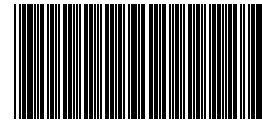




Filed: 10 August 2019 9:42 AM



D00016247T

Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00114608

TITLE OF PROCEEDINGS

First Plaintiff	RK Doudney Pty Ltd ACN 619 152 975, as Trustee for the RK Doudney Superannuation Fund ACN 619152975
First Defendant	IOOF HOLDINGS LTD ABN 49100103722

FILING DETAILS

Filed for	RK Doudney Pty Ltd ACN 619 152 975, as Trustee for the RK Doudney Superannuation Fund, Plaintiff 1
Legal representative	Damian Scattini
Legal representative reference	
Telephone	(02)91463888

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (2019.08.09 RK Doudney v IOOF - ACLS.pdf)

[attach.]

AMENDED COMMERCIAL LIST STATEMENT

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	<u>2019/00114608</u>

TITLE OF PROCEEDINGS

Plaintiff	RK Doudney Pty Ltd ACN 619 152 975, as Trustee for the RK Doudney Superannuation Fund
Defendant	IOOF Holdings Limited ABN 49 100 103 722

FILING DETAILS

Filed for	RK Doudney Pty Ltd ACN 619 152 975, as Trustee for the RK Doudney Superannuation Fund, plaintiff
Legal representative	Damian Scattini Quinn Emanuel Urquhart & Sullivan
Legal representative reference	07435-00002
Contact name and telephone	Nicholas Lennings, +61 2 9146 3500
Contact email	nicholaslennings@quinnemanuel.com

TYPE OF CLAIM

Commercially misleading conduct

Unconscionable conduct

Representative proceedings

A. NATURE OF DISPUTE

1. This is a representative proceeding brought by the Plaintiff on behalf of itself and other persons who acquired an interest in shares of the Defendant, IOOF Holdings Limited (IFL), between 27 May 2015 and ~~9 August~~ 5 December 2018.
2. The proceeding arises from the circumstances partially disclosed by admissions made by IFL, and evidence tendered on behalf of IFL, at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry established on 14 December 2017 (the **Royal Commission**) and the circumstances disclosed by proceedings commenced by the Australian Prudential Regulation Authority (APRA) against IFL and its directors in the Federal Court of Australia on 6 December 2018 (the APRA Proceedings).
3. IFL is the parent company of a group of related companies known as the IOOF Group. This proceeding concerns, in particular, two entities within the IOOF Group, known as Questor and IIML. Questor and IIML carried out dual roles within the IOOF Group, each acting as both the trustee of a superannuation fund, on one hand, and the Responsible Entity or operator of a managed investment scheme in which the assets of that superannuation fund were invested, on the other hand.
4. In summary, ~~IFL admitted to the Royal Commission that~~ on at least three separate occasions in 2015, Questor or IIML, acting in their capacities as trustees of a superannuation fund, used the assets of the superannuation fund to compensate beneficiaries of the superannuation fund for losses, in circumstances where:
 - 4.1 the losses were caused by conduct of amongst others, each of Questor and IIML, acting in its capacity as Responsible Entity or operator of a managed investment scheme in which the assets of the superannuation fund were invested, ~~which conduct was in breach of each of Questor and IIML's obligations as an Australian financial services licensee;~~
 - 4.2 the breach caused losses both to beneficiaries of the superannuation fund (**superannuation clients**) and also to other persons who had invested in the relevant schemes (**non-superannuation clients**);
 - 4.3 in respect of those losses, non-superannuation clients were compensated using funds sourced from within the IOOF Group or from a third party,

whereas superannuation clients were compensated using funds sourced from the reserve of the superannuation fund;

4.4 each of Questor and IIML did not intend to replenish, from its own funds or funds from within the IOOF Group, the funds drawn from the reserve of the superannuation fund for the purpose of compensating superannuation clients;

4.5 each of Questor and IIML had an interest in avoiding using its own funds or funds sourced from within the IOOF Group for the purpose of paying compensation to superannuation clients or for the purpose of replenishing the funds drawn from the reserve of the superannuation fund; and

4.6 each of Questor and IIML was on notice that the use of the reserve of the superannuation fund in this way was contrary to guidance provided by the Australian Prudential Regulation Authority (APRA) to the IOOF Group;

4.7 None of the information conduct of each of Questor, IIML, Kelaher and Venardos constituted a breach of obligations imposed by various provisions of sections 52 and 52A of the *Superannuation Industry (Supervision) Act 1993* (the **SIS Act**):

4A. Further, by reason of the matters summarised in paragraph 4 above, at all material times the conditions precedent to disqualification from acting as a trustee of a superannuation entity or a responsible officer of a corporate trustee of a superannuation entity pursuant to section 126H of the SIS Act were satisfied in relation to Kelaher, Venardos, Coulter, Vine and Riordan.

5. Information relating to this conduct the conduct summarised in paragraphs 4 and 4A above and other related conduct, had not been disclosed to the ASX prior to the revelation of the IOOF Group's true position at partial disclosure resulting from the Royal Commission, and the disclosure resulting from commencement of the APRA Proceedings. Following the disclosures at the Royal Commission:

5.1 from Friday 10 August 2018 to Monday 13 August 2018, being the two trading days after IFL's evidence commenced, IFL's share price declined materially, shedding approximately 5% of its value;

- 5.2 on 6 December 2018, APRA commenced legal proceedings against certain entities and senior executives of the IOOF Group in relation to the conduct ~~described above that was publicly disclosed to the Royal Commission of the IOOF Group~~; and
- 5.3 on 7 December 2018, following the public disclosure of the APRA proceedings, IFL's share price further declined materially, shedding approximately 35% of its value that day.
6. In this proceeding, the Plaintiff says that IFL contravened its continuous disclosure obligations under the ASX Listing Rules. IFL was aware of the information required to be disclosed because its senior management, who were officers of IFL, had, or ought reasonably to have, come into possession of the information in the course of performing their duties as officers of IFL.
7. The Plaintiff also claims that IFL engaged in misleading or deceptive conduct in making statements to the market that (a) it was compliant with continuous disclosure obligations, when it was not; (b) it engaged with APRA in an open and cooperative manner, when it did not; (c) it maintained the highest standards of corporate governance, when it did not; and (d) it was committed to conducting its business ethically, when it was not.
8. The Plaintiff also says that IFL's conduct amounted to unconscionable conduct contrary to statute.
9. The Plaintiff seeks damages on behalf of itself and other shareholders for loss suffered as a result of IFL's breaches of its continuous disclosure obligations, misleading or deceptive conduct, and unconscionable conduct.

B. ISSUES LIKELY TO ARISE

1. Adopting the defined terms in Part C below, the questions of law or fact common to the claims of the Group Members are:
- 1.1 When did IFL become aware, within the meaning of Rule 19.12 of the Listing Rules, of the Questor Compensation Information, the IIML Compensation Information, ~~or the APRA Guidance~~ Information or the Announcement Information?

- 1.2 Whether the Questor Compensation Information, the IIML Compensation Information, ~~or the APRA Guidance Information~~ or the Announcement Information was:
- (a) information that was not generally available, within the meaning of sections 647(2)(c) and 676(2) of the Corporations Act;
 - (b) information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of IFL Shares, within the meaning of section 674(c) of the Corporations Act;
 - (c) information that would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of IFL Shares, within the meaning of section 677 of the Corporations Act; and
 - (d) information that a reasonable person would expect to have a material effect on the price or value of IFL Shares, within the meaning of Listing Rule 3.1?
- 1.3 Whether IFL made the Continuous Disclosure Representation, the Regulatory Engagement Representation, the Corporate Governance Representation and/or the Ethical Standards Representation, and if so whether its conduct in making, maintaining and/or failing to correct or qualify each such representation was misleading or deceptive conduct in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the ACL.
- 1.4 Whether IFL's conduct as pleaded at paragraph 104 of Part C constituted unconscionable conduct in contravention of sections 12CA or 12CB of the ASIC Act and/or sections 20 or 21 of the ACL.
- 1.5 Whether, during the Relevant Period, the Market Contraventions (or any one or combination of them) caused the market price of IFL Shares to be, or materially contributed to the market price of IFL Shares being, substantially greater than their true value and/or the market price that would otherwise have been paid at the time of acquisition but for those Market Contraventions (or any one or combination of them)?

- 1.6 Whether the decline in the price of IFL Shares pleaded in paragraph 57 of Part C was caused, or materially contributed to, by the information communicated to the Affected Market by IFL in respect of the Market Contraventions and/or the Unconscionable Conduct?
 - 1.7 Whether each Group Member suffered loss or damage as a result of IFL's Unconscionable Conduct ~~and~~ the ~~public~~partial revelation of that conduct before the Royal Commission and the revelation of that conduct from the APRA Proceedings?
 - 1.8 What is the proper methodology for assessing the quantum of the loss or damage suffered by the Plaintiff and Group Members as a result of the impugned conduct of IFL?
2. The following additional questions will arise in respect of the Plaintiff and some Group Members individually:
- 2.1 Whether the Plaintiff and each Group Member acquired their respective interests in IFL Shares in reliance upon one or more of the Continuous Disclosure Representation, the Regulatory Engagement Representation, the Corporate Governance Representation and/or the Ethical Standards Representation.
 - 2.2 Whether the Plaintiff and each Group Member would not have acquired their respective interests in IFL Shares had they known:
 - (a) of the Questor Compensation Information, the IIML Compensation Information, ~~or the APRA Guidance~~ Information or the Announcement Information; and/or
 - (b) that each of the Continuous Disclosure Representation, the Regulatory Engagement Representation, the Corporate Governance Representation and/or the Ethical Standards Representation was false or misleading; and/or
 - (c) that IFL had engaged in the Unconscionable Conduct.

C. PLAINTIFF'S CONTENTIONS

Note: terms not otherwise defined in this Part have the meaning given to them in Schedule 4.

I. PARTIES AND RELEVANT PERSONS

(A) The Plaintiff and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on behalf of the Plaintiff and all persons who or which:
 - 1.1 during the period from 27 May 2015 to ~~9 August~~5 December 2018 inclusive (**Relevant Period**), acquired an interest in ordinary shares in the Defendant, IFL, which trade on the financial market operated by the Australian Securities Exchange Limited (**ASX**) (**IFL Shares**); or
 - 1.2 in relation to the unconscionable conduct claim pleaded in Section VIII of this Commercial List Statement (**CLS**), acquired an interest in IFL Shares on or before ~~9 August~~5 December 2018 and still held that interest at the end of ~~9 August~~5 December 2018; and
 - 1.3 suffered loss or damage by or resulting from the contraventions by IFL pleaded in Section VII to ~~VIII~~IX of this CLS; and
 - 1.4 are not any of the following:
 - (a) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of IFL;
 - (b) a related body corporate (as defined by section 50 of the *Corporations Act*) of IFL;
 - (c) an associated entity (as defined by section 50AAA of the *Corporations Act*) of IFL;
 - (d) an officer or a close associate (as defined by section 9 of the *Corporations Act*) of IFL;
 - (e) a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or

- (f) an officer or employee of, or other legal practitioner engaged by, the law firm Quinn Emanuel Urquhart & Sullivan,

(collectively, **Group Members**).

2. At the time of commencing this proceeding, seven or more persons being Group Members have claims against IFL within the meaning of section 157 of the CPA.
3. The Plaintiff is a corporate trustee who has standing to commence proceedings on its own behalf against IFL, within the meaning of section 158(1) of the CPA.
4. The Plaintiff acquired an interest in IFL Shares on the ASX on a number of occasions during the Relevant Period. The Plaintiff sold its interest in IFL Shares after the Relevant Period.

Particulars

Schedule 1 to this CLS sets out the Plaintiff's acquisitions and disposals of IFL Shares in the Relevant Period.

5. As to the requirements in section 161 of the CPA:
 - 5.1 the Group Members to whom the proceedings relate are identified in paragraph 1 above;
 - 5.2 the claims made on behalf of Group Members are that IFL breached its continuous disclosure obligations, made misleading statements and engaged in unconscionable conduct during the Relevant Period, causing the Group Members loss in respect of IFL Shares acquired by them, as further described in this CLS;
 - 5.3 the relief claimed is set out in the Summons; and
 - 5.4 the questions of law or fact common to the claims of the Group Members are as set out in Part B of this CLS, as further described in Part C of this CLS.

(B) The Defendant

6. IFL is a financial services firm that provides services and products relating to superannuation, investment management and administration, and financial advice.
7. IFL is, and at all times during the Relevant Period was:

- 7.1 duly incorporated pursuant to the Corporations Act and capable of being sued;
- 7.2 a corporation included in the official list of the financial market operated by the ASX and whose ordinary shares are ED securities (that is, enhanced disclosure securities) for the purposes of sections 111AE and 111AC of the Corporations Act;
- 7.3 a listed disclosing entity within the meaning of section 111AL(1) and Chapter 6CA of the Corporations Act;
- 7.4 in respect of the conduct described in this CLS in relation to financial services, a person that, in trade or commerce, engaged in conduct in relation to financial services within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- 7.5 a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
- 7.6 in respect of the conduct described in this CLS other than in relation to financial services, a person that, in trade or commerce, engaged in conduct within the meaning of the Australian Consumer Law (**ACL**).

(C) Application of section 674(2) of the Corporations Act to IFL

8. At all times during the Relevant Period:

- 8.1 IFL Shares were able to be acquired and disposed of by investors and potential investors in IFL Shares on the financial market operated by the ASX (**Affected Market**);
- 8.2 IFL was bound by the Listing Rules of the ASX (**Listing Rules**);
- 8.3 Rule 3.1 of the Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information, unless the exceptions in Listing Rule 3.1A apply;
- 8.4 Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably

to have, come into possession of the information in the course of the performance of their duties as an officer of that entity; and

8.5 section 674(2) of the Corporations Act applied to IFL by reason of:

- (a) the matters set out in paragraph 7.2 above and section 111AP(1) of the Corporations Act; and
- (b) the matters set out in paragraph 8 above and section 674(1) of the Corporations Act,

(collectively, **Continuous Disclosure Obligations**).

