

NOTICE OF FILING

Details of Filing

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File Number: NSD917/2020
File Title: COMPUMOD INVESTMENTS PTY LIMITED AS TRUSTEE FOR THE
COMPUMOD PTY LIMITED STAFF SUPERANNUATION FUND v
UNIVERSAL EQUIVALENT TECHNOLOGY LIMITED (FORMERLY
A.C.N. 603 323 182 LIMITED AND FORMERLY AXSESSTODAY
LIMITED & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Defence to the Third Further Amended Statement of Claim

No. NSD917 of 2020

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

Compumod Investments Pty Limited as trustee for the Compumod Pty Limited Staff Superannuation Fund

Applicant

Universal Equivalent Technology Limited (formerly A.C.N. 603 323 182 Limited and formerly Axesstoday Limited) and others

First Respondent

PricewaterhouseCoopers Securities Limited

Second Respondent

This is the defence of the Second Respondent, PricewaterhouseCoopers Securities Limited (**PwCS**), to the ~~Second~~ Third Further Amended Statement of Claim filed ~~17 April~~ 22 December 2023 (**Claim**).

Save as otherwise indicated, capitalised terms used in this Defence have the same meaning as defined in the Claim.

A. Nature of the Proceedings

1. In response to paragraph 1 of the Claim, PwCS:

- (a) admits that the proceedings are commenced pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) denies the allegations made against PwCS in paragraph 1(b); and
- (c) otherwise does not know and cannot admit paragraph 1.

Filed on behalf of (name & role of party)	PricewaterhouseCoopers Securities Limited, Second Respondent		
Prepared by (name of person/lawyer)	Andrew Carter and Gabrielle Piesiewicz		
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2. PwCS does not know and cannot admit paragraph 2 of the Claim.

B. The Parties and other entities

3. In response to paragraph 3 of the Claim, PwCS:

(a) admits paragraph 3(a); and

(b) does not know and cannot admit paragraph 3(b).

4. In response to paragraph 4 of the Claim, PwCS:

(a) admits paragraph 4(a) in respect of the period up to the date that AXL was deregistered, but otherwise denies the paragraph;

(b) admits paragraph 4(b) in respect of the period up to the date that AXL was deregistered, but otherwise denies the paragraph;

(c) admits paragraph 4(c) in respect of 2018, but otherwise does not know and cannot admit the paragraph;

(d) admits paragraph 4(d) in respect of 2018, but otherwise does not know and cannot admit the paragraph;

(e) says that from 2 March 2020 AXL, ceased to be a listed corporation and listed disclosing entity within the meaning of s 9 and s 111AL of the Corporations Act and denies paragraph 4(e) in respect of any time after that date, but otherwise admits paragraph 4(e); and

(f) says that from 2 March 2020 AXL, ceased to be a disclosing entity as defined in s 111AC of the Corporations Act for the purposes of s 111AO of the Corporations Act and denies paragraph 4(f) in respect of any time after that date, but otherwise admits paragraph 4(f); and

(g) admits paragraph 4(g).

5. PwCS admits paragraph 5 of the Claim.

6. PwCS admits paragraph 6 of the Claim.

7. PwCS admits paragraph 7 of the Claim.

8. PwCS admits paragraph 8 of the Claim.

9. PwCS admits paragraph 9 of the Claim.
10. In response to paragraph 10 of the Claim, PwCS:
 - (a) says that the Glossary to the Base Prospectus (as defined in paragraph 22(b) below) defined "Group" as "AXL and its Subsidiaries" (the latter term also having a defined meaning in the Base Prospectus);
 - (b) says that capitalised terms in the Offer Specific Prospectus (as defined in paragraph 22(a) below) and the Replacement Offer Specific Prospectus (as defined in paragraph 22A(a) below) had the same meaning as defined in the Glossary to the Base Prospectus;
 - (c) repeats its responses to paragraphs 7, 8 and 9 above and says that AXL, ACN 603, Retail and Operations were by reason of the matters admitted in those responses, members of the "Group" as that term was used in the Base Prospectus, Offer Specific Prospectus and Replacement Offer Specific Prospectus; and
 - (d) otherwise does not know and cannot admit the paragraph.
11. In response to paragraph 11 of the Claim, PwCS:
 - (a) admits paragraph 11(a);
 - (b) says that AET was appointed trustee pursuant to and upon the terms of a trust deed dated 26 June 2018; and
 - (c) otherwise admits paragraph 11(b).
12. In response to paragraph 12 of the Claim, PwCS:
 - (a) admits paragraph 12(a);
 - (b) admits that it conducted business in Australia under the name PricewaterhouseCoopers Securities Limited (at times abbreviated to "PwCS") by which it provided services including certain accounting, advisory and financial services but otherwise does not admit paragraph 12(b);
 - (c) in response to paragraph 12(c):
 - (i) says that PwCS was engaged by AXL to provide the services described in the document titled "Engagement Letter – Professional services to be

provided in connection with the Prospectus to be issued by Axesstoday Limited" from PwCS to AXL dated 6 June 2018 (**Engagement Letter**) and the addendum to the Engagement Letter dated 24 June 2018 (**Addendum to Engagement Letter**);

Particulars

"Engagement Letter – Professional services to be provided in connection with the Prospectus to be issued by Axesstoday Limited" dated 6 June 2018 from PricewaterhouseCoopers Securities Ltd addressed to the Directors, Axesstoday Limited.

