel file or similar record. As to (b) and (c)-(c11), Rob Urwin was quoted as saying later in 2014 that he had a “stack of files” on Peter Hilton, that “Peter’s not an honest guy”, “Not this again ... He’s up to that again ... next time he tells you to do front running, just tell him it’s insider trading and illegal, he’ll stop”: IFL.017.001.4634. See also the news report with similar words attributed to Urwin in “IOOF’s boiler room throws customers to the wolves”, *Sydney Morning Herald*, 20 June 2015: “He’s [Hilton] forcing me to get my file out. My file is that high no shit.” That article referred to further documents, namely “a compliance report titled ‘potential front-running by head of research’ on behalf of a relative’s account in August 2008; a history of the trading patterns of Hilton’s relative from 1995; four versions of a memo from group legal services ‘interview with Peter Hilton – trading behaviours’ dated April 9, 2009; internal emails relating to the internal investigation” and an email from the “head of legal” to IOOF’s Managing Director, Chris Kelaher, complaining about a then senior executive’s inadequate response on the investigation which purported to absolve Hilton. See further “Litany of wrongdoings at IOOF included insider trading by senior employee”, *SMH*, 20 June 2015, “IOOF’s boiler room throws customers to the wolves”, *SMH*, 20 June 2015 and “IOOF racks up breaches and errors”, *SMH*, 22 June 2015. And see in particular for (c10) MAU.004.001.0607.
- ii. Further as to (b) and (c)-(c11), conduct of this kind was alleged in detail as part of the December 2014 complaint (pleaded below, IFL.017.001.4615-4635) and IOOF discovered or ought to have discovered such information earlier as part of its investigation into the March 2014 complaint.
- iii. Further as to (c1), that there had been multiple such incidents within IOOF is to be inferred from the following additional matters:
  - A. ASIC commenced inquiries into allegations made against IOOF in July 2015;
  - B. ASIC finalised its inquiries on or by 8 July 2016 and identified a number of concerns relating to IOOF’s compliance arrangements, breach reporting, management of conflicts of

interest, staff trading policy, disclosure, whistleblower management and protection and cyber security;

- C. documents disclosed by IOOF in this proceeding from up to or around March 2014 redact lengthy sections recording compliance, regulatory and breach issues and incidents at IOOF:
1. IOOF Group Compliance Report dated 15 September 2011 [IFL.009.025.0495];
  2. IOOF Group Compliance Report dated 4 June 2012 [IFL.009.054.1055];
  3. IOOF Group Compliance Report dated 7 February 2013 [IFL.009.054.1029];
  4. IOOF Group Compliance Report dated 15 April 2013 [IFL.009.054.1090];
  5. IOOF Group Compliance Report dated 19 July 2013 [IFL.009.054.1113];
  6. IOOF Group Compliance Report dated 16 April 2014 [IFL.006.007.3856];
  7. Breaches Register Summary [IFL.006.024.7512];
  8. Breaches Register Summary [IFL.0600.0070.6115];
  9. Board papers – Human Resources April 2014 report [IFL.006.026.2469];
  10. Breaches Register Summary [IFL.009.005.3142];
  11. Breach Register Summary [IFL.009.026.1596];
  12. Breaches Register Summary [IFL.0302.0037.7617];
  13. Breaches Register Summary [IFL.0302.0053.0871];
  14. Breaches Register Summary [IFL.0600.0070.6054];
  15. Breaches Register Summary dated June 2015 [IFL.0600.0071.4287];
  16. Board minutes dated 26 March 2015 [IFL.006.025.8462].
- iv. Further as to (c1), that these matters were known or ought to have been known by IOOF is to be inferred from the following additional matters:
- A. that some of them were were capable of being identified by ASIC through an investigation of IOOF;
  - B. that some of them were recorded in redacted documents of IOOF;
  - C. that IOOF was, or ought to have been, on alert as to issues from failures of governance, oversight and compliance management as a consequence of the matters in (a) to (c) and the March 2014 complaint;
- v. Further particulars of (c1) will be provided after IOOF has properly made discovery and documents have been obtained from non-parties on subpoena.

vi. ~~For sub-paragraph (d): The~~ There were the following 16 breaches were in IOOF's Pursuit, Sweep, CMT and Optus funds, cf. s 52(2) of the:

A. Australian Executor Trustees

~10 December 2012: Kingston Super Trust non-compliance with RMP (risk management plan)

B. IOOF Investment Management

~13 March 2012: Hobart Unit pricing error (Macquarie Master Balanced Fund)

~1 April 2012: Ibbotson JP Morgan FX forward contracts hedging

~1 June 2012: SMF MPST (Master Pooled Superannuation Industry (Supervision) Act 1993 (Cth); Trust) pricing error RREEF Paladin

~~A. Pursuit — From around 2007 to August 2014, failure to act on the instructions of clients who had invested in the Pursuit investor directed portfolio service.~~

~~B. Sweep — In January 2015, detection of a failure to reinstate the automatic investment plan instructions given by approximately 1,300 Sweep investors, which had a negative impact on the financial returns of those investors.~~

~~C. CMT — Implementation in or around 2011 of a CMT remediation plan which prejudiced new members of TPS Super who were not beneficiaries at the time of an overpayment which gave rise to the remediation plan but nonetheless had their distributions reduced.~~

~~D. Optus — Rejection, on 10 February 2015, of a request that Optus employees be moved from an IOOF fund with a proposed more aggressive investment strategy to an AMP fund.~~

~22 June 2012: Direct debit breach

~25 June 2012: Unit pricing mistake

~8 November 2012: Platinum unit pricing error

~11 January 2013: Perennial Income Focused Trust unit pricing error

~31 January 2013: Investment batch duplication – Bendigo Retail

~17 June 2013: Master PST (Legg Mason) unit pricing error

~19 August 2013: SMF ERF crediting rate error

~26 September 2013: Perennial Multi-Mix Wholesale Prop Share Trust hedging error

C. Questor Financial Services

~25 June 2012: Unit pricing mistake

~21 September 2012: Questor CMT distribution

~1 February 2013: Mercer MSIT tax error in SMF MPST (Master Pooled Superannuation Trust)

~7 June 2013: Master PST Bendigo Pricing April 2013

21. IOOF was aware of the Historical Information for the purposes of r 19.12 of the ASX Listing Rules by:

- (a) 25 March 2014;
- (b) alternatively – a date between 25 March 2014 and 16 April 2014 which is not presently known by the applicant; or
- (c) alternatively – 16 April 2014,

and for the rest of the Relevant Period.

**Particulars**

- i. IOOF's Board received an update in relation to the March 2014 complaint on 25 March 2014: IFL.006.025.9961. By this time, IOOF knew or ought to have known the Historical Information as a result of its investigation.
- ii. Alternatively, the "Research Corrective Action Plan" was settled by 16 April 2014: IFL.006.025.9960. At least by that time, IOOF knew or ought to have known of the Historical Information as its investigation concluded or at least had achieved an important milestone having investigated and progressed to a sufficient extent to have made recommendations in relation to the March 2014 complaint.
- iii. Separately, in his Senate testimony in July 2015 IOOF's Managing Director, Chris Kelaher, said that he was aware of at least some allegations in or about January 2014: see Australia, Senate, *Economics References Committee: Scrutiny of financial advice* (Hansard), 7 July 2015 at p 5.

