

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/09/2021 3:57:21 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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

Dated: 21/09/2021 10:34:53 AM AEST

Registrar

Important Information

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

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



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 Axsesstoday Limited)**

First Respondent

PricewaterhouseCoopers Securities Limited

Second Respondent

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A. Nature of the proceedings

1. These proceedings are brought pursuant to Part IVA of the *Federal Court of Australia Act 1976* (**FCA**) by the Applicant on behalf of persons who:
 - a. subscribed to corporate bonds (**the Bonds**) (either directly or through nominees or trustees) issued by the First Respondent (**AXL**) under an Offer Specific Prospectus and Base Prospectus dated 26 June 2018 (together, **the Prospectus**);
 - b. suffered loss or damage by, or resulting from, the conduct of the Respondents pleaded below;
 - c. have entered into a litigation funding agreement, in respect of these proceedings, with Therium Litigation Finance Atlas AFP IC;
 - d. have entered into a retainer agreement, in respect of these proceedings, with Hicksons Lawyers;
 - e. are not:
 - i. the Respondents, a related party, a related body corporate or an associated entity;
 - ii. and have not been directors, officers or employees of AXL;
 - iii. persons listed in s 33E(2) of the FCA.

(Group Members)

2. As at the date of commencement of these proceedings there are 7 or more Group Members.

B. The Parties

3. The Applicant:

- a. is a company incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and is capable of suing in its corporate name and style;
- b. on or about 12 July 2018 purchased 500 Bonds which were held by HSBC Custody Nominees (Australia) Ltd as nominee for the Applicant.

4. The First Respondent, AXL, is and at all material times was:

- a. a company incorporated pursuant to the Corporations Act and is capable of being sued;
- b. a person for the purposes of 1041H of the Corporations Act;
- c. engaged in trade or commerce;
- d. in the business of lending to small to medium sized enterprises (**SMEs**) primarily in the hospitality and transport sectors;
- e. a listed corporation and listed disclosing entity within the meaning of s 9 and s 111AL of the Corporations Act;
- f. a disclosing entity within the meaning of s 111AO of the Corporations Act.

5. On or about 7 April 2019 Mr Glen Kanesvsky, Mr Sal Algeri and Mr Vaughan Strawbridge were appointed joint and several voluntary administrators of AXL.

6. On or about 3 September 2019 AXL become subject to a Deed of Company Arrangement (**DoCA**) with Mr Glen Kanesvsky, Mr Sal Algeri and Mr Vaughan Strawbridge appointed as Deed administrators.

7. As at 28 June 2018, ACN 603 303 126 Pty Ltd (**ACN 603**) was:
 - a. a company incorporated pursuant to the Corporations Act;
 - b. a related entity of AXL;
 - c. a guarantor of AXL's payment obligations under the Bonds (as pleaded more fully below); and
 - d. also became subject to the DoCA on about 3 September 2019.
8. As at 28 June 2018, Axsesstoday Retail Pty (**Retail**) was:
 - a. a company incorporated pursuant to the Corporations Act;
 - b. a related entity of AXL;
 - c. a guarantor of AXL's payment obligations under the Bonds (as pleaded more fully below); and
 - d. also became subject to the DoCA on about 3 September 2019.
9. As at 28 June 2018, Axsess Operations Pty Ltd (**Operations**) was:
 - a. a company incorporated pursuant to the Corporations Act;
 - b. a related entity of AXL;
 - c. a guarantor of AXL's payment obligations under the Bonds (as pleaded more fully below); and
 - d. also became subject to the DoCA on about 3 September 2019.
10. Together, AXL, ACN 603, Retail and Operations were known as the Group (**the Group**).

11. As at 28 June 2018, AET Corporate Trust Pty Ltd (**AET**) was:
 - a. a company incorporated pursuant to the Corporations Act;
 - b. a corporate trustee appointed to hold on trust the right to (inter alia) enforce AXL's obligations in respect of the Bonds (as pleaded more fully below).
12. The Second Respondent, PricewaterhouseCoopers Securities Limited (**PwCS**):
 - a. is, and was as at 26 June 2018, a company incorporated pursuant to the Corporations Act and is capable of being sued;
 - b. conducted business in Australia as accountants and accounting advisors under the names "PricewaterhouseCoopers Securities" and "PwCS";
 - c. provided accounting services to AXL at the time it offered the Bonds;
 - d. was named in the Prospectus as accounting advisors for the Prospectus, and provided services for the Offer (as defined below).