(D) IFL's Business & Structure

9. ~~IFL conducts~~IFL conducted at all material times its superannuation and investment management business through companies, including:

9.1 Questor Financial Services Proprietary Limited (ACN 078 662 718) (**Questor**); and

9.2 IOOF Investment Management Limited (ACN 006 695 021) (**IIML**).

10. Questor:

10.1 is a Subsidiary of IFL;

10.2 was, from about March 2004 to May 2017, a Financial Services Licensee (AFSL number 240829);

10.3 was, from March 2000 to around June 2016, the trustee and RSE Licensee of a Regulated Superannuation Fund known as the Portfolio Service Retirement Fund (ABN 92 861 884 632) (**TPS Fund**);

10.4 was, from around September 1999 to May 2017, the Responsible Entity of a Registered Scheme known as the Portfolio Service Personal Investment Plan (ARSN 089 506 374) (**TPS Scheme**); and

10.5 was, from around September 1999 to January 2014, the Responsible Entity of a Registered Scheme known as the Cash Management Trust (ARSN 089 508 636) (**CMT Scheme**).

11. IIML:

- 11.1 is a Subsidiary of IFL;
- 11.2 is, and has been since 1 December 2003, a Financial Services Licensee (AFSL 230524);
- 11.3 is, and has been since June 1994, the trustee and RSE Licensee of a Regulated Superannuation Fund known as the IOOF Portfolio Service Superannuation Fund (ABN 70 815 369 818) (**IPS Fund**);
- 11.4 is, and was at all relevant times, the service operator of an investor directed portfolio service (**IDPS**) known as the Pursuit Select Investment Service (**Pursuit Service**);
- 11.5 is, and has been since at least March 2008, the Responsible Entity and operator of a suite of Registered Schemes known as the “MultiMix Trusts” (**MultiMix Trusts**), comprising:
 - (a) IOOF MultiMix Balanced Growth Trust (ARSN 130 097 059);
 - (b) IOOF MultiMix Australian Shares Trust (ARSN 130 093 024);
 - (c) IOOF MultiMix Growth Trust (ARSN 130 096 945);
 - (d) IOOF MultiMix Moderate Trust (ARSN 100 071 332);
 - (e) IOOF MultiMix Conservative Trust (ARSN 130 093 186);
 - (f) IOOF MultiMix Stable Trust (ARSN 130 096 730);
 - (g) IOOF MultiMix International Shares Trust (ARSN 130 093 104);
 - (h) IOOF MultiMix Diversified Fixed Interest Trust (ARSN 130 032 787);
 - (i) IOOF MultiMix Cash Enhanced Trust (ARSN 130 097 175);
- 11.6 is, and has been since January 2014, the Responsible Entity of the CMT Scheme;
- 11.7 is, and has been since June 2016, the Responsible Entity of the TPS Scheme; and

11.8 is, and has been since June 2016, the trustee and RSE Licensee of the TPS Fund.

(E) Relevant IFL Personnel

12. Christopher Francis **Kelaher**:

12.1 has been, or was, a Director of:

- (a) IFL since 2009;
- (b) Questor since 2006;
- (c) IIML from 2009 to 1 September 2018; and

12.2 has been, or was, the Managing Director of:

- (a) IFL and Questor from ~~at least~~ 30 April 2009 to 10 December 2018;
- ~~(b)~~ IIML from at least 2015 30 April 2009 to 1 September 2018;
- ~~(b)~~ (c) IOOF Service Co Pty Ltd (ACN 074 572 919) (IOOF Service Co) from 18 July 2006 to 10 December 2018; and

12.3 was, at all material times during the Relevant Period, an officer of IFL within the meaning of section 9 of the Corporations Act and Listing Rule 19.12.

13. George **Venardos**:

13.1 has been, or was, a Director of:

- (a) IFL since 2009;
- (b) Questor ~~since 2008~~ from 24 January 2008 to 26 November 2018;
- (c) IIML from 23 June 2009 to 28 November 2018; and

13.2 was the Chairman of:

- (a) IFL, from ~~about~~ 24 November 2016 to 10 December 2018;
- (b) Questor, from about November 2016 to December 2018;
- (c) IIML, from about 24 November 2016 to ~~November~~ 19 June 2018; and

13.3 was, at all material times during the Relevant Period, an officer of IFL within the meaning of section 9 of the Corporations Act and Listing Rule 19.12.

14. David **Coulter**:

14.1 is, and has been since about September 2009, the Chief Financial Officer of:

- (a) IFL;
- (b) Questor;
- (c) IIML; and
- (d) IOOF Service Co; and

14.2 was, at all material times during the Relevant Period, an officer of IFL within the meaning of section 9 of the Corporations Act and Listing Rule 19.12.

15. Andrew Paul **Vine**:

15.1 is, and has been since December 2015, Company Secretary of:

- (a) IFL;
- (b) Questor;
- (c) IIML; and

15.2 is, and has been since August 2014, the General Manager – Legal, Risk and Compliance of:

- (a) IFL;
- (b) Questor;
- (c) IIML; and
- (d) IOOF Service Co; and

15.3 was, at all material times during the Relevant Period, an officer of IFL within the meaning of section 9 of the Corporations Act and Listing Rule 19.12.

16. Gary William **Riordan**:

16.1 is, and has been since about 2008, the General Counsel of:

- (a) IFL;
- (b) Questor;
- (c) IIML; and
- (d) IOOF Service Co; and

16.2 was, at all material times during the Relevant Period, an officer of IFL within the meaning of section 9 of the Corporations Act and Listing Rule 19.12.

II. DUTIES

(A) Duties of Questor and IIML

16A. From 2007 to 1 July 2013, pursuant to sections s52(1), 52(2)(b) and (c) of the SIS Act (as then in force), the rules of the IPS Fund and the TPS Fund contained, or were taken to contain, a covenant by IIML, in respect of the IPS Fund, and Questor, in relation to the TPS Fund:

16A.1. to exercise, in relation to all matters affecting the IPS Fund and TPS Fund, the same degree of care, skill and diligence an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide (the **Pre-July 2013 Due Care Covenant**); and

16A.2. to ensure that its duties and powers were performed and exercised in the best interests of the beneficiaries of the IPS Fund, in relation to IIML, and the TPS Fund, in relation to Questor (the **Pre-July 2013 Best Interests Covenant**).

16B. From 1 July 2013 to 6 December 2018:

16B.1. pursuant to sections 52(1) and 52(2)(b) of the SIS Act, the rules of the IPS Fund, in relation to IIML, and the TPS Fund, in relation to Questor, contained, or were taken to contain, a covenant by IIML, in relation to the IPS Fund, and Questor, in relation to the TPS Fund, to exercise, in relation to all matters affecting the IPS Fund and the TPS Fund, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments (the **Due Care Covenant**);

16B.2. pursuant to sections 52(1), 52(2)(c) and (d) of the SIS Act, the governing rules of the IPS Fund in relation to IIML and the TPS Fund in relation to Questor contained, or were taken to contain, covenants:

(a) to perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries (the **Best Interests Covenant**); and

(b) where there was a conflict between the duties of IIML and Questor to the beneficiaries of the IPS Fund or TPS Fund (respectively), or the interests of those beneficiaries, and the duties of IIML or Questor to any other person or the interests of IIML or Questor or an associate of IIML or Questor:

(1) to give priority to the duties to and interests of the beneficiaries over the duties to and interest of other persons;

(2) to ensure that the duties to the beneficiaries are met despite the conflict;

(3) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and

(4) to comply with the prudential standards in relation to the conflict,

(the **Conflicts Covenant**); and

(c) pursuant to section 52(4) of the SIS Act, the obligation of IIML and Questor pursuant to the Conflicts Covenant overrode any competing obligation an executive officer or employee of IIML had under Part 2D.1 of the Corporations Act.

(The Covenants pleaded at paragraphs 16B.1-16B.2 above are referred to collectively as the "**Company Covenants**").

16C. At all relevant times, IIML and Questor were required by section 55(1) of the SIS Act not to contravene a covenant contained, or taken to be contained, in the rules of the IPS Fund in relation to IIML, and the rules of the TPS Fund in relation to Questor, that is, prior to July 2013, each of the Pre-July 2013 Due Care Covenant and Pre-July 2013 Best Interests Covenant and thereafter each of the Company Covenants.

(B) Duties of Kelaher and Venardos

16D. At all relevant times prior to 1 July 2013, pursuant to sections 51 and 52(8) of the SIS Act (as then in force), the governing rules of the IPS Fund and the TPS Fund were taken to contain a covenant by Kelaher and Venardos as directors of the corporate trustee of the IPS Fund (IIML) and the TPS Fund (Questor) to exercise a reasonable degree of care and diligence for the purposes of ensuring that IIML and Questor carried out the Pre-July 2013 Due Care Covenant (the “**Director Pre-July 2013 Due Care Covenant**”).

16E. At all times from 1 July 2013 to 6 December 2018:

16E.1. pursuant to sections 52A(1) and 52A(2)(b) of the SIS Act, the governing rules of the each of the IPS Fund and the TPS Fund were taken to contain a covenant by each of Kelaher and Venardos as directors of the corporate trustee of the IPS Fund (IIML) and the TPS Fund (Questor) to exercise, in relation to all matters affecting the IPS Fund and the TPS Fund (as applicable), the same degree of care, skill and diligence as a prudent superannuation entity director would exercise in relation to an entity where he or she is a director of the trustee of the entity and that trustee makes investments of behalf of the entities beneficiaries (the **Director Due Care Covenant**):

16E.2. pursuant to sections 52A(1) and 52A(2)(c) of the SIS Act, the governing rules of the IPS Fund and the TPS Fund were taken to contain a covenant by each of Kelaher and Venardos as directors of the corporate trustee of the IPS Fund (IIML) and the TPS Fund (Questor) to perform his duties and exercise his powers as a director of IIML in the best interests of the beneficiaries of the IPS Fund and as a director of Questor in the best interest of the beneficiaries of the TPS Fund (the **Director Best Interests Covenant**):

16E.3. pursuant to sections 52A(1) and 52A(2)(d) of the SIS Act, where there is a conflict between the duties of the director to the beneficiaries of the IPS Fund or the TPS Fund, or the interests of those beneficiaries, and the duties of a director to any other person or the interests of the director, IIML or Questor (as applicable) or an associate of the director of IIML or Questor (as applicable) to act as set out in paragraph 16B.2(b)(1)-(4) above (the **Director Conflicts Covenant**):

16E.4. pursuant to section 52A(3) of the SIS Act, the obligation of each of Kelaher and Venardos pursuant to the Director Conflicts Covenant overrode any conflicting obligation Kelaher or Venardos (or either of them) had pursuant to Part 2D.1 of the Corporations Act;

16E.5. pursuant to sections 52(1) and 52(2)(f) of the SIS Act, the governing rules of the IPS Fund and the TPS Fund were taken to contain a covenant by each of Kelaher and Venardos as directors of the corporate trustee of the IPS Fund (IIML) and the corporate trustee of the TPS Fund (Questor) to exercise a reasonable degree of care and diligence for the purposes of ensuring that the corporate trustee carries out the covenants referred to in section 52 of the SIS Act (**Director Compliance Covenant**).

(The Covenants pleaded at paragraphs 16E.1-16E.5 above are referred to collectively as the “**Director Covenants**”).

16F. From 30 April 2009 to 1 September 2018, Kelaher was required by section 55(1) of the SIS Act not to contravene a covenant contained, or taken to be contained, in the governing rules of the IPS Fund.

16G. From 25 October 2006 to 16 June 2016, Kelaher was required by section 55(1) of the SIS Act not to contravene a covenant contained, or taken to be contained, in the governing rules of the TPS Fund.

16H. From 23 June 2009 to 28 November 2018, Venardos was required by section 55(1) of the SIS Act not to contravene a covenant contained, or taken to be contained, in the governing rules of the IPS Fund.

16I. From 24 January 2008 to 17 June 2016, Venardos was required by section 55(1) of the SIS Act not to contravene a covenant contained, or taken to be contained, in the governing rules of the TPS Fund.

16J. From 17 June 2016, by reason of a Successor Fund Transfer Deed entered into on 27 January 2016 between IIML and Questor (the **Transfer Deed**):

16J.1. the obligations of IIML, pursuant to the Company Covenants, applied with respect to the trust property and the beneficiaries transferred to it from the TPS Fund pursuant to the Transfer Deed; and

16J.2. the obligations of Kelaher and Venardos pursuant to the Director Covenants applicable to IIML applied with respect to the trust property and the beneficiaries transferred to it from the TPS Fund pursuant to the Transfer Deed.

II.III. HISTORICAL BREACHES & REMEDIATION PLANS

(A) CMT Breach

(A) The Overpayment

17. From at least 2009, Questor:

17.1 in its capacity as Responsible Entity of the TPS Scheme, invested the assets of the TPS Scheme in the CMT Scheme; and

17.2 in its capacity as trustee of the TPS Fund, invested the assets of the TPS Fund in the CMT Scheme.

18. From at least 2009 ~~until June 2014~~ Questor was:

18.1 until January 2014, the Responsible Entity of the CMT Scheme;

18.2 at all material times, a unitholder of the CMT Scheme, in its capacity as trustee of the TPS Fund; and

18.3 at all material times, a unitholder of the CMT Scheme, in its capacity as Responsible Entity of the TPS Scheme.

18A. Questor in its capacity as Responsible Entity of the CMT:

18A.1. used and relied upon services, including administration, operational, financial and asset management services, provided by IOOF Service Co (which was from on or about 1 May 2009 a wholly owned subsidiary of IFL and a member of the IOOF Group); and

18A.2. from 2003 to 2010, used and relied on National Custodian Services (NCS), a subsidiary or business unit of National Australia Bank Ltd, to provide custodial services.