**E.4 March 2014 Information**

22. Further, while investigating the March 2014 complaint, IOOF knew or ought to have known the following (**March 2014 Information**):

- (a) that the allegations in the March 2014 complaint were true or, alternatively, were substantially true;

**Particulars**

- i. IOOF's "Research Corrective Action Plan" of 16 April 2014 may be taken as confirmation of this fact, on the basis that if the allegations were not true or were not substantially true there would have been no need for the detailed corrective action plan: IFL.006.025.9960. Similarly, IOOF's human resources department reported to the Board in April 2014 that allegations in the March 2014 complaint "were found to be correct": IFL.017.001.0162.
- ii. To the extent that an alternative allegation is made that the allegations in the March 2014 were "substantially true", the substance is by reference to the 16 April 2014 Research Corrective Action Plan, i.e.



those allegations identified and actioned in that document are at least the allegations which were true, thus making the allegations in the March 2014 complaint substantially true.

- iii. For the specific allegation regarding the overstatement of IOOF's model portfolio, the document records IOOF's decision "that outperformance numbers will no longer be produced as representative": item 5(a), p 3, IFL.006.025.9960. The person noted as responsible for this is "P Hilton". Again, if the allegations concerning that model portfolio were not true or, alternatively, substantially true, then IOOF would have continued its model portfolios as they were. Further, that IOOF was aware from March 2014 that errors in methodology had been used in its reported performance figures for IOOF's model portfolio is acknowledged in "IOOF's factual response to allegations in the media and in the Senate" dated 1 August 2015: IFL.017.001.0335.
  - iv. For the specific allegation about selective and preferential treatment being given to some planners and clients, conduct of this kind was alleged in detail as part of the December 2014 complaint (pleaded below, IFL.017.001.4633) and IOOF discovered or ought to have discovered such information earlier as part of its investigation into the March 2014 complaint.
- (b) that the Head of Research, Peter Hilton, had failed to comply with the 2009 First and Final Warning Letter but had not been dismissed or disciplined, as foreshadowed in that letter;
  - (c) that there was inadequate resourcing (technological and human) of the research department:
    - (i) as a critical shared service for IOOF's businesses (including with respect to its role in the dealer advice and product distribution network, the IOOF platform investment menus, the Product Investment Committee and the Investment Committee);
    - (ii) for the services provided by the research department to be used or relied upon in the way in which it was in the conduct of the financial services businesses conducted by the AFSL holders in the IOOF dealer / planner network; and
    - (iii) that to the extent that AFSL holders in the IOOF network relied on the services of the research department in conducting financial services businesses there was a risk that they would not adequately fulfil and may breach their obligations as AFSL holders;
  - (d) that IOOF had not notified the recipients of representations made in relation to its Buy Model of the overstatement of its performance (including its adviser/dealer

network, market analysts and clients) and/or issued a correction in respect of such misrepresentations;

- (e) that the activities of the research department were not in accordance with ASIC Regulatory Guide 79 in relation to research report providers, in particular Part C “Research quality, methodology and transparency”;
- (f) that ASIC had not been notified of:
  - (i) the Historical Information;
  - (ii) the matters in the March 2014 complaint, in particular the matters in subparagraphs 17(a)-17(e) and 17(g) above;
  - (iii) the Head of Research’s failure to comply with his obligatory compliance training;
  - (iv) IOOF’s research department’s activities which were not in accordance with Regulatory Guide 79;
- (g) that the Head of Research, Peter Hilton, had not maintained his skills and knowledge, and was not of good fame and character, to be a responsible manager;
- (h) that IOOF had failed to identify, record and control conflicts of interest;
- (i) that IOOF had inadequate internal controls to monitor and mitigate compliance risks arising as a result, including in respect of ASIC’s expectations in Regulatory Guide 79, within the research department, particularly having regard to the research department’s role in producing reports for dissemination to the IOOF network and in making recommendations to and participating on IOOF’s PICs for the business units in its advice division; ~~and~~
- (j) that IOOF had failed to adequately mitigate an inherent risk in its business (which was a feature of the Roll Up Model) namely that it employed manual or other work arounds or temporary patches to resolve incompatibility between legacy IT systems of its various businesses and IOOF’s IT infrastructure; and
- (k) that its research department was the subject of a review and restructure by IOOF’s executive management team.

#### **Particulars (b)-(jk)**

- i. IOOF knew or ought to have been aware of these matters after investigating the March 2014 complaint and becoming aware, per subparagraph (a) above and its Particulars, that the allegations in it were true or, alternatively, substantially true.

- ii. For IOOF's lack of investment in technology (paragraphs (c) and (j)), this was later noted in the papers for a Risk & Compliance Committee Meeting of 28 July 2014 where, in relation to technology, it was said: "We do not invest in new technology that will support / facilitate the development of new or improved products / services or delivery channels": IFL.019.001.0144.
- iii. For (k) see both (1) "Scandal-plagued IOOF Holdings launches internal review", SMH, 24 June 2015 which notes "IOOF said it had reviewed its advice research division in 2014"; and (2) PWC's report from August 2015: IFL.001.001.0120 at 0131.

23. IOOF was aware of the March 2014 Information for the purposes of r 19.12 of the ASX Listing Rules by:

- (a) 25 March 2014;
- (b) alternatively – a date between 25 March 2014 and 16 April 2014 which is not presently known by the applicant; or
- (c) alternatively – 16 April 2014,

and for the rest of the Relevant Period.

#### Particulars

IOOF's Board received an update in relation to the March 2014 complaint on 25 March 2014: IFL.006.025.9961. By this time, IOOF knew or ought to have known the March 2014 Information. Alternatively, the "Research Corrective Action Plan" was settled by 16 April 2014: IFL.006.025.9960. At least by that time, IOOF knew or ought to have known of the March 2014 Information as its investigation concluded or at least had achieved an important milestone having investigated and progressed to a sufficient extent to have made recommendations in relation to the March 2014 complaint.

#### E.5 Compromised Model Information

24. Because of its awareness of the Historical Information and the March 2014 Information, IOOF also knew or ought to have known that its implementation of the Roll Up Model was compromised in a material way (**Compromised Model Information**).

#### Particulars

- i. Together, the Historical Information and the March 2014 Information revealed that IOOF's business had serious unresolved issues which adversely impacted matters of governance, compliance and operations in its shared services infrastructure which was an important feature of its Roll Up Model. The serious unresolved issues were particularly apparent with respect to the research department but were not limited to the research department and included IT (see paragraphs 22(c) and 22(j) above and their Particulars). The flaws in the shared services infrastructure comprised a material qualification to the manner in which IOOF had represented itself to the market including in relation

to its value and growth based on its purportedly successful exploitation of the Roll Up Model.

- ii. This manifested itself in the research department failing to discharge its role within the IOOF group in a proper way. For example in relation to the Historical Information, on 16 December 2013 IOOF's research department issued recommendations to which a financial planner, Steven Lewis, said in response that he "was wondering if someone from Research could explain why you are recommending we place 50% of our clients' managed fund portfolios into funds that have consistently underperformed their respective Morningstar Benchmarks ... I can't help but feel our Research Department has finally been compromised!!"

