

## FIRST CROSS-CLAIM

### 1<sup>ST</sup> TO 455<sup>TH</sup> CROSS-DEFENDANTS' COMMERCIAL LIST CROSS-CLAIM RESPONSE TO THE AMENDED CROSS-CLAIM STATEMENT

#### COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial
Registry	Sydney
Case number	<del>2017/294069</del> & 2018/52431

FILED  
21 MAY 2019



#### TITLE OF PROCEEDINGS

~~Proceeding 2017/294069~~

<del>First plaintiff</del>	<del>Haliburton Charles David Findlay</del>
<del>Second plaintiff</del>	<del>Marian Jennifer Denny Findlay</del>
<del>First defendant</del>	<del>DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)</del>
<del>Number of defendants</del>	<del>457</del>

#### Proceeding 2018/52431

First plaintiff	Epaminondas Mastoris
Second plaintiff	Lena Mastoris
First defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of defendants	457

#### TITLE OF THIS CROSS-CLAIM

Cross-claimants	DSHE Holdings Ltd (ACN 166 237 841) (receivers and managers appointed) (in liquidation) (First Cross-Claimant on First Cross-Claim / First Defendant)
First cross-defendant	David Robert White trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060)
Number of cross-defendants	455

#### FILING DETAILS

Filed for	David Robert White trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060) & Ors, 1 <sup>st</sup> to 454 <sup>th</sup> Cross-Defendants to the First Cross-Claim Deloitte Corporate Finance Pty Limited, 455 <sup>th</sup> Cross-Defendant to the First Cross-Claim
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Filed in relation to	First Cross-Claim
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## **NOTE AS TO TERMINOLOGY AND PRIVILEGE**

The 1<sup>st</sup> to 454<sup>th</sup> Cross-Defendants' (**Deloitte**) and the 455<sup>th</sup> Cross-Defendant (Deloitte Corporate Finance Pty Ltd (**DCF**)) respond to the Amended Cross-Claim Statement filed 8 April 2019 (**DSH Claim**) (in support of the relief claimed in the Cross-Summonses filed on, relevantly, 19 and 27 June 2018) as follows, adopting the definitions therein unless otherwise stated. This includes terms defined in the Plaintiffs' Further Amended Joint Statement of Claim (as further amended from time to time) (**Plaintiffs' Claim**), which have been adopted in the DSH Claim. Otherwise, defined terms take the meaning set out in the "Dictionary" at the end of this Commercial List Cross-Claim Response. Headings and subheadings adopted in the DSH Claim are repeated for ease of reference only.

Where, in this Commercial List Cross-Claim Response, either of Deloitte or DCF do not expressly plead to a paragraph, the position of Deloitte or DCF (as applicable) in relation to the allegation(s) within that paragraph is that Deloitte or DCF do not admit the allegation(s). Admissions made in this Commercial List Cross-Claim Response are for the purpose of this proceeding only and not because any or all of the Cross-Defendants know or believe those matters to be true or false.

Nothing in this Commercial List Cross-Claim Response should be taken to amount to an express or implied waiver of any privilege against self-incrimination or privilege against self-exposure to penalty belonging to Deloitte (or any one of them) or to any of their partners, directors, officers or employees.

## **PART A – NATURE OF DISPUTE**

1. DSH brings the DSH Claim against Deloitte and DCF only in the event that it is found liable to the Plaintiffs in respect of the allegations made against it in the Plaintiffs' Claim.
2. Among other things, the DSH Claim alleges (and the Cross-Defendants deny) that Deloitte:
  - (a) engaged in misleading or deceptive conduct; and/or
  - (b) made false or misleading representations to DSH; and/or
  - (c) breached certain duties allegedly owed to DSH (including by reason of breaching certain duties allegedly owed to DSSH); and/or
  - (d) committed the tort of negligent misstatement; and/or
  - (e) breached their contractual obligations to DSH,

in the conduct of their audits of:

- (f) DSSH's FY13 Report (i.e. the FY13 Audit);
- (g) DSH's FY14 Report (i.e. the FY14 Audit); and
- (h) DSH's FY15 Report (i.e. the FY15 Audit),

(together, the **DTT Engagements**).

3. In addition, among other things, the DSH Claim alleges (and the Cross-Defendants' deny) that DCF:

- (a) breached certain duties allegedly owed to DSH; and/or
- (b) committed the tort of negligent misstatement; and/or
- (c) breached its contractual obligations to DSH; and/or
- (d) is liable for loss or damage caused by the inclusion of certain statements in the Prospectus, pursuant to ss 728-729 of the Corporations Act,

in the conduct of its engagement in connection with the IAR to be included in the Prospectus (**DCF Engagement**).

- 4. DSSH's directors, including the Second Defendant, Nicholas Abboud (**Abboud**) (**DSSH Directors**), were responsible for the preparation, and true and fair presentation, of the FY13 Report.
- 5. DSH's directors, including Abboud and the Third Defendant, Michael Potts (**Potts**), and some or all of DSH's non-executive directors (**NEDs**) (**DSH Directors**), were responsible for the preparation, and true and fair presentation, of each of the FY14 Report and the FY15 Report.
- 6. The nature of each of the DTT Engagements was such that the conduct alleged to have been engaged in and/or the representation(s) alleged to have been made was in the nature of, respectively, an opinion or a negative assurance, given in the course of carrying out a statutory role.
- 7. In conducting the DTT Engagements, Deloitte relied on representations made by the DSSH Directors and the DSH Directors, including Abboud and Potts, in forming their opinions and giving their negative assurance.
- 8. If the Plaintiffs' Claim is successful and if, which is denied, Deloitte are held to have engaged in the conduct and/or made the representations as alleged by the DSH Claim,

Deloitte raise the matters set out in paragraphs 210-230 by way of complete or partial defence.

9. The nature of DCF's Engagement was such that the conduct alleged to have been engaged in and/or the representation(s) alleged to have been made was in the nature of a negative assurance.
10. In their conduct of the DCF Engagement, DCF relied on representations made by DSSH and DSH, and the directors of DSSH and DSH in, relevantly, giving the negative assurance.
11. If the Plaintiffs' Claim is successful and if, which is denied, DCF is held to have engaged in the conduct and/or made the representations as alleged by the DSH Claim, DCF raise the matters set out in paragraphs 210-230 by way of complete or partial defence.

#### **PART B – ISSUES LIKELY TO ARISE**

Deloitte and DCF agree that the issues identified by DSH in Part B of the DSH Claim are likely to arise in this proceeding and say that the following issues will also arise:

1. If Deloitte are held to have:

- (a) engaged in misleading or deceptive conduct; and/or
- (b) made false or misleading representations to DSH; and/or
- (c) breached certain duties allegedly owed to DSH; and/or
- (d) committed the tort of negligent misstatement; and/or
- (e) breached any contractual duties owed to DSH,

as alleged (each of which is denied), then whether:

- (f) Deloitte ought to be fairly excused for the relevant contravention and/or relieved wholly or partly from any liability to which they would otherwise be subject; and/or
- (g) any liability which they may have to DSH for an apportionable claim should be reduced to reflect the proportion of DSH's loss that the Court considers just, having regard to the extent of their responsibility for that loss, and the extent of any concurrent wrongdoer for that same loss.

2. If DCF is held to have:

- (a) breached certain duties allegedly owed to DSH; and/or
- (b) committed the tort of negligent misstatement; and/or
- (c) breached its contractual obligations to DSH; and/or

- (d) incurred liability for loss or damage caused by the inclusion of certain statements in the Prospectus, pursuant to ss 728-729 of the Corporations Act, as alleged (each of which is denied), then whether
- (e) they ought to be fairly excused for the contravention and/or relieved wholly or partly from any liability to which they would otherwise be subject; and/or
- (f) any liability which they may have to DSH for an apportionable claim should be reduced to reflect the proportion of DSH's loss that the Court considers just, having regard to the extent of their responsibility for that loss, and the extent of any concurrent wrongdoer for that same loss.

## **PART C – CROSS-DEFENDANTS' RESPONSES TO CROSS-CLAIMANT'S CONTENTIONS**

### **A. THE PARTIES**

1 to 5. [Not used].

6. As to paragraph 6, Deloitte and DCF:

- (a) refer to and repeat paragraphs 38-56 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, do not admit the paragraph.

7. As to paragraph 7, Deloitte:

- (a) as to sub-paragraph 7(a):
  - (i) admit that they are (or were, as applicable) partners in an Australian partnership trading as Deloitte Touche Tohmatsu (DTT);
  - (ii) say that the membership of DTT changed from time to time and, accordingly, do not admit that the 1<sup>st</sup> to 454<sup>th</sup> Cross-Defendants were partners at all material times;
  - (iii) say that any conduct engaged in by any of the 1<sup>st</sup> to 454<sup>th</sup> Cross-Defendants in respect of the DTT Engagements was conducted by them in the ordinary course of the business of DTT and/or with the authority of DTT's partners at the relevant time; and
  - (iv) otherwise, deny the subparagraph;
- (b) as to sub-paragraph 7(b):

- (i) admit that, as partners of DTT, they conducted business in Australia as providers of (amongst other things) accountancy, audit, tax, consulting and financial advisory services, trading under the name "Deloitte Touche Tohmatsu"; and
    - (ii) otherwise, deny the subparagraph;
  - (c) do not admit sub-paragraph 7(c);
  - (d) as to sub-paragraph 7(d):
    - (i) say that, to the extent the DSH Claim refers to the Australian Consumer Law, it takes that as a reference to the *Australian Consumer Law (NSW)* (**ACL NSW**);
    - (ii) admit the subparagraph insofar as it concerns Mr David White (i.e. the 1<sup>st</sup> Cross-Defendant); and
    - (iii) otherwise, do not admit the subparagraph; and
  - (e) note that in the interests of economy, in the balance of this Commercial List Cross-Claim Response, Deloitte have not repeated the contentions in subparagraphs 7(a)-(d), but that the whole of this Commercial List Cross-Claim Response is subject to Deloitte's position that the membership of DTT changed from time to time; and
  - (f) otherwise, deny the paragraph.
8. As to paragraph 8, DCF:
- (a) admits sub-paragraph 8(a);
  - (b) denies sub-paragraph 8(b);
  - (c) as to sub-paragraphs 8(c) and 8(d), DCF:
    - (i) admits that DCF carried on the business of providing financial advisory services in Australia; and
    - (ii) otherwise, does not admit the subparagraphs; and
  - (d) as to sub-paragraph 8(e), DCF:
    - (i) say that, to the extent the DSH Claim refers to the Australian Consumer Law, it takes that as a reference to the *Australian Consumer Law (NSW)* (**ACL NSW**);

(ii) admits that each of Mr Steve Woosnam, Mr Johan Duivenvoorde, Mr David Hagger, Mr David White, Ms Samantha Lewis and Mr Mark Goldsmith:

(A) are (or were) partners of DTT;

(B) is a person for the purposes of:

(1) s 1041H of the Corporations Act;

(2) s 12DA of the ASIC Act; and

(3) s 18 of the ACL NSW;

(iii) otherwise, do not admit the subparagraph.

## **B. THE DTT RETAINERS**

### **B.1. FY13 Retainer**

9. As to paragraph 9, Deloitte:

(a) repeat their response to paragraph 7;

(b) rely on the terms of the FY13 Retainer for their full meaning and effect; and

(c) otherwise, admit the paragraph.

10. As to paragraph 10, Deloitte:

(a) rely on the terms of the FY13 Retainer for their full meaning and effect; and

(b) otherwise, do not admit the paragraph.

11. Deloitte admit paragraph 11.

### **B.2. FY14 Retainer**

12. As to paragraph 12, Deloitte:

(a) repeat their response to paragraph 7;

(b) rely on the terms of the FY14 Retainer for their full meaning and effect; and

(c) otherwise, admit the paragraph.

13. As to paragraph 13, Deloitte:

(a) rely on the terms of the FY14 Retainer for their full meaning and effect; and

(b) otherwise, do not admit the paragraph.

14. Deloitte admit paragraph 14.

### **B.3. FY15 Retainer**

15. As to paragraph 15, Deloitte:
- (a) repeat their response to paragraph 7;
  - (b) rely on the terms of the FY15 Retainer for their full meaning and effect; and
  - (c) otherwise, admit the paragraph.
16. As to paragraph 16, Deloitte:
- (a) rely on the terms of the FY15 Retainer for their full meaning and effect; and
  - (b) otherwise, do not admit the paragraph.
17. Deloitte admit paragraph 17.