C. AXL's Accounting Obligations

13. Pursuant to s 286 of the Corporations Act AXL was required to keep financial records that correctly recorded and explained its transactions, financial position and performance.
14. Pursuant to s 292(1)(a) of the Corporations Act AXL was required to prepare financial reports for (inter alia) the financial year ending 30 June 2018.
15. Pursuant to s 295(1) of the Corporations Act the financial report referred to in paragraph 14 above was required to include financial statements for the year.
16. Pursuant to s 296 of the Corporations Act the financial report referred to in paragraph 14 above was required to be prepared in accordance with the accounting standards.

17. The accounting standards, as defined by ss 9 and 334 of the Corporations Act (**Accounting Standards**), included:
- a. Australian Accounting Standards Board Standard 9 titled “*Financial Instruments*” (compilation dated 14 December 2014) (**AASB 9**);
 - b. Australian Accounting Standards Board Standard 15 titled “*Revenue from Contracts with Customers*” (compilation dated 14 December 2014) (**AASB 15**);
 - c. Australian Accounting Standards Board Standard 132 titled “*Financial Instruments: Disclosure and Presentation*” (compilation dated 14 August 2015) (**AASB 132**);
 - d. Australian Accounting Standards Board Standard 139 titled “*Financial Instruments: Recognition and Measurement*” (compilation dated 14 August 2015) (**AASB 139**);
 - e. Australian Accounting Standards Board Framework for the Preparation and Presentation of Financial Statements (compilation prepared 15 March 2016) (**Accounting Framework**).
18. Pursuant to s 297 of the Corporations Act the financial report referred to at paragraph 14 above was required to give a true and fair view of the financial position and performance of AXL.

D. The Syndicated Facilities Agreement

19. On about 9 November 2016, AXL entered into a syndicated facilities agreement with (inter alia) the Commonwealth Bank Australia Limited (**CBA**), Macquarie Bank Limited (**MBL**) (together, the **Syndicated Lenders**) and CBA Corporate Services (NSW) Pty Ltd as agent to the Syndicated Lenders (**Agent**) (**the SFA**).
20. Pursuant to the SFA the Group was provided various facilities by the Syndicated Lenders (**Syndicated Banking Facility**) including:
- a. a revolving credit facility;

- b. a bank guarantee facility;
- c. an overdraft facility;
- d. a corporate credit card facility.

21. Pursuant to the SFA the Group covenanted to maintain an arrears ratio of 4% or less (**Arrears Ratio Covenant**), which was to be calculated by reference to AXL's financial reports prepared in accordance with, *inter alia*, the accounting standards referred to in paragraph 17.

E. The Offer

22. On about 26 June 2018 AXL issued the Prospectus for the offer of the Bonds in a single series and tranche identified as *Series A, Tranche 1*.
23. The Bonds were unsecured notes within the meaning of s 283BH of the Corporations Act.
24. The registration of the Prospectus (**Offer**) with ASIC enabled the Offer to be made by the broking houses to retail investors as well as to sophisticated and institutional investors and the Offer was in fact made to retail investors.
25. The Prospectus consisted of an Offer Specific Prospectus for Series A, Tranche 1 and a Base Prospectus which together constituted the "*Offer Documents*" for the issue of the Bonds.
26. The Offer Specific Prospectus related to the issue by AXL of \$50 million of simple corporate bonds (the Bonds as defined above) on the terms set out in the Offer Documents.
27. The Offer Specific Prospectus was lodged with Australian Securities and Investments Commission (**ASIC**) on about 26 June 2018 and remained open for up to 13 months.
28. Relevantly, it was a term of the Offer that:

- a. the Bonds were interest paying, unsubordinated and unsecured debt obligations issued by AXL;

Particulars

Offer Specific Prospectus, page 8; Base Prospectus page 34, paragraph 2; page 41

- b. each Bond was to be issued subject to the provisions of:

- i. a trust deed entered into between:

- 1. AXL;

- 2. ACN 603, Retail and Operations as guarantors (**Guarantors**); and

- 3. AET as trustee.

- ii. the terms of the Offer Specific Prospectus;

Particulars

Offer Specific Prospectus, page 8; Base Prospectus page 34, paragraph 2, page 49, page, pages 62 to 64, clause 3.5, clause 3.6.

- c. the term of the Bonds was 5 years with a maturity date of 20 July 2023 (**Maturity Date**);

Particulars

Offer Specific Prospectus, page 8.

- d. interest was payable based on an approximate 90-Day Bank Bill Swap Rate of 2.12% plus 4.90% to 5.20% basis point which equated to a floating interest rate of between 7.02% and 7.32% payable quarterly in arrears;

Particulars

Offer Specific Prospectus, page 9; Base Prospectus page 42 to 44.

- e. on the Maturity Date Bond holders would receive the face value of their Bond (**Face Value**) plus a final payment of interest;

Particulars

Base Prospectus page 45, pages 81 to 85, clause 5.1

- f. Face Value was \$100 per bond.