"Addendum to the engagement letter for professional services to be provided in connection with the Prospectus to be issued by Axesstoday Limited" dated 24 June 2018, from PricewaterhouseCoopers Securities Ltd addressed to the Directors, Axesstoday Limited.

- (ii) relies on the terms of the Engagement Letter and Addendum to Engagement Letter for their full meaning and effect;
 - (iii) says that the scope of the accounting services it provided to AXL at around the time AXL offered the bonds was limited by and pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter, save that in addition to providing a "Private Investigating Accountant's Report" and "Agreed Upon Procedures Report" as referred to in the Engagement Letter and Addendum to Engagement Letter in respect of the Offer Specific Prospectus (as defined in paragraph 22(a) below), PwCS provided a replacement "Investigating Accountant's Report" and replacement "Agreed Upon Procedures Report" in respect of the Replacement Offer Specific Prospectus (as defined in paragraph 22A(a) below);
 - (iv) says that it did not provide accounting services to AXL at around the time AXL offered the bonds otherwise than as pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter and as described in paragraph 12(c)(iii) of this Defence; and
 - (v) otherwise denies the paragraph; and
- (d) in response to paragraph 12(d):

- (i) admits that it is named on page 24 of the Offer Specific Prospectus (as defined in paragraph 22(a) below) and on page 24 of the Replacement Offer Specific Prospectus (as defined in paragraph 22A(a) below) as "accounting adviser" and is referred to on page 22 of the Offer Specific Prospectus and on page 22 of the Replacement Offer Specific Prospectus as having "provided accounting services for the Offer";
- (ii) repeats paragraph 12(c) above;
- (iii) repeats paragraph 32(c) below; and
- (iv) otherwise denies the paragraph.

12A. In response to paragraph 12A of the Claim, PwCS:

- (a) admits that in 2018 the firm PricewaterhouseCoopers was a partnership that conducted business in Australia under the name PricewaterhouseCoopers (at times abbreviated to "PwC") by which it provided services including certain tax and auditing services but otherwise does not admit paragraph 12A(a);
- (b) in response to paragraph 12A(b):
 - (i) says that PricewaterhouseCoopers was engaged by AXL to provide the services described in the document titled "Axsesstoday Limited Statement of Work (SoW) Project SCB – Taxation services in connection with the Prospectus to be issued by Axsesstoday Limited" dated 21 June 2018 and PricewaterhouseCoopers provided some services to AXL pursuant to that engagement but does not admit PricewaterhouseCoopers provided any particular services as no specific services are alleged;

Particulars

"Axsesstoday Limited Statement of Work (SoW) Project SCB – Taxation services in connection with the Prospectus to be issued by Axsesstoday Limited" dated 21 June 2018 from PricewaterhouseCoopers addressed to Joe Flanagan, Chief Financial Officer, Axsesstoday Limited (PWC.601.002.2788).

- (ii) admits that, for the purposes of Part 2M.4 of the Corporations Act, PricewaterhouseCoopers was AXL's appointed auditor around the time AXL offered the bonds; and
- (iii) otherwise denies the paragraph;

(c) in response to paragraph 12A(c):

- (i) admits that PricewaterhouseCoopers is named on page 24 of the Offer Specific Prospectus (as defined in paragraph 22(a) below) and on page 24 of the Replacement Offer Specific Prospectus (as defined in paragraph 22A(a) below) as "Auditor", is named on page 97 of the Base Prospectus (as defined in paragraph 22(b) below) as "Auditor", and is referred to on page 22 of the Offer Specific Prospectus and on page 22 of the Replacement Offer Specific Prospectus as having "*reviewed section 5.1 of the Base Prospectus (titled "SUMMARY Of INFORMATION ON TAX CONSEQUENCES Of INVESTING IN THE BONDS (sic)"; and*- (ii) otherwise denies the paragraph.

12B. In response to paragraph 12B of the Claim, PwCS:

(a) says that each of the Underwriters is a company incorporated pursuant to the laws of the United Kingdom and otherwise admits paragraph 12B(a);

(b) admits that AXL held a DUAL Evolution Insurance Policy Number EVO53983417J1 with AXL as policyholder for a period commencing on 25 November 2017, which was amended by endorsements effective 25 December 2018, and otherwise does not know and cannot admit paragraph 12B(b);

(c) denies paragraph 12B(c) and says that the Policy was signed by DUAL Australia Pty Limited on behalf of certain underwriters at Lloyd's.