### **C. ACCOUNTING AND AUDITING FRAMEWORK**

#### **C.1. Corporations Act 2001**

18. As to paragraph 18, Deloitte:
- (a) refer to and repeat paragraphs 111-113 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, do not admit the paragraph.
19. Deloitte admit paragraph 19.
20. As to paragraph 20, Deloitte:
- (a) rely on ss 296, 297 and 307 of the Corporations Act for its full meaning and effect; and
  - (b) otherwise, do not admit the paragraph.
21. As to paragraph 21, Deloitte:
- (a) rely on s 307A of the Corporations Act for its full meaning and effect; and
  - (b) otherwise, do not admit the paragraph.
22. As to paragraph 22, Deloitte:
- (a) rely on ss 296, 297 and 308 of the Corporations Act for its full meaning and effect; and
  - (b) otherwise, do not admit the paragraph.
23. As to paragraph 23 Deloitte:
- (a) rely on s 310 of the Corporations Act for its full meaning and effect; and



- (b) otherwise, do not admit the paragraph.

**C.2. Accounting Standards**

- 24. As to paragraph 24, Deloitte:
  - (a) refer to and repeat paragraphs 114-134 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, do not admit the paragraph.

**C.3. Auditing Standards**

- 25. As to paragraph 25, Deloitte:
  - (a) refer to and repeat the paragraphs in Part F.3 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, do not admit the paragraph.
- 26. As to paragraph 26, Deloitte:
  - (a) rely on the all applicable/relevant Australian Auditing Standards issued by the Auditing and Assurance Standards Board (**AUASB**) for their full meaning and effect to the extent that they were in force and in the form in which they existed at the time;
  - (b) say that ASA 265 and all other applicable/relevant Australian Auditing Standards issued by the AUASB include mandatory provisions and/or guidance according to their terms; and
  - (c) otherwise, admit the paragraph.
- 27. As to paragraph 27, Deloitte:
  - (a) repeat their response to paragraph 26; and
  - (b) otherwise, do not admit the paragraph.

**D. REPRESENTATIONS BY DTT**

**D.1. The FY13 Inventory Representations**

- 28. As to paragraph 28, Deloitte:
  - (a) repeat their response to paragraph 32; and
  - (b) otherwise, admit the paragraph.
- 29. As to paragraph 29, Deloitte:
  - (a) repeat their response to paragraph 32; and

- (b) otherwise, do not admit the paragraph.
30. Deloitte deny paragraph 30.
31. As to paragraph 31, Deloitte:
- (a) repeat their response to paragraph 32;
  - (b) admit subparagraphs (a)–(d); and
  - (c) otherwise, do not admit the paragraph.
32. As to paragraph 32, Deloitte:
- (a) rely on the FY13 Board Report for its full content and meaning;
  - (b) rely upon all of the facts, matters and circumstances concerning the parties' dealings in relation to the FY13 Audit as to the content of any representation; and
  - (c) otherwise, deny the paragraph.

## **D.2. The FY13 Audit Report Representations**

33. As to paragraph 33, Deloitte:
- (a) repeat their response to paragraph 32; and
  - (b) otherwise, admit the paragraph.
34. As to paragraph 34, Deloitte:
- (a) repeat their response to paragraph 32; and
  - (b) otherwise, admit the paragraph.
35. As to paragraph 35, Deloitte:
- (a) repeat their response to paragraph 32;
  - (b) rely on Deloitte's FY13 Audit Report for its full content and meaning; and
  - (c) otherwise, admit the paragraph.
36. As to paragraph 36, Deloitte:
- (a) repeat their responses to paragraphs 32 and 35;
  - (b) say that each of Abboud and Timothy Fawaz (in his capacity as Chief Financial Officer of DSSH) (**Fawaz**) provided a management representation letter to DTT dated 23 October 2013 as to matters concerning the FY13 Report (**FY13 Management Representation Letter**);

- (c) say that, on 22 October 2013, each of the DSSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY13 Report (**FY13 Directors Declaration**);
- (d) rely on the FY13 Management Representation Letter, the FY13 Directors Declaration for their full content and meaning;
- (e) say that, after the giving of the FY13 Management Representation Letter and the FY13 Directors Declaration, the First Cross-Defendant (as lead auditor) signed the FY13 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act;
- (f) say that the FY13 Audit Report was divided into, relevantly, three sections: "Directors' Responsibility for the Financial Report"; "Auditor's Responsibility"; and "Opinion";
- (g) say that under the heading "Directors' Responsibility for the Financial Report", the FY13 Audit Report stated that the directors of DSSH were responsible for the preparation and fair presentation of the FY13 Report in accordance with Australian Accounting Standards and the Corporations Act. The responsibility including establishing and maintaining internal control relevant to the preparation and fair presentation of the FY13 Report that is free from material misstatement. In Note 2, the DSSH Directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;
- (h) under the heading "*Auditor's Responsibility*", the FY13 Audit Report stated, inter alia, that:
  - (i) DTT's responsibility was to express an opinion on the FY13 Report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the FY13 Report was free from material misstatement;
  - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor

- considers internal control relevant to DSSH's preparation and fair presentation of the financial report, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSSH's internal control;
- (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSSH directors, as well as evaluating the overall presentation of the financial report; and
  - (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
- (i) under the heading "Opinion", the FY13 Audit Report stated, *inter alia*, that in DTT's opinion:
- (i) the FY13 Report was in accordance with the Corporations Act, including:
    - (A) giving a true and fair view of the consolidated entity's financial position as at 30 June 2013 and of its performance for the year ended on that date; and
    - (B) complying with Australian Accounting Standards and the Corporations Regulations; and
  - (ii) the FY13 Report also complies with IFRS as disclosed in Note 2;
- (j) will rely at trial on the FY13 Audit Report and FY13 Report for their full content and meaning;
- (k) otherwise, deny the paragraph.

### **D.3. The DTT Prospectus Representations**

37. As to paragraph 37, Deloitte:
- (a) repeat their response to paragraph 39; and
  - (b) otherwise, admit the paragraph.
38. As to paragraph 38, Deloitte:
- (a) repeat their response to paragraph 39; and
  - (b) otherwise, admit the paragraph.
39. As to paragraph 39, Deloitte:
- (a) rely on the terms of the Prospectus for its full content and meaning; and

- (b) otherwise, admit the paragraph.
- 40. Deloitte admit paragraph 40.
- 41. Deloitte admit paragraph 41.
- 42. As to paragraph 42, Deloitte:
  - (a) repeat their response to paragraphs 32, 35, 36 and 39;
  - (b) rely on upon the FY13 Audit Report and the Prospectus for their full content and meaning;
  - (c) rely upon all of the facts, matters and circumstances concerning the parties' dealings in relation to the initial public offering of DSH as to the content of any representation; and
  - (d) otherwise, deny the paragraph.
- 43. As to paragraph 43, Deloitte:
  - (a) repeat their response to paragraph 42;
  - (b) say that, at all material times, if they were conducting themselves in relation to a "financial service" within the meaning of s 1041H of the Corporations Act and/or "financial services" within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

- (c) otherwise, deny the paragraph.
- 44. As to paragraph 44, Deloitte:
  - (a) repeat their responses to paragraph 32 and 36;
  - (b) say that, at all material times, if they were conducting themselves in relation to "financial services" within the meaning of s 12DB of the ASIC Act (which is denied), then those services were an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

- (c) otherwise, deny the paragraph.

**D.4. The FY14 Rebate Representations**

45. As to paragraph 45, Deloitte:

- (a) repeat their response to paragraph 51; and  
(b) otherwise, admit the paragraph.

46. As to paragraph 46, Deloitte:

- (a) repeat their response to paragraph 51;  
(b) rely on Deloitte's Audit strategy for Dick Smith Holdings for the financial year ending 29 June 2014 for its full content and meaning; and  
(c) otherwise, admit the paragraph.

**Particulars**

*Deloitte presentation entitled "Audit Strategy. Dick Smith Holdings; External Audit Strategy for the financial year ending 29 June 2014" dated January 2014*

47. As to paragraph 47, Deloitte:

- (a) repeat their responses to paragraphs 45 and 46; and  
(b) otherwise, do not admit the paragraph.

48. As to paragraph 48, Deloitte:

- (a) repeat their response to paragraph 51;  
(b) admit Deloitte requested DSH provide them information on the manner in which O&A rebates were recognised and treated in the accounts of DSH; and  
(c) otherwise, do not admit the paragraph.

49. As to paragraph 49, Deloitte:

- (a) repeat their response to paragraph 51;  
(b) otherwise, do not admit the paragraph.

50. As to paragraph 50, Deloitte:
- (a) repeat their response to paragraph 51;
  - (b) otherwise, do not admit the paragraph.
51. As to paragraph 51, Deloitte:
- (a) repeat their response to paragraph 48;
  - (b) rely upon the FY14 FAC Report (which was dated 6 August 2014) and the further amended (and final) version of that report (which was dated 12 August 2014) given to the members of the FAC in person at the meeting on 12 August 2014 for their full content and meaning;
  - (c) rely upon all of the facts, matters and circumstances concerning the parties' dealings in relation to the FY14 Audit as to the content of any representation;
  - (d) otherwise, deny the paragraph.

#### **D.5. The FY14 Inventory Representations**

52. As to paragraph 52, Deloitte:
- (a) repeat their response to paragraph 51; and
  - (b) otherwise, admit the paragraph.
53. As to paragraph 53, Deloitte:
- (a) repeat their response to paragraph 51;
  - (b) rely on Deloitte's presentation to DSH for the FY14 Audit for its full content and meaning; and
  - (c) otherwise, do not admit the paragraph.

#### **Particulars**

*Document presentation entitled "Audit Strategy. Dick Smith Holdings; External Audit Strategy for the financial year ending 29 June 2014", dated January 2014*

54. As to paragraph 54, Deloitte:
- (a) repeat their response to paragraph 51; and
  - (b) otherwise, admit the paragraph.
55. As to paragraph 55, Deloitte:
- (a) repeat their response to paragraph 51; and

(b) otherwise, do not admit the paragraph.

56. As to paragraph 56, Deloitte:

(a) repeat their response to paragraph 51; and

(b) otherwise, deny the paragraph.

#### **D.6. The FY14 Audit Report Representations**

57. As to paragraph 47, Deloitte:

(a) repeat their response to paragraph 59; and

(b) otherwise, deny the paragraph.

58. As to paragraph 58, Deloitte:

(a) rely on the FY14 Audit Report for its full content and meaning; and

(b) otherwise, admit the paragraph.

59. As to paragraph 59, Deloitte:

(a) refer to and repeat their responses to paragraph 51 and 58;

(b) say that, on 18 August 2014, each of Abboud and Potts provided a management representation letter to DTT dated 18 August 2014 as to matters concerning the FY14 Report (**FY14 Management Representation Letter**);

(c) say that, on 18 August 2014, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY14 CEO / CFO Declaration and Assurance**) for the year ended 29 June 2014;

(d) say that, on 18 August 2014, the DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY14 Report (**FY14 Directors Declaration**);

(e) rely on the FY14 Management Representation Letter, the FY14 CEO / CFO Declaration and Assurance and the FY14 Directors Declaration for their full content and meaning;

(f) say that, after the giving of the FY14 Management Representation Letter, the FY14 CEO / CFO Declaration and Assurance and the FY14 Directors Declaration, the First Cross-Defendant (as lead auditor) signed the FY14 Audit Report, in his name and in the name of the DTT pursuant to s 324AB(3) of the Corporations Act;



- (g) say that the FY14 Audit Report was divided into, relevantly, three sections: “Directors' Responsibility for the Financial Report”; “Auditor's Responsibility”; and “Opinion”;
- (h) say that under the heading “Directors' Responsibility for the Financial Report”, the FY14 Audit Report stated that the directors of DSH were responsible for the preparation of the FY14 Report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determine necessary to enable the preparation of the FY14 Report that gives a true and fair view and is free from material misstatement, whether due to fraud or error. In Note 2, the DSH Directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;
- (i) under the heading “Auditor's Responsibility”, the FY14 Audit Report stated, *inter alia*, that:
  - (i) DTT's responsibility was to express an opinion on the FY14 Report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the FY14 Report was free from material misstatement;
  - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to DSH's preparation of the financial report that gives a true and fair view, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSH's internal control;
  - (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSH Directors, as well as evaluating the overall presentation of the financial report; and

- (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
- (j) under the heading "Opinion", the FY14 Audit Report stated, *inter alia*, that in DTT's opinion:
  - (i) the FY14 Report was in accordance with the Corporations Act, including:
    - (A) giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended on that date; and
    - (B) complying with Australian Accounting Standards and the Corporations Regulations; and
  - (ii) the FY14 Report also complies with IFRS as disclosed in Note 2;
- (k) will rely at trial on the FY14 Audit Report and FY14 Report for their full content and meaning;
- (l) otherwise, deny the paragraph.