Particulars

Offer Specific Prospectus, page 8; Base Prospectus page 34, paragraph 2.

- 29. The following were key dates for the Offer:

- a. commencement of the bookbuild: 3 July 2018;
- b. the opening date for the Offer and lodgement for the replacement Offer Specific Prospectus with ASIC: 4 July 2018;
- c. closing date for the Broker Firm Offer: 17 July 2018;
- d. Issue Date: 20 July 2018;

- e. Bonds to commence trading on the Australian Stock Exchange (**ASX**) on a deferred settlement basis: 23 July 2018;
 - f. Holding Statements dispatched by the Registry: 24 July 2018;
 - g. Bonds to commence trading on the ASX on a normal settlement basis: 25 July 2018.
30. The bookbuild closed on 4 July 2018 with the issue of the Bonds fully subscribed.
31. The Bonds were listed on the ASX under the code “AXLHA”.

F. Representations made in the Prospectus

32. Section 3.3.1 on pages 15 and 16 of the Offer Specific Prospectus contained the following statement:

“The unaudited financial information 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.

The historical consolidated balance sheet has been derived from the Group’s financial statements for the half-year ended 31 December 2017, which have been reviewed by Axesstoday’s auditors.

The historical consolidated balance sheet has been prepared in accordance with the stated basis of preparation, being the recognition and measurement principles contained in the Australian Accounting Standards (“AAS”)...

The pro forma historical balance sheet for the Group has been prepared solely for inclusion in this Offer Specific Prospectus and has been derived from the reviewed historical balance sheet of the Group as at 31 December 2017, adjusted for the effects of the proforma transactions described below. Due to its nature, the pro

forma historical balance sheet does not represent the Groups' actual or prospective financial position.

The pro forma historical balance sheet for the Group has been prepared in accordance with recognition and measurement principles prescribed in AAS other than it includes adjustments which have been prepared in a manner consistent with AAS that reflect the impact of events or transactions as if they had occurred as at 31 December 2017."

33. Section 3.3.1 at page 16 of the Offer Specific Prospectus also relevantly contained the following statement:

"Set out below is a summary of the Group's historical consolidated balance sheet as at 31 December 2017, together with pro forma adjustments that assume the following transactions were completed on 31 December 2017:

- (i) \$50 million Bond issue (pursuant to this Offer Specific Prospectus), which is classified as borrowings – this results in 'Cash and cash equivalents' increasing by \$50 million and non-current 'Borrowings' increasing by \$50 million.*
- (ii) Approximately \$1.6 million in transaction costs associated with the Bond issue – financial liabilities are recognised net of their transaction costs, in accordance with Australian Accounting Standard AASB139 (Note that AASB 9 Financial Instruments, will apply from 1 July 2018, the accounting will not change under the new standard). Accordingly, the payment of the transaction costs results in non-current "Borrowings" and "Cash and cash equivalents" each reducing by \$1.6 million."*

34. Section 3.3.2 at page 17 of the Offer Specific Prospectus set out an historical and pro-forma historical balance sheet as at 31 December 2017 (**2017 Proforma Balance Sheet**) which relevantly represented the following:

	Historical balance sheet 31 Dec 2017	Pro-forma historical balance sheet
	\$'000s	\$'000s
<i>Current assets</i>	82,822	131,239
<i>Non-current assets</i>	191,379	191,379
<i>Total assets</i>	274,201	322,618
<i>Current liabilities</i>	7,747	7,747
<i>Non-current liabilities</i>	218,471	266,888
<i>Total liabilities</i>	226,218	274,636
<i>Net assets</i>	47,983	47,983
<i>Total equity</i>	47,983	47,938

35. Section 3.4 at page 18 of the Offer Specific Prospectus recorded what were stated to be the key financial ratios of AXL and its subsidiaries as follows:

<i>Prescribed Key Financial Ratios as at</i>	<i>30 Jun 16</i>	<i>30 Jun 17</i>	<i>31 Dec 17</i>	<i>Pro forma 31 Dec 17</i>
<i>Prescribed Gearing Ratio</i>	853%	433%	471%	572%
<i>Prescribed Cover Ratio</i>	1.9x	1.9x	1.7x	N/A
<i>Prescribed Working Capital Ratio</i>	0.7x	12.3x	10.7x	16.9x

but which made no reference to the arrears ratio.

36. Section 3.8.1 on page 23 of the Offer Specific Prospectus contained a representation that AXL had not breached any loan covenant or debt obligation as follows:

“Axsesstoday has not materially breached any loan covenant or debt obligations in the two years prior to the date of this Offer Specific Prospectus.”

