

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**



No. S ECI 2021

Case: S ECI 2021 04738

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B E T W E E N

PAUL LEIGHTON MUMFORD

First Plaintiff

-and-

GAYLE MUMFORD

Second
Plaintiff

-and-

EML PAYMENTS LTD

Defendant

AMENDED STATEMENT OF CLAIM

Filed pursuant to Order 3(a) of the orders made by the Honourable Justice Nichols on 12
October 2022.

Date of Document: ~~16 December 2021~~

20 December 2022

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A PRELIMINARY

A.1 The Plaintiffs and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part 4A of the *Supreme Court of Victoria Act 1986* (Vic) by the plaintiffs on their behalf and on behalf of other persons who or which:

- (a) acquired an interest in ordinary shares in the defendant (**EML Shares**) during the period between 19 December 2020 to ~~18 May 2021~~ 25 July 2022 (**Relevant Period**);
- (b) suffered loss or damage by reason of the conduct of the defendant (**EML**); and
- (c) were not during the Relevant Period, and are not as at the date of this Amended Statement of Claim, any of the following:
 - (i) a related party (as defined in s 228 of the Corporations Act 2001 (Cth) (**Corporations Act**)) of EML;
 - (ii) a related body corporate (as defined in s 50 of the Corporations Act) of EML;
 - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of EML;
 - (iv) an officer or close associate (as defined by s 9 of the Corporations Act) of EML;
 - (v) a Judge or the Chief Justice of the Supreme Court of Victoria or a Justice of the Chief Justice of the High Court of Australia,

(Group Members).

2. The plaintiffs acquired an interest in EML Shares during the Relevant Period.

PARTICULARS

<i>Date</i>	<i>Number of Shares</i>	<i>Price per Share</i>	<i>Cost (including brokerage and GST)</i>
12 May 2021	10,150	5.39	\$54,860.66

3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

A.2 The Defendant

4. EML is and at all material times was:

- (a) a company registered pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of ~~ss 1041E and~~ 1041H of the Corporations Act;
- (c) a person within the meaning of s 12DA of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the Australian Consumer ~~L~~aw set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
 - (i) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
 - (iii) s 16 of the *Fair Trading Act 1989* (Qld);
 - (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - (v) s 19 of the *Fair Trading Act 2010* (WA);
 - (vi) s 14 of the *Fair Trading Act 1987* (SA);
 - (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
 - (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
 (individually or together, **ACL**).

5. At all material times, EML was:

- (a) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**);
- (b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act;
- (c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (d) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and

- (e) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes, aware of any information concerning EML that a reasonable person would expect to have a material effect on the price or value of EML Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

6. At all material times, EML was prohibited pursuant to:

- (a) section 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to EML Shares (being a financial product within the meaning of the Corporations Act and ASIC Act); and
- (b) section 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce,

that was misleading or deceptive or likely to mislead or deceive.

B EML'S BUSINESS

B.1 Relevant EML committees and personnel

Audit and Risk Committee

7. During the Relevant Period, EML had an audit and risk committee (**Audit & Risk Committee**) which:
- (a) was established by, and reports to, EML's board of directors;
 - (b) had authority to seek any information it requires from executive management or employees of EML and its wholly owned subsidiaries;
 - (c) was authorised to take such independent professional advice as it considers necessary;
 - (d) was authorised to obtain any independent legal or other professional advice that it considers necessary;
 - (e) had the authority to remove or appoint an internal or external auditor without endorsement of EML's board of directors in extenuating circumstances; and

- (f) had the overall role of assisting EML's board of directors to discharge their responsibilities to exercise due care, diligence and skill in relation to legal and regulatory compliance.

Directors and officers of EML

8. Tom Cregan (**Cregan**) was from 27 August 2012 to 11 July 2022:
- (a) a director of EML; ~~and~~
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules; and
 - (c) the Managing Director and Group Chief Executive Officer of EML during the Relevant Period.
9. David Liddy (**Liddy**) was at all material times from 27 April 2012:
- (a) a director of EML; ~~and~~
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules; and
 - (c) a member of the Audit & Risk Committee during the Relevant Period.
10. Melanie Wilson (**Wilson**) was at all material times from 20 February 2018:
- (a) a director of EML; ~~and~~
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules; and
 - (c) a member of the Audit & Risk Committee during the Relevant Period.
11. Tony Adcock (**Adcock**) was at all material times from 21 November 2011:
- (a) a director of EML; ~~and~~
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules; and
 - (c) the Chair of the Audit & Risk Committee during the Relevant Period.
12. George Gresham (**Gresham**) was at all material times from 18 May 2020 to 29 July 2021:

- (a) a director of EML; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules; and
 - (c) a member of the Audit & Risk Committee during the Relevant Period.
13. Paul Wenk (**Wenk**) was at all material times ~~from July 2018:~~
- (a) from July 2018, EML's Group General Counsel; and
 - (aa) from 26 November 2019 to June 2021, EML's joint company secretary with Tissera-Isaacs; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
14. Sonya Tissera-Isaacs (**Tissera-Isaacs**) was at all material times from 26 November 2019:
- (a) EML's Head of Corporate Governance and Company Secretary; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
15. Rob Shore (**Shore**) was at all material times from November 2018:
- (a) EML's Group Chief Financial Officer; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
16. Andrew Betts (**Betts**) was at all material times from July 2013:
- (a) EML's Group Chief Risk Officer;
 - (aa) at all material times from February 2021, the interim Chief Risk Officer of PCSIL;
and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
17. Noel Moran (**Moran**) was:

- (a) at all material times from in or about March 2009 until in or about March 2021 the Chief Executive Officer of Prepaid Financial Services; and
 - (b) at all material times from 31 March 2020 until in or about March 2021 an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
18. Lee Britton (**Britton**) was:
- (a) at all material times until March 2021 the Chief Compliance Officer for Prepaid Financial Services;
 - (aa) at all material times, Chief Executive Officer of PCSIL;
 - (b) at all material times from March 2021 the Chief Executive Officer of EML Europe; and
 - (c) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules at all material times from 31 March 2020.
19. Nikki Evans (**Evans**) was at all material times from 31 March 2020:
- (a) the Chief Executive Officer of EML Europe, Middle East and Africa; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
- 19A. Emma Shand (**Shand**) was at all material times from 11 July 2022:
- (a) the Chief Executive Officer and Managing Director of EML; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
- 19B. David Curneen (**Curneen**) was at all material times from in or about October 2021:
- (a) the Group Chief Operating Officer of EML; and
 - (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.
- 19C. Jonathon Gatt (**Gatt**) was at all material times from in or about February 2022:
- (a) the Chief Financial Officer, Europe of EML; and

- (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

19D. Noel Gaughran (**Gaughran**) was at all material times from in or about March 2022:

- (a) the General Counsel, Europe of EML; and
- (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

19E. Jennie Power (**Power**) was at all material times from in or about March 2022:

- (a) the European Compliance & Regulatory Director of EML; and
- (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

19F. Marco Nuvoloni (**Nuvoloni**) was at all material times from in or about April 2022:

- (a) the Head of Compliance, Europe of EML; and
- (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

19G. Juan Rio Salvador (**Salvador**) was at all material times from in or about September 2021:

- (a) the Head of Risk, Europe of EML; and
- (b) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

19H. Stefan Gadiot (**Gadiot**) was at all material times from in or about September 2020 to April 2022:

- (a) the Chief Risk Officer EML Europe;
- (b) the Director of Risk and Compliance PFS Card Services Ireland; and
- (c) an officer of EML within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

20. By reason of the matters pleaded in paragraphs 8 to 19H above any information of which any or all of:

- (a) Cregan;
- (b) Liddy;
- (c) Wilson;
- (d) Adcock;
- (e) Gresham;
- (f) Wenk;
- (g) Tissera-Isaacs;
- (h) Shore;
- (i) Betts;
- (j) Moran;
- (k) Britton;
- (l) Evans;
- (m) Shand;
- (n) Curneen;
- (o) Gatt;
- (p) Gaughran;
- (q) Power;
- (r) Nuvoloni;
- (s) Salvador; and
- (t) Gadiot.

(EML Officers).

became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of EML (including, in the case of Moran and Britton, information concerning PFS of which they were aware

prior to the acquisition of PFS by EML), was information of which EML was aware (as aware is defined within the meaning of r 19.12 of the ASX Listing Rules).

B.2 EML and its acquisition of PFS

21. At all material times, EML carried on business of providing payment card technology solutions.
22. At all material times, Prepaid Financial Services (Ireland) Limited (**PFS**) carried on business providing white label payments and Banking-as-a-Service (~~**BaaS**~~) technology in support of the FinTech sector.
23. On or about 11 November 2019, EML entered into a binding agreement to acquire PFS (and its subsidiaries) for an upfront enterprise value of £226 million (or A\$423 million) plus an earn-out component of up to £55 million (or A\$103 million).
24. Prior to 31 March 2020, EML renegotiated the terms on which it would purchase PFS including by reducing the upfront enterprise value by £94.5 million from £226 million to £131.5 million (or A\$252.3 million).
25. On or about 31 March 2020, EML completed its acquisition of PFS on the renegotiated terms.

25A. The strategic rationale for EML's acquisition of PFS included:

- (a) that the combined group was expected to become one of the largest FinTech enablers in open banking and prepaid globally;
- (b) the combined group would have less concentration on the Gift & Incentive (**G&I**) segment (which would make up less than 40% of pro forma group revenues);
- (c) the acquisition of PFS would transition EML into a company in which the majority of revenues were generated by General Purpose Reloadable (**GPR**) products;
- (d) the addition of PFS's digital banking and multi-currency offerings and the ability to cross-sell them into EML's global market footprint would broaden EML's solution suite; and
- (e) the acquisition would bring scale to EML's European operations, enabling greater operating leverage which would allow the business to ride out uncertain times in markets when they move back into growth mode.

PARTICULARS

- i. ASX Announcement of 31 March 2020: "EML to Acquire Prepaid Financial Services (Ireland) Limited – Renegotiated Terms"

26. During the Relevant Period:

- (a) prior to the completion of EML's acquisition of PFS, pro forma combined financial statements prepared by EML indicated that if the acquisition of PFS had been completed on 1 July 2018, a significant proportion of EML's global consolidated net revenue and global consolidated EBITDA would have been derived from PFS in 2019 and 2020;
- (b) on and from the completion of EML's acquisition of PFS, a significant proportion of EML's global consolidated net revenue and global consolidated EBITDA was derived from PFS.