18B. Questor, in its capacity as trustee of TPS Super, used and relied upon the services of IOOF Service Co set out in paragraph 18A.1 above.

19. In May 2009, Questor, in its capacity as Responsible Entity of the CMT Scheme, ~~committed a significant breach of its statutory obligations as a Financial Services Licensee by making~~made distributions to unitholders of the CMT Scheme in an amount that was approximately \$6 million more than the amount to which unitholders were entitled (~~CMT Breach~~). the Overpayment). Questor, in its capacity as trustee of the TPS Fund, passed these overpayments on to beneficiaries of the TPS Fund.

19A. The Overpayment to unitholders caused loss and damage to:

19A.1. Questor, in its capacity as Responsible Entity of the CMT;

19A.2. Questor, in its capacity as unitholder and trustee of the TPS Fund;

19A.3. Questor, in its capacity as unitholder and Responsible Entity of the TPS Scheme; and/or

19A.4. the beneficiaries of the TPS Fund.

19B. The further distribution to beneficiaries of the TPS Fund caused loss and damage to:

19B.1. Questor, in its capacity as unitholder and trustee of TPS Super; and/or

19B.2. the beneficiaries of the TPS Fund.

19C. In the circumstances:

19C.1. Questor, in its capacity as Responsible Entity of the CMT Scheme, was, or it is reasonably arguable that Questor in this capacity was, liable to compensate or indemnify Questor in its capacity as trustee of the TPS Fund for loss and damage caused by the Overpayment; and/or

19C.2. Questor, in its capacity as trustee of the TPS Fund, was in breach, or it is reasonably arguable that Questor in this capacity was in breach, of Questor's Pre-July 2013 Due Care Covenant and liable pursuant to section 55(3) of the SIS Act to beneficiaries of TPS Super for any loss and damage caused by the Overpayment; and/or

19C.3. NCS was liable, or it was reasonably arguable that NCS was liable, to compensate or indemnify Questor in its capacity as Responsible Entity of the CMT Scheme for loss and damage caused by the Overpayment; and/or

19C.4. IOOF Service Co was liable, or it was reasonably arguable that IOOF Service was liable, to compensate or indemnify Questor in its capacity as Responsible Entity of the CMT Scheme and/or Questor in its capacity as trustee of the TPS Fund, for loss and damage caused by the Overpayment.

20. In February 2010, Questor first detected the CMT ~~Breach~~Overpayment.

21. In October 2012, Questor reported the CMT ~~Breach~~Overpayment to ASIC.

22. From around September 2011 to around June 2014, in ~~order~~an attempt to recoup the ~~over-distribution giving rise to the CMT Breach,~~ Overpayment:

22.22.1 Questor, in its capacity as Responsible Entity of the CMT Scheme, ~~deliberately~~decided to make (with the approval of Coulter), and subsequently made, distributions to unitholders of the CMT Scheme in amounts that ~~that~~ were less than the amounts to which unitholders were entitled (**CMT Remediation**); and

22.2 those (reduced) distributions were passed on to beneficiaries of the TPS Fund by Questor, in its capacity as trustee of the TPS Fund.

23. The CMT Remediation had an adverse financial impact upon and/or caused loss to:

23.1 some unitholders of the TPS Scheme; and

23.2 some beneficiaries of the TPS Fund.

Particulars

The under-distributions were passed through by Questor, as a unitholder in the CMT Scheme, to unitholders of the TPS Scheme and beneficiaries of the TPS Fund on whose behalf Questor had invested in the CMT Scheme.

The under-distributions adversely impacted unitholders of the TPS Scheme and beneficiaries of the TPS Fund who did not have an interest in the CMT Scheme at the time of the CMT ~~Breach~~Overpayment and therefore did not receive any over-distribution as a consequence of the CMT ~~Breach~~Overpayment.

The under-distributions also adversely impacted unitholders of the TPS Scheme and beneficiaries of the TPS Fund who had increased their interest

in the CMT Scheme since the time of the CMT Breach Overpayment and therefore did not receive a proportionate over-distribution as a consequence of the CMT Breach Overpayment.

In around May 2014, 23A. Without recourse to any of the other sources of compensation set out in paragraph 19C above:

23A.1. the CMT Remediation was not in the best interests of the beneficiaries of TPS Super; and/or

23A.2. the passing on of reduced contributions was not in the best interests of the beneficiaries of TPS Super.

23B. Questor, in its capacity as Responsible Entity of the trustee of the TPS Fund, was aware of the CMT Remediation from September 2011.

23C. In considering and accepting the CMT Remediation for itself as unitholder, and in considering whether to pass on the consequently reduced contributions to beneficiaries of the TPS Fund who invested in the CMT, Questor:

23C.1. was in a position of conflict because:

(a) IOOF Service Co was a wholly owned subsidiary of IFL and part of the IOOF Group;

(b) at all material times the 'executive officers' of Questor (within the meaning of the SIS Act) were senior executives of IFL and the IOOF Group;

(c) at all material times up to 30 January 2017, each director of Questor was also a director of IFL;

(d) Questor, as trustee of the TPS Fund, invested in the CMT Scheme; asserted that a third party known as National Custodian Services (for which Questor was the Responsible Entity.

23C.2. breached its obligations pursuant to the Pre-July 2013 Best Interests Covenant, the Best Interests Covenant and the Conflicts Covenant; and

23C.3 was liable pursuant to section 55(3) of the SIS Act, to compensate beneficiaries of the TPS Fund who suffered loss as a result of the CMT Remediation plan.

23D. In considering and accepting the CMT Remediation and the decision to pass on its consequences to beneficiaries of the TPS Fund who had invested in the CMT from September 2012 to October 2015 in their capacity as directors of Questor, each of Kelaher and Venardos:

23D.1. breached his Director Pre-July 2013 Due Care Covenant, Director Due Care Covenant, Director Best Interests Covenant and Director Compliance Covenant;

23D.2. was in a position of conflict because of the matters set out in paragraph 23C.1 above and/or because:

(a) Kelaher was the Managing Director of IOOF Service Co; and/or

(b) Kelaher was a shareholder of IFL; and

23D.3. breached his Director Conflicts Covenant.

24. In around May 2014, Questor, negotiated with NCS) was at least partly responsible in relation to its responsibility for the CMT BreachOverpayment and sought, by letter of demand, compensation from NCS.

25. In ~~June~~January 2014, Questor ceased to be the Responsible Entity of the CMT Scheme, and IIML became the Responsible Entity of the CMT Scheme.

26. In around March 2015, NCS agreed to pay to IIML, in its capacity as Responsible Entity of the CMT Scheme, \$1.565 million in settlement of claims asserted by Questor against NCS in relation to the CMT BreachOverpayment (**NCS settlement amount**). By this time, however, IIML had determined that the total cost of compensating persons who had been adversely affected by the CMT BreachOverpayment would be approximately \$3.13 million, ie twice the NCS settlement amount.

27. On 28 October 2015, the board of Questor (including Kelaher and Venardos), on the recommendation of Coulter and Vine, resolved to approve a plan to compensate persons who had been adversely affected by the CMT Remediation, pursuant to which:

- 27.1 affected unitholders of the TPS Scheme were to be compensated using funds sourced solely from the NCS settlement amount;
- 27.2 affected beneficiaries of the TPS Fund were to be compensated using funds sourced from the balance of the NCS settlement amount (after deducting the compensation to be paid to unitholders of the TPS Scheme) and thereafter from the general reserve of the TPS Fund; and
- 27.3 Questor would not replenish the general reserve of the TPS Fund in respect of those funds used to compensate affected beneficiaries of the TPS Fund.

(CMT Compensation Plan).

28. Compensation was paid to beneficiaries of the TPS Fund pursuant to the CMT Compensation Plan from April 2016 to April 2017.
29. Pursuant to the CMT Compensation Plan, approximately \$1.616 million was drawn from the general reserve of the TPS Fund for the purpose of compensating beneficiaries of the TPS Fund.
30. The general reserve of the TPS Fund is, and was at all material times, an asset of the TPS Fund.
31. Questor did not replenish the funds drawn from the general reserve of the TPS Fund for the purposes of the CMT Compensation Plan until October 2018.

31A. It was not in the best interests of the beneficiaries of the TPS Fund for compensation for loss arising from the Overpayment to be paid out of funds taken from the general reserve where:

31A.1. Questor was liable to make good the trust fund for losses suffered by beneficiaries of the TPS Fund by reason of the matters set out at paragraph 23C above;

31A.2. Questor was liable to make good the trust fund for losses suffered by beneficiaries of the TPS Fund by reason of the matters set out at paragraph at paragraphs 19C.1 and 19C.2 above;

31A.4 IOOF Service Co was liable, or potentially liable, to make good the losses suffered by beneficiaries of the TPS Fund, as set out in paragraph 19C.4 above;

31A.5. there was no practical difficulty in Questor making a claim against IOOF Service Co in its capacity as service provider to Questor as Responsible Entity of the CMT Scheme or as service provider to Questor as trustee for the TPS Fund; and/or

31A.6. the general reserve of the TPS Fund was trust property and the beneficiaries of the TPS Fund had a beneficial interest in the money held in the TPS general reserve.

31B. In considering and accepting the CMT Compensation Plan:

31B.1. Questor was in the position of conflict pleaded at paragraph 23C.1. above; and

31B.2. Questor breached its obligations pursuant to the Best Interests Covenant and the Conflicts Covenant.

31C. In considering and approving the CMT Compensation Plan as directors of Questor in its capacity as trustee of the TPS Fund, each of Kelaher and Venardos breached his Director Due Care Covenant, Director Best Interests Covenant, Director Compliance Covenant and Director Conflicts Covenant.

31C. Following the successor fund transfer of the assets and beneficiaries of TPS Super to IIML as trustee of IPS Super pleaded at paragraph 16J above, IIML took no steps to reconsider the CMT Compensation Plan and continued to implement the CMT Compensation Plan.

31D. In the circumstances, IIML breached its obligations pursuant to the Best Interests Covenant and the Conflicts Covenant.

(B) Pursuit Breach

32. From at least 2007, IIML, in its capacity as trustee of the IPS Fund, caused assets of the IPS Fund to be invested through the Pursuit Service.

33. From at least 2007, IIML was:

33.1 the service operator ~~of the~~ of the Pursuit Service; and

33.2 a client of the Pursuit Service, in its capacity as trustee of the IPS Fund.

33A. In administering the Pursuit Service and processing re-distribution instructions from 1 July 2009 to August 2014, IIML used and relied upon services, including administration, operational, financial and asset management services, provided by IOOF Service Co.

34. From around 2007 to August 2014, IIML, in its capacity as operator of the Pursuit Service, committed a significant breach of its statutory obligations as a Financial Services Licensee by failing to did not act upon the instructions of clients using the Pursuit Service to invest 100% of income distributions back into the same investment that made the income distribution (**Pursuit Breach**), causing loss to clients.

~~In February 2010~~34A. In the circumstances:

34A.1. IOOF Service Co was liable, or it was reasonably arguable that IOOF Service Co was liable, to compensate or indemnify IIML in its capacity as trustee of the IPS Fund for loss or damage caused by the Pursuit Breach;

34A.2. IIML did not exercise the degree of care, skill and diligence an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide, in breach of IIML's Pre-July 2013 Due Care Covenant;

34A.3. IIML did not exercise the degree of care, skill and diligence of a prudent superannuation trustee, in breach of IIML's Due Care Covenant; and

34A.4. IIML was liable pursuant to section 55(3) of the SIS Act to beneficiaries of IPS Super for the losses suffered as a result of the Pursuit Breach.

35. In August 2014, IIML first detected the Pursuit Breach.

36. In September 2014, IIML reported the Pursuit Breach to APRA.

37. The Pursuit Breach had an adverse financial impact upon and/or caused loss to:

37.1 beneficiaries of the IPS Fund, on whose behalf IIML, in its capacity as trustee of the IPS Fund, had invested through the Pursuit Service; and

37.2 other persons who had directly invested through the Pursuit Service.

38. On 27 May 2015, the board of IIML ~~resolved~~(including Kelaher and Venardos) resolved, on the recommendation of Vine and Riordan, to approve a plan to

compensate persons who had been adversely affected by the Pursuit Breach, pursuant to which:

- 38.1 affected investors who had directly invested in or through the Pursuit Service would be compensated using funds sourced from IIML;
- 38.2 affected beneficiaries of the IPS Fund, on whose behalf IIML, in its capacity as trustee of the IPS Fund, had invested in or through the Pursuit Service, would be compensated using funds sourced from the Operational Risk Financial Reserve (**ORFR**) of the IPS Fund; ~~and~~
- 38.3 IIML would not replenish the ORFR in respect of those funds used to compensate affected beneficiaries of the IPS Fund; and
- 38.4 no action would be taken against IOOF Service Co in respect of IOOF Service Co's potential liability because of asserted practical difficulties with seeking compensation directly from a related entity.

(Pursuit Compensation Plan).

- 39. Pursuant to the Pursuit Compensation Plan, approximately \$700,000 was drawn from the ORFR of the IPS Fund for the purpose of compensating beneficiaries of the IPS Fund for losses caused by the Pursuit Breach.
- 40. The ORFR of the IPS Fund is, and was at all material times, an asset of the IPS Fund.
- 41. IIML has not replenished the funds drawn from the ORFR of the IPS Fund pursuant to the Pursuit Compensation Plan.
- 41A. It was not in the best interests of the beneficiaries of the IPS Fund for compensation for loss arising from the Pursuit Breach to be paid out of funds taken from the ORFR where:
 - 41A.1. IIML was liable to make good the trust fund for losses suffered by beneficiaries of the IPS Fund, by reason of the matters set out in paragraphs 34A.2 – 32A.4 above;
 - 41A.2. IOOF Service Co was liable, or potentially liable, to make good the losses, as set out in paragraph 34A.1 above;

41A.3. there was no practical difficulty in IIML making a claim against IOOF Service Co in its capacity as service provider to IIML; and/or

41A.4. the ORFR of the IPS Fund was trust property and the beneficiaries of the IPS Fund had a beneficial interest in the money held in the ORFR.