60. As to paragraph 60, Deloitte:

- (a) repeat their responses to paragraphs 51, 56, 58 and 59;
- (b) say that, at all material times, if they were conducting themselves in relation to a "financial service" within the meaning of s 1041H of the Corporations Act and/or "financial services" within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

- (c) otherwise, deny the paragraph.

61. As to paragraph 61, Deloitte:

- (a) repeat their responses to paragraphs 51, 56 and 59;
- (b) say that, at all material times, if they were conducting themselves in relation to "financial services" within the meaning of s 12DB of the ASIC Act (which is

denied), then those services were an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

(c) otherwise, deny the paragraph.

**D.7. The FY15 Rebate Representations**

62. As to paragraph 62, Deloitte:
- (a) repeat their response to paragraph 48;
  - (b) otherwise, deny the paragraph.
63. As to paragraph 63, Deloitte:
- (a) repeat their response to paragraph 66; and
  - (b) otherwise, admit the paragraph.
64. As to paragraph 64, Deloitte:
- (a) repeat their response to paragraph 66;
  - (b) rely on Deloitte's FY15 Audit Strategy Presentation for its full content and meaning; and
  - (c) otherwise, do not admit the paragraph.
65. As to paragraph 65, Deloitte:
- (a) repeat their response to paragraph 66; and
  - (b) otherwise, do not admit the paragraph.
66. As to paragraph 66, Deloitte:
- (a) rely upon the FY15 FAC Report for its full content and meaning;
  - (b) rely upon all of the facts, matters and circumstances concerning the parties' dealings in relation to the FY15 Audit as to the content of any representation; and
  - (c) otherwise, deny the paragraph.

#### D.8. The FY15 Inventory Representations

67. As to paragraph 67, Deloitte:
- (a) repeat their response to paragraph 66; and
  - (b) otherwise, admit the paragraph.
68. As to paragraph 67, Deloitte:
- (a) repeat their response to paragraph 66; and
  - (b) otherwise, admit the paragraph.
69. As to paragraph 69, Deloitte:
- (a) repeat their response to paragraph 66; and
  - (b) otherwise, deny the paragraph.

#### D.9. The FY15 Audit Report Representations

70. As to paragraph 70, Deloitte:
- (a) repeat their response to paragraph 72; and
  - (b) otherwise, do not admit the paragraph.
71. As to paragraph 71, Deloitte:
- (a) repeat their response to paragraph 72; and
  - (b) otherwise, do not admit the paragraph.
72. As to paragraph 72, Deloitte:
- (a) repeat their response to paragraph 66;
  - (b) say that, on 17 August 2015, each of Abboud and Potts provided a management representation letter to DTT dated 17 August 2015 as to matters concerning the FY15 Report (**FY15 Management Representation Letter**);
  - (c) say that, on 17 August 2015, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY15 CEO / CFO Declaration and Assurance**) for "the half year ended 28 December 2014" (which Deloitte says was intended to refer to the "year ended 28 June 2015");
  - (d) say that, on 17 August 2015, the DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY15 Report (**FY15 Directors Declaration**);

- (e) rely on the FY15 Management Representation Letter, FY15 CEO / CFO Declaration and Assurance and the FY15 Directors Declaration for their full content and meaning; and
- (f) say that, after the giving of the FY15 Management Representation Letter, the FY15 CEO / CFO Declaration and Assurance and the FY15 Directors Declaration the First Cross-Defendant (as lead auditor) signed the FY15 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act;
- (g) say that the FY15 Audit Report was divided into, relevantly, three sections: "Directors' Responsibility for the Financial Report"; "Auditor's Responsibility"; and "Opinion";
- (h) say that under the heading "Directors' Responsibility for the Financial Report", the FY15 Audit Report stated that the directors of DSH were responsible for the preparation of the FY15 Report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determine necessary to enable the preparation of the FY15 Report that gives a true and fair view and is free from material misstatement, whether due to fraud or error. In Note 2, the DSH Directors also stated, in accordance with AASB 101 that the consolidated financial statements comply with IFRS;
- (i) under the heading "Auditor's Responsibility", the FY15 Audit Report stated, *inter alia*, that:
  - (i) DTT's responsibility was to express an opinion on the FY15 Report based on their audit. DTT conducted their audit in accordance with Australian Auditing Standards. Those standards required that DTT comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the FY15 Report was free from material misstatement;
  - (ii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to DSH's preparation of the financial report that gives a true and fair view, in order to design audit procedures

- that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of DSH's internal control;
- (iii) an audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the DSH Directors, as well as evaluating the overall presentation of the financial report; and
  - (iv) DTT believed that the audit evidence that they had obtained was sufficient and appropriate to provide a basis for their audit opinion;
- (j) under the heading "Opinion", the FY15 Audit Report stated, *inter alia*, that in DTT's opinion:
- (i) the FY15 Report was in accordance with the Corporations Act, including:
    - (A) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
    - (B) complying with Australian Accounting Standards and the Corporations Regulations; and
  - (ii) the FY15 Report also complies with IFRS as disclosed in Note 2;
- (k) will rely at trial on the FY15 Audit Report and FY15 Report for their full content and meaning;
- (l) otherwise, deny the paragraph.

73. As to paragraph 73, Deloitte:

- (a) repeat their responses to paragraphs 66, 69, 70 and 71;
- (b) say that, at all material times, if they were conducting themselves in relation to a "financial service" within the meaning of s 1041H of the Corporations Act and/or "financial services" within the meaning of s 12DA of the ASIC Act (which in each case is denied), then that service was an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

- (c) otherwise, deny the paragraph.
74. As to paragraph 74, Deloitte:
- (a) repeat their responses to paragraphs 66, 69 and 72;
  - (b) say that, at all material times, if they were conducting themselves in relation to "financial services" within the meaning of s 12DB of the ASIC Act (which is denied), then those services were an "exempt service" within the meaning of the Corporations Regulations; and

**Particulars**

*Corporations Regulations, r 7.1.29*

*Corporations Act, s 766A(2)*

*ASIC Act, s 5(3)*

- (c) otherwise, deny the paragraph.

**E. MISLEADING AND DECEPTIVE CONDUCT BY DTT (INVENTORY REPRESENTATIONS)**

**E.1. Plaintiffs' allegations in respect of inventory provisions**

75. As to paragraph 75, Deloitte:
- (a) refer to and repeat paragraphs 135-151 and 223-226 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, do not admit the paragraph.

76. Deloitte do not admit paragraph 76.

**E.2. DTT's failure to comply with Auditing Standards – FY13 Inventory Provisions**

77. Deloitte deny paragraph 77.

**E.3. DTT's failure to comply with Auditing Standards – FY14 Inventory Provisions**

78. Deloitte deny paragraph 78.

**E.4. DTT's failure to comply with Auditing Standards – FY15 Inventory Provisions**

79. Deloitte deny paragraph 79.

**E.5. Contravention of the ACL and/or Corporations Act and/or ASIC Act- DTT Inventory Representations**

80. Deloitte deny paragraph 80.

81. Deloitte deny paragraph 81.

**F. MISLEADING AND DECEPTIVE CONDUCT BY DTT (REBATE REPRESENTATIONS)**

**F.1. Plaintiffs' allegations regarding adoption of the O&A Rebate Accounting Treatment**

82. As to paragraph 82, Deloitte:

- (a) refer to and repeat paragraphs 155-162, 163-169, 170-172, 173-175, 176, 177-179, 180-187, 188-192 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, do not admit the paragraph.

83. Deloitte do not admit paragraph 83.

**F.2. DTT's failure to comply with auditing standards – O&A Rebate Accounting Treatment**

84. Deloitte deny paragraph 84.

**F.3. Contravention of the ACL and/or Corporations Act and/or ASIC Act – DTT Rebate Representations**

85. Deloitte deny paragraph 85.

86. Deloitte deny paragraph 86.

**G. MISLEADING OR DECEPTIVE CONDUCT BY DTT – DTT REPORT REPRESENTATIONS**

**G.1. Plaintiffs' allegations in respect of the Prospectus and Financial Reports**

87. As to paragraph 87, Deloitte:

- (a) refer to and repeat paragraphs 427-444, 445-455, 456-466, 469-472, 481-484 and 493-496 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, do not admit the paragraph.

88. Deloitte deny paragraph 88.

**G.2. Contravention of the ACL and/or the ASIC Act and/or the Corporations Act**

89. As to paragraph 89, Deloitte:

- (a) refer to and repeat paragraphs 467-472 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, deny the paragraph.



90. As to paragraph 90, Deloitte:
- (a) refer to and repeat paragraphs 479-484 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, deny the paragraph.

91. As to paragraph 91, Deloitte:
- (a) refer to and repeat paragraphs 491-496 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, deny the paragraph.

92. Deloitte deny paragraph 92.

## **H. NEGLIGENCE**

### **H.1. Risks of harm - Inventory**

93. As to paragraph 93, Deloitte:
- (a) say that the paragraph does not plead any risks of "harm" within the meaning of s 5 of the *Civil Liability Act 2005* (NSW) (CLA), at common law, or otherwise; and
  - (b) otherwise, do not admit the paragraph.

94. As to paragraph 94, Deloitte:
- (a) repeat their response to paragraph 93; and
  - (b) otherwise, do not admit the paragraph.

95. Deloitte do not admit paragraph 95.

### **H.2. Risk of harm - Rebates**

96. As to paragraph 96, Deloitte:
- (a) say that the paragraph does not plead any risks of "harm" within the meaning of s 5 of the CLA, at common law, or otherwise; and
  - (b) otherwise, do not admit the paragraph.

97. As to paragraph 97, Deloitte:
- (a) repeat their response to paragraph 96; and
  - (b) otherwise, do not admit the paragraph.

98. Deloitte do not admit paragraph 98.

### **H.3. Risks of harm – Journal entries**

99. As to paragraph 99, Deloitte:

- (a) say that the paragraph does not plead any risks of "harm" within the meaning of s 5 of the CLA, at common law, or otherwise; and
- (b) otherwise, do not admit the paragraph.

100. As to paragraph 100, Deloitte:

- (a) repeat their response to paragraph 99; and
- (b) otherwise, do not admit the paragraph.

101. Deloitte do not admit paragraph 101.

### **H.4. Auditor's Duty of Care**

#### **FY13 Audit**

102. As to paragraph 102, Deloitte:

- (a) say that, if they owed DSSH a duty of care in connection with the FY13 Audit (which is denied), such duty was limited in scope as the relationship between DSSH and Deloitte was governed by the FY13 Retainer, including Deloitte's obligation to exercise reasonable care and skill and diligence in carrying out the FY13 Audit;
- (b) rely on the FY13 Retainer for its full meaning and effect; and
- (c) otherwise, deny the paragraph.

103. As to paragraph 103, Deloitte:

- (a) say that they held themselves out as a firm of professionals which carried out company audits and had the necessary knowledge, skills and expertise to carry out the FY13 Audit; and
- (b) otherwise, do not admit the paragraph.

104. As to paragraph 104, Deloitte:

- (a) repeat their responses to paragraphs 18-27; and
- (b) otherwise, do not admit the paragraph.

105. As to paragraph 105, Deloitte:

- (a) admit that they voluntarily accepted their appointment and engagement as auditor of DSSH for the FY13 Audit;

- (b) repeat their response to paragraph 7; and
  - (c) otherwise, deny the paragraph.
- 106. Deloitte admit paragraph 106.
- 107. Deloitte do not admit paragraph 107.
- 108. Deloitte do not admit paragraph 108.
- 109. Deloitte do not admit paragraph 109.
- 110. Deloitte admit paragraph 110.
- 111. Deloitte do not admit paragraph 111.
- 112. As to paragraph 112, Deloitte:
  - (a) say that their carrying out of the FY13 Audit was dependent on the cooperation of, and provision of information by DSSH and the DSSH Directors; and
  - (b) otherwise, deny the paragraph.
- 113. As to paragraph 113, Deloitte:
  - (a) repeat their responses to paragraphs 9-17 and 112;
  - (b) otherwise, do not admit the paragraph.
- 114. As to paragraph 114, Deloitte:
  - (a) say that DSSH was able to protect itself, including without limitation by means of contract with Deloitte, from any consequences of Deloitte not exercising reasonable skill, care and diligence in carrying out the FY13 Audit; and
  - (b) otherwise, deny the paragraph.
- 115. Deloitte deny paragraph 115.
- 116. Deloitte deny paragraph 116.