PARTICULARS

- i. *On a pro forma basis, PFS would have contributed approximately 40% of EML's net revenue and 36% of EML's EBITDA in 2019 and 2020: Investor Presentation, 11 November 2019, Slide 25.*
- ii. *PFS contributed \$78.3 million to EML's revenue of \$113.5 million for FY21: Investor Presentation, 17 August 2021, Slide 8.*

B.3 Regulation of PFS

27. At all material times prior to 19 December 2020, ~~PFS's European business~~ PFS primarily operated conducted its business in the European Economic Area and in the UK through a wholly owned subsidiary, Prepaid Financial Services Limited (PFS UK), which was regulated in the United Kingdom by the Financial Conduct Authority.
- 27A. At all material times prior to 19 December 2020, PFS UK operated a branch in Ireland which was regulated by the Central Bank of Ireland (CBI).
28. ~~From~~ At all material times after 19 December 2020, PFS's European business primarily operated through PFS primarily conducted its business in the European Economic Area through a wholly owned subsidiary, PFS Card Services (Ireland) Limited (PCSIL), which was regulated in Ireland by the Central Bank of Ireland (CBI).

28A. At all material times, PCSIL operated under an authorisation granted by CBI for PCSIL to conduct business as an Electronic Money Institution (EMI) for the purposes of the European Communities (Electronic Money) Regulations 2011 (EM Regulations) (CBI Authorisation).

PARTICULARS

- i. PCSIL's application to CBI to operate as an electronic money institution under the EM Regulations, which was granted on 4 April 2019, projected that by 18 months post authorisation, PCSIL would be executing approximately 4.7 million payment transactions per quarter, valued at €350 million: First 13 May CBI Letter, p.7
- ii. Further and better particulars may be provided following discovery.

28B. At all material times during the Relevant Period, the CBI Authorisation imposed various conditions on PCSIL's operations as an EMI, including among others:

- (a) a condition to notify the CBI in advance of any proposed material change in PCSIL's business model (Material Business Model Variation): and
- (b) limits on the permitted transaction volumes and activity for PCSIL products (CBI Authorisation Transaction Volume Limit).

PARTICULARS

- i. Paragraph 28A above is repeated.
- ii. Further and better particulars may be provided following discovery.

28C. At all material times during the Relevant Period, a Material Business Model Variation included, among other matters, a material increase in transaction volume activity in excess of the CBI Authorisation Transaction Volume Limit.

28D. At all material times after 19 December 2020, PFS UK and PCSIL were, in practice, managed as one business, operated in the same manner by the same personnel, and had the same anti-money laundering and counter terrorism financing (AML/CTF) risk and control frameworks (the AML/CTF risk and control framework).

28E. At all material times after 4 April 2019, PCSIL were obliged to discharge various statutory obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Ireland) (CJA 2010).

PARTICULARS

- i. Among other CJA 2010 provisions, ss. 30A, 30B, 33, 35, 37, 36A and 42.

28F. At all material times after 4 April 2019, PCSIL were obliged to act in a way consistent with the conditions of the CBI authorisation imposed under the EM Regulations.

PARTICULARS

i. Among others, regulations 8(1)(e), 11(3), 26(1) of the EM Regulations.

28G. At all material times after 4 April 2019, PCSIL were obliged to act in a way consistent with the s 23 of the Central Bank Reform Act 2010 (Ireland) (Central Bank Reform Act).

28H. At all material times after 4 April 2019, PCSIL were subject to the exercise of powers by the CBI under the Central Bank (Supervision and Enforcement) Act 2013 (Ireland) (Central Bank Act).

29. During the Relevant Period, CBI could give PCSIL a written direction to:

- (a) suspend, for a period specified in the direction not exceeding 12 months, any one or more of the following:
 - (i) the provision of any financial service, or description of financial service, specified in the direction;
 - (ii) the making of payments or any such payments or description of such payments specified in the direction;
 - (iii) the acquisition or disposal of any assets or liabilities, or description of assets or liabilities, specified in the direction;
 - (iv) entering into transactions or agreements, or description of transaction or agreements, specified in the direction, or entering into them ~~except~~ except in specified circumstances or to a specified extent;
 - (v) soliciting business from persons of a class specified in the direction;
 - (vi) carrying on business in a manner specified in the direction or otherwise than in a manner so specified;
- (b) dispose of, on terms specified in the direction, assets or liabilities so specified, or a part or parts of its business so specified, within ~~set~~ such period as may be so specified;
- (c) raise and maintain such capital or other financial resource as may be specified in the direction;

- (d) make such modifications to its systems and controls as may be specified in the direction;
- (e) make such modifications to its business practices and dealings with third parties as may be specified in the direction,

(CBI Written Direction).

PARTICULARS

- i. Central Bank ~~(Supervision and Enforcement) Act 2013 (Ireland)~~ (**Central Bank Act**), ss 45(1), (3).*

30. CBI could make and issue a CBI Written Direction to PCSIL if CBI was satisfied:

- (a) that it was in the interests of the proper and effective regulation of financial services providers; and
- (b) of one or more of the following:
 - (i) PCSIL has become or is likely to become unable to meet its obligations to creditors or its customers;
 - (ii) PCSIL is not maintaining or is unlikely to be in a position to maintain adequate capital or other financial resources having regard to the volume and nature of its business;
 - (iii) PCSIL is failing to comply with or is likely to fail to comply with any condition or requirement imposed by, or by virtue of, financial services legislation;
 - (iv) PCSIL is conducting business in such a manner as to jeopardise or prejudice:
 - (A) monies, securities or other investment instruments or other property held by or controlled by it on behalf of customers; or
 - (B) the rights and interests of customers;
 - (v) there may be grounds for revoking or not renewing PCSIL's authorisation,

(Conditions for a CBI Written Direction).