C. AXL's Accounting Obligations

- 13. PwCS does not plead to paragraph 13 of the Claim as it does not contain any allegation against it.
- 14. PwCS does not plead to paragraph 14 of the Claim as it does not contain any allegation against it.
- 15. PwCS does not plead to paragraph 15 of the Claim as it does not contain any allegation against it.
- 16. PwCS does not plead to paragraph 16 of the Claim as it does not contain any allegation against it.
- 17. In response to paragraph 17 of the Claim, PwCS:

- (a) does not plead to paragraphs 17(a), (b), (c) and (e) as they do not contain any allegation against PwCS;
- (b) says that the compilations of accounting standards are not separate accounting standards made by the Australian Accounting Standards Board;
- (c) says that by reason of paragraph 103 of the compilation dated 14 August 2015, the relevant compilation of Australian Accounting Standards Board Standard 139 titled "*Financial Instruments: Recognition and Measurement*" for AXL for the year ended 30 June 2018 was dated 28 August 2014;
- (d) denies that Australian Accounting Standards Board Framework for the Preparation and Presentation of Financial Statements (compilation prepared 15 March 2016) (**Accounting Framework**) is an Accounting Standard, and says that the Accounting Framework is not an Accounting Standard and does not override any specific Accounting Standard (paragraph 2 of the Accounting Framework); and
- (e) otherwise admits paragraph 17(d).

18. PwCS does not plead to paragraph 18 of the Claim, as it does not contain any allegation against it.

D. The Syndicated Facilities Agreement

19. PwCS does not plead to paragraph 19 of the Claim as it does not contain any allegation against it.

20. PwCS does not plead to paragraph 20 of the Claim as it does not contain any allegation against it.

21. PwCS does not plead to paragraph 21 of the Claim as it does not contain any allegation against it.

E. The Offer

22. In response to paragraph 22 of the Claim, PwCS:

- (a) says that on or about 26 June 2018, AXL lodged the "*Part A: Offer Specific Prospectus for the issue of Axesstoday Bonds – Series A, Tranche 1*" (**Offer Specific Prospectus**) with the Australian Securities and Investment Commission (**ASIC**);

- (b) says that on or about 26 June 2018, AXL also lodged the "*Part B: Base Prospectus*" (**Base Prospectus**), for the offer of "Axsesstoday Bonds – Series A, Tranche 1" with ASIC;
- (c) says that on or about 27 June 2018, AXL made the Offer Specific Prospectus and Base Prospectus available to the public, including by releasing the Offer Specific Prospectus and Base Prospectus to the ASX; and
- (d) [not used]
- (e) otherwise does not know and cannot admit the paragraph.

22A. In response to paragraph 22A of the Claim, PwCS:

- (a) says that on or about 4 July 2018, AXL lodged with ASIC the "*Part A: Replacement Offer Specific Prospectus for the issue of Axsesstoday Bonds – Series A, Tranche 1*" (**Replacement Offer Specific Prospectus**) and Base Prospectus, and made the Replacement Offer Specific Prospectus and Base Prospectus available to the public including by releasing the Replacement Offer Specific Prospectus and Base Prospectus to the ASX; and
- (b) otherwise does not know and cannot admit the paragraph.

23. PwCS admits paragraph 23 of the Claim.

24. In response to paragraph 24 of the Claim, PwCS:

- (a) says that, insofar as the offer of the bonds (**Offer**) required disclosure under Part 6D.2 of the Corporations Act, AXL was prohibited by s 727 of the Corporations Act from making the Offer unless it had lodged a disclosure document with ASIC;
- (b) says that the disclosure document in respect of the Offer in the period 28 June 2018 to about 4 July 2018 was the Base Prospectus and Offer Specific Prospectus pursuant to s 713B(2) of the Corporations Act;
- (c) says that the disclosure document in respect of the Offer from on or about 4 July 2018 was the Base Prospectus and Replacement Offer Specific Prospectus pursuant to s 719A(9) of the Corporations Act; and
- (d) otherwise does not know and cannot admit the paragraph.

25. In response to paragraph 25 of the Claim:

- (a) PwCS repeats paragraphs 22, 22A and 24 above;
 - (b) says that on page 93 of the Base Prospectus the term "Offer Documents" is defined to mean "*This Base Prospectus and the relevant Offer Specific Prospectus*";
 - (c) says that in the period 28 June 2018 to about 4 July 2018 the "Offer Documents" were constituted by the Base Prospectus and the Offer Specific Prospectus;
 - (d) says that from about 4 July 2018, the "Offer Documents" were constituted by the Base Prospectus and the Replacement Offer Specific Prospectus; and
 - (e) otherwise denies the paragraph.
26. In response to paragraph 26 of the Claim, PwCS:
- (a) [not used]
 - (b) repeats paragraph 25 above; and
 - (c) otherwise admits the paragraph.
27. In response to paragraph 27 of the Claim, PwCS:
- (a) [not used]
 - (b) [not used]
 - (c) says that on page 7 of the Offer Specific Prospectus and on page 7 of the Replacement Offer Specific Prospectus it is stated that there would be a bookbuild on 3 July 2018 and the Broker Firm Offer would be open from 4 July 2018 to 17 July 2018, and that the key dates are subject to change; and
 - (d) otherwise admits the paragraph.
28. In response to paragraph 28 of the Claim, PwCS:
- (a) [not used]
 - (b) admits paragraph 28(c) of the Claim, save to say the maturity date would be earlier if the bonds were redeemed early;