#### **FY14 and FY15 Reports**

- 117. As to paragraph 117, Deloitte:
  - (a) say that, if they owed DSH a duty of care in connection with the FY14 Audit (which is denied), such duty was limited in scope as the relationship between DSH and Deloitte was governed by the FY14 Retainer, including Deloitte's obligation to exercise reasonable care and skill and diligence in carrying out the FY14 Audit; rely on the FY14 Retainer for its full meaning and effect; and
  - (b) otherwise, deny the paragraph.

118. As to paragraph 118, Deloitte:
- (a) admit that they held themselves out as a firm of professionals which carried out company audits and had the necessary knowledge, skills and expertise to carry out the FY14 Audit and the FY15 Audit; and
  - (b) otherwise, deny the paragraph.
119. As to paragraph 119, Deloitte:
- (a) repeat their responses to paragraphs 18-27; and
  - (b) otherwise, do not admit the paragraph.
120. As to paragraph 120, Deloitte:
- (a) admit that they voluntarily accepted their appointment and engagement as auditor of DSH for the FY14 Audit and the FY15 Audit;
  - (b) repeat their response to paragraph 7; and
  - (c) otherwise, deny the paragraph.
121. Deloitte do not admit paragraph 121.
122. As to paragraph 122, Deloitte:
- (a) repeat their responses to paragraphs 9-17; and
  - (b) otherwise, do not admit the paragraph.
123. As to paragraph 123, Deloitte:
- (a) say that DSH was able to protect itself, including without limitation by means of contract with Deloitte, from any consequences of Deloitte not exercising reasonable skill, care and diligence in carrying out the FY14 Audit; and
  - (b) otherwise, deny the paragraph.
124. Deloitte admit paragraph 124.
125. As to paragraph 125, Deloitte:
- (a) say that their carrying out of the FY14 Audit and FY15 Audit was dependent on the cooperation of, and provision of information by DSH and the DSH Directors; and
  - (b) otherwise, deny the paragraph.
126. As to paragraph 126, Deloitte:

- (a) admit that DSH would be likely to rely on Deloitte to carry out their role as auditor of the FY14 Report and FY15 Report;
  - (b) otherwise, deny the paragraph.
127. As to paragraph 127, Deloitte:
- (a) repeat their response to paragraph 126; and
  - (b) otherwise, do not admit the paragraph.
128. As to paragraph 128, Deloitte:
- (a) repeat their responses to paragraphs 116 and 117; and
  - (b) otherwise, deny the paragraph.

#### **H.5. Breach of Auditor's Duty of Care**

129. Deloitte deny paragraph 129.
130. Deloitte deny paragraph 130.
131. Deloitte deny paragraph 131.

#### **H.6. Negligent misstatement**

132. Deloitte deny paragraph 132.
133. As to paragraph 133, Deloitte:
- (a) repeat their responses to paragraphs 102 to 125; and
  - (b) otherwise, deny the paragraph.
134. As to paragraph 134, Deloitte:
- (a) repeat their responses to paragraphs 102 to 125; and
  - (b) otherwise, deny the paragraph.
135. As to paragraph 135, Deloitte:
- (a) repeat their responses to paragraphs 77, 78, 79 and 84; and
  - (b) otherwise, deny the paragraph.

#### **I. DTT'S BREACH OF CONTRACT**

136. Deloitte note paragraph 136.
137. As to paragraph 137, Deloitte:
- (a) repeat their responses to paragraphs 13, 78 and 84; and

(b) otherwise, deny the paragraph.

138. As to paragraph 138, Deloitte:

(a) repeat their responses to paragraphs 16, 79 and 84; and

(b) otherwise, deny the paragraph.

## **J. LOSS OR DAMAGE**

139. Deloitte note paragraph 139.

### **J.1. Loss and damage - Prospectus Accounts**

140. As to paragraph 140, Deloitte:

(a) repeat to their responses to paragraphs 28-32, 35 and 36; and

(b) otherwise, do not admit the paragraph.

141. Deloitte do not admit paragraph 141.

142. As to paragraph 142, Deloitte:

(a) repeat to their response to paragraph 77; and

(b) otherwise, deny the paragraph.

### **J.2. Loss and damage - FY14 Report**

143. As to paragraph 143, Deloitte:

(a) repeat their responses to paragraphs 28-32, 35, 40-42, 45-47 and 51; and

(b) otherwise, do not admit the paragraph.

144. Deloitte do not admit the paragraph.

145. As to paragraph 145, Deloitte:

(a) repeat their responses to paragraphs 75, 76, 78, 82, 83 and 84;

(b) refer to and repeat paragraphs 239-244 of Deloitte's Defence to the Plaintiffs' Claim; and

(c) otherwise, deny the paragraph.

### **J.3. Loss and damage - FY15 Report**

146. Deloitte do not admit the paragraph.

147. As to paragraph 147, Deloitte:

(a) repeat their responses to paragraphs 75, 76, 79, 82, 83 and 84;

- (b) refer to and repeat paragraphs 245-250 of Deloitte's Defence to the Plaintiffs' Claim; and
- (c) otherwise, deny the paragraph.

## **K. CONTRIBUTION**

148. Deloitte note paragraph 148.

149. As to paragraph 149, Deloitte:

- (a) refer to and repeat paragraphs 251-273 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, do not admit the paragraph.

### **K.1. Coordinate liability — Claims in respect of the Prospectus**

150. As to paragraph 150, Deloitte:

- (a) refer to and repeat paragraphs 227-238, 251-253, 279, 282-284, 357-366 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, deny the paragraph.

151. As to paragraph 151, Deloitte:

- (a) repeat their responses to paragraphs 80, 81 and 89; and
- (b) otherwise, deny the paragraph.

152. As to paragraph 152, Deloitte:

- (a) repeat their responses to paragraphs 150 and 151; and
- (b) otherwise, deny the paragraph.

### **K.2. Coordinate liability — Claims in respect of the FY14 Report**

153. As to paragraph 153, Deloitte:

- (a) refer to and repeat paragraphs 254-263 and 357-366 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, deny the paragraph.

154. As to paragraph 154, Deloitte:

- (a) repeat their responses to paragraphs 80, 81, 85, 86, 90 and 153; and
- (b) otherwise, deny the paragraph.

155. As to paragraph 155, Deloitte:
- (a) repeat their responses to paragraphs 153 and 154; and
  - (b) otherwise, deny the paragraph.

**K.3. Coordinate liability — Claims in respect of the FY15 Report**

156. As to paragraph 156, Deloitte:
- (a) refer to and repeat paragraphs 264-273, 357-366 of Deloitte's Defence to the Plaintiffs' Claim; and
  - (b) otherwise, deny the paragraph.
157. As to paragraph 157, Deloitte:
- (a) repeat their responses to paragraphs 80, 81, 85, 86, 91 and 156; and
  - (b) otherwise, deny the paragraph.
158. As to paragraph 158, Deloitte:
- (a) repeat their response to paragraph 157; and
  - (b) otherwise, deny the paragraph.

**K.4. Claim for Contribution**

159. As to paragraph 159, Deloitte:
- (a) repeat their responses to paragraphs 150-152, 153-155 and 156-158; and
  - (b) otherwise deny, the paragraph.

**L. THE DCF RETAINER**

160. As to paragraph 160, DCF:
- (a) repeats its responses to paragraph 8;
  - (b) relies on the terms of the DCF Retainer for their full meaning and effect; and
  - (c) otherwise, admits the paragraph.
161. As to paragraph 161, DCF:
- (a) relies on the DCF Retainer for its full meaning and effect; and
  - (b) otherwise, does not admit the paragraph.
162. As to paragraph 162, DCF:
- (a) relies on the terms of the DCF Retainer for their full meaning and effect; and



- (b) otherwise, admits the paragraph.

## **M. STATUTORY AND ASSURANCE FRAMEWORK**

### **M.1. Corporations Act**

163. As to paragraph 163, DCF:

- (a) refers to and repeats paragraphs 57, 238 and 253 of Deloitte's Defence to the Plaintiffs' Claim; and
- (b) otherwise, does not admit the paragraph.

### **M.2. Assurance Framework**

164. As to paragraph 164, DCF:

- (a) relies on all other applicable/relevant Assurance Standards issued by the Auditing and Assurance Standards Board (**AUASB**) for their full meaning and effect to the extent that they were in force and in the form in which they existed at the time;
- (b) say that ASAE 3450 and all other applicable/relevant Assurance Standards issued by the AUASB include mandatory provisions and/or guidance according to their terms; and
- (c) otherwise, admit the paragraph.

165. As to paragraph 165, DCF:

- (a) repeats its response to paragraph 164; and
- (b) otherwise, does not admit the paragraph.

166. As to paragraph 166, DCF:

- (a) repeats its response to paragraph 164; and
- (b) otherwise, does not admit the paragraph.

## **N. DCF'S CONDUCT**

167. As to paragraph 167, DCF:

- (a) repeats its response to paragraph 168; and
- (b) otherwise, admits the paragraph.

168. As to paragraph 168, DCF:

- (a) relies on the Due Diligence Sign-Off and the Prospectus for their full content and meaning;

- (b) relies upon all of the facts, matters and circumstances concerning the parties' dealings in relation to the DCF Engagement (including, without limitation, the IAR) as to the content of any representation; and:
  - (c) otherwise, does not admit the paragraph.
169. As to paragraph 169, DCF:
- (a) admits that, on or about 14 November 2013, it issued an Investigating Accountant's Report (**IAR**) to which a copy of its Financial Services Guide (**FSG**) was attached;
  - (b) relies upon the IAR and FSG for their full content and meaning; and
  - (c) otherwise, does not admit the paragraph.
170. As to paragraph 170, DCF:
- (a) repeats its responses to paragraphs 168 to 169;
  - (b) says that, on or about 13 November 2013, each of Abboud (in his capacity as CEO of DSH), Potts (in his capacity as CFO of DSH) and Fawaz (in his capacity as Director of Finance of DSH) provided a management sign-off certificate addressed to (*inter alios*) members of the Due Diligence Committee (which included DCF) (**Prospectus Management Certificates**);
  - (c) says that, on behalf of the directors and management of DSH, Potts provided a representation letter to DCF dated 14 November 2013 as to matters concerning the DCF Engagement (including, without limitation, the IAR) (**Prospectus Representation Letter**);
  - (d) rely on the Prospectus Management Certificates and the Prospectus Representation Letter for their full content and meaning;
  - (e) say that, after the giving of the Prospectus Representation Letter, Steve Shirliff signed the Due Diligence Sign-Off in his capacity as a director of DCF;
  - (f) say that the Due Diligence Sign-Off contained various assumptions which were made by DCF in giving the negative assurance contained in the Due Diligence Sign-Off including (without limitation) that:
    - (i) the representations made and the information (including responses to questions and questionnaires (and also, including, without limitation, the Prospectus Management Certificates and the Prospectus Representation Letter)) provided by directors, officers, personnel and agents of DSH, other members of the Due Diligence Committee, and

other persons reporting to the Due Diligence Committee, had been complete, true and accurate in all respects and were not misleading or deceptive;

- (ii) all persons who were interviewed, questioned or sent questionnaires were competent to answer all questions put to them, made complete and accurate disclosures in all matters and that there were no other persons who should have been interviewed, questioned or sent questionnaires in relation to the matters the subject of those questions;
  - (iii) there were no relevant documents or information other than those which were disclosed, or provided by or on behalf of DSH to DCF which were relevant to the Financial Information;
  - (iv) all corporate records and other documents examined by DCF were genuine, complete, up-to-date and accurate and, without limitation, any minutes of the meetings of DSH examined by DCF correctly recorded the business of, and resolutions passed at, any such meeting and no relevant corporate records have been withheld from DCF (whether deliberately or inadvertently);
  - (v) all factual matters stated in any document provided to DCF were true and accurate; and
  - (vi) the Prospectus would be lodged with the Australian Securities and Investment Commission;
  - (g) will rely at trial on the Prospectus Management Certificates and Prospectus Representation Letter for their full content and meaning; and
  - (h) otherwise, denies the paragraph.
171. DCF admits paragraph 171.
172. As to paragraph 172, DCF:
- (a) repeats its response to paragraph 170;
  - (b) says that subparagraph 172(b) is embarrassing because "the statements" referred to therein are not pleaded or identified; and
  - (c) otherwise, denies the paragraph.