PARTICULARS

- i. Central Bank Act, ss 45(1), (2).*

B.4 ML/TF Risks Investigations and enforcement action by banking regulators

31. PFS' business posed significant money laundering and terrorism financing (ML/TF) AML/CFT risks (~~–because prepaid cards could be anonymously used to transport large sums of money across borders.~~

PARTICULARS

- i. The reason PFS was at a significant risk from an ML/TF perspective included that:*
- a. certain electronic money products can be used to move funds easily and anonymously:*
 - b. the increased usage of non-cash payments:*
 - c. the global acceptance of card/online/digital payments:*
 - d. the fact that online electronic money accounts can often have no limitations on the monetary sum placed, withdrawn or transferred: and*
 - e. the geographic reach of some electronic money institutions and the fact that the majority of electronic money products are distributed through non-face-to face means, which can make this sector attractive to money launderers and for terrorist financing purposes.*
- ii. Australian Financial Review, "EML's prepaid cards pose 'significant money-laundering risk', 20 May 2021.*
- iii. Further particulars to be provided following expert evidence and discovery.*

BA. WHAT EML SAID PRIOR TO 21 MAY 2021

- 31A. At all material times, materials and information published by EML to the ASX were available to the market of investors and potential investors in EML Shares (Affected Market).

BA.1 19 August 2020

- 31B. On 19 August 2020, EML published to the ASX a document entitled "Appendix 4G: Key to Disclosures: Corporate Governance Council Principles and Recommendations" (2020 Corporate Governance Statement).

31C. Cregan and Tissera-Isaacs approved the 2020 Corporate Governance Statement and its publication to the ASX.

31D. 2020 Corporate Governance Statement contained the following statements:

*EML's approach to corporate governance goes beyond compliance. Our Board of Directors (**Board**) and all levels of management are fully committed to achieving the highest standards of corporate governance and business conduct (pg. 2).*

...

We regularly review our governance practices in light of both current and emerging corporate governance developments of relevance to EML, to reflect market practice, expectations and regulation as appropriate (pg. 2).

...

Our governance framework includes: ... Robust systems of risk management and assurance... (pg. 3)

The Board has established an Audit & Risk Committee...

The purpose of the [Audit & Risk] Committee is to oversee financial risk management and internal controls across EML. Responsibilities include:

...

- Internal controls: to confirm the effectiveness of EML's internal controls;

...

- Risk: oversee and assess the effectiveness of EML's Risk Management Framework; and

- Review and monitor EML's compliance with legal and regulatory obligations, internal policies and industry standards.

The Audit & Risk Committee meets as often as required in accordance with its Charter. Following each meeting, the ARC reports to the Board on any matter that should be brought to the Board's attention and on any recommendation of the ARC that requires Board approval. (pg. 12)

The purpose of the [Audit & Risk] Committee is to oversee financial risk management and internal controls across EML and to assess the effectiveness of EML's Risk and Compliance management framework. Risk related responsibilities include:

- Oversee and assess the effectiveness of EML's risk management framework and to make recommendations in respect of the development of embedding of the risk management framework and appetite of the Board with detailed oversight of financial risk;

- Assist the Board with the monitoring and review of EML's risk culture;

- Review and approve policies and initiatives that ensure best practise risk management, reflect stakeholder expectations and influence EML's reputation as a responsible organisation; and

- Review and monitor EML's compliance with legal and regulatory obligations, internal policies and industry standards.

EML has established a Risk Management Framework (**Framework**) and regularly reviews the soundness and effectiveness of that Framework. The Framework is designed to identify and manage risk on an ongoing basis. The Board sets the risk appetite for the Group, oversees the Framework and satisfies itself that the Framework is sound by reviewing reports received and asking questions when necessary to satisfy itself as questions arise. It is the responsibility of management to design and implement that Framework and to ensure that the Group operates within the risk appetite set by the Board. (pg. 15)

...

The Group Chief Risk Officer (**Group CRO**) provides ongoing reports to the Audit & Risk Committee, as well as bi-annual assessments of the adequacy and effectiveness of the Company's control processes and risk management procedures. Any internal audit reviews that are undertaken are done so in coordination with the Audit & Risk Committee, with external audit assistance provided if needed.

The role of the Group CRO is to:

- coordinate the implementation of the risk management processes, risk profile and risk mitigation strategies;

- facilitate, challenge and drive risk management and risk mitigation strategies in the Group:

- review the sufficiency and effectiveness of the internal control framework:

- review systems and operations and the adequacy of controls; and

- report to Senior Management and the Audit & Risk Committee at regular intervals on the risk management process, risk mitigation strategies, material business risks and internal control framework. (pg. 16)

31E. On 19 August 2020, EML published to the ASX its Appendix 4E and Annual Report for the financial year ended 30 June 2020 (2020 Appendix 4E and Annual Report).