(c) says that the Replacement Offer Specific Prospectus identified the interest rate as 4.90% per annum and otherwise does not know and cannot admit paragraph 28(d);

(ca) admits paragraph 28(e) of the Claim, save to say that if the bonds were redeemed before the maturity date, bond holders would receive interest up to (but excluding) the Redemption Date (as defined in the Base Prospectus);

Particulars

Base Prospectus page 47.

(cb) relies on the terms of the Base Prospectus, Offer Specific Prospectus and Replacement Offer Specific Prospectus for their full meaning and effect; and

(d) otherwise admits the paragraph.

29. In response to paragraph 29 of the Claim, PwCS:

(a) admits that on page 7 of the Offer Specific Prospectus and on page 7 of the Replacement Offer Specific Prospectus the events and related dates set out in paragraph 29 of the Claim are referred to as "Key Dates for the Offer"; and

(b) otherwise does not know and cannot admit the paragraph.

30. PwCS does not know and cannot admit paragraph 30 of the Claim.

31. PwCS admits paragraph 31 of the Claim.

F. Representations made in the Prospectus

32. In response to paragraph 32 of the Claim, PwCS:

(a) says the first paragraph under section 3.3.1 on page 15 of the Offer Specific Prospectus and on page 15 of the Replacement Offer Specific Prospectus states: *"The unaudited information in this section is presented in an abbreviated form and does not contain all of the presentation, disclosures, statements and comparative information as required by the Australian Accounting Standards that are usually provided in an annual or interim financial report prepared in accordance with the Corporations Act."*;

(b) says that the statement quoted in paragraph 32 of the Claim was not made by PwCS;

(c) says that in section 3.8.5 on page 24 of the Offer Specific Prospectus and in section 3.8.5 on page 24 of the Replacement Offer Specific Prospectus it is stated that PwCS as accounting adviser:

- (i) *"has not, and its affiliates, officers and employees have not, made any statement in the Offer Documents or any statement on which a statement made in the Offer Documents is based";*
- (ii) *"has not authorised or caused the issue of the Offer Documents, and makes no representation or warranty, express or implied, as to the fairness, accuracy or completeness of the information contained in the Offer Documents"; and*
- (iii) *"to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any statements in or omissions from the Offer Documents other than references to its name";*

(d) relies on the terms of the Offer Specific Prospectus and Replacement Offer Specific Prospectus for their full meaning and effect;

(e) says that PwCS was not engaged by AXL to perform any service in relation to the preparation of AXL's financial reports for the half year ended 31 December 2017; and

(f) otherwise admits the paragraph.

33. In response to paragraph 33 of the Claim, PwCS:

(a) says that the statement quoted in paragraph 33 of the Claim was not made by PwCS;

(b) repeats paragraphs 32(a), 32(c), (d) and (e) above; and

(c) otherwise admits the paragraph.

33A. In response to paragraph 33A of the Claim, PwCS:

(a) says that the statement quoted in paragraph 33A of the Claim was not made by PwCS;

(b) repeats paragraphs 32(a), 32(c), (d) and (e) above; and

(c) otherwise admits the paragraph.

34. In response to paragraph 34 of the Claim, PwCS:
- (a) admits that in section 3.3.2 on page 17 of the Offer Specific Prospectus and in section 3.3.2 on page 17 of the Replacement Offer Specific Prospectus there is set out a historical and pro-forma balance sheet as at 31 December 2017;
 - (b) admits that, among other figures, the total figures set out in paragraph 34(a) of the Claim appear in the historical and pro-forma balance sheet as at 31 December 2017 in the Offer Specific Prospectus;
 - (ba) admits that, among other figures, the total figures set out in paragraph 34(b) of the Claim appear in the historical and pro-forma balance sheet as at 31 December 2017 in the Replacement Offer Specific Prospectus;
 - (c) says that the statements in Section 3.3.2 of the Offer Specific Prospectus and Section 3.3.2 of the Replacement Offer Specific Prospectus were not made by PwCS;
 - (d) denies that PwCS made a representation to the effect of that alleged in paragraph 34 of the Claim;
 - (e) repeats paragraphs 32(a), 32(c), (d) and (e) above; and
 - (f) otherwise denies the paragraph.
35. PwCS does not plead to paragraph 35 of the Claim as it does not contain any allegation against it.
36. PwCS does not plead to paragraph 36 of the Claim as it does not contain any allegation against it.
37. PwCS does not plead to paragraph 37 of the Claim as it does not contain any allegation against it.
38. Save to say that the quoted statement appears in section 4.4.6 on page 79 of the Base Prospectus, that the first paragraph in Section 4.4.6 on page 79 of the Base Prospectus contained the word "*the*" before "*Key Financial Ratios*", and that the second paragraph in Section 4.4.6 on page 79 of the Base Prospectus commenced with the words "*A new accounting standard, AASB15*" and did not include the word "and" in the phrase "*on and its consolidated financial statements*", PwCS admits paragraph 38 of the Claim and will rely on the terms of section 4.4.6 as it appears in the Base Prospectus.