173. As to paragraph 173, DCF refers to and repeats paragraphs 57-84, 111-134, 227-238, 357-366 of Deloitte's Defence to the Plaintiffs' Claim.

174. As to paragraph 174, DCF:

(a) says that, if any representations were made as alleged (which is not admitted), then it:

(i) admits that such representations were made in trade or commerce;

(ii) admits such representations were made in relation to a "financial product" or a "financial service" within the meaning of s 1041H of the Corporations Act, or in relation to "financial services" within the meaning of s 12DA of the ASIC Act; and

(b) otherwise, denies the paragraph.

175. As to paragraph 175, DCF:

(a) repeats its response to paragraph 175; and

(b) otherwise, denies the paragraph.

## **O. DCF'S MISLEADING OR DECEPTIVE CONDUCT**

### **O.1. Allegations by plaintiffs regarding the Prospectus Inventory Information**

176. As to paragraph 176, DCF refers to and repeats paragraphs 135-137, 144-149 and 227-238 of Deloitte's Defence to the Plaintiffs' Claim.

177. DCF does not admit paragraph 177.

### **O.2. DCF's failure to comply with ASAE 3450**

178. As to paragraph 178, DCF:

(a) repeats its responses to paragraphs 170 and 176 to 177; and

(b) otherwise, denies the paragraph.

## **P. DCF'S NEGLIGENCE**

### **P.1. DCF's Duty of Care**

179. As to paragraph 179, DCF:

(a) says that, if they owed DSH a duty of care in connection with the DCF Retainer (which is denied), such duty was limited in scope as the relationship between DSH and DCF was governed by the DCF Retainer, including Deloitte's

- obligation to exercise reasonable care and skill and diligence in carrying out the DCF Retainer; rely on the DCF Retainer for its full meaning and effect;
- (b) relies on the terms of the DCF Retainer for their full meaning and effect; and
  - (c) otherwise, denies the paragraph.
180. As to paragraph 180, DCF:
- (a) admits that it held itself out as a firm of professionals which had the necessary knowledge, skills and expertise to conduct the services pursuant to the DCF Retainer; and
  - (b) otherwise, denies the paragraph.
181. As to paragraph 181, DCF:
- (a) admits that it voluntarily accepted its appointment and engagement pursuant to the DCF Retainer;
  - (b) repeats its response to paragraph 8; and
  - (c) otherwise, denies the paragraph.
182. DCF does not admit paragraph 182.
183. As to paragraph 183, DCF:
- (a) repeats its responses to paragraphs 160-162; and
  - (b) otherwise, does not admit the paragraph.
184. As to paragraph 184, DCF:
- (a) says that DSH (or DSSH, as applicable) was able to protect itself, including without limitation by means of contract with DCF, from any consequences of DCF not exercising reasonable skill, care and diligence in carrying out the DCF Retainer; and
  - (b) otherwise, denies the paragraph.
185. DCF admits paragraph 185.
186. As to paragraph 186, DCF:
- (a) says that DCF's carrying out of the DCF Retainer was dependent on the cooperation of, and provision of information by DSH and the DSH Directors (and DSSH or the DSSH Directors, as applicable); and
  - (b) otherwise, denies the paragraph.

187. As to paragraph 187, DCF:
- (a) admits that DSH would be likely to rely on DCF to carry out its role as an assurance practitioner in connection with the IAR; and
  - (b) otherwise, denies the paragraph.
188. As to paragraph 188, DCF:
- (a) repeats Deloitte's responses to paragraphs 93 and 99; and
  - (b) otherwise, does not admit the paragraph.
189. As to paragraph 189, DCF:
- (a) repeats its response to paragraph 188; and
  - (b) otherwise, does not admit the paragraph.
190. As to paragraph 190, DCF:
- (a) repeats its responses to paragraphs 180 to 187; and
  - (b) otherwise, denies the paragraph.

## **P.2. Breach of DCF's Duty of Care**

191. As to paragraph 191, DCF:
- (a) repeats its responses to paragraphs 176 to 178; and
  - (b) otherwise, denies the paragraph.

## **P.3. Negligent misstatement**

192. DCF does not admit paragraph 192.
193. As to paragraph 193, DCF:
- (a) repeats its responses to paragraphs 179 to 190; and
  - (b) otherwise, denies the paragraph.
194. As to paragraph 194, DCF:
- (a) repeat its responses to paragraphs 179 to 190; and
  - (b) otherwise, denies the paragraph.
195. DCF denies paragraph 195.

## **Q. DCF's BREACH OF CONTRACT**

196. DCF denies paragraph 196.

## **R. SECTION 728**

197. DCF admits paragraph 197.
198. DCF admits paragraph 198.
199. As to paragraph 199, DCF:
- (a) repeat its response to paragraph 170;
  - (b) relies upon s 729 of the Corporations Act for its full meaning and effect; and
  - (c) otherwise, does not admit the paragraph.
200. As to paragraph 200, DCF:
- (a) repeat its response to paragraph 170;
  - (b) relies upon s 729 of the Corporations Act for its full meaning and effect; and
201. otherwise, denies the paragraph.
202. DCF deny paragraph 201.
203. As to paragraph 202, DCF:
- (a) repeats its responses to paragraphs 173 and 197 to 201; and
  - (b) otherwise, denies the paragraph.
204. As to paragraph 203, DCF:
- (a) refers to and repeats paragraphs 230 to 238, 251 to 253, 279 and 282 to 284 of Deloitte's Defence to the Plaintiffs' Claim;
  - (b) repeats its responses to paragraphs 197 to 200; and
  - (c) otherwise, denies the paragraph.
205. As to paragraph 204, DCF:
- (a) refers to and repeats paragraphs 230 to 238, 251 to 253, 279 and 282 to 284 of Deloitte's Defence to the Plaintiffs' Claim;
  - (b) repeats its responses to paragraphs 197 to 201 and 203; and
  - (c) otherwise, denies the paragraph.

## **S. LOSS OR DAMAGE CAUSED BY DCF**

206. DCF does not admit paragraph 205.
207. DCF denies paragraph 206.

208. DCF denies paragraph 207.

209. Deloitte and DCF deny that DSH is entitled to the relief claimed or at all.

## T. OTHER DEFENCES

In further or alternative answer to the whole of DSH Claim, Deloitte and DCF respond as follows:

210. The FY13 Retainer, the FY14 Retainer and the FY15 Retainer (together, the **DTT Retainers**) each provided that each of the DTT Engagements would be conducted on the basis that:

- (a) the DSSH Directors or DSH Directors (as applicable) acknowledged and understood that they had the responsibility:
  - (i) for the preparation of, relevantly, the financial reports which were the subject of the DTT Retainers (i.e. relevantly, the FY13 Report, FY14 Report and FY15 Report, together, the **Financial Reports**) that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act;
  - (ii) for such internal control as the directors determined was necessary to enable the preparation of the Financial Reports that are free from material misstatement, whether due to fraud or error; and
  - (iii) to provide DTT with:
    - (A) access to all information of which the directors and management were aware that was relevant to the preparation of the Financial Reports such as records, documentation and other matters;
    - (B) additional information that DTT may request from the directors and management for the purpose of the DTT Engagements; and
    - (C) unrestricted access to persons within DSSH or DSH (as applicable) from whom DTT determined it necessary to obtain evidence;
- (b) DSSH or DSH (as applicable) was responsible for, amongst other things, providing DTT with accurate and complete information and all information that was relevant to the services to be provided under the DTT Retainers.

211. The DCF Retainer provided that the DCF Engagement would be conducted on the basis that:



- (a) the newly incorporated public company contemplated by the DCF Retainer would become a party to the DCF Retainer;
- (b) in respect of the IAR, DCF would conduct review procedures as described, and only to provide limited assurance, being less assurance than in an audit, and that DCF would not be expressing an audit opinion;
- (c) the DSSH Directors or DSH Directors (as applicable) were solely responsible for:
  - (i) the preparation and presentation of the Financial Information (as defined in the DCF Retainer, which defined term is adopted in the balance of this paragraph) included in the Prospectus;
  - (ii) the determination, selection, development, adequate disclosure and consistent application, of the stated basis of preparation in the Prospectus;
  - (iii) complying with the requirements of all applicable laws and regulations in the preparation of the Financial Information and the Prospectus;
  - (iv) such internal control as determined necessary to enable the preparation of the Financial Information that was free from material misstatement;
  - (v) the DSSH Directors' or DSH Directors' (as applicable) best estimate assumptions on which the forecast financial information was based;
  - (vi) selecting the unadjusted historical and forecast financial information used as the source for the pro forma historical and pro forma forecast financial information and selecting and determining the pro forma adjustments; and
- (d) DSSH and DSH were responsible for, amongst other things, providing Deloitte with accurate and complete information and all information that would be relevant to the services to be provided under the DCF Retainer

### **Conduct of directors and management**

212. Deloitte and DCF refer to paragraphs 44 and 45 of the Plaintiffs' Claim and Deloitte's responses thereto, and say that at all material times the directors of DSSH or DSH (as relevant) were responsible for the preparation and fair presentation of the Financial Reports in accordance with Accounting Standards (including the Australian Accounting Standards) and the Corporations Act, and such responsibility included establishing and maintaining internal control relevant to the preparation and fair presentation of the Financial Reports that is free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

## Particulars

### *Corporations Act Chapter 2M, Part 2M.3*

213. By letter dated on or around 18 August 2014 (in connection with the consolidated financial statements of DSH and its controlled entities for the year ended 28 June 2014) (i.e. the FY14 CEO / CFO Declaration and Assurance) and by letter dated on or about 17 August 2015 (in connection with the consolidated financial statements of DSH and its controlled entities for the year ended 29 June 2015) (i.e. the FY15 CEO / CFO Declaration and Assurance), each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (together, the **CEO / CFO Declarations and Assurances**):
- (a) which was provided to the Board prior to the Board approving DSH's financial statements;
  - (b) which included statements to the effect that, to the best of each of their knowledge:
    - (i) the financial records of DSH had been properly maintained in accordance with s 286 of the Corporations Act;
    - (ii) the financial statements and the accompanying notes complied with the appropriate accounting standards;
    - (iii) the financial statements and accompanying notes gave a true and fair view of the financial position and performance of DSH for the financial year;
    - (iv) DSH had complied with all other matters prescribed by the Corporations Regulations in relation to the financial statements and notes;
    - (v) the relevant Financial Report was founded on a sound system of risk management and internal compliance and control;
    - (vi) DSH's risk management and internal compliance and control system was operating efficiently and effectively in all material aspects; and
  - (c) upon the entire terms of which Deloitte rely for their full content and meaning.
214. On 23 October 2013, 18 August 2014, and 17 August 2015, the directors of DSSH or DSH (as relevant) made the FY13 Directors' Declaration, the HY14 Directors' Declaration and the FY15 Directors' Declaration (together, the **Directors' Declarations**) (**Directors' Declarations**):
- (a) to the effect that, in the DSSH Directors' or DSH Directors' (as applicable) opinion:

- (i) there were reasonable grounds to believe that DSSH or DSH (as applicable) and the consolidated entity would be able to pay its debts as and when they became due and payable;
  - (ii) the financial statement and notes attached thereto were in accordance with the Corporations Act, including compliance with accounting standards and giving a true and fair view of the financial position and performance of DSSH or DSH (as relevant) and the consolidated entity; and
  - (iii) the financial statements and notes attached thereto were in compliance with the International Financial Reporting Standards as stated in Note 2 of the financial statements; and
- (b) on the entire terms of which Deloitte rely for their full content and meaning.
215. By the FY13 Management Representation Letter, the FY14 Management Representation Letter and FY15 Management Representation Letter (together, the **Management Representation Letters**), Abboud and Fawaz or Abboud and Potts (as applicable) provided a representation letter to DTT:
- (a) for the purpose of DTT expressing an opinion as to whether the relevant Financial Report gave a true and fair view in accordance with the Australian Accounting Standards and the Corporations Act;
  - (b) in which Abboud and Fawaz (in respect of the FY13 Report and the FY13 Audit) and Abboud and Potts (in respect of the FY14 Report, the FY14 Audit, the FY15 Report and the FY15 Audit) each confirmed to DTT, among other matters, that:
    - (i) they had fulfilled their responsibilities as set out in the relevant audit engagement (as to which in particular see paragraph 210), for the preparation of the relevant Financial Report in accordance with Australian Accounting Standards and the Corporations Act, in particular that the relevant Financial Report gave a true and fair view in accordance therewith;
    - (ii) they had provided DTT with:
      - (A) access to all information of which they were aware was relevant to the preparation of the relevant Financial Report such as records, documentation and other matters;
      - (B) additional information DTT had requested from them for the purpose of the audit;