31F. In the 2020 Appendix 4E and Annual Report, EML stated:

(a) in FY20, EML had generated \$32.5M in EBITDA from revenues of \$121.6M, driven by gross debit volumes (GDV) of \$13.9 billion, a 54% increase on the prior corresponding period:

(b) EML's General Purpose Reloadable (GPR) segment grew by 54.3% to \$4.2 billion in FY20, driven by strong organic growth from salary packaging programs, resiliency in gaming and disbursement programs and the acquisition of PFS (which contributed \$1.25 billion in the last quarter:

(c) EML had implemented a new strategy to drive growth in the next three years called "Project Accelerator", and had a clear intent of transitioning to a company deriving the majority of its revenues from GPR products, and the acquisition of PFS was clearly aligned to that strategy:

(d) EML's strong governance and compliance are demonstrated by EML's commitment to having simplified, harmonised and accessible group policies, which had been reviewed and revised to reflect changes in the employment landscape and relevant legislation and to demonstrate EML's values:

(e) EML operated in a number of regulated markets and was subject to regulatory reviews and inquiries, which from time to time may result in litigation, fines or other regulatory enforcement actions:

(f) EML had recognised provisions for matters where an economic out flow of resources as a result of events occurring prior to the reporting date is probable and can be reliably measured utilising information known as at the reporting date: and

- (g) Note B9 to the Financial Statements recorded a provision of \$3.585M in relation to costs arising from the UK Payment Service Regulator investigation into anti-competitive conduct in relation to a minor part of the PFS business prior to its acquisition by EML.

PARTICULARS

- i. As to paragraphs 31F(a) to (c) above, 2020 Appendix 4E and Annual Report (Covering ASX announcement (pp.1-3)).
- ii. As to paragraphs 31F(d) to (f) above, 2020 Appendix 4E and Annual Report (Annual Report), pp.23 and 125.
- iii. As to paragraph 31F(g) above, 2020 Appendix 4E and Annual Report (Annual Report), pg. 88.

BA.2 30 October 2020

31G. On 30 October 2020, EML held its Annual General Meeting, at which Cregan gave a presentation titled 'Annual General Meeting Presentations' (the transcript and slides of which were published to the ASX (2020 AGM Presentation)).

31H. In the 2020 AGM Presentation, EML stated:

- (a) in FY20, EML had generated \$32.5M in EBITDA from revenues of \$121.6M, driven by GDV of almost \$14 billion;
- (b) EML's debit volumes would grow into the future, as would its revenues;
- (c) EML had experienced \$10M in 1QFY21 EBITDA (compared to \$3.2M in the prior corresponding period (1QFY20)), with GDV up 51% on the prior corresponding period;
- (d) having suspended guidance in May 2020, EML would re-commence giving guidance in February 2021 with the release of its 1H21 results (though it was aware of the broker consensus of mid \$40M to mid \$60M);
- (e) EML operated in a heavily regulated industry and was responsible for moving and reconciling billions of dollars a month, so systems, infrastructure and regulatory and compliance were barriers to competitor entry, and parts of EML's business under the surface without which you've got no business being in this business.

PARTICULARS

- i. 2020 AGM Presentation; CEO Address

BA.3 Compliance Representations

31I. During the Relevant Period, EML represented to the Affected Market that:

- (a) EML's corporate governance exceeded what was necessary to comply with applicable laws and regulations;
- (b) EML's governance framework reflected market practice, expectations and regulation, and included robust systems of risk management and assurance; and
- (c) EML had strong and effective internal controls to comply with legal and regulatory obligations applicable to its businesses.

(together and separately, **Compliance Representations**).

PARTICULARS

- i. The Compliance Representations are partly express and partly to be implied from the statements pleaded in paragraphs 31A to 31D, and 31F(d)-(g), and 31H(e).*
- ii. The Compliance Representations were made on 19 August 2020, and were reaffirmed on 30 October 2020, including by the fact of EML not saying anything to modify, qualify or contradict the Compliance Representations.*

31J. Further, by reason of the matters pleaded in paragraphs 31A to 31E above, on 19 August 2020, EML represented to the Affected Market that they had a reasonable basis for making the Compliance Representations (**Compliance Basis Representation**).

PARTICULARS

- i. The Compliance Basis Representation was implied from the making of the Compliance Representations.*

31K. During the Relevant Period to 19 May 2021, EML continued to make the Compliance Representations and the Compliance Basis Representation.

PARTICULARS

- i. The continuing representation is implied by EML not saying anything during that period to modify, qualify or contradict the Compliance Representations and the Compliance Basis Representation.*
- ii. The representations were continuing in that period, notwithstanding that from 19 December 2020, EML's European business was conducted primarily through PCSIL, and CBI became its primary regulator, as pleaded in paragraph 28.*

BA.4 17 February 2021

31L. On 17 February 2021, EML published to the ASX an announcement entitled “EML Announces Record Revenues of \$95.3M and EBITDA of \$28.1M” (1H21 Interim Results Announcement).

31M. In the 1H21 Interim Results Announcement, EML stated:

- (a) in 1H21, EML achieved group revenue of \$95.3M, group EBITDA of \$28.1M, group NPATA of \$13.2M, and group GDV of \$10.2 billion;
- (b) GPR revenue represented 57% of group revenue in 1H21, demonstrating the extent of the group’s pivot to deriving a majority of revenues from the GPR segment, of which PFS generated \$38M in revenue;
- (c) The record EBITDA result demonstrated that EML had transitioned away from a company reliant on seasonal mall gift cards to a broader business where it generated the majority of revenues from the GPR segment; and
- (d) EML was reinstating an FY21 guidance range of revenue of \$180M-\$190M (+48-56% on FY20) , EBITDA of \$50M to \$54M (+54-66% on FY20) and NPATA of \$30M to \$33.5M (+25-40% on FY20).

BB. PCSIL’S ENGAGEMENT WITH CBI**BB.1 PCSIL’s growth in business beyond what was notified to CBI**

32. By the end of the first quarter of the financial year ended 30 June 2021 (1QFY21) PCSIL had significantly increased the number and value of payment transactions that it was executing in excess of the CBI Authorisation Transaction Volume Limit.