41B. In considering and accepting the Pursuit Compensation Plan:

41B.1. IIML was in a position of conflict because:

- (a) IOOF Service Co was a wholly owned subsidiary of IFL and part of the IOOF Group;
- (b) at all material times the 'executive officers' of IIML (within the meaning of the SIS Act) were senior executives of IFL and the IOOF Group;
- (c) at all material times up to 30 January 2017, each director of IIML was also a director of IFL;
- (d) IIML, as trustee of the IPS Fund, used the Pursuit Service of which IIML was the operator; and

41B.2. IIML breached its obligations pursuant to the Best Interests Covenant and the Conflicts Covenant.

41C. In considering and approving the Pursuit Compensation Plan as directors of IIML in its capacity as trustee of the IPS Fund, each of Kelaher and Venardos:

41C.1. breached his Director Due Care Covenant, Director Best Interests Covenant and Director Compliance Covenant;

41C.2. was in a position of conflict because of the matters set out in paragraph 41B.1 above and/or because:

- (a) Kelaher was the Managing Director of IOOF Service Co; and/or
- (b) Kelaher was a shareholder of IFL; and

41C.3. breached his Director Conflicts Covenant.

(C) Sweep Breach

42. From around September 2011, Questor:

42.1 in its capacity as Responsible Entity of the TPS Scheme, invested the assets of the TPS Scheme in the MultiMix Trusts; and

42.2 in its capacity as trustee of the TPS Fund, invested the assets of the TPS Fund in the MultiMix Trusts.

~~Commencing in around September 2011, Questor, in its capacity as Responsible Entity or operator of 42A. In transferring investments to the MultiMix Trusts, committed a significant breach of its statutory obligations as a Financial Services Licensee Questor used and relied upon services, including administration, operational, financial and asset management services, provided by failing to implement IOOF Service Co, including to ensure 'investment sweep' instructions were actioned.~~

43. From around September 2011 until January 2015, the standing 'investment sweep' instructions of certain account holders in the Multimix Trusts were not implemented, causing loss to investors in the MultiMix Trusts (Sweep Breach).

43A. In the circumstances:

43A.1. IOOF Service Co was liable, or it was reasonably arguable that IOOF Service Co was liable, to compensate or indemnify Questor in its capacity as trustee of the TPS Fund for loss and damage caused by the Sweep Breach in that IOOF Service Co was responsible for implementing the standing 'investment sweep' instructions;

43A.2. Questor did not exercise the degree of care, skill and diligence an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide, in breach of Questor's Pre-July 2013 Due Care Covenant;

43A.3. Questor did not exercise the degree of care, skill and diligence of a prudent superannuation trustee, in breach of Questor's Due Care Covenant.

43A.4. Questor was liable pursuant to section 55(3) of the SIS Act, to beneficiaries of TPS Super for losses suffered by them as a result of the Sweep Breach.

44. In around August 2014, Questor first detected the Sweep Breach.

45. In February 2015, Questor reported the Sweep Breach to APRA and ASIC.
46. The Sweep Breach had an adverse financial impact upon and/or caused loss to:
- 46.1 unitholders of the TPS Scheme; and
 - 46.2 beneficiaries of the TPS Fund.
47. On 27 May 2015, the board of Questor (including Kelaher and Venardos), on the recommendation of Vine and Riordan, resolved to approve a plan to compensate persons who had been adversely affected by the Sweep Breach, pursuant to which:
- 47.1 affected unitholders of the TPS Scheme would be compensated using funds sourced from Questor;
 - 47.2 affected beneficiaries of the TPS Fund would be compensated using funds sourced from the ORFR of the TPS Fund; ~~and~~
 - 47.3 Questor would not replenish the ORFR in respect of those funds used to compensate affected beneficiaries of the TPS Fund; ~~and~~ and
 - 47.4 no action would be taken against IOOF Service Co in respect of IOOF Service Co's potential liability because of asserted practical difficulties with seeking compensation directly from a related entity.

(Sweep Compensation Plan).

48. Pursuant to the Sweep Compensation Plan, approximately \$1 million was drawn from the ORFR of the TPS Fund for the purpose of compensating beneficiaries of the TPS Fund for losses caused by the Sweep Breach.
49. The ORFR of the TPS Fund is, and was at all material times, an asset of the TPS Fund.
50. Questor has not replenished the funds drawn from the ORFR of the TPS Fund pursuant to the Sweep Compensation Plan.
- 50A. It was not in the best interests of the beneficiaries of the TPS Fund for compensation for loss arising from the Sweep Breach to be paid out of funds taken from the ORFR where:

50A.1. Questor was liable to make good the trust fund for losses suffered by beneficiaries of the TPS Fund, by reason of the matters set out in paragraphs 43A.2 – 43A.4 above.

50A.2. IOOF Service Co was liable, or potentially liable, to make good the losses, as set out in paragraph 43A.1 above;

50A.3. there was no practical difficulty in Questor making a claim against IOOF Service Co in its capacity as service provider to Questor; and/or

50A.4. the ORFR of the TPS Fund was trust property and the beneficiaries of the TPS Fund had a beneficial interest in the money held in the ORFR.

50B. In considering and accepting the Sweep Compensation Plan:

50B.1. Questor was in the position of conflict pleaded at paragraph 23C.1 above; and

50B.2. Questor breached its obligations pursuant to the Best Interests Covenant and the Conflicts Covenant.

50C. In considering and approving the Sweep Compensation Plan as directors of Questor in its capacity as trustee of the TPS Fund, each of Kelaher and Venardos:

50C.1. breached his Director Due Care Covenant, Director Best Interests Covenant and Director Compliance Covenant; and/or

50C.2. was in a position of conflict because of the matters set out in paragraph 23D.2 above; and

50C.3. breached his Director Conflicts Covenant.

50D. Following the successor fund transfer of the assets and beneficiaries of TPS Super to IIML as trustee of IPS Super pleaded at paragraph 16J above, IIML took no steps to reconsider the Sweep Compensation Plan and continued to implement the Sweep Compensation Plan.

50E. In the circumstances, IIML breached its obligations pursuant to the Best Interests Covenant and the Conflicts Covenant.

(D) Responsible officers liable to disqualification

50F. From at least the beginning of the Relevant Period (alternatively, at any point prior to 5 December 2018), Kelaher and/or Venardos were liable to be disqualified from acting as a trustee or a responsible officer of a body corporate that is a trustee because:

50F.1. Each was liable to be disqualified pursuant to sections 126H(1) and (3) of the SIS Act because of:

(a) his breaches of the SIS Act pleaded at paragraphs 23D, 31C, 41C, 50C above;

(b) the number of contraventions pleaded at paragraphs 23D, 31C, 41C, 50C above;

(c) further or alternatively, the nature and seriousness of the contraventions pleaded at paragraphs 23D, 31C, 41C, 50C above.

(d) the disqualification was justified because:

(1) Kelaher and/or Venardos had not demonstrated the minimum standards expected of individuals holding positions of responsibility with respect to trustees of RSE Licencees;

(2) Kelaher and/or Venardos had demonstrated a failure to provide a high-level of cooperation to APRA;

(3) the removal of Kelaher and/or Venardos would have had a specific deterrent effect on Kelaher and Venardos (respectively) from engaging in similar conduct in the future;

(4) the removal of Kelaher and/or Venardos would have had a general deterrent effect on directors and responsible officers of corporate superannuation trustees and discourage them from making decisions that are not in the best interests of superannuation entities.

50F.2. Each was liable to be disqualified pursuant to sections 126H(1) and (4) of the SIS Act because of:

- (a) IIML and Questor's breaches of the SIS Act pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above;
- (b) the fact that each of Kelaher and Venardos was a responsible officer of IIML and Questor at the time of those contraventions;
- (c) the number of contraventions pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above;
- (d) further or alternatively, the nature and seriousness of the contraventions pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above;
- (e) the disqualification was justified as pleaded at paragraph 50F.1(d) above.

50F.3. Each was liable to be disqualified pursuant to sections 126H(1) and (5) of the SIS Act because:

- (a) he was not a fit and proper person to remain a superannuation trustee because of the matters set out in paragraphs 50F.1 and 50F.2 above; and
- (b) the disqualification was justified as pleaded at paragraph 50F.1(d) above.

50G. From at least the beginning of the Relevant Period, Coulter and/or Vine and/or Riordan were liable to be disqualified from acting as a trustee or a responsible officer of a body corporate that is a trustee because:

50G1. each was liable to be disqualified pursuant to sections 126H(1) and (4) of the SIS Act because of:

- (a) IIML and Questor's breaches of the SIS Act pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above;
- (b) the fact that each of Coulter and/or Vine and/or Riordan was a responsible officer of IIML and Questor at the time of those contraventions;
- (c) the number of contraventions pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above;

(d) further or alternatively, the nature and seriousness of the contraventions pleaded at paragraphs 23C, 31B, 31C, 41B, 50B and 50D above.

(e) the disqualification was justified because:

(1) Coulter and/or Vine and/or Riordan had not demonstrated the minimum standards expected of individuals holding positions of responsibility with respect to trustees of RSE Licencees;

(2) Coulter and/or Vine and/or Riordan had demonstrated a failure to provide a high-level of cooperation to APRA;

(3) the removal of Coulter and/or Vine and/or Riordan would have had a specific deterrent effect on Coulter and/or Vine and/or Riordan (respectively) from engaging in similar conduct in the future; and

(4) the removal of Coulter and/or Vine and/or Riordan would have had a general deterrent effect on directors and responsible officers of corporate superannuation trustees and discourage them from making decisions that are not in the best interests of superannuation entities.

50G.2. Each was liable to be disqualified pursuant to sections 126H(1) and (5) of the SIS Act because:

(f) he was not a fit and proper person to remain a superannuation trustee because of:

(1) the matters set out in paragraphs 50G.1 above;

(2) as to Coulter, his approval of the CMT Remediation pleaded at paragraph 22.1 above;

(3) as to Vine and Coulter, their recommendation of the CMT Compensation Plan pleaded at paragraph 27 above;

(4) as to Vine and Riordan, their recommendation of the Pursuit Compensation Plan pleaded at paragraph 38 above and/or the Sweep Compensation Plan pleaded at paragraph 47 above; and/or

(5) as to Vine and Riordan, their knowledge of the APRA guidance referred to at paragraph 56.2 below; and

(a) the disqualification was justified as pleaded at paragraph 50G.1(e) above.

III.IV. DISCLOSURES AT THE ROYAL COMMISSION

(A) Admissions made by IFL to the Royal Commission

51. On 14 December 2017, the Governor-General of the Commonwealth of Australia established the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the **Royal Commission**).
52. The fifth round of hearings conducted by the Royal Commission considered the conduct of financial services entities that provide superannuation services. A case study examined in this round concerned IFL and its subsidiaries, particularly IIML and Questor (**IFL case study**).
53. IFL was required to provide evidence in response to questions from the Royal Commission for the purposes of the IFL case study. A witness put forward by IFL for the purposes of the IFL case study was Mr Kelaher, the Managing Director of IFL, Questor and IIML, who gave evidence for and on behalf of IFL.
54. Mr Kelaher made a witness statement dated 26 July 2018 that was published on the Royal Commission's website. Mr Kelaher was cross-examined before the Royal Commission on 10 August 2018 from approximately 10:58 am until approximately 2:47 pm.
55. It was the fact, and it was admitted by Mr Kelaher for and on behalf of IFL in the course of his evidence to the Royal Commission to be the fact, that:
 - 55.1 since at least late 2015, APRA had been expressing concerns to IFL about governance structures and arrangements at IFL, including concerns about the failure by IFL and its subsidiaries to manage adequately conflicts of interest;
 - 55.2 in respect of the ~~CMT Breach~~Overpayment:
 - (a) the CMT Remediation adversely impacted beneficiaries of the TPS Fund and unitholders of the TPS Scheme;

- (b) Questor's communication with beneficiaries of the TPS Fund in relation to the ~~CMT Breach~~Overpayment and CMT Remediation were capable of misleading;
- (c) it was an available point of view that the first and obvious source to pay compensation to affected beneficiaries of the TPS Fund was Questor itself;
- (d) the board of Questor nevertheless approved the CMT Compensation Plan, pursuant to which affected beneficiaries of the TPS Fund were compensated in part from the general reserve of the TPS Fund;
- (e) the effect of the CMT Compensation Plan was that Questor avoided having to pay any compensation to affected beneficiaries of the TPS Fund;
- (f) in approving the CMT Compensation Plan, the directors of Questor had a potential conflict of interest;
- (g) in approving the CMT Compensation Plan, the directors of Questor did not record any actual or potential conflict of interest;
- (h) APRA had informed Questor in 2016 that APRA considered that, in relation to the ~~CMT Breach~~Overpayment, Questor had acted contrary to its statutory obligations as trustee of the TPS Fund, and expected that Questor would immediately replenish funds drawn from the general reserve of the TPS Fund for the purpose of compensating affected TPS beneficiaries; and
- (i) Questor, as at 10 August 2018, had not replenished the general reserve of the TPS Fund, contrary to APRA's expectations;

55.3 in respect of the Pursuit Breach:

- (a) the Pursuit Breach adversely affected investors who had directly invested through the Pursuit Service, and also beneficiaries of the IPS Fund, on whose behalf IIML, in its capacity as trustee of the IPS Fund, had invested through the Pursuit Service;
- (b) the Pursuit Breach was caused by an error on the part of IIML;

- (c) the board of IIML nevertheless approved the Pursuit Compensation Plan, pursuant to which affected beneficiaries of the IPS Fund were compensated from the ORFR of the IPS Fund, whereas other affected investors in the Pursuit Service were compensated by IIML; and
- (d) in approving the Pursuit Compensation Plan, the directors of IIML did not record any actual or potential conflict of interest;

55.4 in respect of the Sweep Breach:

- (a) the Sweep Breach had adversely affected beneficiaries of the TPS Fund and unitholders of the TPS Scheme;
- (b) the Sweep Breach was caused by a failure on the part of Questor;
- (c) the board of Questor nevertheless approved the Sweep Compensation Plan, pursuant to which affected beneficiaries of the TPS Fund were compensated from the ORFR of the TPS Fund, whereas unitholders of the TPS Scheme were compensated by Questor; and
- (d) in approving the Sweep Compensation Plan, the directors of Questor did not record any actual or potential conflict of interest.