25. IOOF was aware of the Compromised Model Information for the purposes of r 19.12 of the ASX Listing Rules by:

- (a) 25 March 2014;
- (b) alternatively – a date between 25 March 2014 and 16 April 2014 which is not presently known by the applicant; or
- (c) alternatively – 16 April 2014,

and for the rest of the Relevant Period.

#### **Particulars**

The Relevant Information arises from the Historical Information and the March 2014 Information and thus was known to IOOF at the same time as that information as pleaded in paragraphs 21 and 23 above.

#### **E.6 Further 'final warning' letter and the December 2014 complaint**

26. Between on or about 16 April 2014 and 1 May 2014, IOOF issued to the Head of Research, Peter Hilton, a "final warning" letter in respect of his conduct (**2014 Final Warning Letter**).

#### **Particulars**

This is foreshadowed in the Research Corrective Action Plan: item 2(b), p 1, IFL.006.025.9960.

27. By the time of issuing the 2014 Final Warning Letter, IOOF had concluded that the Head of Research, Peter Hilton, had engaged in conduct which warranted the issue of a final warning letter.

#### **Particulars**

This follows from the fact that the 2014 Final Warning Letter was issued.

28. IOOF was aware of:

- (a) the 2014 Final Warning Letter; and
- (b) the conduct giving rise to that letter,

for the purposes of r 19.12 of the ASX Listing Rules by, at the latest, the time that IOOF sent that letter.

29. On or about 22 December 2014, an employee of IOOF made a number of allegations to IOOF of serious misconduct within and by IOOF in the form of the letter discovered at IFL.017.001.4615 (December 2014 complaint), including:

- ~~(a) detailed allegations of historic insider trading / front running by the Head of Research, Peter Hilton;~~
- ~~(b) that the Head of Research, Peter Hilton, required subordinates to, and subordinates did, complete his compliance training modules; and~~
- ~~(c) that there had been a material overstatement of model portfolio performance in presentations and materials.~~

#### Particulars

Letter from Chhai Ung to, *inter alia*, Danielle Corcoran and Rob Urwin dated 22 December 2014: IFL.017.001.4615-4635.

30. IOOF was aware of the December 2014 complaint for the purposes of r 19.12 of the ASX Listing Rules from on or about 22 December 2014.
31. Each of the 2014 Final Warning Letter and the December 2014 complaint was consistent with and reinforced IOOF's awareness of:
- (a) the Historical Information;
  - (b) the March 2014 Information; and
  - (c) the Compromised Model Information.
32. By mid-2014 at the latest, IOOF was aware that its advice division businesses conducted under AFSLs were increasingly included in ASIC's surveillance activity.

#### Particulars

Advice Division Report for Risk and Compliance Committee Meeting, 28 July 2014: IFL.019.001.0135 at 0140.

## F. EFFECT OF THE INFORMATION KNOWN TO IOOF

33. ~~Either~~Any or ~~both~~all of the:

(a) ~~Historical Information and;~~

(a1) ~~March 2014 Information taken together;~~ and/or

(b) Compromised Model Information,

constituted information that:

(c) was material to the price or value of IOOF's shares during the Relevant Period;

(d) a reasonable person would have expected to be disclosed to the market during the Relevant Period; and

(e) further, or alternatively, comprised a material qualification to the manner in which IOOF had represented itself to the market as pleaded in paragraph 14 above.

### Particulars

If IOOF had disclosed the Historical Information and March 2014 Information, market participants would have deduced the Compromised Model Information themselves. They would have done so for reasons that will be addressed in the applicant's expert evidence. Alternatively, if IOOF had disclosed the Compromised Model Information with an explanation that it arose from (described in summary form) the Historical Information and March 2014 Information, then again market participants would have deduced that IOOF's repeated representations as to its growth and value based on its successful exploitation of the Roll Up Model were overstated. However, by not disclosing this information in one or other such form, IOOF withheld material price-sensitive information that a reasonable person would have expected to be disclosed.

## G. ONGOING INFORMATION

34. Throughout the Relevant Period, IOOF's awareness of each of the Historical Information, March 2014 Information and Compromised Model Information was:

(a) continuing;

(b) not remediated; and

(c) not disclosed to the market.

## H. DISCLOSURE OF THE INFORMATION KNOWN TO IOOF

35. From in or about 20 June 2015 to 7 July 2015:

(a) the Historical Information and March 2014 Information taken together were substantially disclosed publicly;

(b) further, or in the alternative, the Compromised Model Information was:

- (i) disclosed publicly; or
- (ii) alternatively, discernible from public disclosures,

in media reports in the Fairfax Media press and in statements by IOOF's Managing Director when appearing before the Australian Senate Economics References Committee.

### **Particulars**

- i. The principal sources of these revelations are listed in **Annexure B**.
- ii. For each source in Annexure B, particular disclosures of the Historical Information, March 2014 Information and/or Compromised Model Information, as applicable, are identified.
- iii. The Historical Information and March 2014 Information were "substantially" disclosed because, so far as the applicant is presently aware, there was no disclosure of the parts of the March 2014 complaint pleaded in paragraphs 17(h) and 17(i) above.
- iv. These particulars may be supplemented after expert evidence.

- 36. The revelations pleaded in paragraph 35 above caused a decline in IOOF's share price between 19 June 2015 and 7 July 2015.
- 37. On 22 June 2015, being the first trading day after the first of the revelations, IOOF's closing share price fell by 13.32% from its last closing price on 19 June 2015.
- 38. On 7 July 2015, being the day on which Christopher Kelaher appeared before the Senate Committee, IOOF's closing share price fell by 3.27% from its last closing price of 6 July 2015.

## **I. CONTRAVENING CONDUCT**

### **I.1 Continuous disclosure**

- 39. During the Relevant Period, as a result of the conduct pleaded in Parts E-H above, ~~each~~ any or all of the:
  - (a) ~~Historical Information and;~~
  - (a1) March 2014 Information taken together; and/or
  - (b) Compromised Model Information,

constituted material price- or value-sensitive information of which IOOF was or ought to have been aware and which IOOF failed to disclose to the market in accordance with r 3.1 of the ASX Listing Rules and s 674 of the Corporations Act, causing loss and damage to the applicant and Group Members.

## I.2 Misleading or deceptive conduct

40. Further, or alternatively, in the context of IOOF's statements to the ASX pleaded in paragraph 14, during the Relevant Period IOOF engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL by:

- (a) failing, in the circumstances, to disclose the:
- (i) ~~Historical Information and March 2014 Information taken together; and/or;~~  
(iA) March 2014 Information; and/or
  - (ii) Compromised Model Information,
- in order to correct the market's misapprehension about IOOF's business and/or the success of its implementation of the Roll Up Model; and

- (b) further, or alternatively – making the statements pleaded in paragraph 14 which were not qualified by reference to the:
- (i) ~~Historical Information and March 2014 Information taken together; and/or;~~  
(iA) March 2014 Information; and/or
  - (ii) Compromised Model Information;

such that as a result of (a) and/or (b) the applicant and Group Members are entitled to compensation for the loss and damage suffered by them pursuant to s 1041I(1) of the Corporations Act, s 12GF(1) of the ASIC Act and/or s 236 of the ACL.