PARTICULARS

- i. PCSIL’s application to CBI to operate as an electronic money institution under the EM Regulations, which was granted on 4 April 2019, projected that by 18 months post authorisation, PCSIL would be executing approximately 4.7 million payment transactions per quarter, valued at €350 million: First 13 May CBI Letter, p.7
- ii. PCSIL’s regulatory return for the first quarter of the financial year ended 30 June 2021 recorded that PCSIL had executed approximately 11 million payment transactions valued at €1.2 billion: First 13 May CBI Letter, p.7.

On or about 24 September 2019, PFS had been fined €1,000,000 and sanctioned by the French banking regulator, Autorité de Contrôle Prudentiel et de Résolution (**ACPR**), for:

- (a) ~~non-compliant ‘know your customer’ processes; and~~
- (b) ~~a failure to report suspicious transactions to the ACPR.~~

32A. The matters pleaded in paragraph 32 exceeded the Material Business Model Variation and PCSIL was obliged to seek authorisation from CBI for any such variation in its transaction volume operating.

PARTICULARS

- i. The particulars to paragraphs 28A and 32 are repeated.*

BB.2 CBI engagement with PCSIL (December 2020 to May 2021)

19 December 2020 CBI Letter

- 33. On or about 19 December 2020, PFS and/or EML received a letter from CBI (**19 December 2020 CBI Letter**).
- 34. The 19 December 2020 CBI Letter contained the statements set out in Annexure A.
- 35. From mid-December 2020 to May 2021, PCSIL had increased interactions with CBI covering a range of regulatory and compliance issues including governance and internal controls.

PARTICULARS

- i. EML’s “Response to ASX Aware Query” dated 25 May 2021.*
- ii. Paragraphs 35A to 39C below are repeated.*
- iii. Further particulars will be provided following discovery.*

8 January 2021 report on PFS UK

35A. On or about 8 January 2021, CBI provided a report to Moran on PFS UK (8 January 2021 Report).

35B. The 8 January 2021 Report:

- (a) identified non-compliance and deficiencies with PFS UK’s AML/CTF risk and control frameworks; and
- (b) proposed that PFS UK take certain actions to remedy the non-compliance and deficiencies with its AML/CTF risk and control frameworks.

8 January 2021 inspection of PCSIL

35C. On or about 8 January 2021, CBI sent a letter to Moran (8 January 2021 Letter).

35D. The 8 January 2021 Letter stated that CBI intended to conduct an AML/CTF and EU Financial Sanctions inspection of PCSIL.

35E. During the period from 8 January 2021 to on or about 1 May 2021, CBI conducted an AML/CTF and EU Financial Sanctions inspection of PCSIL.

35F. As part of the AML/CTF and EU Financial Sanctions inspection of PCSIL, during the period from on or about 8 January 2021 to on or about 1 May 2021, representatives of CBI:

- (a) attended telephone and/or videoconferences with representatives of PCSIL; and
- (b) requested documents and/or information from representatives of PCSIL.

PARTICULARS

- i. An email from Gadiot to Betts dated 12 April 2021 (EML.0012.0006.5369).
- ii. Further and better particulars may be provided following completion of EML's discovery.

CBI gives written notice of concerns

35G. On or about 7 May 2021, representatives of CBI sent a letter to Gadiot, Britton and Betts (7 May 2021 Letter).

35H. The 7 May 2021 Letter:

- (a) stated that PCSIL's activity levels far exceeded what was projected in the firm's application for authorisation which CBI considered to be a material change of PCSIL's business model which PCSIL was required to notify CBI of in advance, as a condition of the CBI Authorisation;
- (b) stated that CBI had a number of significant concerns regarding PCSIL's current and proposed governance arrangements, particularly in the context of the volume, extent and variety of activities PCSIL was conducting;
- (c) set out CBI's concerns regarding PCSIL's governance, internal controls and risk management arrangements, including:

- (i) that on and from 28 April 2021, PCSIL's board had one director, being Britton, who was based in the United Kingdom, not Ireland, and that the CBI considered that PCSIL did not have a functioning board as a result;
 - (ii) that PCSIL had made interim appointments of Betts, with oversight from Shore, in relation to the performance of a pre-approval controlled functions (PCF) at PCSIL, such interim appointments were, in the opinion of CBI, not compliant with PCSIL's obligations under s 23 of the *Central Bank Reform Act 2010*, which prohibited PCF appointments without CBI authorisation;
 - (iii) inadequate regulatory functions within the jurisdiction;
 - (iv) the absence of a head office function within the jurisdiction, which was a requirement of EM Regulations; and
 - (v) personnel occupying key dual roles, which was inconsistent with PCSIL's application for the CBI Authorisation;
- (d) stated that PCSIL was required to undertake immediate remedial action in respect of the concerns outlined by CBI, and such action was to be implemented by the board and senior management of PCSIL to address CBI's concerns;
- (e) required that a copy of the 7 May 2021 letter be brought to the immediate attention of EML given the serious nature of the matters identified; and
- (f) set out a risk mitigation program that CBI expected PCSIL to address in the context of a series of governance, internal control and risk management issues which CBI identified.

35I. On or about 11 May 2021, representatives of CBI sent a letter to Britton dated 10 May 2021 (10 May 2021 Letter).