(B) Further disclosures

56. It was also the fact, and it was further disclosed to the Royal Commission in evidence submitted on behalf of IFL, that:

56.1 the approval and implementation of the CMT Compensation Plan was contrary to guidance provided to IOOF by APRA;

Particulars

- (a) *Royal Commission Transcript at 4643.9-40.*
- (b) *The Plaintiff repeats the particulars to sub-paragraph 56.2. The guidance provided to IOOF by APRA in respect of the Pursuit Compensation Plan was also applicable to the CMT Compensation Plan.*
- (c) *Letter from APRA to the directors of Questor dated 12 December 2016.*

(d) *Further particulars may be provided following discovery and evidence.*

56.2 the approval and implementation of the Pursuit Compensation Plan was contrary to guidance provided to IOOF by APRA; and

Particulars

(a) *The Plaintiff refers to the memorandum concerning the 'Pursuit Distribution Reinvestment Error' dated 13 May 2015, authored by Mr Vine and Mr Riordan, approved by Mr Kelaher, and addressed to the board of directors of IIML (**Pursuit Breach Memorandum**). The Pursuit Breach Memorandum was included with the board materials provided to each of the directors of IIML in advance of the 27 May 2015 meeting of the board of directors of IIML. Appendix 1 to the Pursuit Breach Memorandum records that "APRA has suggested that IIML itself is responsible for funding at least part of the compensation payable to super fund members".*

(b) *The concise statement filed by APRA in the APRA Proceedings (described below in paragraph 57.2) alleges that "[i]n meetings with APRA at or around the time the Pursuit Breach Compensation Plan was developed, APRA informed IIML representatives that IIML should either fund the compensation for the Pursuit Breach itself or seek compensation from its service provider, IOOF Service Co Pty Ltd".*

(c) *Letter from APRA to the directors of IFL dated 15 September 2015.*

(d) *Letter from APRA to the directors of IFL dated 21 December 2015.*

(e) *Further particulars may be provided following discovery and evidence.*

56.3 the approval and implementation of the Sweep Compensation Plan was contrary to guidance provided to IOOF by APRA.

Particulars

(a) *The Plaintiff repeats the particulars to sub-paragraph 56.2. The guidance provided to IOOF by APRA in respect of the Pursuit Compensation Plan was also applicable to the Sweep Compensation Plan.*

(b) *Further particulars may be provided following discovery and evidence.*

IV.V. SHARE PRICE DECLINE

57. Following the ~~publication of the information set out above that was disclosed at the~~ Royal Commission:

57.1 IFL's share price materially declined, and has remained substantially below the price at which it was trading prior to the ~~publication of information about the conduct of Questor and IIML referred to above and the admissions made for and on behalf of IFL at the~~ Royal Commission;

Particulars

IFL's share price following the 10 August 2018 disclosures is set out in Schedule 2.

57.2 on 6 December 2018, APRA commenced ~~legal proceedings~~ the APRA Proceedings against Mr Kelaher, Mr Venardos, Mr Coulter, Mr Vine, Mr Riordan, IIML and Questor in respect of ~~the information about, *inter alia*, the~~ conduct of Questor and IIML referred to above and the admissions made for and on behalf of IFL at the Royal Commission in relation to the CMT Compensation Plan, the Pursuit Compensation Plan and the Sweep Compensation Plan (**APRA Proceedings**);

57.3 also on 6 December 2018, APRA notified IFL that APRA was considering imposing conditions upon the RSE licences of entities including IIML, and issuing directions to IIML to comply with licence conditions (**Show Cause Notice**) in relation to conduct of Questor and IIML referred to above and the admissions made for and on behalf of IFL at the Royal Commission;

57.4 on 7 December 2018, following the disclosure of the APRA Proceedings and the Show Cause Notice, IFL's share price materially declined further;

57.5 on 10 December 2018, IFL announced that:

(a) Mr Kelaher and Mr Venardos had agreed to step aside from their respective positions effective immediately;

(b) Mr Coulter, Mr Vine and Mr Riordan would have no responsibilities in relation to the management of IOOF trustee companies and would

cease to have any engagement with APRA, pending resolution of the APRA Proceedings.

Particulars

ASX Announcement of IFL dated 10 December 2018.

- 57.6 on 4 April 2019, IFL announced that, as part of IFL's focus on restoring trust, Mr Kelaher would leave IFL by mutual agreement, ceasing employment on 2 July 2019 and resigning from the board of directors of IFL immediately.

Particulars

ASX Announcement of IFL dated 4 April 2019.

V.VI. INFORMATION OF WHICH IFL WAS AWARE

(A) Questor Compensation Information

~~58. From no later than the start of the Relevant Period, Questor, in its capacity as trustee of the TPS Fund, approved the use of the assets of the TPS Fund to compensate beneficiaries of the TPS Fund for losses, in circumstances where:~~

~~58.1 the losses were caused by conduct of Questor, in its capacity as Responsible Entity of a managed investment scheme in which the assets of the TPS Fund were invested, which conduct was in breach of Questor's obligations as an Australian financial services licensee;~~

~~58.2 the conduct caused losses both to beneficiaries of the TPS Fund (**superannuation clients**) and also to other persons who had invested in the relevant schemes (**non-superannuation clients**);~~

~~58.3 in respect of those losses, whereas non-superannuation clients were, or would be, compensated using funds sourced from Questor or from a third-party, superannuation clients were, or would be, compensated using funds sourced from the reserve of the superannuation fund;~~

~~58.4 Questor did not intend to replenish the funds drawn from the reserve of the TPS Fund for that purpose; and~~

~~58.5 Questor had an interest in avoiding using its own funds for the purposes of paying compensation to superannuation clients or for the purpose of replenishing the funds drawn from the reserve of the TPS Fund,~~

58. The matters set out at paragraphs 17-31B, 42-50C and 50F-50G above occurred in relation to Questor.

(Questor Compensation Information).

59. IFL was aware of the Questor Compensation Information by no later than the start of the Relevant Period.

Particulars

- (a) *The knowledge and awareness of each of the persons referred to in the particulars below was and is, by reason of the position of each of those persons in IFL, the knowledge and awareness of IFL.*
- (b) *The Sweep Compensation Plan was discussed in a memorandum dated 13 May 2015 authored by Mr Vine and Mr Riordan, approved by Mr Kelaher and addressed to the board of directors of Questor. The memorandum was included with the board materials provided to each of the directors of Questor in advance of the 27 May 2015 board meeting, including Mr Kelaher and Mr Venardos. The Sweep Compensation Plan was discussed and approved at the meeting of the board of directors of Questor on 27 May 2015, at which Mr Kelaher and Mr Venardos attended.*
- (c) *The CMT Compensation Plan was discussed in a memorandum dated 16 October 2015 endorsed by Mr Coulter and Mr Vine, approved by Mr Kelaher and included with the board papers provided to each of the directors of Questor in advance of for the meeting of the board of directors of Questor on 28 October 2015, including Mr Kelaher and Mr Venardos. The CMT Compensation Plan was discussed and approved at the meeting of the board of directors of Questor on 28 October 2015, at which Mr Kelaher and Mr Venardos attended.*

(B) IIML Compensation Information

~~60. From no later than the start of the Relevant Period, IIML, in its capacity as trustee of the IPS Fund, approved the use of the assets of the IPS Fund to compensate beneficiaries of the IPS Fund for losses caused by the Pursuit Breach, in circumstances where:~~

~~60.1 the losses were caused by conduct of IIML, in its capacity as service operator of a scheme through which the assets of the IPS Fund were invested, which conduct was in breach of IIML's obligations as an Australian financial services licensee;~~

~~60.2 the conduct caused losses both to superannuation clients of the IPS Fund and also to non-superannuation clients who had invested through the scheme;~~

~~60.3 in respect of those losses, whereas non-superannuation clients were, or would be, compensated using funds sourced from Questor or from a third-party, superannuation clients were, or would be, compensated using funds sourced from the ORFR of the IPS fund;~~

~~60.4 IIML did not intend to replenish the funds drawn from the ORFR of the IPS Fund for that purpose; and~~

~~60.5 IIML had an interest in avoiding using its own funds for the purposes of paying compensation to superannuation clients or for the purpose of replenishing the funds drawn from the ORFR of the IPS Fund,~~

60. The matters set out at paragraphs 17-50G above occurred in relation to IIML.

(IIML Compensation Information).

61. IFL was aware of the IIML Compensation Information by no later than the start of the Relevant Period.

Particulars

- (a) *The knowledge and awareness of each of the persons referred to in the particulars below was and is, by reason of the position of each of those persons in IFL, the knowledge and awareness of IFL.*

- (b) *The Pursuit Compensation Plan was discussed in the Pursuit Breach Memorandum, which was authored by Mr Vine and Mr Riordan, approved by Mr Kelaher and addressed to the board of directors of IIML. The Pursuit Breach Memorandum was included with the board materials provided to each of the directors in advance of the 27 May 2015 meeting of the board of directors of IIML, including Mr Kelaher and Mr Venardos. The Pursuit Compensation Plan was discussed and approved at the meeting of the board of directors of IIML on 27 May 2015, at which Mr Kelaher and Mr Venardos attended.*

(C) APRA Guidance Information

62. From no later than the start of the Relevant Period, the use of assets of the TPS Fund in the manner described above at ~~paragraph 58,~~paragraphs 27 and 47, and the use of the assets of the IPS Fund in the manner described above at ~~paragraph 60,~~38, was contrary to guidance provided by APRA to IOOF (**APRA Guidance Information**).
63. IFL was aware of the APRA Guidance Information by:
- 63.1 no later than the start of the Relevant Period;
- 63.2 alternatively, by no later than 15 September 2015;
- 63.3 alternatively, by no later than 21 December 2015; or
- 63.4 alternatively, by no later than 12 December 2016.

Particulars

- (a) *The APRA Guidance information was contained in or apparent from:*
- (1) *the Pursuit Breach Memorandum dated 13 May 2015;*
- (2) *a letter from APRA to the directors of IFL dated 15 September 2015.*
- (3) *a letter from APRA to the directors of Questor dated 12 December 2016.*
- (4) *a letter from APRA to the directors of IFL dated 21 December 2015.*

(b) *Further, the applicant repeats the particulars at paragraph 56.2(b).*

(D) Announcement Information

63A. IFL made the Continuous Disclosure Representation, the Regulatory Engagement Regulation, the Corporate Governance Representation and the Ethical Standards Representation (the **Representations**), as pleaded at paragraphs 78, 84, 90 and 96 below.

63B. The Representations did not constitute the true position, as pleaded at paragraphs 81, 87, 93 and 99 below (**Announcement Information**).

63C. IFL was aware of the Announcement Information by no later than the start of the Relevant Period.

Particulars

(a) *The Plaintiff repeats the particulars to paragraphs 59, 61 and 63 above.*

VI.VII. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

(A) Questor Compensation Information Contravention

64. As at, and from, the commencement of the Relevant Period, the Questor Compensation Information was information concerning IFL that:

64.1 was not generally available, within the meaning of sections 647(2)(c) and 676(2) of the Corporations Act;

64.2 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of IFL Shares, within the meaning of section 674(c) of the Corporations Act;

64.3 would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of IFL Shares, within the meaning of section 677 of the Corporations Act; and

64.4 a reasonable person would expect to have a material effect on the price or value of IFL Shares, within the meaning of Listing Rule 3.1,

(such information is hereafter referred to as **Material Non-public Information**).

65. By reason of IFL's Continuous Disclosure Obligations and the matters pleaded in paragraphs 58 to 59 and 64 above, IFL became obliged immediately to inform the ASX of the Questor Compensation Information by no later than the start of the Relevant Period.
66. IFL did not inform the ASX of the Questor Compensation Information at any time ~~prior to 10 April 2018~~, and the Affected Market did not become aware of the Questor Compensation Information until no earlier than ~~10 April~~ 6 December 2018.
67. By reason of the matters pleaded in paragraphs 64 to 66 above, IFL contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Questor Compensation Information Contravention**).

(B) IIML Compensation Information Contravention

68. As at, and from, the commencement of the Relevant Period, the IIML Compensation Information was information concerning IFL that was Material Non-public Information.
69. By reason of IFL's Continuous Disclosure Obligations and the matters pleaded in paragraphs 60 to 61 and 68 above, IFL became obliged immediately to inform the ASX of the IIML Compensation Information by no later than the start of the Relevant Period.
70. IFL did not inform the ASX of the IIML Compensation Information at any time ~~prior to 10 August 2018~~, and the Affected Market did not become aware of the IIML Compensation Information until no earlier than ~~10 August~~ 6 December 2018.
71. By reason of the matters pleaded in paragraphs 68 to 70 above, IFL contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**IIML Compensation Information Contravention**).

(C) APRA Guidance Information Contravention

72. As at, and from, the commencement of the Relevant Period, the APRA Guidance Information was information concerning IFL that was Material Non-public Information.
73. By reason of IFL's Continuous Disclosure Obligations and the matters pleaded in paragraphs 62 to 63 above, IFL became obliged immediately to tell the ASX of the APRA Guidance Information by:

73.1 no later than the start of the Relevant Period;

- 73.2 alternatively, by no later than 15 September 2015;
- 73.3 alternatively, by no later than 21 December 2015; or
- 73.4 alternatively, by no later than 12 December 2016.
74. IFL did not tell the ASX of the APRA Guidance Information at any time ~~prior to 10 August 2018~~, and the Affected Market did not become aware of the APRA Guidance Information until no earlier than ~~10 August~~ 6 December 2018.
75. By reason of the matters pleaded in paragraphs 72 to 74 above, IFL contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**APRA Guidance Information Contravention**).