41. Further, or alternatively, in light of the:

- (a) ~~Historical Information and March 2014 Information taken together; and/or;~~  
(a1) March 2014 Information; and/or
- (b) Compromised Model Information,

IOOF engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL by making the following statements in its ASX announcements, which statements were false and/or to the extent the statements were statements of opinion they were made without a reasonable basis:

- (c) on 22 June 2015:



- (i) “Following publication of a number of articles in the Fairfax media, it is appropriate for IOOF to note its strong compliance record and that it takes seriously any suggestion that its high standards are not being met in its different businesses.”
  - (ii) “All the issues raised [in Fairfax media articles], historic or recent, have been dealt with appropriately at the time; this includes, where relevant, thorough internal and board review, notifying industry regulators, ongoing review of compliance measures and controls, employee education and independent investigations”; and/or
- (d) on 24 June 2015:

- (i) "As noted in IOOF's statement of 22 June 2015, the company is committed to ensuring it meets the highest standard of governance and compliance in its different businesses.

In accordance with this approach, IOOF has engaged PwC to immediately commence an independent review of the IOOF Group regulatory breach reporting policy and procedures and the control environment within our Research division. This will be a thorough review and it is our intention to inform ASIC and APRA of the outcomes."

- (ii) “Most of the matters raised in the Fairfax press are historic in nature and IOOF believes all these issues have been addressed, including where relevant, thorough internal and board review, notifying industry regulators, ongoing review of compliance measures and controls, employee education and independent investigations. These initiatives have, where necessary, led to enhancement of processes and procedures and sought to improve the client experience and meet expected standards of compliance”,

such that the applicant and Group Members are entitled to compensation for the loss and damage suffered by them pursuant to s 1041I(1) of the Corporations Act, s 12GF(1) of the ASIC Act and/or s 236 of the ACL.

## **J. LOSS AND DAMAGE**

42. During the Relevant Period, if IOOF had not engaged in the contravening conduct pleaded in Part I above by disclosing and/or qualifying its statements by reference to:

- (a) ~~the Historical Information and March 2014 Information taken together; and/or;~~

(a1) March 2014 Information; and/or

(b) the Compromised Model Information,

the market price of IOOF's shares would have been lower.

**Particulars**

The multiple of earnings that the market previously awarded IOOF during the Relevant Period would have been lower. This will be addressed in the applicant and Group Members' expert evidence in relation to quantum.

43. The applicant and Group Members have suffered loss and damage.

**Particulars**

The applicant and Group Members suffered market-based loss and damage, namely either:

- (a) no transaction – had IOOF not engaged in contravening conduct, a shareholder would not have bought any shares in IOOF and should have his, her or its purchase price refunded;
- (b) *Dura*<sup>1</sup> – the shareholder's loss is the drop in IOOF's share price that can be attributed to the corrective disclosure of IOOF's contravening conduct;
- (c) true value / *Potts v Miller*<sup>2</sup> – as a result of IOOF's contravening conduct, the company's share price was artificially inflated and each shareholder's loss is the price paid less the true value of the shares at the time of purchase; or
- (d) direct reliance – as a result of IOOF's contravening conduct, a shareholder invested in shares in IOOF and forewent other investment opportunities that would have proven successful and for which the shareholder should be compensated.

44. The applicant and Group Members claim the relief sought in the Originating Application.

Date: ~~15 May 2020~~ 23 November 2021



Signed by Craig Allsopp  
Lawyer for the applicant

This pleading was prepared by ~~Elizabeth Cheeseman SC~~ Michael Hodge QC and Caspar Conde with the assistance of Shine Lawyers.

<sup>1</sup> *Dura Pharmaceuticals Inc. v Broudo*, 544 US 335 (2005).

<sup>2</sup> *Potts v Miller* (1940) 64 CLR 282.

## ANNEXURE A

Examples of IOOF's statements (particulars to paragraph 14)

Date	Document	Statements
25 Feb 2014	Appendix 4D and interim financial report	<p><b>pp 2-3:</b> "As an incumbent participant, we seek to grow our Funds Under Management, Administration, Advice and Supervision (FUMAS) at a rate which exceeds those of our competitors. In doing so, the portion of our revenue net of direct costs (gross margin) which is levied on asset balances may reasonably be expected to rise proportionately with FUMAS. This proportionate rise may be affected by the impact of differentiated product pricing and competitive pressure on management fee rates. In conjunction, we seek to leverage a cost base which is largely fixed relative to the scale of our FUMAS.</p> <p>The IOOF Group's future FUMAS growth will be underpinned by organic and acquisition initiatives. Organic growth will be advanced through:</p> <ul style="list-style-type: none"> <li>• increasing brand and product awareness to increase revenue;</li> <li>• enhancing the adviser and fund member experience through continued technology development and experienced knowledgeable support staff;</li> <li>• establishing skilled teams and robust analytical processes to enhance the prospect of achieving above benchmark performance in investment management; and</li> <li>• continuous improvement in process efficiency to minimise operating costs.</li> </ul> <p>The IOOF Group has completed several acquisitions in previous years. This experience will be utilised to continue to pursue acquisitions within the Wealth Management sector on an opportunistic basis. Acquisitions will only be considered where they present a sound strategic fit with existing operations and are priced reasonably for the expected value accretion to shareholders. The funding of acquisitions will be considered on a case by case basis taking into account the relative cost of available funding sources and the impact on balance sheet structure overall."</p>
25 Feb 2014	Media release	<p><b>p 1:</b> "IOOF's philosophy over the past 5 years has been to focus on stimulating further organic growth. Each of our operating segments is performing strongly, particularly our platform administration business."</p> <p><b>p 2:</b> "IOOF's integrated service offering, our partnership with quality advisers and strong brand awareness are generating these strong net flows. In fact, since the launch of our awareness campaign in September 2011, and the subsequent addition of television and radio advertisements in 2013, we have seen a marked improvement in our net flows. Importantly, this campaign has been implemented in a cost effective manner which makes the outcome more pleasing.</p> <p>...</p> <p>With a strong balance sheet and unparalleled record in mergers, acquisitions and business integration, the experienced IOOF management team continues to assess opportunities across each of our four operating segments.</p> <p>The pursuit of organic, sales led growth, expansion via value accretive acquisitions and disciplined cost control has underpinned the growth of IOOF in recent times and will continue into the future."</p>