37. By containing the statement pleaded in paragraph 36 without any condition or explanation the Prospectus also contained a representation that the Group:

- a. was not in breach, or alternatively was not imminently going to breach, a loan covenant or debt obligation; or
- b. had reasonable grounds for considering that it was not in breach, or alternatively was not imminently going to breach, a loan covenant or debt obligation

38. Section 4.4 on page 79 of the Base Prospectus relevantly stated that a risk associated with the Bonds was a change in Accounting Standards as follows:

“Axsesstoday is subject to the usual business risks that there may be changes in Australian accounting standards which have an adverse financial impact on Axsesstoday or members of the Group. Holders should be aware that Key Financial Ratios and the ratios used by Axsesstoday (disclosed in Section 3.7.2 and Section 3.7.3 of this Base Prospectus) are calculated by reference to figures from the accounts of Axsesstoday prepared on the basis of the Australian accounting standards in place as at the date of the issuance of the Bonds. Axsesstoday has the right under the Terms to notify Holders and the Trustee that components of the ratios will instead be determined in accordance with Australian accounting standards in force at the time of making the determination.

A new Australian Accounting Standard AASB15 Revenue from Contracts with customers, will apply to Axsesstoday from its financial year commencing on 1 July 2018. Axsesstoday continues to evaluate the potential impact of this new standard on and its consolidated financial statements. The evaluation process includes reviewing the terms of contracts and evaluating customary business practices and considering these against the measurement, recognition and disclosure requirements of AASB 15. A key judgement area will be determining when customers obtain control of land developed and residential building assets insofar as this impacts the timing of revenue recognition.”

39. The Base Prospectus, whether in section 4.4 or elsewhere, made no express reference to the fact that AASB 9, in force as at 14 December 2014, was to become compulsory from 1 July 2018 and would have the effect on the Group pleaded in Section G below.

40. Section 3.7 on page 22 of the Offer Specific Prospectus recorded, as was the fact, that PwCS had provided accounting services for the Offer as follows:

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

41. Those accounting services referred to in paragraph 40 as provided by PwCS included, and were reasonably understood by a reader of the Prospectus as including, preparation of or approval of the pro forma balance sheet pleaded in paragraph 34.
42. Section 3.8.5 on page 24 of the Offer Specific Prospectus recorded, as was the fact, that PwCS consented to be named Accounting Advisor for the Offer.

F1. Failure to identify breaches of the Arrears Ratio Covenant

- 42A. At all material times up to about 6 September 2018 the Group had adopted an accounting policy that automatically wrote off receivables outstanding for a period of greater than 120 days (**the Old Policy**).
- 42B. The Old Policy did not accord with the Accounting Standards, and in particular clauses 58 – 70 of AASB 139, on the basis that:
- 42B.1 it did not seek to engage, either adequately or at all, with the requisite assessment for determining impairment;
- 42B.2 instead in applying the Old Policy AXL adopted a fixed rule of fully impairing any debt which had been in default for 120 days regardless of prospect of recovery;
- 42B.3 which in turn had the effect of understating both receivables and arrears; and
- 42B.4 also had the effect that the arrears covenant ratio was misstated because the portion by which arrears were understated was greater than the portion by which receivables were understated.

- 42C. The effect of the Old Policy was such that as at the time the 2017 Proforma Balance Sheet was prepared, receivables and arrears as stated in the 2017 Proforma Balance Sheet were less than if they had been determined in accordance with the Accounting Standards (and arrears significantly understated), as pleaded in paragraphs 46-48 below.
- 42D. Had the 2017 Proforma Balance Sheet been prepared in accordance with the Accounting Standards (instead of the Old Policy), AXL would have been in breach of (inter alia) the Arrears Ratio Covenant.

Particulars

See paragraphs 50-53 below

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

43. From 1 July 2018, for the purpose of a company with a reporting period starting after 1 January 2018, the application of AASB 9 (which had been published on 17 December 2014) became mandatory and superseded AASB 139.
44. As a matter of fact, by superseding AASB 139, AASB 9 relevantly:
- a. introduced new requirements for the classification and measurement of financial assets and liabilities;
 - b. included a forward-looking 'expected credit loss' impairment model (**ECL Model**) as distinct from an incurred loss model.
45. As a matter of fact, pursuant to the ECL Model:
- a. a credit event (or impairment trigger) no longer had to occur before credit losses were recognised in an entity's financial accounts prepared as part of the financial report and financial statement pleaded in paragraphs 14 and 15;

- b. minimum 12 month expected credit losses must always be recognised in the entity's consolidated statement of comprehensive income which formed part of the financial report and financial statement pleaded in paragraphs 14 and 15;
 - c. lifetime expected losses would be recognised on assets for which there is a significant increase in credit risk after initial recognition.
46. Prior to the application of AASB 9, and by the application of the Old Policy, the Group's provisions for the impairment of receivables for the year ended 30 June 2018 were as follows:
- a. Current – (\$1,247,206)
 - b. Non-current – (\$2,648,775)

Particulars

AXL Annual Report 2018, Note 13, page 69.