39. PwCS does not plead to paragraph 39 of the Claim as it does not contain any allegation against it.

40. In response to paragraph 40 of the Claim, PwCS:

(a) admits that in Section 3.7 on page 22 of the Offer Specific Prospectus it is stated:

"PricewaterhouseCoopers Securities Ltd ("PwCS) has provided accounting services for the Offer, and will be paid approximately \$60,000 (excluding GST)";

(ab) says that in Section 3.7 on page 22 of the Replacement Offer Specific Prospectus it is stated:

"PricewaterhouseCoopers Securities Ltd ("PwCS) has provided accounting services for the Offer, and will be paid approximately \$65,000 (excluding GST)";

(b) repeats paragraphs 12(c), 12(d), and 32(a), 32(c), (d) and (e) above; and

(c) otherwise denies the paragraph.

41. In response to paragraph 41 of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d), and 32 above; and

(b) denies the paragraph.

42. In response to paragraph 42 of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d), and 32(a), 32(c), (d) and (e) above; and

(b) otherwise admits the paragraph.

F1. Failure to identify breaches of the Arrears Ratio Covenant

42A. In response to paragraph 42A of the Claim, PwCS:

(a) admits that as at about June 2018 AXL had a policy to the effect that receivables outstanding for a period of more than about 120 days would be written off; and

(b) otherwise does not know and cannot admit the paragraph.

42B. PwCS denies paragraph 42B of the Claim.

42C. PwCS denies paragraph 42C of the Claim.

42D. PwCS does not plead to paragraph 42D of the Claim as it does not contain any allegation against it.

G. AASB 9 and its application to AXL's accounts

43. PwCS does not plead to paragraph 43 of the Claim as it does not contain any allegation against it.

44. PwCS does not plead to paragraph 44 of the Claim as it does not contain any allegation against it.

45. PwCS does not plead to paragraph 45 of the Claim as it does not contain any allegation against it.

46. PwCS does not plead to paragraph 46 of the Claim as it does not contain any allegation against it.

46A. PwCS does not plead to paragraph 46A of the Claim as it does not contain any allegation against it.

46B. PwCS does not plead to paragraph 46B of the Claim as it does not contain any allegation against it.

47. PwCS does not plead to paragraph 47 of the Claim as it does not contain any allegation against it.

48. PwCS does not plead to paragraph 48 of the Claim as it does not contain any allegation against it.

49. PwCS does not plead to paragraph 49 of the Claim as it does not contain any allegation against it.

G1. AXL's and PwCS' knowledge in relation to AASB9

49A. PwCS does not plead to paragraph 49A of the Claim as it does not contain any allegation against it.

49B. PwCS does not plead to paragraph 49B of the Claim as it does not contain any allegation against it.

49C. PwCS does not plead to paragraph 49C of the Claim as it does not contain any allegation against it.

49D. PwCS does not plead to paragraph 49D of the Claim as it does not contain any allegation against it.

49E. In response to paragraph 49E of the Claim, PwCS:

(a) says it was aware that AXL would be required to assess the impact of the mandatory application of AASB 9 in its financial reports following 1 July 2018; and

(b) otherwise denies the paragraph.

H. The Initial Discovery of Covenant Breach

50. PwCS does not plead to paragraph 50 of the Claim as it does not contain any allegation against it.

51. PwCS does not plead to paragraph 51 of the Claim as it does not contain any allegation against it.

52. PwCS does not plead to paragraph 52 of the Claim as it does not contain any allegation against it.

53. PwCS does not plead to paragraph 53 of the Claim as it does not contain any allegation against it.

54. PwCS does not plead to paragraph 54 of the Claim as it does not contain any allegation against it.

55. PwCS does not plead to paragraph 55 of the Claim as it does not contain any allegation against it.

56. PwCS does not plead to paragraph 56 of the Claim as it does not contain any allegation against it.

57. PwCS does not plead to paragraph 57 of the Claim as it does not contain any allegation against it.

58. PwCS does not plead to paragraph 58 of the Claim as it does not contain any allegation against it.

59. PwCS does not plead to paragraph 59 of the Claim as it does not contain any allegation against it.

- 60. PwCS does not plead to paragraph 60 of the Claim as it does not contain any allegation against it.
- 61. PwCS does not plead to paragraph 61 of the Claim as it does not contain any allegation against it.
- 62. PwCS does not plead to paragraph 62 of the Claim as it does not contain any allegation against it.
- 63. PwCS does not plead to paragraph 63 of the Claim as it does not contain any allegation against it.
- 64. PwCS admits paragraph 64 of the Claim.