- (C) unrestricted access to the persons within the entity from whom DTT determined it necessary to obtain audit evidence;
- (D) all information required by the Corporations Act and all requested information, explanations and assistance for the purposes of the audit;
- (iii) all transactions had been recorded in the accounting records and were reflected in the relevant Financial Report;
- (iv) they were responsible for the design, implementation and maintenance of internal control to prevent and detect fraud;
- (v) significant assumptions used by them in making accounting estimates, including those measured at fair value, were reasonable;
- (vi) the effects of uncorrected misstatements (in the case of the FY13 Audit and the FY14 Audit) or unadjusted misstatements and disclosure deficiencies (in the case of the FY15 Audit) were immaterial, individually and in aggregate, to the relevant Financial Report as a whole, and a summary of such items was attached to the relevant Management Representation Letter;
- (vii) the selection and application of accounting policies as described in the notes in the relevant Financial Report were appropriate;
- (viii) liabilities, both actual and contingent, had been properly recorded and, where appropriate, adequately disclosed in the relevant Financial Report;
- (ix) they had communicated to DTT all deficiencies in internal control of which they were aware;
- (x) in respect of the FY14 Audit and FY15 Audit, they had considered the requirements of Accounting Standard AASB 136 *Impairment of Assets* (in the form in force at the relevant time) when assessing the impairment of assets and in ensuring that no assets were stated in excess of their recoverable amount, and that they had communicated to DTT all indicators of impairment and where those existed, they had conducted appropriate impairment testing on the relevant asset;
- (xi) in respect of the FY14 Audit and the FY15 Audit, they had no plans to abandon lines of product or other plans or intentions that would result in any excess or obsolete inventory, and no inventory was stated in an amount in excess of net realisable value;

- (xii) in respect of the FY14 Audit and the FY15 Audit, where assets and liabilities were recorded at their fair value, the value attributed to these assets and liabilities was, in the opinion of directors and management, the fair value; and they were responsible for the reasonableness of any significant assumptions underlying the valuation, including consideration of whether they appropriately reflected their intent and ability to carry out specific courses of action;
  - (xiii) in respect of the FY14 Audit, they had raised a liability as at 29 June 2014 for management's best estimate of costs associated with existing leases on underperforming stores prior to the actual lease expiration date, including outstanding penalties and make good costs; they were reviewing the performance of those stores on a regular basis and it was their intention to exit those stores within the next 12 months;
  - (xiv) in respect of the FY14 Audit and the FY15 Audit, DSH and its consolidated entities had not breached any covenants on its financing facility during any of the periods reported and did not expect to breach any covenants in future periods; and they had fully disclosed to Deloitte all covenants and information related to how they determined their compliance with the terms of the covenants;
  - (xv) in respect of the FY14 Audit and the FY15 Audit, they had performed a detailed review of the amount and nature of rebates received or owed from suppliers during the relevant year ended; the rebates recognised in this period had been appropriately recognised and presented in the financial statements in accordance with Australian Accounting Standards; in particular they confirmed that the O&A rebates recognised as receivables as at:
    - (A) in the case of the FY14 Report, 29 June 2014 totalled \$16.9 million;
    - (B) in the case of the FY15 Report, 28 June 2015 totalled \$32.5 million;were recoverable in full from the vendors; in addition those amounts related to additional support received from vendors to market or clear products in the relevant year ended and were not to be deferred and recognised in future periods.
- (c) on the entire terms of which Deloitte rely for their full content and meaning.

216. On or about 13 November 2013, each of Abboud (in his capacity as CEO of DSH), Potts (in his capacity as CFO of DSH) and Fawaz (in his capacity as Director of Finance of DSH) provided a management sign-off certificate to the members of the Due Diligence Committee (which included DCF) (**Prospectus Management Certificates**):

- (a) in which each of them certified as at the date of the Prospectus Management Certificate, that:
  - (i) as far as he was aware, the sign-offs being sought from management were being given by persons who would be expected to have, between them, knowledge and responsibility for all the material business operations and risks of the DSH;
  - (ii) to the best of his knowledge after due enquiry:
    - (A) the Prospectus did not contain any statement that was misleading or deceptive (including by omission) or untrue and all forward-looking statements in the Prospectus were based on reasonable grounds;
    - (B) the Prospectus complied with the Disclosure Requirements (as that term is defined in the Prospectus Management Certificates);
    - (C) the issue of the Prospectus did not involve conduct by any person that was misleading or deceptive or conduct that may be likely to mislead or deceive;
    - (D) the Prospectus complied with the Presentation Requirement (as that term is defined in the Prospectus Management Certificates);
  - (iii) that he had answered, to the best of his knowledge and ability after due enquiry, all questions and requests for information submitted to him in the course of the Due Diligence Program (as that term is defined in the Prospectus Management Certificates), satisfied himself that all matters he considered to be material relating to his knowledge of DSH have been identified to the Due Diligence Committee, and he had made all reasonable enquiries to independently verify all information in the Prospectus related to his area of responsibility;
  - (iv) the Prospectus Management Certificate was addressed to and may be relied upon by, among others, the members of the Due Diligence Committee and their representatives (such members including DCF); and
- (b) on the entire terms of which DCF rely for their full content and meaning.

217. By letter dated 14 November 2013, in respect of the DCF Retainer, the Directors and Management of DSH provided a representation letter to DCF (**Prospectus Representation Letter**):

- (a) signed by Potts on behalf of the DSH Directors;
- (b) in connection with the DCF Engagement to provide an investigating accountant's report on the historical and forecast financial information included in the Prospectus to be dated on or around 14 November 2013 to be issued by DSH in relation to its initial public offering;
- (c) in which each of the directors and management confirmed to DCF, among other matters, that:
  - (i) they acknowledged their responsibility for the preparation, contents and issuance of the Prospectus, including:
    - (A) the preparation and presentation of all financial information contained therein, in accordance with the basis of preparation described below and the Corporations Act;
    - (B) the determination, selection, development, adequate disclosure and consistent application of the stated basis of preparation of the Prospectus;
    - (C) selecting the unadjusted historical and forecast financial information used as the source for the pro forma historical and pro forma forecast information and selecting and determining the pro forma adjustments;
    - (D) complying with the requirements of all applicable laws and regulations in the preparation of the Financial Information (as defined in the Prospectus Representation Letter, which defined term is adopted in the balance of this paragraph) and the Prospectus;
  - (ii) to the best of their knowledge and belief (having made such enquiries as they considered necessary for the purposes of appropriately informing themselves):
    - (A) all material financial information, financial records, related data and other information relevant to the Financial Information within the possession of DSSH or DSH (as applicable) had been provided to DCF;

- (B) DCF had been entitled to rely on the information provided to them and to assume that the information provided was, to the best knowledge and belief of DSSH or DSH's (as applicable) management and the DSSH Directors or DSH Directors (as applicable), accurate and, except where otherwise indicated, complete;
  - (C) all material events and transactions had been properly recorded in the accounting records underlying the Financial Information;
  - (D) they were responsible for, and had established and maintained, an adequate internal control structure to facilitate the preparation of reliable financial information. They acknowledged their responsibility for implementation and operation of accounting and internal control systems that were designed to prevent and detect fraud and error;
  - (E) all material risks that may impact on the business had been adequately disclosed in the Prospectus and considered in relation to their impact on the Financial Information;
  - (F) they believed that there were no uncorrected misstatements that were material, both individually and in aggregate, to any of the Financial Information under review;
- (iii) with respect to the historical financial information and pro forma historical financial information of the Company for FY2011, FY2012, FY2013 and Q1FY2014, they acknowledged their responsibility for the preparation and presentation of that financial information to which the IAR related;
  - (iv) to the best of their knowledge and belief, DSH or DSSH's (as applicable) historical financial information included in the Prospectus had been prepared in accordance with the stated bases of preparation, being the recognition and measurement principles contained in Australian Accounting Standards and the adopted accounting policies of DSH or DSSH's (as applicable) as described in the Prospectus;
  - (v) disclosures not included in the Prospectus with respect to the historical financial information and pro forma historical financial information have been determined by them to be not material to users of the Prospectus;
  - (vi) they acknowledged their responsibility for the preparation and presentation of the statutory and pro forma forecasts prepared in respect of FY2014, the



best estimate assumptions used therein and that information's compliance with the stated basis of preparation; and

(d) upon the entire terms of which DCF rely for their full content and meaning.

218. For the purposes of this Commercial List Cross-Claim Response to the DSH Claim only and without admission, Deloitte and DCF:

(a) repeat Sections C2 to C10 of the Plaintiffs' Claim;

(b) say that, if the allegations in the Plaintiffs' Claim are made out, then each of Abboud and Potts knew of the facts and matters asserted in Sections C2 to C10 of the Plaintiffs' Claim;

(c) say that, if the allegations in the Plaintiffs' Claim are made out then, by reason of the matters set out in subparagraph (a) or alternatively (b) above:

(i) the CEO / CFO Declarations and Assurances pleaded in paragraph 213;

(ii) the Directors' Declarations pleaded in paragraph 214;

(iii) the Management Representation Letters pleaded in paragraph 215;

(iv) the Prospectus Management Certificates pleaded in paragraph 216;

(v) the Prospectus Representation Letter pleaded in paragraph 217;

were each misleading or deceptive, or likely to mislead or deceive;

(d) say that each of the matters pleaded in subparagraph (a) or alternatively (b) above was:

(i) a matter that ought to have been disclosed to DTT pursuant to the terms of DTT's Retainers or, in the case of the Prospectus, to DCF pursuant to the DCF Retainer;

(ii) a matter of the type which Abboud and/or Potts and/or Fawaz (as relevant) represented had been disclosed to DTT in Management Representation Letters or to DCF in the Prospectus Representation Letter or the Prospectus Management Certificates;

(iii) a matter of the type that a reasonable director and/or officer of a company in the position of Abboud and/or Potts and/or Fawaz (as relevant) would have disclosed to DTT or DCF (as relevant);

(iv) a matter of the type that a reasonable person in the position of DTT and/or DCF would have expected would have been, in the circumstances, disclosed; and

- (e) say that neither Abboud nor Potts nor Fawaz (as applicable) disclosed any of the matters set out in subparagraph (a) or alternatively (b) above to Deloitte or DCF:
  - (i) at the time Abboud and/or Potts and/or Fawaz (as relevant) became aware of each of those matters; or
  - (ii) alternatively, at a reasonable time after becoming aware of each of those matters; or
  - (iii) alternatively, at all.

219. If and to the extent Abboud and/or Potts and/or DSH is liable pursuant to the Plaintiffs' Claim in respect of loss caused to the Plaintiffs, then in light of:

- (a) the following allegations, if and to the extent they are made out:
  - (i) the Plaintiffs' allegations in the Plaintiffs' Claim against Abboud;
  - (ii) the Plaintiffs' allegations in the Plaintiffs' Claim against Potts;
  - (iii) the Plaintiffs' allegations in the Plaintiffs' Claim against DSH;
  - (iv) the allegations made by the Plaintiffs in Supreme Court of NSW Proceeding No 2017/81938 (the **Bank Proceeding**) against Abboud;
  - (v) the allegations made by the plaintiffs in the Bank Proceeding against Potts;
  - (vi) the allegations made by the Plaintiff in Supreme Court of NSW Proceeding No 2017/81927 (the **Company Proceeding**) against Abboud;
  - (vii) the allegations made by the Plaintiff in the Company Proceeding against Potts;
  - (viii) the allegations made by the Plaintiff in the Company Proceeding against the non-executive directors of DSH, Murray, Raine, Ishak, Tomlinson, Wavish and Cave (i.e. the NEDs);
- (b) further or alternatively the matters alleged in paragraphs 212 to 217; then Abboud and/or Potts and/or Fawaz and/or the NEDs (as applicable):
- (c) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, within the meaning of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL; and
- (d) breached his duty to DSSH and/or DSH (as applicable) to discharge his duties as a director and/or officer (as applicable) with reasonable care and diligence.