- 46A. Following the matters pleaded below at paragraphs 50 to 53, AXL adopted a new accounting policy whereby receivables were only to be written off if they were outstanding for greater than 365 days or if there was no prospect of recovery before then (**New Policy**).
- 46B. The New Policy would have conformed with AASB 139 had it applied prior to 30 June 2018 and conformed with AASB 9 from 30 June 2018.
47. After the application of the New Policy prior to 30 June 2018 or of AASB 9 and, or alternatively or, the New Policy, the Group's provisions for the impairment of receivables for the year ended 30 June 2018 were as follows:
- a. Current – (\$2,064,651) plus a further “other” provision of (\$882,000);
 - b. Non-current – (\$2,993,330)

Particulars

AXL Reissued Annual Report 2018, Note 13, page 65.

48. In the premises pleaded in paragraph 47 above and paragraph 53 below, as at 30 June 2018 or 1 July 2018, the Group's arrears ratio calculated as required by the SFA was greater than 4% having increased from 3.25% to 7.67%.
49. As a matter of fact, in the period to 30 June 2018 and as at 1 July 2018:
- a. the Group was in breach of the Arrears Ratio Covenant;
 - b. in light of that breach (if not unconditionally waived, which the breach was not) the Syndicated Banking Facility would be immediately payable and recognised as a current liability; and
 - c. AXL and the Group could not repay the Syndicated Banking Facility when payable (which was immediately) and was insolvent subject to any waiver given by the Syndicated Lenders.

H. The Initial Discovery of Covenant Breach

50. In about July 2018 the Group submitted to Syndicate Lenders the management accounts for the financial year ending 30 June 2018 (**FY18 Management Accounts**) to test various covenants relevantly including (but not limited to) the Arrears Ratio Covenant pleaded at paragraph 21 above.
51. On about 27 August 2018 AXL issued the statutory accounts and annual report for the Group for the year ending 30 June 2018 (**FY18 Annual Report**).
52. On about 3 September 2018 Syndicate Lenders raised a query regarding inconsistencies between the FY18 Management Accounts and the FY18 Annual Report.
53. Following that query, AXL and the Group reported to the Syndicated Lenders that the effect of the adoption of AASB 9 and, or alternatively or, the New Policy, was that the arrears ratio, calculated in accordance with the SFA was that, instead of the arrears ratio being 3.25%, the arears ratio was 7.67%.

- 54. In the premises pleaded in paragraph 53 above, the Group was in breach of the Arrears Ratio Covenant and had been at all material times, or alternatively since no later than 1 July 2018.
- 55. On a date not presently known, but sometime between 27 August 2018 and 29 November 2018, the FY18 Annual Report was withdrawn.
- 56. On about 6 September 2018 the Group submitted an updated covenant certificate to the Syndicate Lenders that confirmed a breach of the Arrears Ratio Covenant.
- 57. On about 9 September 2018 the Group placed a trading halt on the ASX in relation to its securities.
- 58. On about 12 September 2018 the Group placed a trading halt on the Bonds on the ASX.
- 59. On about 14 September 2018 the Group voluntarily requested the ASX suspend its trading for the purpose of undertaking a strategic review (**the Review**).
- 60. The Review revealed (inter alia) four further breaches of covenants contained in the SFA.

Particulars

See 4.1.2.4 of the Report to Creditors dated 20 August 2019 from Deloitte (at page 22).

- 61. On about 28 November 2018 the FY18 Annual Report was reissued.
- 62. The reissued FY18 Annual Report revised previously reported profit after tax from \$7,000,000 to \$3,100,000, a reduction of 55.7%.
- 63. Further, the reissued FY18 Annual Report, in accordance with the requirements of the Accounting Standards, reclassified (inter alia) the Syndicated Banking Facility as a current liability with effect from June 2018.

64. On about 7 April 2019, AXL and the other members of the Group were placed in voluntary administration.

I. Prospectus Contraventions

65. The Prospectus was:

- a. an offer of securities within the meaning of s 706 of the Corporations Act;
- b. a prospectus within the meaning of s 710 of the Corporations Act;
- c. a disclosure document within the meaning of s 728 of the Corporations Act.