I. Prospectus Contraventions

- 65. PwCS does not plead to paragraph 65 of the Claim as it does not contain any allegation against it.
- 66. In response to paragraph 66 of the Claim, PwCS:
 - (a) does not plead to paragraphs 66(a)(i)-(vi) and 66(b)(ii)-(vii) as they do not contain any allegation against PwCS;
 - (b) repeats paragraphs 42A to 42D, 43 to 49, 49A to 49E and 53 to 54 above;
 - (c) in response to paragraphs 66(a)(vii), PwCS:
 - (i) says that the Prospectus did not contain the statement set out in paragraph 66(a)(vii) of the Claim; and
 - (ii) otherwise denies the paragraph;
 - (d) in response to paragraphs 66(a)(viii), PwCS:
 - (i) says that the Prospectus did not contain the statement set out in paragraph 66(a)(viii) of the Claim; and
 - (ii) otherwise denies the paragraph;
 - (e) in response to paragraph 66(b)(i), PwCS:
 - (i) repeats paragraphs 32 and 33 above;

- (ii) denies the paragraph; and
- (iii) says that the Prospectus contained the statement "the accounting will not change" in a paragraph relating specifically to transaction costs associated with the bonds issue in section 3.3.1 on page 16 of the Offers Specific Prospectus and in section 3.3.1 on page 16 of the Replacement Offer Specific Prospectus.

- 67. PwCS does not plead to paragraph 67 of the Claim as it does not contain any allegation against it.
- 68. PwCS does not plead to paragraph 68 of the Claim as it does not contain any allegation against it.
- 69. PwCS does not plead to paragraph 69 of the Claim as it does not contain any allegation against it.
- 70. PwCS does not plead to paragraph 70 of the Claim as it does not contain any allegation against it.
- 71. PwCS does not plead to paragraph 71 of the Claim as it does not contain any allegation against it.

J. AXL's Contraventions

- 72. PwCS does not plead to paragraph 72 of the Claim as it does not contain any allegation against it.
- 73. PwCS does not plead to paragraph 73 of the Claim as it does not contain any allegation against it.
- 74. PwCS does not plead to paragraph 74 of the Claim as it does not contain any allegation against it.
- 75. PwCS does not plead to paragraph 75 of the Claim as it does not contain any allegation against it.
- 76. PwCS does not plead to paragraph 76 of the Claim as it does not contain any allegation against it.
- 77. PwCS does not plead to paragraph 77 of the Claim as it does not contain any allegation against it.

78. PwCS does not plead to paragraph 78 of the Claim as it does not contain any allegation against it.

79. PwCS does not plead to paragraph 79 of the Claim as it does not contain any allegation against it.

J1. Underwriters' Liability

79A. PwCS does not plead to paragraph 79A of the Claim as it does not contain any allegation against it.

79B. PwCS does not plead to paragraph 79B of the Claim as it does not contain any allegation against it.

79C. PwCS does not plead to paragraph 79C of the Claim as it does not contain any allegation against it.

79D. PwCS does not plead to paragraph 79D of the Claim as it does not contain any allegation against it.

79E. PwCS does not plead to paragraph 79E of the Claim as it does not contain any allegation against it.

K. PwCS's Liability

80. In response to paragraph 80 of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d) and 32 above and otherwise admits paragraph 80(a) of the Claim;

(b) denies paragraph 80(b) of the Claim;

(c) denies paragraph 80(c) of the Claim;

(d) in response to paragraph 80(d) of the Claim, PwCS:

(i) says that the scope of the services it provided to AXL as a member of and reporting person to the due diligence committee (**DDC**) at around the time AXL offered the bonds was limited by and pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter, save that in addition to providing a "Private Investigating Accountant's Report" and "Agreed Upon Procedures Report" as referred to in the Engagement Letter and Addendum to Engagement Letter in respect of the Offer

Specific Prospectus, PwCS provided a replacement "Investigating Accountant's Report" and replacement "Agreed Upon Procedures Report" in respect of the Replacement Offer Specific Prospectus;

- (ii) says that it did not provide services to AXL as a member of and reporting person to the DDC at around the time AXL offered the bonds otherwise than as pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter and as described in paragraph 12(c)(iii) of this Defence; and
- (iii) says that its role was further subject to the limitations set out in the Private Investigating Accountant's Report dated 25 June 2018, Private Investigating Accountant's Report dated 3 July 2018, Report of Factual Findings to Axesstoday Limited dated 25 June 2018, Report of Factual Findings to Axesstoday Limited dated 3 July 2018 and the Due Diligence Planning Memorandum dated 25 June 2018;

Particulars

"Private Investigating Accountant's Report" dated 25 June 2018 from PricewaterhouseCoopers Securities Ltd addressed to the Directors, Axesstoday Limited (PWC.601.002.2903).