Date	Document	Statements
25 Feb 2014	Investor presentation	<p><b>p 2:</b> “Strong pipeline of M&amp;A opportunities”</p> <p><b>p 5:</b> “Integrated service offering and strong brand awareness generate net flows”</p> <p><b>p 22:</b> “Organic growth</p> <ul style="list-style-type: none"> <li>• Investment in IOOF brand</li> <li>• Focus on client service a differentiator</li> <li>• Partnering with quality advisers</li> </ul> <p>Productivity</p> <ul style="list-style-type: none"> <li>• Disciplined cost control</li> <li>• Efficiencies through scale, synergies and continuing technology developments &amp; enhancements</li> </ul> <p>Growth by acquisition</p> <ul style="list-style-type: none"> <li>• Look for growth and value based acquisitions across the value chain</li> <li>• Consistent delivery of timely value accretion”.</li> </ul>
17 Apr 2014	ASX release: “FUMAS as at 31 March 2014”	<p><b>p 1:</b> “IOOF Holdings Ltd (IOOF) advises that its FUMA (FUMAS excluding Supervision) as at 31 March 2014 was \$94.5 billion. This compares favourably to IOOF’s FUMA as at 31 December 2013 of \$94.1 billion. Including supervised funds, FUMAS was stable at \$123.9 billion.</p> <p>The sustained positive flows performance in IOOF’s core platform segment reaffirms the success of IOOF’s organic growth strategy. IOOF has now experienced positive net flows to platforms in 7 of the last 8 quarters.”</p>
16 May 2014	Announcement of SFG scheme	<p><b>p 2:</b> “This transaction is a continuation of IOOF’s ongoing, long-term strategy of pursuing value accretive acquisitions.”</p>
16 May 2014	Investor presentation	<p><b>p 5:</b> “Enhanced scale</p> <ul style="list-style-type: none"> <li>• Positions IOOF as Australia’s 3<sup>rd</sup> largest advice business by FUA</li> <li>• 19% increase in total advisers to ~1,120</li> <li>• IOOF’s due diligence of SFGA has confirmed meaningful synergies, expected to exceed \$20m per annum pre-tax by FY 2016”</li> </ul> <p><b>p 12:</b> “Significant synergies expected through the rationalisation of overlapping cost bases</p> <ul style="list-style-type: none"> <li>• Removing duplicate support infrastructure and ASX listing structure</li> <li>• Centralising and consolidated shared services functions”</li> </ul> <p><b>p 13:</b> “Consistent with IOOF’s stated strategy of growth through value accretive acquisitions and its vertically integrated wealth management model”.</p>
22 Aug 2014	Full Year Statutory Accounts and Appendix 4E	<p><b>pp 2-3:</b> “As an incumbent participant, we seek to grow our Funds Under Management, Administration, Advice and Supervision (FUMAS) at a rate which exceeds those of our competitors. In doing so, the portion of our revenue net of direct costs (gross margin) which is levied on asset balances may reasonably be expected to rise proportionately with FUMAS. This proportionate rise may be affected by the impact of differentiated product pricing and competitive pressure on management fee rates. In conjunction, we</p>

Date	Document	Statements
		<p>seek to leverage a cost base which is largely fixed relative to the scale of our FUMAS.</p> <p>The IOOF Group's future FUMAS growth will be underpinned by organic and acquisition initiatives. Organic growth will be advanced through:</p> <ul style="list-style-type: none"> <li>• increasing brand and product awareness to increase revenue;</li> <li>• enhancing the adviser and fund member experience through continued technology development and experienced knowledgeable support staff;</li> <li>• establishing skilled teams and robust analytical processes to enhance the prospect of achieving above benchmark performance in investment management; and</li> <li>• continuous improvement in process efficiency to minimise operating costs.</li> </ul> <p>IOOF also has a long-term strategy of pursuing growth through acquisitions and has completed several acquisitions in previous years. IOOF will continue to pursue acquisitions within the Wealth Management sector on an opportunistic basis. However acquisitions will only be considered where they present a logical strategic fit with existing operations and are priced reasonably for the expected value accretion to shareholders. The funding of acquisitions will be considered on a case by case basis taking into account the relative cost of available funding sources and the impact on balance sheet structure overall.”</p>
22 Aug 2014	Media release	<p><b>p 2:</b> “IOOF’s increased scale following the acquisition of SFG Australia in early August, creates opportunities for the group and accelerates our ability for future growth.</p> <p>This important acquisition, combined with a higher starting base for FUMA in this financial year provides the solid platform IOOF requires for continued growth.”</p>
22 Aug 2014	Investor presentation	<p><b>p 3:</b> “Increased scale presents opportunities for further integration, efficiencies and growth”</p> <p><b>p 7:</b> “Services and products are more cost efficient – stable net operating margin with increasing FUMA drives increased profitability”</p> <p><b>p 31:</b> “Outlook</p> <ul style="list-style-type: none"> <li>• Further increase in scale creates opportunities and accelerates investment in future growth</li> <li>• Efficiency remains a key part of our strategy due to the expectation of a stable regulatory environment for next two years</li> <li>• Strong balance sheet available for further acquisitions</li> <li>• Enhanced consumer and adviser confidence points to increasing fund inflows</li> <li>• Higher FUMA starting base provides a solid platform for continued growth in performance”.</li> </ul>
24 Oct 2014	Annual Report to shareholders	<p><b>p 6:</b> “The company’s success has been underpinned by our strategy of achieving sustainable organic growth by increasing the sales of our existing products and services while at the same time pursuing targeted, value accretive acquisitions.”</p> <p><b>p 7:</b> “[T]he growth strategy we adopted in 2009, where our focus has been on the pursuit of organic, sales led growth, expansion via value accretive acquisitions and disciplined cost control has</p>

Date	Document	Statements
		<p>underpinned the growth of IOOF in recent times and will continue into the future.”</p> <p><b>p 24:</b> “As an incumbent participant, we seek to grow our Funds Under Management, Administration, Advice and Supervision (FUMAS) at a rate which exceeds those of our competitors. In doing so, the portion of our revenue net of direct costs (gross margin) which is levied on asset balances may reasonably be expected to rise proportionately with FUMAS. This proportionate rise may be affected by the impact of differentiated product pricing and competitive pressure on management fee rates. In conjunction, we seek to leverage a cost base which is largely fixed relative to the scale of our FUMAS.</p> <p>The IOOF Group’s future FUMAS growth will be underpinned by organic and acquisition initiatives. Organic growth will be advanced through:</p> <ul style="list-style-type: none"> <li>• increasing brand and product awareness to increase revenue;</li> <li>• enhancing the adviser and fund member experience through continued technology development and experienced knowledgeable support staff;</li> <li>• establishing skilled teams and robust analytical processes to enhance the prospect of achieving above benchmark performance in investment management; and</li> <li>• continuous improvement in process efficiency to minimise operating costs.</li> </ul> <p>IOOF also has a long-term strategy of pursuing growth through acquisitions and has completed several acquisitions in previous years. IOOF will continue to pursue acquisitions within the Wealth Management sector on an opportunistic basis. However acquisitions will only be considered where they present a logical strategic fit with existing operations and are priced reasonably for the expected value accretion to shareholders. The funding of acquisitions will be considered on a case by case basis taking into account the relative cost of available funding sources and the impact on balance sheet structure overall.”</p> <p><b>p 26:</b> “The acquisition of SFGA will also carry integration and cultural alignment risk. IOOF will manage this risk through comprehensive integration planning and collaborative implementation led by experienced senior executives and managers from both parties.”</p>
25 Nov 2014	Chairman’s Address to Shareholders	<p><b>p 2:</b> “Notwithstanding these changes in our balance sheet, profitability and diversity of financial services offerings, I am pleased to say that there is one thing which has not changed during these ten years – and that is our <u>culture</u>.” (original emphasis)</p> <p><b>p 13:</b> “The company’s success has been underpinned by our strategy of achieving sustainable organic growth by increasing the sales of our existing products and services while at the same time pursuing targeted, value accretive acquisitions.”</p> <p><b>p 14:</b> “Over the 10 years since the listing of IOOF Holdings Limited, as I stated at the outset, many changes have taken place within the company, but one thing has remained constant – our goal of assisting people to create and achieve financial independence through dedication to our members while, at the same time, protecting and enhancing the interests of our shareholders.”</p>
25 Nov 2014	Managing Director’s	<p><b>p 1:</b> “The record result your company has achieved in the last financial year can be attributed to the effectiveness of IOOF’s growth strategy that we adopted in 2009. It focuses on the</p>