66. In the premises pleaded at paragraphs 42A to 42D, 43 to 49 and 53 to 54 the Prospectus:

- a. omitted to disclose:
 - i. the effect of the mandatory application of AASB 9 from 1 July 2018 and, or alternatively or, the New Policy, on AXL's financial accounts as pleaded at paragraph 53;
 - ii. that the mandatory application of AASB 9 from 1 July 2018 and, or alternatively or, the New Policy in the period to 30 June 2018 and after that period, would have a material adverse effect on AXL's financial position such that, by reason of the matters pleaded at paragraphs 43 to 49 and 53 to 54 above, AXL was in breach of various covenants including the Arrears Ratio Covenant;
 - iii. that the mandatory application of AASB 9 from 1 July 2018 and, or alternatively or, the New Policy in the period to 30 June 2018 and after that period, would have the effect that the Syndicated Banking Facility was a then current liability;
 - iv. that the mandatory application of AASB 9 from 1 July 2018 and, or alternatively or, the New Policy in the period to 30 June 2018 and after that

period, would have a material adverse effect on AXL's financial position such that by reason of the matters pleaded at paragraph 43 to 49 and 53 to 54 above it was:

1. in breach of various covenants including the Arrears Ratio Covenant;
 2. dependant upon senior lenders not exercising their rights so as to continue to trade;
 3. alternatively, insolvent;
- v. the Old Policy did not conform with AASB 139 in the period to 30 June 2018 and AASB 9 from 1 July 2018 as pleaded at paragraph 42B to the effect pleaded at paragraphs 42C to 42D;
- vi. that the application of the Old Policy misrepresented AXL's financial position such that as at the date of the 2017 Proforma Balance Sheet, the true financial position of AXL was such that it was:
1. in breach of various covenants including the Arrears Ratio Covenant;
 2. dependant upon senior lenders not exercising their rights so as to continue to trade;
 3. alternatively, insolvent.

b. contained misrepresentations to the effect that:

- i. upon the introduction of AASB 9 "*the accounting will not change*" as pleaded at paragraph 33 above;

- ii. by virtue of the matters pleaded at 34 to 38, an assessment of the likely effect of the application of AASB 9 and, or alternatively or, the New Policy, on the financial position of AXL and the Group had been made;
- iii. the 2017 Proforma Balance Sheet as pleaded at paragraph 34 above provided a reliable estimation of the Group's financial position as at the date it was made, or alternatively post the issue of the Bonds;
- iv. the historical and pro-forma historical balance sheet as pleaded at paragraph 34 complied with applicable Accounting Standards;
- v. the Group had not materially breached any loan covenant or debt obligations in the two years prior to 26 June 2018 and was not in breach, or alternatively was not imminently going to breach, a loan covenant or debt obligation;
- vi. the Group was solvent with current assets exceeding current liability by circa \$125 million;
- vii. the application of the Old Policy misrepresented AXL's financial position such that as at the date of the 2017 Proforma Balance Sheet, the true financial position of AXL was such that it was:
 - 1. in breach of various covenants including the Arrears Ratio Covenant;
 - 2. dependant upon senior lenders not exercising their rights so as to continue to trade;
 - 3. alternatively, insolvent.

67. The omissions pleaded in 66(a) (**Prospectus Omissions**) were matters that the Applicant, the Group Members and their advisors reasonably required to make an informed assessment of the financial position and prospects of AXL (within that concept in s.710 of the Corporations Act).

68. Further, the Prospectus Omissions were matters that Applicant, the Group Members and/or their advisors reasonably expected to find in the Prospectus (within that concept in s.710 of the Corporations Act) by reason of the fact that (at the very least) AASB 9 was soon to become compulsory as noted in the Prospectus and pleaded at paragraph 39 above.
69. By reason of the matters pleaded at 42A to 42D, 43 to 49 and 53 to 54, the misrepresentations pleaded in 66(b) (the **Prospectus Misrepresentations**) were misleading or deceptive.
70. Further or alternatively, the compulsory application of AASB 9 and the material effects it had as pleaded at 43 to 49 and 53 to 54 above, including but not limited to the breach of the Arrears Ratio Covenant (**the New Circumstances**), were new circumstances that arose after:
- a. the Prospectus was originally lodged with ASIC;
 - b. before:
 - i. the opening date for the Offer and lodgement for the replacement Offer Specific Prospectus with ASIC;
 - ii. each of the Applicant and Group Members accepted the Offer;
 - iii. the Offer closed.
71. The effect of the New Circumstances were that the offer of the Bonds pursuant to the Prospectus was in contravention of s 728(1)(c) of the Corporations Act.

J. AXL's Contraventions

72. AXL was a person making an offer of securities under the Prospectus within the meaning of s 728(1) and s729(1) (Table, Item 1) of the Corporations Act.