35J. The 10 May 2021 Letter:

- (a) referred to the 7 May 2021 Letter;
- (b) stated that CBI was of the view that the current governance and internal control arrangements were not sufficiently effective to deliver PCSIL's business in a manner consistent with its legislative and regulatory obligations;
- (c) requested the information set out in Section A of the letter in the form specified in Section B of the letter;

- (d) stated that the 10 May 2021 Letter should be brought to the immediate attention of EML given the serious nature of the matters identified.

35K. On or about 12 May 2021, representatives of CBI sent an email to Britton, Betts and Gadiot (12 May 2021 Email).

35L. The 12 May 2021 Email sought a meeting between CBI and senior personnel from PCSIL and EML on 13 May 2021 at 9:30AM (Irish time) / 6:30pm (Brisbane time) to set out significant concerns which CBI had in relation to PCSIL's compliance with financial services legislation and the CBI Authorisation, particularly with regard to PCSIL's AML/CTF controls, governance arrangements and compliance with the EM Regulations.

36. At approximately 10:00pm on Thursday 13 May 2021 (Australian Eastern Standard Time (AEST)), a teleconference was attended by representatives of CBI, PCSIL and EML including ~~Shere~~ Betts, Britton, Bennett, Gadiot, Brendan O'Kelly (EML Legal Counsel), and Cathal Smyth (PCSIL Legal Counsel) (13 May 2021 Teleconference).

PARTICULARS

- i. *EML's "Response to ASX Aware Query" dated 25 May 2021.*
- ii. *Further particulars will be provided following completion of EML's discovery.*

37. During the 13 May 2021 Teleconference, representatives of CBI:

- (a) raised significant regulatory concerns regarding PCSIL's AML/CTF risk and control frameworks ~~anti-money laundering / counter terrorism financing (AML/CTF), risk and control frameworks~~ and governance; and
- (b) stated that CBI was minded to issue PCSIL with a CBI Written Direction.

PARTICULARS

- i. *EML's announcement to the ASX entitled "Central Bank of Ireland correspondence" dated 19 May 2021.*
- ii. *EML's "Response to ASX Aware Query" dated 25 May 2021.*
- iii. *Further particulars will be provided following completion of EML's discovery.*

38. At approximately 11:12pm on Thursday 13 May 2021 (AEST), representatives of PCSIL and EML including ~~Shere~~ Britton, Gadiot and Betts received a letter from CBI (**First 13 May 2021 CBI Letter**).

PARTICULARS

- i. *EML's "Response to ASX Aware Query" dated 25 May 2021.*

ii. *Further particulars will be provided following EML's discovery.*

38A. The First 13 May 2021 CBI Letter:

- (a) stated that the purpose of the letter was to advise PCSIL of the significant concerns CBI had in relation to PCSIL and the directions CBI was minded to impose as a result of these significant concerns:
- (b) stated that the level of CBI's concerns [were] at such a degree of severity that CBI [was] minded to exercise its direction making powers to materially restrict PCSIL's business:
- (c) stated that the seriousness of the issues identified by CBI, including AML/CTF and governance failures, required urgent intervention by CBI in the interests of the proper and effective regulation of financial service providers and in order to protect consumers:
- (d) stated that CBI's concerns included but were not limited to:
 - (i) material failings in PCSIL's AML/CTF control framework such that PCSIL had not complied with its AML/CTF obligations and the CBI suspected that PCSIL had breached and/or continued to materially breach key requirements of the CJA 2010:
 - (ii) as a consequence of the high risk nature of PCSIL's business and PCSIL's weak AML/CTF control framework, CBI had strong suspicions that PCSIL's products/services were potentially being utilised by criminals to undertake money laundering and/or terrorist financing activities; and
 - (iii) PCSIL had grown its business volumes materially faster than outlined in its application for authorisation, however PCSIL's current and proposed governance arrangements, particularly in the context of the volume, extent and variety of activities it conducted, fell materially below that required for an authorised firm, especially one operating in an industry that is high risk from an ML/TF perspective.
- (e) set out at length and in detail suspected breaches of the CJA 2010, EM Regulations and the Central Bank Reform Act by PCSIL and significant concerns held by CBI, including, among other matters:
 - (i) that 40% of files reviewed to assess PCSIL's Customer Risk Assessment Process disclosed red flag indicators of ML/TF activity and/or risk, which led

- to CBI submitting a report to the Irish policing authorities as the CBI was required to do under s 63(4) of the CJA 2010;
- (ii) that PCSIL did not have the necessary frameworks or resources in place to assess risk alerts generated by its own systems, which resulted in a significant number of transactions with heightened ML/TF risk not being actioned; and
 - (iii) PCSIL's systems generated 27,980 ML/TF alerts as at January 2021, but only 3% of those alerts were reviewed by PCSIL;
- (f) enclosed Appendix 1 which set out breaches suspected by CBI and set out CBI's significant concerns;
- (g) enclosed a report entitled 'Appendix 2' addressed to Gadiot (13 May 2021 Report), which was a preliminary observation report detailing the most material deficiencies identified in CBI's AML/CTF inspection of PCSIL;
- (h) set out the directions that the CBI was minded to make to PCSIL being:
- (i) PCSIL, including any distributors acting for PCSIL in the distribution and redemption of electronic money, not issue any further electronic money on behalf of PCSIL;
 - (ii) PCSIL not permit additional funds to be placed on payment accounts maintained by PCSIL on behalf of new or existing customers;
 - (iii) PCSIL not appoint any further distributors to act on its behalf for the distribution and redemption of electronic money;
 - (iv) PCSIL not transfer any of its current customers and/or distributor appointments to any other person without prior approval from CBI; and
- (i) stated that CBI was of the view, subject to any submissions from PCSIL, that it was appropriate to proceed to exercise its powers as outlined.
39. By reason of the matters pleaded in paragraph 38A, the First 13 May 2021 CBI Letter:
- (a) raised significant regulatory concerns regarding PCSIL's AML/CTF risk and control frameworks and governance; and
 - (b) stated that CBI was minded to issue PCSIL with a CBI Written Direction.