Date	Document	Statements
	Address to AGM	<p>increased use of our existing products, targeting an increased market share of net flows and growth achieved through acquisition. This strategic focus has underpinned the growth of IOOF in recent times and will continue on into the future.”</p> <p><b>p 3:</b> “On a standalone basis, IOOF’s flagship platforms (our actively marketed platforms), experienced record net funds flow growth of \$1.4b, a 65% increase on the previous financial year. When all of IOOF’s platforms are included, total platform net flows increased by \$1.0b. This is a milestone for IOOF to achieve such a figure within a financial year, and also represents the third consecutive half of total platform positive net flows.</p> <p>IOOF’s integrated service offering, our partnership with quality advisers and strong brand awareness are generating these strong net flows. The result is a reflection of the investment in time, expertise and branding.”</p>
26 Feb 2015	Half Yearly Report and Accounts	<p><b>pp 2-3:</b> “As an incumbent participant, we seek to grow our Funds Under Management, Administration, Advice and Supervision (FUMAS) at a rate which exceeds those of our competitors. In doing so, the portion of our revenue net of direct costs (gross margin) which is levied on asset balances may reasonably be expected to rise proportionately with FUMAS. This proportionate rise may be affected by the impact of differentiated product pricing and competitive pressure on management fee rates. In conjunction, we seek to leverage a cost base which is largely fixed relative to the scale of our FUMAS.</p> <p>The IOOF Group's future FUMAS growth will be underpinned by organic and acquisition initiatives. Organic growth will be advanced through:</p> <ul style="list-style-type: none"> <li>• increasing brand and product awareness to increase revenue;</li> <li>• enhancing the adviser and fund member experience through continued technology development and experienced knowledgeable support staff;</li> <li>• establishing skilled teams and robust analytical processes to enhance the prospect of achieving above benchmark performance in investment management; and</li> <li>• continuous improvement in process efficiency to minimise operating costs.</li> </ul> <p>IOOF also has a long-term strategy of pursuing growth through acquisitions and has completed several acquisitions in previous years. IOOF will continue to pursue acquisitions within the Wealth Management sector on an opportunistic basis. However acquisitions will only be considered where they present a logical strategic fit with existing operations and are priced reasonably for the expected value accretion to shareholders. The funding of acquisitions will be considered on a case by case basis taking into account the relative cost of available funding sources and the impact on balance sheet structure overall.”</p> <p><b>p 4:</b> “The acquisition of SFG also carries integration and cultural alignment risk. IOOF will manage this risk through comprehensive integration planning and collaborative implementation led by experienced senior executives and managers from both parties.”</p>
26 Feb 2015	Investor presentation	<p><b>p 3:</b> “Driving enhanced advisor productivity through Best Advice program”</p> <p><b>p 25:</b> “Areas for growth Organic growth</p>

Date	Document	Statements
		<ul style="list-style-type: none"> <li>• Focus on client service as a differentiator</li> <li>• Partnering with quality advisers</li> <li>• Attractive growth opportunities in trustee services</li> </ul> <p>Productivity</p> <ul style="list-style-type: none"> <li>• Disciplined cost control</li> <li>• Efficiencies through scale, synergies and continuing technology developments &amp; enhancements</li> </ul> <p>Accretive acquisition</p> <ul style="list-style-type: none"> <li>• Look for growth and valued [scil. value] based acquisitions across the value chain</li> <li>• Consistent delivery of timely value accretion”</li> </ul> <p><b>p 27:</b> “Best Advice Program aims:</p> <ul style="list-style-type: none"> <li>• Support quality advice outcomes for clients</li> <li>• Champion efficiency throughout advice businesses</li> <li>• Standardise business processes and deliverables</li> <li>• Enhance adviser productivity and profitability”</li> </ul> <p><b>p 29:</b> “Focus on productivity and infrastructure to ensure advice, capabilities and services facilitate future organic growth”.</p>
26 Feb 2015	Media release	<p><b>p 1:</b> “This record interim result represents another strong start to the year for IOOF. The inclusion of SFG during the period has contributed \$16.3m to IOOF’s result and has been immediately earnings per share accretive. The benefits of IOOF’s additional scale following this key acquisition are also immediately evident.”</p> <p><b>p 2:</b> “The scale IOOF has achieved in recent years through strong organic and acquisition growth provides a perfect foundation for the future. This consistent strategic approach, coupled with disciplined management of IOOF’s cost base, will ensure we remain a highly successful business and provide value for all stakeholders.”</p>



## ANNEXURE B

### Sources of revelations (particulars to paragraph 35)

1. **“Litany of wrongdoings at IOOF included insider trading by senior employee”, *Sydney Morning Herald*, 20 June 2015, 12:27 am**, which disclosed *inter alia*:
  - (a) improper share trading by Peter Hilton;
  - (b) non-disclosure to ASIC of that improper share trading;
  - (c) that IOOF had transformed “through numerous acquisitions ... into a financial advice behemoth with \$150 billion of Australians’ retirement savings in its care, earning the company the nickname ‘Pac Man’”;
  - (d) that Peter Hilton was issued a first and final warning letter in 2009;
  - (e) that Peter Hilton was issued a final warning letter in 2014;
  - (f) that Peter Hilton had instructed a direct report to complete Kaplan and eLearning training on his behalf;
  - (g) that IOOF had misrepresented the outperformance numbers of funds, which numbers would no longer be produce as representative;
  - (h) that there was a “scandal inside IOOF’s research division – the engine room of the financial group”.
  
2. **“IOOF’s boiler room throws customers to the wolves”, *Sydney Morning Herald*, 20 June 2015, 12:38 pm**, which disclosed *inter alia*:
  - (a) a complaint from a senior equities analyst in or about late December 2014 to Rob Urwin;
  - (b) that the senior equities analyst was asked to share price-sensitive information with planners ahead of release of that information in the form of a research report;
  - (c) that Rob Urwin had an extensive file on Peter Hilton detailing historical misconduct;
  - (d) that IOOF since its listing in 2004 “had a reputation as a serial acquirer of businesses”, with an “appetite for hoovering up funds management businesses then slashing costs” earning it the nickname “Pac Man” and creating “one of the largest networks of financial advisers in the country”;
  - (e) that IOOF’s research division provided research “for the group’s 1120-strong financial planning network” with its reports “relied on by the planners to spruik products to the group’s 650,000 clients”;
  - (f) that IOOF had a file dating back to 2009 which included allegations of improper share trading;
  - (g) that Peter Hilton was issued a first and final warning letter in 2009;
  - (h) that a 2014 research corrective action plan identified continuing problems in the research department, including breach of password access and that Peter Hilton would be issued a final warning letter;
  - (i) that Peter Hilton had instructed a direct report to complete Kaplan and eLearning training on his behalf;
  - (j) that IOOF had misrepresented the outperformance numbers of funds, which numbers would no longer be produce as representative;
  - (k) that performance figures “are used in presentations, in reports and to benchmark a fund against other funds, and are used by financial advisers to attract clients to the funds”;
  - (l) that by the time of the December 2014 complaint, IOOF was already aware of the alleged misconduct the subject of that complaint;
  - (m) that IOOF had “arcane” systems and had noted internally “We do not invest in new technology that will support / facilitate the development of new or improved products / services or delivery channels”;