(C1) Announcement Information Contravention

- 75A. As at, and from, the commencement of the Relevant Period, the Announcement Information was information concerning IFL that was Material Non-public Information.
- 75B. By reason of IFL's Continuous Disclosure Obligations and the matters pleaded in paragraphs 63A-63C and 75A above, IFL became obliged immediately to inform the ASX of the Announcement Information by no later than the start of the Relevant Period.
- 75C. IFL did not inform the ASX of the Announcement Information at any time, and the Affected Market did not become aware of the Announcement Information until no earlier than 6 December 2018.
- 75D. By reason of the matters pleaded in paragraphs 75A-75C above, IFL contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Announcement Information Contravention**).

(D) The Disclosure Contraventions were continuing

76. Each of:
- 76.1 the Questor Compensation Information Contravention;
- 76.2 the IIML Compensation Information Contravention; ~~and~~
- 76.3 the APRA Guidance Information Contravention; and

76.4 the Announcement Information Contravention

(collectively, the **Disclosure Contraventions**),

was a continuing contravention, which of its nature continued from and after the time of the first contravention (when first known to IFL) throughout the Relevant Period (or the remainder thereof) and until such time as the Questor Compensation Information, the IIML Compensation Information and/or the APRA Guidance Information and/or the Announcement Information, relevantly, was disclosed to the Affected Market ~~on 10 August 2018~~.

VII.VIII. MISLEADING AND DECEPTIVE CONDUCT

(A) IFL's public statements

77. Prior to and during the Relevant Period:

77.1 IFL made the statements set out in Schedule 3 to this CLS; and

77.2 the statements set out in Schedule 3 were made in a manner that was likely to result in their publication to the Affected Market.

(B) Continuous Disclosure Representation

78. Throughout the Relevant Period, IFL represented to the Affected Market that IFL was in compliance with its Continuous Disclosure Obligations (**Continuous Disclosure Representation**).

Particulars

The Continuous Disclosure Representation is to be implied from:

(a) *the statements at Schedule 3 paragraphs 1 to 16; and*

(b) *taken together, IFL's Continuous Disclosure Obligations and the absence of any statement by IFL during the Relevant Period to the effect that IFL had not complied with those obligations.*

79. IFL failed to correct or qualify the Continuous Disclosure Representation at any time during the Relevant Period.

80. The Continuous Disclosure Representation was a continuing representation in the Relevant Period.
81. Throughout the Relevant Period, IFL was not in fact in compliance with its Continuous Disclosure Obligations.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 64 to 76 above.

82. The conduct pleaded in paragraphs 77 to 79 was conduct engaged in by IFL:
- 82.1 in relation to financial products (being IFL Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- 82.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 82.3 in trade or commerce, within the meaning of section 18 of the ACL.
83. In making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, IFL engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 83.1 section 1041H of the Corporations Act;
- 83.2 section 12DA(1) of the ASIC Act; and/or
- 83.3 section 18 of the ACL,

(Continuous Disclosure Misleading Conduct Contravention).

(C) Regulatory Engagement Representation

84. Throughout the Relevant Period, IFL represented to the Affected Market that IFL deals with APRA in an open and cooperative manner **(Regulatory Engagement Representation)**.

Particulars

- (a) *The Regulatory Engagement Representation was express, or alternatively, implied.*

(b) *To the extent it was express, the Plaintiff refers to the statements at Schedule 3 paragraphs 18, 19, 20, 23, and 26.*

(c) *To the extent it was implied, it was to be implied from:*

(1) *the statements at Schedule 3 paragraphs 18 to 26; and*

(2) *the absence of any statement by IFL during the Relevant Period qualifying the statements referred to above.*

85. IFL failed to correct or qualify the Regulatory Engagement Representation at any time during the Relevant Period.

86. The Regulatory Engagement Representation was a continuing representation in the Relevant Period.

87. Throughout the Relevant Period, IFL did not in fact deal with APRA in an open and cooperative manner.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 55, 56, 62 and 63 above.

88. The conduct pleaded in paragraphs 77 and 84 to 85 was conduct engaged in by IFL:

88.1 in relation to financial products (being IFL Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

88.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

88.3 in trade or commerce, within the meaning of section 18 of the ACL.

89. In making, maintaining and/or failing to correct or qualify the Regulatory Engagement Representation, IFL engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:

89.1 section 1041H of the Corporations Act;

89.2 section 12DA(1) of the ASIC Act; and/or

89.3 section 18 of the ACL,

(Regulatory Engagement Misleading Conduct Contravention).

(D) Corporate Governance Representation

90. Throughout the Relevant Period, IFL represented to the Affected Market that it maintained the highest standards of corporate governance within the IOOF Group **(Corporate Governance Representation).**

Particulars

- (a) *The Corporate Governance Representation was express, or alternatively, implied.*
 - (b) *To the extent it was express, the Plaintiff refers to the statements at Schedule 3 paragraphs 28, 30, 32, 33, and 39.*
 - (c) *To the extent it was implied, it was to be implied from:*
 - (1) *the statements at Schedule 3 paragraphs 27 to 45; and*
 - (2) *the absence of any statement by IFL during the Relevant Period qualifying the statements referred to above.*
91. IFL failed to correct or qualify the Corporate Governance Representation at any time during the Relevant Period.
92. The Corporate Governance Representation was a continuing representation in the Relevant Period.
93. Throughout the Relevant Period, IFL did not in fact maintain the highest standards of corporate governance within the IOOF Group.

Particulars

- The Plaintiff repeats the matters pleaded in paragraphs 55, 58 to 63C, and 102 to 104 above.*
94. The conduct pleaded in paragraphs 77 and 90 to 91 was conduct engaged in by IFL:
- 94.1 in relation to financial products (being IFL Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

- 94.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 94.3 in trade or commerce, within the meaning of section 18 of the ACL.
95. In making, maintaining and/or failing to correct or qualify the Corporate Governance Representation, IFL engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 95.1 section 1041H of the Corporations Act;
- 95.2 section 12DA(1) of the ASIC Act; and/or
- 95.3 section 18 of the ACL,

(Corporate Governance Misleading Conduct Contravention).

(E) Ethical Standards Representation

96. Throughout the Relevant Period, IFL represented to the Affected Market that IFL was committed to conducting its business ethically **(Ethical Standards Representation)**.

Particulars

- (a) *The Ethical Standards Representation was express, or alternatively, implied.*
- (b) *To the extent it was express, the Plaintiff refers to the statements at Schedule 3 paragraphs 47 to 55.*
- (c) *To the extent it was implied, it was to be implied from:*
- (1) *the statements at Schedule 3 paragraphs 47 to 55; and*
- (2) *the absence of any statement by IFL during the Relevant Period qualifying the statements referred to above.*
97. IFL failed to correct or qualify the Ethical Standards Representation at any time during the Relevant Period.
98. The Ethical Standards Representation was a continuing representation in the Relevant Period.

99. Throughout the Relevant Period, IFL was not in fact committed to conducting its business ethically.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 55, 58 to 63, and 102 to 104 above.

100. The conduct pleaded in paragraphs 77 and 96 to 97 was conduct engaged in by IFL:
- 100.1 in relation to financial products (being IFL Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - 100.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
 - 100.3 in trade or commerce, within the meaning of section 18 of the ACL.
101. In making, maintaining and/or failing to correct or qualify the Ethical Standards Representation, IFL engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 101.1 section 1041H of the Corporations Act;
 - 101.2 section 12DA(1) of the ASIC Act; and/or
 - 101.3 section 18 of the ACL,

(Ethical Standards Misleading Conduct Contravention, and together with the Continuous Disclosure Misleading Conduct Contravention, the Regulatory Engagement Misleading Conduct Contravention, the Corporate Governance Misleading Conduct Contravention, the **Misleading Conduct Contraventions).**

VIII.IX. UNCONSCIONABLE CONDUCT

102. In approving and implementing the CMT Compensation Plan, the Sweep Compensation Plan and/or the Pursuit Compensation Plan, Questor/IIML:
- 102.1 improperly used assets of the superannuation trust to compensate superannuation members for losses caused by conduct of Questor/IIML;
 - 102.2 avoided paying compensation for such losses out of Questor/IIML's funds;

- 102.3 thereby made a financial gain at the expense of superannuation clients; and
- 102.4 acted in its own interests to the detriment of superannuation clients.
103. Superannuation clients who were owed compensation by reason of the ~~CMT Breach~~Overpayment and CMT Remediation, the Sweep Breach and the Pursuit Breach were vulnerable and not in a position to protect their own interests.
104. In the premises, the conduct of IFL, through Questor/IIML, in:
- 104.1 acting in its own interests to the detriment of superannuation clients in the manner pleaded above at paragraph 102;
- 104.2 using, and approving the use of, assets of the superannuation trust to compensate superannuation members for losses caused by conduct of Questor/IIML;
- 104.3 further or alternatively failing to take any, or any adequate, steps to prevent the use of assets of the superannuation trust to compensate superannuation members for losses caused by conduct of Questor/IIML;
- 104.4 failing to disclose to superannuation clients that compensation for superannuation clients would be or had been drawn from the assets of the superannuation trust;
- 104.5 acting contrary to guidance provided by APRA to the effect that assets of the superannuation trust should not be used to compensate superannuation members for losses caused by conduct of Questor/IIML; and
- 104.6 in respect of the CMT Compensation Plan only, making misleading statements to superannuation clients about the CMT Compensation Plan;

was unconscionable conduct:

- (a) in trade or commerce and in relation to financial services in contravention of section 12CA of the ASIC Act;
- (b) alternatively to (a), in trade or commerce and in connection with the supply of financial services to a person in contravention of section 12CB of the ASIC Act;

- (c) further or in the alternative, in trade or commerce in contravention of section 20 of the ACL; and
 - (d) alternatively to (c), in trade or commerce and in connection with the supply of services to a person in contravention of section 21 of the ACL,
- (hereafter, **Unconscionable Conduct**).

Particulars

The Plaintiff repeats the matters pleaded and particularised in paragraphs 55, 56, 58 to 63 above.

IX.X. CAUSATION, INCLUDING INDIRECT (MARKET-BASED) CAUSATION

- 105. During the Relevant Period, the Plaintiff and the Group Members acquired an interest in IFL Shares in a market of investors or potential investors in IFL Shares:
 - 105.1 operated by the ASX;
 - 105.2 regulated by, inter alia, section 674(2) of the Corporations Act and Listing Rule 3.1;
 - 105.3 where the price or value of IFL Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and Listing Rule 3.1;
 - 105.4 where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of IFL Shares (namely the information the subject of the Disclosure Contraventions, or any one of them);
 - 105.5 where misleading or deceptive conduct had occurred (namely the conduct the subject of the Misleading Conduct Contraventions) by the making of statements to the market that a reasonable person would expect to have a material effect on the price or value of IFL Shares.
- 106. During the Relevant Period, the Plaintiff and the Group Members acquired an interest in IFL Shares in circumstances in which the Disclosure Contraventions and the Misleading Conduct Contraventions (together with the Disclosure Contraventions, **Market Contraventions**) (or any one or combination of them) caused the market price

of IFL Shares to be, or materially contributed to the market price of IFL Shares being, substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition but for those Market Contraventions (or any one or combination of them).

Particulars of indirect / market-based causation

Full particulars of the extent to which the Market Contraventions caused the market price for IFL Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition will be provided after the Plaintiff has served expert evidence.

107. Further or in the alternative to paragraph 106, the decline in the price of IFL Shares pleaded in paragraph 57 above was caused or materially contributed to by the information communicated to the Affected Market by IFL in respect of the Market Contraventions and/or the Unconscionable Conduct.
108. Further or in the alternative to paragraphs 106 and 107, during the Relevant Period, the Plaintiff and some Group Members acquired their respective interests in IFL Shares in reliance upon one or more of the Continuous Disclosure Representation, the Regulatory Engagement Representation, the Corporate Governance Representation and/or the Ethical Standards Representation.
109. Further or in the alternative to paragraphs 106 to 108, during the Relevant Period, the Plaintiff and some Group Members would not have acquired their respective interests in IFL Shares had they known:
 - 109.1 of the Questor Compensation Information, the IIML Compensation Information,~~—and/or~~ the APRA Guidance Information and/or the Announcement Information;
 - 109.2 that the Continuous Disclosure Representation, the Regulatory Engagement Representation, the Corporate Governance Representation, and/or the Ethical Standards Representation was false or misleading; and/or
 - 109.3 that IFL had engaged in the Unconscionable Conduct.
110. Further, or in the further alternative to paragraphs 106 to 109, each Group Member falling within paragraph 1.2 above:

- 110.1 held, during the Relevant Period, an interest in one or more IFL shares with a market value of approximately \$8.97 per share at market close on 9 August 2018, and approximately \$7.06 per share on 5 December 2018; and
- 110.2 suffered loss or damage by reason of ~~a reduction in the market value of their shares as a result of IFL's Unconscionable Conduct, and the partial public revelation of that conduct before the Royal Commission on 10 August 2018~~ and the further revelations arising from the APRA Proceedings.

X.XI. LOSS AND DAMAGE

111. By reason of the matters pleaded in paragraphs 105 to 110 above, the Plaintiff and the Group Members have suffered loss and damage by reason of and resulting from the Market Contraventions (or any one or combination of them).