73. AXL was a person who was, or ought to have been, aware that the Prospectus Omissions were materially adverse from the point of view of an investor.
74. Further or alternatively, AXL was a person who was, or ought to have been, aware that the Prospectus Misrepresentations were materially adverse from the point of view of an investor.
75. Further or alternatively, AXL did not have reasonable grounds for making the Prospectus Misrepresentations within the meaning of s 728(2) of the Corporations Act.
76. Further or alternatively, AXL was a person who was, or ought to have been, aware that the effect of the New Circumstances was materially adverse from the point of view of an investor.
77. In the premises pleaded at 72 to 76 (and by each of them) AXL contravened s 728(1) and s 728(4) of the Corporations Act.
78. By reason of s 729(1) (Table, Item 1) of the Corporations Act, any person who suffers loss or damage by reason of AXL's contravention of s 728(1) may recover the amount of the loss or damage from AXL.
79. Further, or alternatively, by reason of the Prospectus Omissions and the Prospectus Misrepresentations, and or alternatively, by the failure to disclose the effect of the New Circumstances, AXL engaged in conduct which was:
 - a. in relation to financial products within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - b. in trade or commerce, in relation to financial services within the meaning of s12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - c. likely to induce persons in Australia to subscribe for or purchase financial products;
 - d. misleading or deceptive, or likely to mislead or deceive, in contravention of:

i. s1041H(1) of the Corporations Act;

ii. s12DA(1) of the ASIC Act.

K. PwCS's Liability

80. As a matter of fact, PwCS was engaged by AXL to:

- a. provide accounting services for the Offer;
- b. prepare the pro forma accounts, including the 2017 Proforma Balance Sheet, for inclusion in the Prospectus;
- c. prepare the 2017 Proforma Balance Sheet for AXL, adjusted for the effects of the pro forma transactions referred to in the Prospectus, in accordance with the recognition and measurement principles prescribed in Accounting Standards other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017, and for the purpose of being included in the Prospectus;

Particulars

Subject to discovery, the best particulars that can be provided to date are:

- I. PwCS consented to being named in Prospectus as providing accounting services for the offer as pleaded at paragraph 40.
- II. PwCS received a fee for providing accounting services for the offer as pleaded at paragraph 40.
- III. Representations made in the Prospectus by AXL pleaded in paragraphs 32 to 34 above.

81. As a matter of fact, PwCS:

- a. prepared the 2017 Proforma Balance Sheet for the purpose of inclusion in the Prospectus; and
- b. knew that the 2017 Proforma Balance Sheet was included in the Prospectus.

Particulars

- i. PwCS' knowledge follows from the fact pleaded in paragraph 80 and the matters identified in the particulars to paragraph 80.
- ii. Further particulars will be provided after discovery.

82. The 2017 Proforma Balance Sheet was not prepared by PwCS in accordance with the recognition and measurement principles prescribed in Accounting Standards, other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017, in that:

- a. the 2017 Proforma Balance Sheet was prepared using the Old Policy which, as pleaded in paragraphs 42B.1 and 42B.2 did not comply with AASB 139, in particular clauses 58-70;
- b. the 2017 Proforma Balance Sheet was prepared on a basis which understated both receivables and arrears (but to varying extents, the arrears misstated by a greater proportion).

83. [not used]

84. In preparing the 2017 Pro Forma Balance Sheet (or alternatively in preparing it to be including in the Prospectus) PwCS represented that there were reasonable grounds for an opinion that the 2017 Pro Forma Balance Sheet was prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards, other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017.

- 84A. By reason of the facts pleaded in paragraph 82 there were not reasonable grounds for an opinion that the 2017 Pro Forma Balance Sheet was prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards, other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017.
- 84B. By reason of the matters pleaded in paragraphs 12, 34, 80 to 82, 84 and 84A above, in preparing the 2017 Pro Forma Balance Sheet (or alternatively in preparing it to be included in the Prospectus) PwCS engaged in conduct in relation to a financial product, and, or alternatively or, a financial service, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H of the Corporations Act.
- 84C. By reason of PwCS' misleading or deceptive conduct pleaded in paragraph 84B the Applicant and each Group Member were presented with the 2017 Pro Forma Balance Sheet in the Prospectus, and in reliance upon that financial information being prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards, other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017, acquired the Bonds.

L. Loss

85. Prior to its decision to enter the Bond, the Applicant was provided a copy of the Prospectus.
86. The Applicant's decision to enter the Bond was based upon:
- a. the financial information and representations pleaded at 32 to 35;
 - b. the representation that AXL had not breached any loan covenant or debt obligation as pleaded at paragraph 36;
 - c. the Prospectus;
 - d. the 2017 Pro Forma Balance Sheet:

- i. being prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards, other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017; or
 - ii. that there was a reasonable basis to hold the opinion that the 2017 Pro Forma Balance Sheet had been so prepared;
- e. the absence of disclosure to the effect that:
 - i. the effect of the mandatory application of AASB 9 and, or alternatively or, the New Policy, from any time, or alternatively from 1 July 2018 on AXL's financial accounts as pleaded at paragraphs 43 to 49 and 53 to 54 above;
 - ii. that the mandatory application of AASB 9 and, or alternatively or, the New Policy in the period to 30 June 2018, or from any time, or alternatively from 1 July 2018 would have a material adverse effect on AXL's financial position such that, by reason of the matters pleaded at paragraph 43 to 49 and 53 to 54 above, AXL was in breach of various covenants including the Arrears Ratio Covenant;
 - iii. that the mandatory application of AASB 9 and, or alternatively or, the New Policy in the period to 30 June 2018, or from any time, or alternatively from 1 July 2018 would have the effect that the Syndicated Banking Facility was a then current liability;
 - iv. that the mandatory application of AASB 9 and, or alternatively or, the New Policy in the period to 30 June 2018, or from any time, or alternatively from 1 July 2018 would have a material adverse effect on AXL's financial position such that by reason of the matters pleaded at paragraph 43 to 49 and 53 to 54 above it was:
 - 1. dependant upon senior lenders not exercising their rights so as to continue to trade;
 - 2. alternatively, insolvent.

87. [not used]

88. Further and alternatively, the Applicant and each Group Member would not have entered into the Bonds had it known:

- a. that the effect of the mandatory application of AASB 9 and, or alternatively or, the New Policy, in the period to 30 June 2018, or from any time, or alternatively from 1 July 2018 on AXL's financial accounts as pleaded at paragraphs 43 to 49 and 53 to 54 above;
- b. that the mandatory application of AASB 9 and, or alternatively or, the New Policy, from in the period to 30 June 2018, or any time, or alternatively from 1 July 2018 would have a material adverse effect on AXL's financial position such that it was in breach of various covenants including the Arrears Ratio Covenant;
- c. that the mandatory application of AASB 9 and, or alternatively or, the New Policy, from in the period to 30 June 2018, or any time, or alternatively from 1 July 2018 would have the effect that the Syndicated Banking Facility was a then current liability;
- d. that the mandatory application of AASB 9 and, or alternatively or, the New Policy, in the period to 30 June 2018, or from any time, or alternatively from 1 July 2018 would have a material adverse effect on AXL's financial position such that it was:
 - i. in breach of various covenants including the Arrears Ratio Covenant;
 - ii. dependant upon senior lenders not exercising their rights so as to continue to trade;
 - iii. alternatively, insolvent;
- e. the effect of the Old Policy on AXL's financial accounts as pleaded at paragraph 42C and 42D;

f. that the application of the Old Policy misrepresented AXL's financial position such that as at the date of the 2017 Proforma Balance Sheet, the true financial position (calculated in accordance with AASB 139) of AXL was such that it was:

- i. dependant upon senior lenders not exercising their rights so as to continue to trade;
- ii. in breach of various covenants including the Arrears Ratio Covenant;
- iii. alternatively, insolvent,

88A. Further and alternatively, the Applicant and each Group Member would not have entered into the Bonds had they known that:

- (a) the 2017 Pro Forma Balance Sheet in the Prospectus had not been prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017; or
- (b) there was not a reasonable basis to hold the opinion that the 2017 Pro Forma Balance Sheet in the Prospectus had not been prepared in accordance with the recognition and measurement principles prescribed in Accounting Standards other than in respect of the adjustments to reflect the proposed bond issue as if it had occurred as at 31 December 2017.

88B. In the premises, were it not for the AXL's contraventions pleaded at 72 to 79 the Applicant and the Group Members would not have acquired the Bonds.

88C. Further and alternatively, in the premises but for PwCS's contraventions pleaded in 84B, and the facts pleaded in 84C, 86(d) and 88A. the Applicant and the Group Members would not have acquired the Bonds.

89. By reason of the above the Applicant and each Group Member has suffered loss or damage.

Particulars of loss of the Applicant

Face value of Bonds:	\$50,000.00
Less distribution from the DoCA:	<u>\$13,514.79</u>
TOTAL:	<u>\$36,485.21</u>

In addition, the Applicant has suffered loss of interest on the Bonds, particulars of which will be provided.

90. The Applicants and each Group Member is entitled to recover from AXL the loss or damage pursuant to:
- a. section 729(1) of the Corporations Act;
 - b. section 1041I of the Corporations Act;
 - c. s 12GF of the ASIC Act.
91. The Applicants and each Group Member is entitled to recover from PWCS the loss or damage pursuant to section 1041I of the Corporations Act.

Date: 20 September 2021



Signed by Chris Moore
Lawyer for the Applicant

This pleading was prepared by Jeremy Giles SC & Callan O'Neill, counsel.

Certificate of lawyer

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

Date: 20 September 2021

A handwritten signature in cursive script, appearing to read "Chris Moore", is written over a horizontal line.

Signed by Chris Moore
Lawyer for the Applicant