"Private Investigating Accountant's Report" dated 3 July 2018 from PricewaterhouseCoopers Securities Ltd addressed to the Directors, Axesstoday Limited (PWC.601.002.6734).

"Report of Factual Findings to Axesstoday Limited" dated 25 June 2018 addressed to the Directors, Axesstoday Limited (PWC.601.002.2912).

"Report of Factual Findings to Axesstoday Limited" dated 3 July 2018 addressed to the Directors, Axesstoday Limited (PWC.601.002.6724).

"Due Diligence Planning Memorandum" dated 25 June 2018 (PWC.601.002.5721 at PWC.601.002.5726 to PWC.601.002.5813).

- (iv) relies on the terms of the Private Investigating Accountant's Report dated 25 June 2018, Private Investigating Accountant's Report dated 3 July 2018, Report of Factual Findings to Axesstoday Limited dated 25 June 2018, Report of Factual Findings to Axesstoday Limited dated 3 July

2018 and the Due Diligence Planning Memorandum dated 25 June 2018 for their full meaning and effect; and

- (v) otherwise admits it was engaged by AXL to participate as a member of and a reporting person to the DDC that the directors of AXL established for the purposes of co-ordinating due diligence investigations in connection with the Prospectus;

(e) in response to paragraph 80(e) of the Claim, PwCS:

- (i) says that the scope of the services it provided to AXL in considering and commenting on drafts of the Prospectus at around the time AXL offered the bonds was limited by and pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter, save that in addition to providing a "Private Investigating Accountant's Report" and "Agreed Upon Procedures Report" as referred to in the Engagement Letter and Addendum to Engagement Letter in respect of the Offer Specific Prospectus, PwCS provided a replacement "Investigating Accountant's Report" and replacement "Agreed Upon Procedures Report" in respect of the Replacement Offer Specific Prospectus;
- (ii) says that it did not provide services to AXL in considering and commenting on drafts of the Prospectus at around the time AXL offered the bonds otherwise than as pursuant to the terms of the Engagement Letter and Addendum to Engagement Letter and as described in paragraph 12(c)(iii) of this Defence;
- (iii) repeats paragraphs 80(d)(iii) and 80(d)(iv) above;
- (iv) admits it was engaged by AXL to consider and comment on drafts of the Prospectus in relation to matters relevant to the scope of PwCS' work as set out in the Engagement Letter; and
- (v) otherwise denies the paragraph.

81. In response to paragraph 81 of the Claim, PwCS:

- (a) admits paragraph 81(b) of the Claim;
- (b) repeats paragraphs 12(c), 12(d), 32, 33, 49E(a), 66(c), 66(d), 66(e) and 80 above, and paragraph 84D(a) below;

(ba) otherwise admits paragraph 81(c) of the Claim; and

(c) otherwise denies the paragraph.

82. In response to paragraph 82 of the Claim PwCS:

(a) repeats paragraphs 12(c), 12(d), 32, 33, 33A, 34, 42B, 42C, 80 and 81 above;
and

(b) denies the paragraph.

83. [not used]

84. In response to paragraph 84 of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d), 32, 34, 42B, 42C, 80, 81 and 82 above; and

(b) denies the paragraph.

84A. In response to paragraph 84A of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d), 32, 34, 42B, 42C, 80, 81, 82 and 84 above; and

(b) denies the paragraph.

84B. In response to paragraph 84B of the Claim, PwCS:

(a) repeats paragraphs 12(c), 12(d), 32, 34, 42B, 42C, 80, 81, 82, 84 and 84A
above;

(b) denies the paragraph; and

(c) says further that the conduct alleged against PwCS, to the extent it would
contravene s 728 of the Corporations Act, would not contravene s 1041H(1) of
that Act by reason of s 1041H(3)(a)(ii).

84C. PwCS denies paragraph 84C of the Claim.

84D. In response to paragraph 84D of the Claim, PwCS:

(a) says that it was aware of the Prospectus and reviewed drafts of its proposed
contents including the final draft of the Prospectus prior to the Prospectus being
lodged with ASIC;

(b) repeats paragraphs 12(c), 12(d), 32(a), (c), (d) and (e), 49E, 66(c), 66(d), 66(e), 80 and 81 above; and

(c) otherwise denies the paragraph.

84E. PwCS denies paragraph 84E of the Claim.

84F. PwCS denies paragraph 84F of the Claim.

84G. PwCS denies paragraph 84G of the Claim.

84H. PwCS denies paragraph 84H of the Claim.

84I. PwCS denies paragraph 84I of the Claim.

84J. PwCS denies paragraph 84J of the Claim.