- (n) that the research department had recommended substandard investments which was complained about by one planner, who wrote “I ... was wondering if someone from Research could explain why you are recommending we place 50% of our clients’ managed fund portfolios into funds that have consistently underperformed their respective Morningstar Benchmarks ... I can’t help but feel our Research Department has finally been compromised”;
  - (o) that IOOF financial planning subsidiaries had had “run-ins with ASIC over the years”;
  - (p) that IOOF had refused to answer specific questions pertaining to the information referred to in the newspaper article.
3. **“IOOF scandal puts spotlight on vertical integration”, *Australian Financial Review*, 21 June 2015, 3:07 pm**, which disclosed *inter alia*:
- (a) that there was a “scandal” at IOOF “involving claims of insider trading, front running and ‘misrepresentation’ of performance numbers [which] raises issues about culture and the insidiousness of vertical integration”;
  - (b) that the *Australian Financial Review* had seen “Internal emails and documents ... [which] reveal breaches and errors in unit pricing in some of IOOF’s cash management trusts”;
  - (c) that distributions had been diluted to clients to compensate for past overpayments, none of which had been disclosed;
  - (d) that an IOOF Risk and Compliance Committee document had noted: “We do not invest in new technology that will support / facilitate the development of new or improved products / services or delivery channels”;
  - (e) that IOOF’s business model had involved a “merger frenzy” which had “created a financial juggernaut with 650,000 customers and a network of almost 1200 financial planners” which had “created the challenge of trying to marry a hotchpotch of technologies, platforms, dealer groups – both aligned and owned by IOOF – and different cultures”, whilst at the same time “costs have been slashed to help boost profit margins – and bonuses”;
  - (f) that a senior member of staff had been investigated by IOOF in 2009 over suspicious trading and “The matter was handled internally rather than by ASIC”;
  - (g) that a first and final warning letter was issued in 2009;
  - (h) that IOOF’s compliance reports “reveal investigations into possible front running, evidence of training and compliance cheating and the misrepresentation of ‘out performance’ numbers”;
  - (i) that IOOF had “problems with vertical integration”, evident in a complaint from one adviser “I ... was wondering if someone from Research could explain why you are recommending we place 50% of our clients’ managed fund portfolios into funds that have consistently underperformed their respective Morningstar Benchmarks ... I can’t help but feel our Research Department has finally been compromised”;
  - (j) that IOOF had refused to answer specific questions pertaining to the information referred to in the newspaper article.
4. **“IOOF’s scandal sparks calls for royal commission”, *Sydney Morning Herald*, 22 June 2015, 12:15 am**, which disclosed *inter alia*:
- (a) that IOOF “is facing allegations of misconduct, insider trading, front running, cheating by senior staff and has misrepresented performance numbers on its funds”;
  - (b) that IOOF had failed to notify ASIC of serious misconduct of which it was aware;
  - (c) that IOOF’s “cash management trust division is plagued by regulatory breaches and unit pricing errors that have led to some clients receiving distributions that are too high, diluting the distributions to other customers in the division”;
  - (d) that IOOF had refused to answer specific questions pertaining to the information referred to in the newspaper article.
5. **“IOOF racks up breaches and errors”, *Sydney Morning Herald*, 22 June 2015, 8:16 pm**, which disclosed *inter alia* that IOOF had recorded various breaches and unit pricing areas within its cash management funds arm in 2012 and 2013.

6. **“IOOF shares plunge as regulator moves”, *Sydney Morning Herald*, 23 June 2015, 1:40 am**, which disclosed *inter alia*:
- (a) that there were extant allegations against IOOF including “insider trading, suspected front-running, the misrepresentation of performance figures and cheating on compliance and training exams”;
  - (b) that many matters were dealt with “in-house rather than having [been] notified [to] ASIC”;
  - (c) that there were “further serious issues within IOOF, including the quality of its IT systems and several breaches and unit pricing errors within its cash management arm”
  - (d) that IOOF had refused to answer specific questions pertaining to the information referred to in the newspaper article.
7. **“IOOF head of advice research Peter Hilton ‘on leave’ as more whistleblowers come forward”, *Sydney Morning Herald*, 23 June 2015, 12:14 pm**, which disclosed *inter alia*:
- (a) that Peter Hilton was “on leave until further notice”;
  - (b) that Peter Hilton “was at the centre of allegations getting staff to cheat on compliance and training modules on his behalf and an internal investigation into possible front running on behalf of a relative”;
  - (c) that Peter Hilton received a final warning in 2009 and another final warning in 2014 for a password breach;
  - (d) that IOOF had found in an internal investigation that Peter Hilton “had instructed direct reports to complete his Kaplan and compulsory e-training modules”;
  - (e) that the Managing Director of IOOF, Chris Kelaher, had sent an internal email at IOOF which stated that “The incidents were isolated and are not reflective of the behaviour of our employees or advisers”.
8. **“IOOF head of advice research on leave as company faces prospect of class action”, *Sydney Morning Herald*, 23 June 2015, 7:39 pm**, which disclosed *inter alia*:
- (a) that the Managing Director of IOOF, Chris Kelaher, had acknowledged the incidents in an internal email at IOOF which stated that “The incidents were isolated and are not reflective of the behaviour of our employees or advisers”;
  - (b) that “Several internal whistleblowers have come forward to Fairfax Media to shine a light on IOOF’s culture”.
9. **“Scandal-plagued IOOF Holdings launches internal review”, *Sydney Morning Herald*, 24 June 2015, 10:27 am**, which disclosed *inter alia*:
- (a) that IOOF had appointed an adviser to conduct a review of its “misconduct record”;
  - (b) that the move followed revelations “of serious misconduct by senior staff including insider trading, front-running, misrepresentation of performance figures, and cheating on training and compliance exams”;
  - (c) that Fairfax Media had seen “a cache of internal documents”, including “a breach report form mid-2014”, which “shone a light on IOOF’s questionable compliance record and decision to keep some of the compliance breaches in house instead of reporting them to the corporate regulator”;
  - (d) that a “‘research corrective action plan’ written in mid 2014 refers to Hilton instructing a direct report to complete Kaplan training on his behalf”, and “also refers to ‘misrepresentation of performance numbers’”;
  - (e) that IOOF had described the misconduct allegations as historic in nature.
10. **“The ‘Ctrl C’, ‘Ctrl V’ team: More issues raised about IOOF’s research division”, *Sydney Morning Herald*, 26 June 2015, 2:22 pm**, which disclosed *inter alia*:
- (a) that IOOF ran its research division “on the ‘smell of an oily rag’, earning its team the nickname among advisers as the ‘Ctrl C, Ctrl V’ team”;
  - (b) that “For years, it has been IOOF policy to use the majority of the content in research notes from JPMorgan in IOOF’s research reports”;