220. For the purposes of this Commercial List Cross-Claim Response to the DSH Claim only, Deloitte:

- (a) say that the acts of Abboud and/or Potts and/or the other directors of DSSH or DSH at the relevant times (**Other Directors**) and/or Fawaz are attributable to DSSH or DSH (as applicable); and
- (b) in the premises of subparagraph (a), the contraventions of the individuals referred to in that subparagraph are contraventions of DSSH and DSH (as relevant).

#### **Contributory negligence and mitigation**

221. If any of the Plaintiffs' allegations in the Claim are made out, and the Plaintiffs suffered loss thereby, then that loss was suffered by reason of the wrongdoing of DSH as set out in paragraph 219 and 220 and the Plaintiffs' Claim.

222. By reason of the matters set out in paragraph 221, Deloitte's liability (if any) to DSH is to be reduced to the extent which the Court considers just and equitable having regard to DSH's share in responsibility for the loss, as a result of the operation of s 1041I(1B) of the Corporations Act, s 12GF(1B) of the ASIC Act, and s 137B of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

#### **Proportionate liability**

223. In respect of each claim alleged against DCF and/or Deloitte in the DSH Claim that is an apportionable claim for the purposes of s 34 of the CLA, s 1041L of the Corporations Act, s12GP of the ASIC Act and s87CB of the ACL (**Apportionable Claims**):

- (a) if Deloitte or DCF are liable to DSH in respect of any of the Apportionable Claims, then for the reasons set out at paragraph 219, Abboud is a person whose acts or omissions caused the loss allegedly suffered by DSH which is the subject of the DSH Claim, and therefore:
  - (i) Abboud is a "concurrent wrongdoer" within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA;
  - (ii) Deloitte's or DCF's liability (if any) to DSH is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Abboud's responsibility for that damage or loss;

- (b) further or in the alternative, if Deloitte or DCF are liable to DSH in respect of any of the Apportionable Claims, then for the reasons set out at paragraph 219, Potts is a person whose acts or omissions caused the loss allegedly suffered by DSH which is the subject of the DSH Claim, and therefore:
- (i) Potts is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA;
  - (ii) Deloitte’s or DCF’s liability (if any) to DSH is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Potts’ responsibility for that damage or loss;
- (c) further or in the alternative, if Deloitte or DCF are liable to DSH in respect of any of the Apportionable Claims that relate to FY2013, then by reason of the matters in paragraph 219, Fawaz is a person whose acts or omissions caused the loss allegedly suffered by DSH which is the subject of the DSH Claim, and therefore:
- (i) Fawaz is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the CCA in respect of any loss suffered by DSH;
  - (ii) Deloitte’s or DCF’s liability (if any) to DSH is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Fawaz’s responsibility for that damage or loss;
- (d) further or in the alternative, if Deloitte or DCF are liable to DSH in respect of any of the Apportionable Claims that relate to FY2013 or to the Prospectus, then by reason of the matters in paragraph 219 to 220, DSSH is a person whose acts or omissions caused the loss allegedly suffered by DSH which is the subject of the DSH Claim, and therefore:
- (i) DSSH is a “concurrent wrongdoer” within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the ACL in respect of any loss suffered by DSH;
  - (ii) Deloitte’s or DCF’s liability (if any) to DSH is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s

12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of DSSH's responsibility for that damage or loss;

- (e) further or in the alternative, if Deloitte or DCF are liable to the DSH in respect of any of the Apportionable Claims, then by reason of:
- (i) the matters alleged against the NEDs by the Plaintiff in the Company Proceeding; and
  - (ii) the matters stated in paragraph 214, 217, 218 and 219 (in respect of the Directors' Declarations and the Prospectus Representation Letter);

each of the Other Directors (as applicable) is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs which is the subject of the Plaintiffs' Claim, and therefore:

- (iii) each of the Other Directors (as applicable) is a "concurrent wrongdoer" within the meaning of s 34 of the CLA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 87CB of the ACL;
- (iv) Deloitte's or DCF's liability (if any) to the Plaintiffs is, by that reason, limited by s 35 of the CLA, s 1041N of the Corporations Act, s 87CD of the CCA and s 12GR of the ASIC Act, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of the Other Directors' (as applicable) responsibility for that damage or loss.

#### **Limitation of liability – accountants' scheme / retainer**

224. In further or alternative answer to the DSH Claim, without admission and for the purposes of this Commercial List Cross-Claim Response only, Deloitte and DCF:

- (a) say that if, which is denied, Deloitte are liable for any of the loss alleged in the DSH Claim, that liability is limited in accordance with:
- (i) the Institute of Chartered Accountants in Australia (NSW) Scheme approved under the *Professional Standards Act 1994* (NSW) (**Professional Standards Act**) commencing on 8 October 2007 (as extended);
  - (ii) the Institute of Chartered Accountants in Australia (Victoria) Scheme approved under the *Professional Standards Act 2003* (Vic) (**Professional Standards Act (Vic)**) commencing on 8 October 2007 (as extended);

- (iii) the Institute of Chartered Accountants in Australia (NSW) Scheme approved under the Professional Standards Act commencing on 8 October 2013;
  - (iv) the Institute of Chartered Accountants in Australia (VIC) Scheme approved under the Professional Standards Act (Vic) commencing on 8 October 2013;
  - (v) the Chartered Accountants Australia and New Zealand Professional Standards Scheme (NSW) (including as amended) approved under the Professional Standards Act commencing on 8 October 2014; and/or
  - (vi) the Chartered Accountants Australia and New Zealand Professional Standards Scheme (Victoria) (including as amended) approved under the Professional Standards Act (Vic) commencing on 8 October 2014;
- (b) say that, if which is denied, either Deloitte (if and to the extent that the schemes pleaded in paragraph (a) above do not apply) or DCF are liable for any loss alleged in the DSH Claim, that liability is limited in accordance with the Prospectus Retainer and the DTT Retainers, including but not limited to cl 12 of the Standard Terms and Conditions that form part of the FY13 Retainer and cl 13 of the Standard Terms and Conditions that form part of the Prospectus Retainer, the FY14 Retainer and the FY15 Retainer.

#### **Relief from liability – Corporations Act**

225. Further or in the alternative, in reliance on privilege against self-incrimination or privilege against exposure to penalty, Deloitte does not at this time assert a positive defence based on s 1317S (by reason of s 1041I(4)), or s 1318 of the Corporations Act but reserve their right to do so at an appropriate time.
226. Further or in the alternative, in answer to the whole of the DSH Claim, DCF says that if it is liable to DSH by reason of the facts and matters alleged in the DSH Claim (which is denied), then at all material times it acted honestly, and, having regard to all the circumstances of the case, ought fairly be excused from any such liability, in whole or alternatively in part, pursuant to s 1317S (by reason of s 1041I(4)), or s 1318 of the Corporations Act.
227. In further answer to the DSH Claim insofar as it relates to the Prospectus, Deloitte and DCF say that if they are liable to DSH by reason of a misleading or deceptive statement in the Prospectus (which is denied), Deloitte and DCF made all inquiries that were reasonable in the circumstances, and after doing so believed on reasonable grounds that the statement was not misleading or deceptive, and so are each relieved from liability by reason of s 731 of the Corporations Act.

## Civil Liability Act

228. Further or in the alternative, in answer to the whole of the DSH Claim, Deloitte and DCF:
- (a) say that if (which is not admitted) the claims made by DSH in the DSH Claim are claims for harm resulting from negligence within the meaning of s 5A of the CLA;  
then:
  - (b) in respect of the claims in the DSH Claim, it is not appropriate for the scope of Deloitte's and DCF's liability to extend to the harm DSH allegedly suffered within the meaning of s 5D(1) of the CLA.
229. Further or in the alternative, in answer to the whole of the DSH Claim, Deloitte and DCF say that if (which is denied) any relevant risk of harm existed and was not insignificant in respect of the matters alleged in the DSH Claim, then in respect of all claims to which Part 1A of the CLA applies:
- (a) the risk of harm was obvious within the meaning of s 5F of the CLA;
  - (b) DSH is presumed to have been aware of the risk of harm, by reason of s 5G of the CLA; and
  - (c) the risk of harm was inherent, within the meaning of s 5I of the CLA.
230. Further or in the alternative, in performing the Prospectus Retainer and the DTT Retainers, Deloitte and DCF (as relevant) acted in a manner that (at the time the services were provided) was widely accepted in Australia by peer professional opinion as competent professional practice within the meaning of s 5O(1) of the Civil Liability Act and accordingly are not liable for any loss or damage alleged in the DSH Claim.

## PART D – QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE


None.

## PART E – MEDIATION

The parties attempted a mediation of this proceeding on 26-27 February 2019. The Cross-Defendants are willing to proceed to further mediation at an appropriate time.

## SIGNATURE OF LEGAL REPRESENTATIVE

Signature  
Name  
Capacity  
Date of signature

  
Angela Louise Pearsall, Clifford Chance  
Solicitor for the Cross-Defendants  
17 May 2019

**PARTY DETAILS**

**PLAINTIFFS to Proceeding No. 2017/294069**

**Haliburton Charles David Findlay**, First Plaintiff

**Marian Jennifer Denny Findlay**, Second Plaintiff

**PLAINTIFFS to Proceeding No. 2018/52431**

**Epaminondas Mastoris**, First Plaintiff

**Lena Mastoris**, Second Plaintiff

**DEFENDANTS to Proceeding Nos. 2017/294069 and 2018/52431**

**DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)**, First Defendant / First Cross-Claimant

**Nicholas Abboud**, Second Defendant / Second Cross-Claimant

**Michael Potts**, Third Defendant / Third Cross-Claimant

**David Robert White & Ors t/as Deloitte Touche Tohmatsu (ABN 74 490 121 060)**,  
4<sup>th</sup> to 457<sup>th</sup> Defendants / 1<sup>st</sup> to 454<sup>th</sup> Cross-Defendants (as listed in Schedule 1)



## **SCHEDULE 1 – 2<sup>ND</sup> TO 454<sup>TH</sup> CROSS-DEFENDANTS**

### **Cross-Defendant No. Name**

2	Brett Douglas Streatfeild
3	Sneza Pelusi
4	James Patrick Hickey
5	Alastair Banks
6	Tara Cathy Hill
7	Paul Jeremy Klein
8	Frank Scott Farrall
9	Christopher Donald Noble
10	Alec Paul Bashinsky
11	George Nicholas Kyriakakis
12	Roan Rolles Fryer
13	Stuart Johnston
14	Kaylene O'Brien
15	Craig Patrick O'Hagan
16	Leanne Karamfiles
17	Neil Graham Smith
18	Demostanies Krallis
19	David John Lombe
20	Christian John Biermann
21	Jonathan Paul
22	Michael James Clarke
23	Roger Jeffrey
24	Rachel Andrea Foley-Lewis
25	Franco Claudio Santucci
26	Michelle Robyn Hartman
27	Matthew Christopher Saines
28	Francis Thomas
29	Robert Basker
30	Alan Eckstein
31	Donal Graham
32	Andrew Raymond Hill
33	Patrick McLay
34	Paul Bernal Liggins
35	David Ocello
36	Paul Scott Holman
37	Paul Robert Wiebusch
38	Murray Peck
39	Julie Michelle Stanley
40	John Bland
41	Timothy Carberry
42	Alvaro Ramos

43	Graeme John Adams
44	Suzanne Archbold
45	Tim Richards
46	Timothy Geoffrey Maddock
47	Xenia Delaney
48	Reuben Saayman
49	Ronaldus Lambertus Van Beek
50	Liesbet Ann Julliette Spanjaard
51	Christopher John Richardson
52	Martin Harry Read
53	Mark Reuter
54	Stuart Thomas Ciocarelli
55	Paul Wayne Hockridge
56	Vikas Khanna
57	Paul Thomas Carr
58	Weng Yen Ching
59	Rodger Stewart Muir
60	Mark Cover
61	Robert Hillard
62	Michael John Lynn
63	Gaile Anthea Pearce
64	Isabelle Emilienne Lefevre
65	Phillip Andrew Roberts
66	Stuart Alexander Rodger
67	Paul Leonard Wensor
68	Claudio Cimetta
69	Simon Tarte
70	Stephen Charles Gustafson
71	Geoffrey William Cowen
72	Geoffrey Gill
73	Steven John Simionato
74	Jason John Handel
75	Declan O'Callaghan
76	Michael Andrew Kissane
77	Kurt Proctor-Parker
78	Richard Davies Wanstall
79	Johan Simon Duivenvoorde
80	Benjamin John Shields
81	John Meacock
82	Ian Michael Turner
83	David Harradine
84	Muhunthan Kanagaratnam
85	Marc Philipp
86	Kamlee Anne Coorey