L. Loss

85. PwCS does not know and cannot admit paragraph 85 of the Claim.

86. In response to paragraph 86 of the Claim, PwCS:

(a) does not plead to paragraphs 86(a), (b), (c) and (e)(i)-(iv) as they do not contain any allegation against it; and

(b) does not know and cannot admit paragraphs 86(d) and 86(e)(v)-(vi).

87. [not used]

88. In response to paragraph 88 of the Claim, PwCS:

(a) does not plead to paragraphs 88(a)-(f) as they do not contain any allegation against it; and

(b) does not know and cannot admit paragraphs 88(g)-(h).

88A. In response to paragraph 88A of the Claim, PwCS:

(c) repeats paragraphs 12(c), 12(d), 32, 34, 42B, 42C, 80, 81, 82, 84, 84A, 85, and 86 above; and

(d) denies the paragraph.

- 88B. PwCS does not plead to paragraph 88B of the Claim, as it does not contain any allegation against it.
- 88C. PwCS denies paragraph 88C of the Claim.
89. PwCS denies paragraph 89 of the Claim.
90. PwCS does not plead to paragraph 90 of the Claim, as it does not contain any allegation against it.
91. PwCS denies paragraph 91 of the Claim.

M. Proportionate Liability

92. For the purposes of this Defence to the Claim only and without admission, PwCS says that if, which is denied, PwCS contravened s 1041H of the Corporations Act and/or was knowingly involved in any contravention by AXL of s 1041H of the Corporations Act and/or s 12DA of the Australian Securities and Investment Commission Act 2001 (Cth) (**ASIC Act**) as alleged by the Applicant in the Claim and if, which is denied, those contraventions caused the Applicant's and/or the Group Members' loss or damage as alleged in the Claim, that claim is an apportionable claim for the purposes of s 1041L of the Corporations Act and s 12GP of the ASIC Act (**Apportionable Claim**).
93. For the purposes of this Defence only and without admission, PwCS repeats paragraphs 1 to 11, ~~and 12A and 12B~~, Parts C, D, E, F, F1, G, paragraphs 49A to 49D, Parts H, I, ~~and J and J1~~, and paragraphs 85 to 88B, 89 and 90 of the Claim.
94. If and to the extent that AXL and/or Underwriters standing in the place of AXL are is liable pursuant to the Claim in respect of loss or damage caused to the Applicant and/or Group Members by reason of the matters alleged in paragraphs 1 to 11, ~~and 12A and 12B~~, Parts C, D, E, F, F1, G, paragraphs 49A to 49D, Parts H, I, ~~and J and J1~~, and paragraphs 85 to 88B, 89 and 90 of the Claim, then AXL:
- (a) engaged in conduct in contravention of s 728(1) of the Corporations Act; and/or
- (b) engaged in conduct in contravention of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act, and
- is AXL and/or Underwriters standing in the place of AXL are liable to the Applicant and Group Members for the loss or damage suffered by them pursuant to:
- (c) s 729(1) of the Corporations Act;

(d) s 1041I of the Corporations Act; and/or

(e) s 12GF of the ASIC Act.

95. If, which is denied, PwCS is liable to the Applicant and/or Group Members in respect of the Apportionable Claim, then for the reasons set out at paragraph 94 above, AXL is a person whose acts or omissions caused the loss allegedly suffered by the Applicant and/or Group Members, and therefore:

(a) AXL is a "concurrent wrongdoer" within the meaning of s 1041L of the Corporations Act and s 12GP of the ASIC Act; and

(b) PwCS's liability to the Applicant and/or Group Members is, by that reason, limited by s 1041N of the Corporations Act and s 12GR of the ASIC Act to an amount reflecting that proportion of the damage or loss claimed that the Court considers just having regard to the extent of PwCS's responsibility for that damage or loss.

N. Relief from Liability

96. In further or alternative answer to the Claim, without admission and for the purposes of this Defence only, PwCS says that if it is liable to the Applicant and/or the Group Members for any of the loss alleged in the Claim by reason of the matters alleged in the Claim (which is denied), then PwCS acted honestly and having regard to all the circumstances of the case ought fairly to be excused from any such liability (in whole, or alternatively, in part) based on s 1317S (by reason of s 1041I(4)) or s 1318 of the Corporations Act).

This Defence has been prepared on the basis of orders of the Court made on ~~14 April 2023 and 26 May 2023~~^{21 December 2023}, on the basis of which PwCS has not pleaded to the Non-PwCS Paragraphs as defined in those orders, and for the avoidance of doubt, PwCS does not admit the allegations in those paragraphs.

Date: ~~2 June 2023~~²¹ February 2024



Signed by Andrew Carter
Lawyer for the Second Respondent

This pleading was prepared by Andrew Carter and Gabrielle Piesiewicz.

Certificate of lawyer

I, Andrew Carter, certify to the Court that, in relation to the Defence to the Further Amended Statement of Claim filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

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

Date: 21 February 2024



Signed by Andrew Carter

Lawyer for the Second Respondent