- (c) that the small team of analysts in research “are expected to produce research for up to 100 stocks each and thousands of managed funds”;
- (d) that Fairfax Media, in addition to the allegations in its earlier reports, had “now uncovered other issues with IOOF’s research advice division”;
- (e) that official complaints from staff included “‘bullying, harassment and isolation’, misrepresentation of performance figures, getting junior staff to complete training on behalf of Hilton and potential plagiarism breaches”;
- (f) that staff had complained in 2014 about “using research, modelling and financial estimates from another source, then changing the recommendation without a basis for the change”;
- (g) that key financial planners within the IOOF network were complaining about unanswered inconsistencies in the price targets for securities;
- (h) that although research reports “are generally produced by analysts who can spend weeks poring over company documents, government data, site tours, presentations, talking to competitors and a range of other sources to form a view on whether a particular company is a good or bad investment”, in “IOOF’s case, the vast majority of the content in the research notes originates from JPMorgan’s notes”;
- (i) that Fairfax Media had “seen internal documents showing IOOF changes the recommendations from the JPMorgan and Ord Minnett notes which are sometimes inconsistent with the financial estimates and modelling”;
- (j) that IOOF had in March 2014 “actioned a plagiarism policy” to ensure compliance with ASIC Regulatory Guide 79, but this did not happen.

11. **“IOOF research division under fire over report copying”, *Sydney Morning Herald*, 27 June 2015, 12:15 am**, which disclosed *inter alia*:

- (a) that despite being a core service, “the research division is run leanly – too leanly say many who have worked there – with a few analysts covering more than 300 listed equities and even fewer analysts covering thousands of managed funds”;
- (b) that IOOF’s research division “is at the centre of misconduct allegations” where an “investigation by Fairfax Media, based on hundreds of documents and testimony of several whistleblowers, has uncovered incidents including insider trading, potential front running, cheating on exams and inaccurate performance figures”;
- (c) that some of IOOF’s research recommendations “appear to lack a reasonable basis and don’t fit with the ratings system and raise issues about the breach of regulatory guidelines”;
- (d) that the research division “has no share register to track conflicts of interest among analysts and they are not compliant with relevant standards governing the provision of advice”;
- (e) that “Documents in 2014 also highlight bullying, harassment and isolation”;
- (f) that IOOF “staff worked gruelling hours, particularly during profit season”, with one former employee quoted as saying “We were supposed to cover all these companies in one day, sometimes 10 in one day during results season” which “meant sitting in on a conference call, writing and formatting”;
- (g) that as a result, “What sat uncomfortably with the analysts was they didn’t have time to fully understand the companies they were writing about”;
- (h) that IOOF had “used the same financial estimates and modelling from JPMorgan and Ord Minnett” but reached “different stock recommendations”;
- (i) that Fairfax Media had reviewed a sample of research reports and found the complaints about unattributed copying and unexplained changes to investment recommendations to be substantiated;
- (j) that an analyst in research was “called up by planners for any changes to stock recommendations before reports were released”, which the analyst believed “was dangerously close to front running” and “It was like the IOOF financial planning network had become conditioned to expect front running research”;

- (k) that Rob Urwin had said in December 2014 when told of complaints about Peter Hilton's behaviour: "Not this again ... He's up to that again? Next time he tells you to do front running just tell him it's insider trading and illegal. He'll stop."
12. **Australia, Senate, *Economics References Committee: Scrutiny of financial advice (Hansard)*, 7 July 2015**, which disclosed *inter alia*:
- (a) at p 1 – that the issues raised "had all been identified internally" and "identified for investigation by the company's compliance team through the ordinary course of their duties";
  - (b) at p 2 – that IOOF's "acquisition strategy over the years ... has also thrown many challenges in respect of: merging IT systems; internal policies and protocols; and, most importantly, creating a single culture among staff coming from often diverse and formerly competitive organisations";
  - (c) at p 2 – that IOOF was "restructuring the research group";
  - (d) at p 4 – that early in 2014 "the issues of sharing passwords and no asset register being maintained in the research group were raised";
  - (e) at pp 5, 13 and 19 – that Peter Hilton had received multiple first and final warning letters and this was possible under IOOF's procedures because "a first and final warning in relation to different conduct is not cumulative" (p 5);
  - (f) at p 5 – that Chris Kelaher was aware of front running allegations in research from January 2014;
  - (g) at p 6 – that there were allegations of "frontrunning, insider trading, misrepresentation of performance figures, unit pricing errors, faulty research reports, and juniors told to cheat on training and compliance exams on behalf of their boss";
  - (h) at p 8 – that, in the view of the Chair of the Senate committee, PwC's report "reeks of a whitewash" because PwC had not spoken with the relevant complainant / whistle blower;
  - (i) at p 10 – that Chris Kelaher was aware of the shared passwords and plagiarism allegations in early 2014;
  - (j) at p 10 – that the Chair of the Senate Committee possessed a document with "58 separate examples of allegations of frontrunning by IOOF" where "The last one relates to December 2014 and they go as far back as 2009";
  - (k) at p 12 – that IOOF had not always been compliant with ASIC Regulatory Guide 146;
  - (l) at p 12 – that an employee, Edward Youds, was accused of insider trading and will donate the proceeds of that trading to charity but IOOF took no further action, including any report to ASIC;
  - (m) at p 20 – that ASIC was contacted in relation to the allegations against IOOF after publication of Fairfax Media articles;
13. **"IOOF boss admits company never reported suspected insider trading to ASIC", *Sydney Morning Herald*, 7 July 2015, 10:58 am**, which disclosed *inter alia*:
- (a) that the Managing Director of IOOF, Chris Kelaher, had admitted in Senate testimony that IOOF "did not report serious allegations of misconduct by senior staff to the corporate regulator despite the company investigating insider trading and front running six years ago";
  - (b) that Peter Hilton had received two final warnings.

## GLOSSARY

In this document, unless the context requires otherwise, the following definitions apply:

**2009 First and Final Warning Letter** has the meaning given in paragraph 20(a).

**2014 Final Warning Letter** has the meaning given in paragraph 26.

**ACL** means the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Acquisitions** has the meaning given in paragraph 8.

**AFSL** means an Australian Financial Services Licence.

**APL** means Approved Product Listing.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**ASX** means the market operated by ASX Ltd.

**AWM** means Australian Wealth Management Ltd.

**Compromised Model Information** has the meaning given in paragraph 24.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**December 2014 complaint** has the meaning given in paragraph 29.

**FCA Act** means the *Federal Court of Australia Act 1976* (Cth).

**FUMA** means funds under management and administration.

**FUMAS** means funds under management, administration, advice and supervision.

**Group Members** means the persons identified as such in the applicant's originating application filed on 28 February 2020.

**Historical Information** has the meaning given in paragraph 20.

**IOOF** means the respondent.

**March 2014 complaint** has the meaning given in paragraph 17.

**March 2014 Information** has the meaning given in paragraph 22.

**PIC** means IOOF's Product Investment Committee.

**Relevant Period** means the period 1 March 2014 to 7 July 2015.

**Roll Up Model** has the meaning given in paragraph 9.

**Certificate of lawyer**

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

Date: ~~15 May 2020~~ 23 November 2020



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Signed by Craig Allsopp  
Lawyer for the applicant