87	Hugh William Mosley
88	Paul Masters
89	David Shane Egan
90	Alison Margaret Brown
91	Stavroula Papadatos
92	Damien Tampling
93	Alexandra Jane Spark
94	Monica Ellen Campigli
95	Craig Peter Mitchell
96	Robert John McCannel
97	Alyson Rodi
98	Andrew Charles Price
99	Mark Hadassin
100	Anthony James Robinson
101	Garry Ian Millhouse
102	Ashley Graham Miller
103	Craig Stephen Smith
104	Margaret Lynne Pezzullo
105	Adam Barringer
106	Campbell James Jackson
107	Jason Charles Crawford
108	Kevin Michael Russo
109	Adele Christine Watson
110	Neil Anthony Brown
111	Gordon James Thring
112	Brett William Greig
113	Steven James Shirliff
114	Robert Donald Collie
115	Spyros Kotsopoulos
116	Austin John Scott
117	Jenny Lyn Wilson
118	Peter John Bars
119	Elizma Bolt
120	Stephen Thomas Harvey
121	Fiona Lea Cahill
122	Jonathan Mark Schneider
123	Michael McNulty
124	Katherine Louise Howard
125	Juliet Elizabeth Bourke
126	Peter Gerard Forrester
127	Carl Jonathan Gerrard
128	Jody Michelle Burton
129	Rachel Frances Smith
130	Peter Martin Rupp

131	Helen Elena Fisher
132	Geoffrey Ronald Sincock
133	Nicholas Harwood
134	John Clement Malcom Randall
135	Todd Kayle Fielding
136	Geoffrey Bruce Stalley
137	Russell Bradley Norman Mason
138	Paul Leon Rubinstein
139	Andrew Ignatius Muir
140	Lisa Barry
141	Alfred Alan Nehama
142	Michael Paul Stibbard
143	Paul Childers
144	Angelo Karelis
145	Sarah Caroline Woodhouse
146	Richard John Hughes
147	Christopher Robert Masterman
148	Robin Polson
149	Megan Joy Field
150	Christopher Guy Nunns
151	Clare Helen Harding
152	Simon Cook
153	Stephen Carl Tarling
154	Leslie Coleman
155	Samuel James Vorweg
156	Helen Hamilton-James
157	Coert Grobbelaar Du Plessis
158	Stephen George Stavrou
159	Steven Christopher Cunico
160	Mark Ekkel
161	Soulla McFall
162	Leigh Matthew Pieroni
163	Mark Colin Woodley
164	Stephen James Healey
165	Sandeep Chadha
166	Margaret Clare Bower
167	Anna Victoria Crawford
168	Robert Howard Dowling
169	Greg Janes
170	Colin McKay Methven Scott
171	Richard Mark Simes
172	Dharmalingum Shunmugam Chithiray
173	Nicole Mari Vignaroli
174	John Giannakopoulos

175	Vaughan Neil Strawbridge
176	Judith Anne Donovan
177	Nicole Wakefield
178	Paula Teresa Capaldo
179	Michael Rath
180	Karen Rachel Stein
181	Brett Todd
182	Julian Craig Dolby
183	Robert Kim Arvai
184	Catherine Jane Hill
185	Richard Michael Thomas
186	Timothy John Gullifer
187	Peter James Pagonis
188	Michael Damon Cantwell
189	Joseph Frank Galea
190	Nicolette Louise Ivory
191	John Leotta
192	Darren James Hall
193	Stephen Huppert
194	Elma Von Wielligh-Louw
195	Michael Anthony Kennedy
196	Stuart James Alexander
197	Yi Mei Tsang
198	Christopher Wilson
199	Joshua David Tanchel
200	Tendal Sitenisiyo Mkwanzani
201	Richard Nigel Raphael
202	Jacqueline Ann Clarke
203	Rodney James Whitehead
204	Heather Park
205	John Lethbridge Greig
206	Adrian Charles O'Dea
207	Grant Cameron
208	Gregory Couttas
209	Steven Allan Hernyl
210	Gary John McLean
211	Jonathan Ma
212	Suzie Gough
213	Mark Douglas Ian Allsop
214	Jennifer Anne Exner
215	Ryan Quintin Hansen
216	Jamie Brian Hamilton
217	David Mark Hill
218	Jason Bruce Dunnachie

219	John Christopher McCourt
220	Gerhard Vorster
221	David John Boyd
222	Andrew Kingsley Johnstone-Burt
223	Dwayne Barrie Sleep
224	David Black
225	Gerard Michael Meade
226	Francis Patrick O'Toole
227	Tony Garrett
228	Danny Rezek
229	Mark Goldsmith
230	David Watkins
231	Patrick Broughan
232	Jeremy Drumm
233	Michael John Whyte
234	Mark Andrew Stretton
235	Weng Wee Ching
236	Robert Malcolm Spittle
237	Marisa Orbea
238	Frances Rita Borg
239	David Barrie Brown
240	David Sherwin McCloskey
241	Philip Walter Teale
242	Jan Hein Alexander Alpert
243	Katherine Anne Milesi
244	Kevin Kiazm Nevrous
245	Andrew Paul Annand
246	Carl Richard Harris
247	Philip Malcolm Moore Hardy
248	Derek Rodney Bryan
249	Gregory Gyorgy Janky
250	David John Redhill
251	Guillaume Johannes Swiegers
252	Peter Ronald Ryan
253	Brennan Ursula
254	Fiona Dawn Craig
255	Sarah Lane
256	George Stathos
257	Richard Adam Young
258	Marc Hofmann
259	Brad Joel Pollock
260	Mark Justin Kuzma
261	Warren Green
262	Stuart Osborne

263	Garry Lance Bourke
264	Andrew Vaughn Griffiths
265	Adam Powick
266	Margaret Dreyer
267	Timothy Bryce Norman
268	David McCarthy
269	Neil Pereira
270	Michael Robert Gastevich
271	Elizabeth Ann Brown
272	Lakshman Kumar Gunaratnam
273	Monish Paul
274	Alexander Collinson
275	Bruce John Williamson
276	Luke Bramwell Houghton
277	Aldrin Anthony De Zilva
278	Neil McLeod
279	Gerard Lucien Belleville
280	Michael Kaplan
281	Mark David Irving
282	Alison Lorna White
283	Haiderali Hussein Hussein
284	Martyn Charles Barrett Strickland
285	Caroline Jane Bennet
286	Christopher Robert Campbell
287	Gary Peter Doran
288	Mark Steven Wright
289	Peter Matruglio
290	John Koutsogiannis
291	Selwyn Peter D'Souza
292	Keith William Skinner
293	Clive Charles Alan Mottershead
294	Karen Lynette Green
295	Jason Mark Thorne
296	Andrew Stuart Christopher Reid
297	Mark Richard Weaver
298	Matthew Robert Broadfoot
299	Michael Mauro De Palo
300	Peter Arthur Caldwell
301	Tracey Condous
302	Shelley Rae Nolan
303	Ian Grant Levi
304	Grant Arthur Hyde
305	Timothy Francis Nugent
306	Andrea Csontos

307	Geoffrey Colin Lamont
308	Christopher John Nicoloff
309	Craig Maxwell Bryan
310	Peter Madden
311	Jeremy Jurriaan Walton Cooper
312	Neil Robert Cussen
313	Robert Southern
314	Andy Peck
315	Colin Radford
316	Hendri Mentz
317	Robert Nguyen
318	Shinji Tsutsui
319	Philippa Simone Dexter
320	Timothy Fleming
321	Cynthia Hook
322	James Campbell Down
323	Kate McDonald
324	Stephen John Coakley
325	Keith Francis Jones
326	Serg Duchini
327	Stephen James Reid
328	Max Andreas Persson
329	Graham Mott
330	Anthony John Viel
331	David Joseph Murray
332	Richard Antony Jamieson
333	Bradley James Burt
334	Anthony Goroslav Buntic
335	Paul Gerard Fogarty
336	Jamie Christopher Gatt
337	Geoffrey Ian Roberts
338	Melissa Jayne Cabban
339	Matthew Fraser
340	Thomas Fredrick Viljoen
341	Julie Christine Crisp
342	Paul Bernard Riley
343	Salvatore Algeri
344	Ross Ian Jerrard
345	Avi Sharabi
346	Ian Geoffrey Sanders
347	Dale McCaauley
348	Iain Maxwell Gerrard
349	David Hobbis
350	Scott Conrad Bailey



351 Stephen Gregory Brown  
352 Ian Ross Harper  
353 Shashi Vicknekumeran Sivayoganathan  
354 Jowita Gartlan  
355 Mark Ingham  
356 Viswa Phani Kumar Padiseti  
357 Ian Charles Thatcher  
358 Ian Andrew Trevorah  
359 Dennis Leslie Moth  
360 Jacques Louis Van Rhyn  
361 Paul Swinhoe  
362 Greg Fitzgerald  
363 Steven Alexander Hallam  
364 Stuart Lynn Black  
365 Stephen Woosnam  
366 Andrew John Culley  
367 Stephen James Ferris  
368 Timothy Arbuckie  
369 David Arnis Rumbens  
370 Matthew James Williams  
371 Jason Frederick Bender  
372 Patrick Lane  
373 Martin Paul Langridge  
374 Caithlin Mary McCabe  
375 Simon Alexander Wallace-Smith  
376 Adrian Clyde Batty  
377 Tapan Parekh  
378 Masaaki Mark Nakamura  
379 Roger Geoffrey McBain  
380 Graeme John Hodge  
381 Rick Shaw  
382 Marina Ruth Stuart  
383 Tom Christopher Imbesi  
384 Eric Angelucci  
385 Harvey Christophers  
386 John Kingsley Rawson  
387 Mark Richard Sercombe  
388 Phillip Kravaritis  
389 Gary Christie  
390 Wayne Edward Walker  
391 John Womack  
392 Peter Grainger  
393 Samantha Louise Lewis  
394 Ashley Jonathon King

395	Peter Francis Williams
396	Alexander Aitken
397	Timothy Gordon Biggs
398	Ian McCall
399	Johannes Laubscher Venter
400	Roberto Dimonte
401	Alan Gordon Weeks
402	Ian John Breedon
403	Peter Michael Roberson
404	Michael David Nelson
405	Lindsay James Stanton
406	Craig Paul Johnson
407	Timothy Riordan
408	Anthony James Cipriano
409	Phil Hopwood
410	Dai-Trang Le Duncanson
411	David Jonathan Graham
412	Andre Spnovic
413	William Harold Wardrop
414	David Erskine Thompson
415	David Kyffin Wellington
416	Stephen Mark Holdstock
417	Dean John Grandy
418	Harold Scott Payne
419	Jean-Marie Ab-Ghanem
420	Fraser Ross
421	Roberto Krizman
422	Caroline McGlashan
423	William Robert McAinsh
424	Osamu Uchimura
425	Glendon Moss Sanford
426	Simon James Lester
427	Stephen James Jones
428	Kristen Jay Wydell
429	John Guthrie Hood
430	Paul Martin Radici
431	Frank Klasic
432	Mark John Pittorino
433	David Anthony Cooper
434	Matthew Sheerin
435	Tony Brain
436	Henry John Kidd
437	Matt Gerald Tengu Whitesky Kuperholz
438	Gordon Pattison

439	Branko Panich
440	Julian Christopher Cheng
441	David William Pring
442	Peter Andre Jovic
443	Craig Goldberg
444	Bruce Robert Dungey
445	Dean Robert Edward Kingsley
446	David Alan Watson
447	Bernard Spencer Gild
448	Graham John Newton
449	Dwight Murray Hooper
450	Michael Rosendorfer
451	Richard Roy Porter
452	John George Azarias
453	Donna Maree Carey
454	Christopher Paul Cass
455	Deloitte Corporate Finance Pty Limited