Particulars

- (a) *The loss suffered by the Plaintiff will be calculated by reference to one or more of the following measures of loss and damage:*
- (1) *the difference between the price at which IFL Shares were acquired by the Plaintiff during the Relevant Period and the true value of that interest at that time; or*
 - (2) *the difference between the price at which IFL Shares were acquired by the Plaintiff during the Relevant Period and the market price that would have prevailed at that time had the Market Contraventions and Unconscionable Conduct not occurred; or*
 - (3) *the nature and quantum of the decline in the share price in the period after the Relevant Period when the market price of IFL Shares fell as a result of the disclosure of information which had not previously been disclosed in respect of the Market Contraventions or Unconscionable Conduct; or*
 - (4) *the difference between the price at which the IFL Shares were acquired by the Plaintiff during the Relevant Period and the amount "left in hand" or that might be realised on the sale of those shares.*

- (b) *Further particulars of the Plaintiff's loss will be provided after the service of the Plaintiff's expert evidence.*
- (c) *Particulars of the losses of the Group Members will be provided following opt-out, the determination of the Plaintiff's claim and identified common issues at an initial trial, and if and when it becomes necessary for a determination to be made on the individual claims of the Group Members. The losses of the Group Members are presently expected to involve one or more of the following measures of loss and damage:*
 - (1) *the difference between the price at which IFL Shares were acquired during the Relevant Period and the true value of the shares at that time; or*
 - (2) *the difference between the purchase price paid for the shares and the price that the shares would then have been trading at on the day of purchase, had the Market Contraventions and Unconscionable Conduct not occurred and had the market been properly informed;*
 - (3) *in the alternative, the difference between the purchase price of the shares and (i) if the shares were sold: the price at the time they were sold; or (ii) if the shares are retained: the listed price of the shares at the date of the judgment; or*
 - (4) *the nature and quantum of the decline in the share price in the days on and after 10 August 2018 when the market price of IFL Shares fell as a result of the disclosure of information which had not previously been disclosed in respect of the Market Contraventions and Unconscionable Conduct.*

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

- 1 None.

E. MEDIATION

- 1 The parties have not attempted mediation. The Plaintiff is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor on the Record

Date of signature

~~12 April 2019~~ 9 August 2019

This pleading was prepared by Richard Lancaster SC, Adam Hochroth, Patrick Meagher, Oliver Jones and Quinn Emanuel Urquhart & Sullivan.

SCHEDULE 1

Plaintiff's Acquisitions and Disposals of IFL Shares

Date	Buy/Sell	Number of IFL Securities	Average Price per Security
31 January 2018	Buy	1,000	\$10.95
22 February 2018	Buy	1,000	\$10.54
26 July 2018	Buy	1,000	\$9.27
4 February 2019	Sell	3,000	\$4.85

SCHEDULE 2

IFL Share Price

Date	Opening price	Closing price
8 August 2018	8.84	8.84
9 August 2018	8.84	8.97
10 August 2018	8.97	8.73
13 August 2018	8.73	8.54
23 October 2018	7.91	7.81
24 October 2018	7.81	7.84
25 October 2018	7.84	7.35
26 October 2018	7.35	6.97
29 October 2018	6.97	6.88
5 December 2018	7.06	7.00
6 December 2018	7.00	7.17
7 December 2018	7.17	4.60
10 December 2018	4.60	4.28

SCHEDULE 3

IFL's Misleading Public Statements

(A) CONTINUOUS DISCLOSURE STATEMENTS

(i) IFL's 2013 Continuous Disclosure Statement

1. On 24 September 2013, IFL publicised its Corporate Governance Statement **(2013 Corporate Governance Statement)**.
2. In the 2013 Corporate Governance Statement, IFL made the following statements:
 - 2.1 *"The Board is committed to keeping its shareholders and the market fully informed of major developments that may have an impact on the Company. Procedures are in place to identify matters that are likely to have a material effect on the price of the Company's securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements... The Company has a Continuous Disclosure Policy". (p. 18)*
 - 2.2 *"IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the Company". (p. 19)*

(ii) IFL's 2014 Continuous Disclosure Statements

3. On 21 October 2014, IFL publicised its Corporate Governance Statement **(2014 Corporate Governance Statement)**.
4. In the 2014 Corporate Governance Statement, IFL made the following statements:
 - 4.1 *"The Board is committed to keeping its shareholders and the market fully informed of major developments that may have an impact on the company". (p. 6)*

- 4.2 *“Procedures are in place to identify matters that are likely to have a material effect on the price of the Company’s securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements. The Company has a Continuous Disclosure Policy”. (p. 6)*
- 4.3 *“IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the company”. (p. 6)*

(iii) IFL’s 2015 Continuous Disclosure Statements

- 5. On 23 October 2015 date, IFL published its revised Corporate Governance Statement (**2015 Corporate Governance Statement**).
- 6. In the 2015 Corporate Governance Statement, IFL made the following statements:
 - 6.1 *“The Board is committed to keeping its shareholders and the market fully informed of major developments that may have an impact on the Company”. (p. 7)*
 - 6.2 *“Procedures are in place to identify matters that are likely to have a material effect on the price of the Company’s securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements. The Company has a Continuous Disclosure Policy”. (p. 7)*
 - 6.3 *“IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the company”. (p. 7)*

(iv) IFL’s 2016 Continuous Disclosure Statements

- 7. On 24 October 2016, IFL published its Corporate Governance Statement (**2016 Corporate Governance Statement**).
- 8. In the 2016 Corporate Governance Statement, IFL made the following statements:

- 8.1 *“The Board is committed to keeping its shareholders and the market fully informed of major developments that may have an impact on the Company. In line with this commitment, IOOF maintains a Disclosure and Communications Policy which governs how we communicate with shareholders and the investment community.” (p. 9)*
- 8.2 *Procedures are in place to identify matters that are likely to have a material effect on the price of the Company’s securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements. Processes for engagement with analysts and investors are also detailed in the Policy.” (p. 9)*
- 8.3 *IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the Company.” (p. 9)*
9. In June 2016, IFL published a Disclosure and Communications Policy (**2016 Disclosure and Communications Policy**).
10. In the 2016 Disclosure and Communications Policy, IFL made the following statements:
 - 10.1 ***“1.1 Introduction: IOOF is committed to promoting investor confidence and the rights of shareholders by ensuring that trade in its securities takes place in an informed market. IOOF aims to be open and transparent with all stakeholders and is committed to disseminating information in a fair and timely manner”. (p. 4)***
 - 10.2 ***“3.1 Disclosure obligation: IOOF is listed on the ASX and complies with the continuous disclosure obligations in the ASX Listing Rules.... Under Listing Rule 3.1, if IOOF becomes aware of any information that a reasonable person would expect to have a material effect on the price or value of its securities, it must immediately give the ASX that information, unless an exception applies”. (p. 5)***
 - 10.3 ***“4.1 Role and responsibilities of the Disclosure Committee: The IOOF Disclosure Committee is comprised of senior management personnel and is a management committee of the IOOF Group. Its role***

is to consider disclosures of potentially market sensitive information to be made by IOOF and is tasked with ensuring that such information has been assessed for compliance with IOOF's continuous disclosure obligations". (p. 7)

- 10.4 ***"6.1 Communication of information: Market sensitive information will be posted as soon as reasonably practicable after its release to the ASX". (p. 9)***

(v) IFL's 2017 Continuous Disclosure Statements

11. On 23 October 2017, IFL published ~~publicised~~ its Corporate Governance Statement (**2017 Corporate Governance Statement**) in identical terms to the 2016 Corporate Governance Statement.
12. The 2017 Corporate Governance Statement made the following statements:
- 12.1 *"The Board is committed to keeping its shareholders and the market fully informed of major developments that may have an impact on the Company. In line with this commitment, IOOF maintains a Disclosure and Communications Policy which governs how we communicate with shareholders and the investment community". (p. 9)*
- 12.2 *Procedures are in place to identify matters that are likely to have a material effect on the price of the Company's securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements. Processes for engagement with analysts and investors are also detailed in the Policy". (p. 9)*
- 12.3 *IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the Company". (p. 9)*
13. In May 2017, IFL published a Disclosure and Communications Policy (**2017 Disclosure and Communications Policy**).
14. In the 2017 Disclosure and Communications Policy, IFL made the following statements:

- 14.1 ***“1.1 Introduction: IOOF is committed to promoting investor confidence and the rights of shareholders by ensuring that trade in its securities takes place in an informed market. IOOF aims to be open and transparent with all stakeholders and is committed to disseminating information in a fair and timely manner”. (p. 4)***
- 14.2 ***“3.1 Disclosure obligation: IOOF is listed on the ASX and complies with the continuous disclosure obligations in the ASX Listing Rules.... Under Listing Rule 3.1, if IOOF becomes aware of any information that a reasonable person would expect to have a material effect on the price or value of its securities, it must immediately give the ASX that information, unless an exception applies”. (p. 5)***
- 14.3 ***“4.1 Role and responsibilities of the Disclosure Committee: The IOOF Disclosure Committee is comprised of senior management personnel and is a management committee of the IOOF Group. Its role is to consider disclosures of potentially market sensitive information to be made by IOOF and is tasked with ensuring that such information has been assessed for compliance with IOOF’s continuous disclosure obligations”. (p. 7)***
- 14.4 ***“6.1 Communication of information: Market sensitive information will be posted as soon as reasonably practicable after its release to the ASX”. (p. 9)***

(vi) IFL’s 2018 Continuous Disclosure Statements

- 15. In 26 October 2018, IFL published a Corporate Governance Statement (**2018 Corporate Governance Statement**).
- 16. In the 2018 Corporate Governance Statement, IFL made the following statements:
 - 16.1 ***“The Board is committed to keeping its shareholders and the market fully informed of material developments that may have an impact on the Group. In line with this commitment, IOOF maintains a Disclosure and Communications Policy which governs how we communicate with shareholders and the investment community”. (p. 9)***

- 16.2 *Procedures are in place to identify matters that are likely to have a material effect on the price of the Company's securities and to ensure matters that are notified to the ASX are factual and made in a timely manner in accordance with the ASX Listing Rule requirements. Processes for engagement with analysts and investors are also detailed in the Policy". (p. 9)*
- 16.3 *IOOF recognises the right of shareholders to receive effective communication ensuring shareholders are informed of all necessary information to fully assess the performance of the Group". (p. 9)*

(B) REGULATORY ENGAGEMENT STATEMENTS

(i) IFL's 2013 Regulatory Engagement Statements

17. On or about September 2013, and in operation until at least July 2014, IFL published a revised Code of Conduct (**2013 Code of Conduct**).
18. In the 2013 Code of Conduct, IFL stated that:
- 18.1 *"IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business". (p. 8)*

(ii) IFL's 2014 Regulatory Engagement Statements

19. On or about September 2014, IFL published a revised Code of Conduct (**2014 Code of Conduct**). In the 2014 Code of Conduct, IFL stated that:
- 19.1 *"IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business". (p. 7)*

(iii) IFL's 2015 Regulatory Engagement Statements

20. In the 2014 Code of Conduct, in force in 2015, IFL stated that:
- 20.1 *"IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business". (pp. 6-7)*

21. On 28 August 2015, IFL issued a media release (**28 August 2015 Media Release**).
22. In the 28 August 2015 Media Release, IFL made the following statements:
- 22.1 *“We also recognise that a culture of compliance requires openness and transparency with regulators. For this reason, we have welcomed the opportunity to interact with our industry regulators, ASIC and APRA, at an even more elevated level than usual during this past years”. (p. 4)*

(iv) IFL’s 2016 Regulatory Engagement Statements

23. In the 2014 Code of Conduct, in force in 2016, IFL stated that:
- 23.1 *“IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business”. (pp. 6-7)*
24. On 24 February 2016, IFL published its 2016 Interim Financial Result (**2016 Interim Financial Result**).
25. In the 2016 Interim Financial Result, IFL made the following statement:
- 25.1 *“IOOF is fully committed to proactively achieving the highest standards of compliance throughout the whole of the organisation and we continue to work with all regulators to demonstrate that commitment”. (p. 2)*

(v) IFL’s 2017 Regulatory Engagement Statements

26. In the 2017 Code of Conduct, in force in 2017, IFL stated that:
- 26.1 *“IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business”. (pp. 6-7)*

(C) CORPORATE GOVERNANCE STATEMENTS

(i) IFL's 2013 Corporate Governance Statements

27. In the 2013 Code of Conduct, IFL stated that:

27.1 *"IOOF will ensure strict observance of all financial services law and regulations relevant to the conduct of its business including, but not limited to... Superannuation Industry (Supervision) Act (1993) and associated legislation; ASX Listing Rules... IOOF must not participate in or assist any violation of these laws, rules or regulations". (pp. 7-8)*

27.2 *"IOOF employees must observe the following: Place the interests of clients first at all times; Avoid, and be seen to avoid, an actual or potential conflict of interest between personal interests and their duty to clients". (p. 8)*

28. In the 2013 Corporate Governance Statement, IFL stated that:

28.1 *"The Board of Directors and Management of IOOF recognise the importance of good corporate governance and are committed to maintaining the highest standards of corporate governance within the Group. This is an organisational priority since IOOF is both a listed company and an entity operating within the highly regulated financial services sector, overseen by [APRA, ASIC, ASX, AUSTRAC]". (p. 16)*

(ii) IFL's 2014 Corporate Governance Statements

29. In the 2014 Code of Conduct, IFL stated that:

29.1 ***"Compliance:** IOOF employees are expected to adhere to all internal rules developed to regulate and manage IOOF's business operations. IOOF employees are required to comply with all legal and regulatory requirements applicable to IOOF's operations. IOOF employees are required to discharge their obligations as required under the IOOF Group Compliance Policy and all corporate policies, which are available on IOOF's intranet". (p. 7)*

29.2 *"IOOF will ensure strict observance of all financial services law and regulations relevant to the conduct of its business including, but not*

limited to... Superannuation Industry (Supervision) Act (1993) and associated legislation; ASX Listing Rules... IOOF must not participate in or assist any violation of these laws, rules or regulations". (pp. 6-7)

29.3 *"IOOF employees must observe the following: Place the interests of clients first at all times; Avoid, and be seen to avoid, an actual or potential conflict of interest between personal interests and their duty to clients". (p. 8)*

30. In the 2014 Corporate Governance Statement, IFL made the following statement:

30.1 *"The Board of Directors and Management of IOOF recognise the importance of good corporate governance and are committed to maintaining the highest standards of corporate governance within the Group. This is an organisational priority since IOOF is both a listed company and an entity operating within the highly regulated financial services sector, overseen by [APRA, ASIC, ASX, AUSTRAC]". (p. 2)*

(iii) IFL's 2015 Corporate Governance Statements

31. In the 2014 Code of Conduct, in force in 2015, IFL stated that:

31.1 *"**Compliance:** IOOF employees are expected to adhere to all internal rules developed to regulate and manage IOOF's business operations. IOOF employees are required to comply with all legal and regulatory requirements applicable to IOOF's operations. IOOF employees are required to discharge their obligations as required under the IOOF Group Compliance Policy and all corporate policies, which are available on IOOF's intranet". (p. 7)*

31.2 *"IOOF will ensure strict observance of all financial services law and regulations relevant to the conduct of its business including, but not limited to... Superannuation Industry (Supervision) Act (1993) and associated legislation; ASX Listing Rules... IOOF must not participate in or assist any violation of these laws, rules or regulations". (pp. 6-7)*

31.3 *"IOOF employees must observe the following: Place the interests of clients first at all times; Avoid, and be seen to avoid, an actual or*

potential conflict of interest between personal interests and their duty to clients". (p. 8)

32. In the 2015 Corporate Governance Statement, IFL made the following statement:

32.1 *"The Board of Directors and Management of IOOF recognise the importance of good corporate governance and are committed to maintaining the highest standards of corporate governance within the Group. This is an organisational priority since IOOF is both a listed company and an entity operating within the highly regulated financial services sector... overseen by [APRA, ASIC, ASX, AUSTRAC]". (p. 1)*

33. On 24 June 2015, IFL issued a media release (**24 June 2015 Media Release**). In the 24 June 2015 Media Release, IFL made the following statement:

33.1 *"As noted in IOOF's statement of 22 June 2015, the company is committed to ensuring it meets the highest standards of governance and compliance in its different businesses". (p. 1)*

34. On 28 August 2015, IFL released an investor presentation (**2015 Investor Presentation**).

35. In the 2015 Investor Presentation, IFL made the following statement:

35.1 *"Compliance and governance are an integral part of our business". (p. 23)*

36. On 28 August 2015, IFL issued a media release (**28 August 2015 Media Release**).

37. In the 28 August 2015 Media Release, IFL made the following statements:

37.1 *"IOOF acknowledges that putting clients' interests above all else is paramount. We accept the need to continuously examine our policies and constantly challenge the way we do business in order to protect the interests of our clients and deliver on clients' expectations of trustworthy advice and behaviour".*

37.2 *"IOOF's strong compliance culture requires its employees to behave in a way which exceeds the standards required by the law. The policies*

and procedures in place recognises [sic] that human errors will inevitably be made, but also applies strong sanctions and penalties when policies are deliberately breached...". (p. 4)

(iv) IFL's 2016 Corporate Governance Statements

38. In the 2014 Code of Conduct, in force in 2016, IFL stated that:

38.1 *"**Compliance:** IOOF employees are expected to adhere to all internal rules developed to regulate and manage IOOF's business operations. IOOF employees are required to comply with all legal and regulatory requirements applicable to IOOF's operations. IOOF employees are required to discharge their obligations as required under the IOOF Group Compliance Policy and all corporate policies, which are available on IOOF's intranet". (p. 7)*

38.2 *"IOOF will ensure strict observance of all financial services law and regulations relevant to the conduct of its business including, but not limited to... Superannuation Industry (Supervision) Act (1993) and associated legislation; ASX Listing Rules... IOOF must not participate in or assist any violation of these laws, rules or regulations. IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business". (pp. 6-7)*

38.3 *"IOOF employees must observe the following: Place the interests of clients first at all times; Avoid, and be seen to avoid, an actual or potential conflict of interest between personal interests and their duty to clients". (p. 8)*

39. On 24 October 2016, IFL published its 2016 Annual Financial Report (**2016 Annual Report**). In the 2016 Annual Report, IFL made the following statements:

39.1 *"IOOF has a strong governance culture and we remain committed to the highest standards of compliance and oversight". (p. 4)*

39.2 *"Underpinning everything we do are robust governance and compliance foundations which are fundamental to our successful day to day operations". (p. 6)*

(v) **IFL's 2017 Corporate Governance Statements**

40. In the 2014 Code of Conduct, in force in 2017, IFL stated that:

40.1 ***"Compliance:** IOOF employees are expected to adhere to all internal rules developed to regulate and manage IOOF's business operations. IOOF employees are required to comply with all legal and regulatory requirements applicable to IOOF's operations. IOOF employees are required to discharge their obligations as required under the IOOF Group Compliance Policy and all corporate policies, which are available on IOOF's intranet". (p. 7)*

40.2 *"IOOF will ensure strict observance of all financial services law and regulations relevant to the conduct of its business including, but not limited to... Superannuation Industry (Supervision) Act (1993) and associated legislation; ASX Listing Rules... IOOF must not participate in or assist any violation of these laws, rules or regulations. IOOF will deal with regulators in an open and co-operative manner and keep them informed of relevant matters concerning the business". (pp. 6-7)*

40.3 *"IOOF employees must observe the following: Place the interests of clients first at all times; Avoid, and be seen to avoid, an actual or potential conflict of interest between personal interests and their duty to clients". (p. 8)*

41. In February 2017, IFL published a Board Charter of IOOF Holdings Limited **(2017 IOOF Board Charter)**.

42. In the 2017 IOOF Board Charter, IFL made the following statement:

42.1 ***"2. Role and responsibilities of the Board:** (f) establishing, monitoring and regularly reviewing systems of internal governance compliance, risk management and control, and systems of legal compliance that govern the operations of the Company and ensuring that they are operating effectively". (p. 2)*

43. In October 2017, IFL published an Annual Report **(2017 Annual Report)**.

44. In the 2017 Annual Report, IFL made the following statements:

- 44.1 **“Corporate Governance:** *Robust corporate governance policies, practices and procedures are a fundamental part of our culture and lay the foundations that underpin everything we do”.* (p. 14);
- 44.2 **“5-6 Disclosures on asset restrictions, managed assets and trustee activities:** *... Entities in the IOOF Group, including the IOOF Ltd Benefit Funds, hold controlling investments in managed funds. A subsidiary of the Company is the Responsible Entity for these managed funds and has a fiduciary responsibility for managing these trusts. Arrangements are in place to ensure that such activities are managed separately from the other activities of the IOOF Group”.* (p. 103)

(vi) IFL’s 2018 Corporate Governance Statements

- 45. On or about June 2018, IFL published a revised Code of Conduct (**2018 Code of Conduct**).
- 46. In the 2018 Code of Conduct, IFL stated that:
 - 46.1 *“Being aware of and complying with the laws and regulations under which we operate is a critical part of our business and is fundamental to who we are and what we represent”.* (p. 7)
 - 46.2 *“To maintain the respect and confidence of our customers, which in turn protects our brand and our reputation, it is essential that we comply with the spirit of our Code as well as the letter of the law”.* (p. 7)

(D) ETHICAL STANDARDS STATEMENTS

(i) IFL’s 2013 Ethical Standards Statements

- 47. In the 2013 Code of Conduct, IFL made the following statements:
 - 47.1 *“IOOF employees are expected to conduct their activities and responsibilities with the highest degree of integrity and fair dealing. It is important to maintain the Group’s reputation”.* (p. 5)

47.2 *"IOOF will ensure that it acts at all times with due skill, care and diligence, maintaining appropriate standards of competence in the conduct of carrying out its business. The Code's objectives are to ensure that all managers have [inter alia]... adequate and properly documented plans, controls and maintenance mechanisms which are implements at all levels of management to ensure the business... complies with regulatory requirements and this Code of Conduct". (pp. 5-6)*

48. In the 2013 Corporate Governance Statement, IFL made the following statement:

48.1 *"All employees, including the Board and senior management are expected to uphold the highest levels of integrity and professional and ethical behaviour in their relationships with the Group's stakeholders". (p. 4)*

(ii) IFL's 2014 Ethical Standards Statements

49. In the 2014 Code of Conduct, IFL made the following statements:

49.1 *"IOOF employees are expected to conduct their activities and responsibilities with the highest degree of integrity and fair dealing. It is important to maintain the Group's reputation". (p. 5)*

49.2 *"IOOF will ensure that it acts at all times with due skill, care and diligence, maintaining appropriate standards of competence in the conduct of carrying out its business. The Code's objectives are to ensure that all managers have [inter alia]... adequate and properly documented plans, controls and maintenance mechanisms which are implements at all levels of management to ensure the... complies with regulatory requirements and this Code of Conduct". (p. 5)*

50. In the 2014 Corporate Governance Statement, IFL made the following statement:

50.1 *"All employees, including the Board and senior management are expected to uphold the highest levels of integrity and professional and*

ethical behaviour in their relationships with the Group's stakeholders".
(p. 4)

(iii) IFL's 2015 Ethical Standards Statements

51. In the 2015 Corporate Governance Statement, IFL made the following statement:

51.1 *"All employees, including the Board and senior management are expected to uphold the highest levels of integrity and professional and ethical behaviour in their relationships with the Group's stakeholders".*
(p. 6)

(iv) IFL's 2016 Ethical Standards Statements

52. In the 2016 Conflicts Management Framework, IFL made the following statement:

52.1 *"IOOF delivers a high level of quality service to our clients and rigorously supports ethical behaviour. As a condition of employment, employees are expected to conduct their activities and responsibilities with integrity and fair dealing. The IOOF Code of Conduct also contains this requirement and is attested to on appointment and again annually by all staff, The Code of Conduct also emphasises IOOF's values (which include integrity) and are incorporated into the recruitment and performance review process for all staff".* (p. 3)

53. In the 2016 Corporate Governance Statement, IFL made the following statements:

53.1 *"The IOOF Group is committed to the highest standards of conduct and ethical behaviour in all our business activities, and to promoting and supporting a culture of honest and ethical behaviours, corporate compliance and good corporate governance".* (p. 6)

53.2 *"The Board has a strong commitment to the integrity and quality of its financial reporting and its systems for risk management, compliance and internal control".* (p. 8)

(v) IFL's 2017 Ethical Standards Statements

54. In the 2017 IOOF Board Charter, IFL made the following statements:

- 54.1 ***"2. Role and responsibilities of the Board: (g) monitoring and reviewing policies and processes relating to occupational health and safety, compliance with laws and the maintenance of high ethical standards". (p. 2)***
- 54.2 ***"3.3 Managing Director: The Board delegates overall management of all day to day operations to the MD, who has the authority to control the affairs of the Company in relation to all matters other than those expressly reserved for the Board in this Charter, including: (a) fostering a culture of integrity and respect in accordance with the Company's values; (b) ensuring all material matters are brought to the Board's attention; (c) maintaining systems of risk management, compliance and internal control; (d) mentoring and providing direction to the senior executives; and (e) developing, in consultation with the Board, and implementation and monitoring of the Company's strategic plans. The MD has authority to sub-delegate to the senior executive team. Ultimate responsibility for the strategy and control and oversight of sound and prudent management of the Company rests with the Directors". (p. 4)***

(vi) IFL's 2018 Ethical Standards Statements

55. In the 2018 IOOF Code of Conduct, IFL made the following statements:

- 55.1 ***"Our Culture: We treat each other, our customers and other Employees with respect and stay true to our values". (p. 4)***
- 55.2 ***"Ethical and responsible decision making: The IOOF Group is committed to the highest standards of conduct and ethical behaviour in all our business activities, conduct and ethical behaviour in all our business activities, and to promoting and supporting a culture of honest and ethical behaviours, corporate compliance and good corporate governance". "The board has adopted a Code of Conduct which applies to all Directors, officers, employees, contractors and consultants within the IOOF Group and is designed to ensure a high***

standard of honest and ethical corporate and individual behaviour”.
(p. 5)

- 55.3 *“Our Code: Our Code represents our commitment to: acting honestly, ethically and with high standards of personal integrity; understanding and complying with the letter and spirit of our Code: our values, behaviours and Policies; acting in the best interests of our clients and protecting the interests and reputation of IOOF; demonstrating IOOF values in our interactions and ensuring that our behaviours and actions reflect our values; not knowingly participate in any illegal or unethical activity; complying with and working within our delegated authority; managing conflicts of interest to ensure that the best interests of customers, investors and members are upheld including by ensuring that we identify, record and report actual or potential conflicts in a timely and appropriate manner and cooperate with Group Compliance to manage any identified conflict”.* **(p. 6)**
- 55.4 *“Compliance with our Code: Being aware of and complying with the laws and regulations under which we operate is a critical part of our business and is fundamental to who we are and what we represent”.*
(p. 7)
- 55.5 *“Breaches of the Code: We are all responsible for building a sustainable business and for protecting IOOF’s reputation. We must promptly report any known or suspected breaches of our Code, other IOOF Policies, or of any relevant law or regulation”.* **(p. 7)**

SCHEDULE 4

Glossary of Defined Terms

A term in Column 1 has the meaning ascribed to it by the statutory provision listed in Column 2.	
Financial Services Licensee	<i>Corporations Act 2001</i> (Cth), s 761A
Registered Scheme	<i>Corporations Act 2001</i> (Cth), s 9
Regulated Superannuation Fund	<i>Superannuation Industry (Supervision) Act 1993</i> (Cth), s 19
Responsible Entity	<i>Corporations Act 2001</i> (Cth), s 9
RSE Licensee	<i>Superannuation Industry (Supervision) Act 1993</i> (Cth), s 10
Subsidiary	<i>Corporations Act 2001</i> (Cth), s 9