PARTICULARS

- i. EML's announcement to the ASX entitled "Central Bank of Ireland correspondence" dated 19 May 2021.*
- ii. EML's "Response to ASX Aware Query" dated 25 May 2021.*
- iii. ~~Further particulars will be provided following discovery.~~*

39A. On 13 May 2021, CBI wrote to Britton (**Second 13 May 2021 Letter**).

39B. The Second 13 May 2021 Letter:

- (a) referred to the First 13 May 2021 Letter; and
- (b) requested information and documents set out in Section A (Appendix 1) of the Second 13 May 2021 Letter in the form and manner set out in Section B.

39C. The 13 May 2021 Report set out matters relating to CBI's findings of PCSIL's AML/CTF regulatory compliance deficiencies, including that:

- (a) the PCSIL board of directors had failed to actively engage in the management of the identified ML/TF risks faced by PCSIL;
- (b) PCSIL had failed to clearly define the roles of the board of directors and senior management of PCSIL in relation to the AML/CTF Framework;
- (c) PCSIL had failed to exercise sufficient oversight of its compliance with its obligations under the CJA 2010;
- (d) PCSIL's ML/TF Risk assessment methodology did not meet the requirements of the CJA 2010 and was materially inadequate;
- (e) PCSIL's ML/TF Business Risk Assessment was not a meaningful reflection of the ML/TF risks of PCSIL and did not meet the requirements of the CJA 2010;
- (f) PCSIL had not met the requirements of ss 30B(1), 33, 35(1), 54(3) and 54(6) CJA 2010;
- (g) PCSIL had failed to keep information and documentation about its customers up to date;
- (h) PCSIL's PEP/FS screening and onboarding of identified PEPs was materially deficient;
- (i) PCSIL's transaction monitoring controls, systems and procedures were not fit for purpose and breached s 36A CJA 2010;

- (j) PCSIL's approach to suspicious transaction reporting was deficient and not compliant with s 42 CJA 2010;
- (k) PCSIL did not have effective controls to monitor and manage its compliance with its obligations under the CJA 2010; and
- (l) PCSIL's record keeping policy required enhancement.

40. At approximately 12:37am on Friday 14 May 2021 (AEST), a copy of the **First** 13 May 2021 CBI Letter was provided to, amongst others, Cregan.

PARTICULARS

- i. EML's "Response to ASX Aware Query" dated 25 May 2021.*
- ii. Further particulars will be provided following completion of EML's discovery.*

41. On Saturday 15 May 2021 (AEST), a copy of the **First** 13 May 2021 CBI Letter was provided to, amongst others, Liddy, Wilson, Adcock and Gresham.

PARTICULARS

- i. EML's "Response to ASX Aware Query" dated 25 May 2021.*
- ii. Further particulars will be provided following completion of EML's discovery.*

C THE 19 MAY 2021 DISCLOSURE AND ITS IMPACT

C.1 19 May 2021

- 42. On 17 May 2021 at 950AM, EML shares were placed in trading halt at the request of EML, pending it releasing an announcement to the ASX.
- 43. On 19 May 2021, EML published to the ASX a document entitled "Central Bank of Ireland correspondence" (**19 May 2021 Announcement**).
- 44. In the 19 May 2021 Announcement, EML made the following statements:

EML advises that its Irish regulated subsidiary, PFS Card Services (Ireland) Limited ('PCSIL'), has received correspondence from the Central Bank of Ireland ('CBI'), including a letter received on Friday 14 May 2021 (Australian time) raising significant regulatory concerns ('Correspondence'). The CBI is the relevant regulator in Ireland.

The CBI's concerns relate to PCSIL's Anti-Money Laundering / Counter Terrorism Financing ('AML/CTF'), risk and control frameworks and governance. The Correspondence states that the CBI is minded to issue directions to PCSIL pursuant to section 45 of the Central Bank (Supervision and Enforcement) Act 2013.

The Correspondence does not concern EML's Australian and North American operations, or the operations of PFS' UK subsidiary ('Prepaid Financial Services Limited' which is incorporated in England and regulated by the FCA), or EML's other Irish regulated subsidiary ('EML Money DAC').

Prior to 19 December 2020, PFS' European business primarily operated through its FCA regulated subsidiary. However, as a result of Brexit, PFS was required to transfer non-UK programs out of the UK. On 19 December 2020, all of PFS' European programs were transferred to ~~its~~ CBI regulated subsidiary PCSIL.

The directions, if made, could materially impact the European operations of the Prepaid Financial Services business, including potentially restricting PCSIL's activities under the Irish authorisation. During the period from 1 January 2021 to 31 March 2021, EML estimates that approximately 27% of EML's global consolidated revenue (unaudited) derived from programs operating under PCSIL's Irish authorisation.

The CBI has invited PCSIL to provide it with submissions in relation to the concerns, which PCSIL intends to do by 27 May 2021.

The CBI and PCSIL are currently in close dialogue regarding the concerns raised and PCSIL is working with the CBI to assist it in receiving information and documentation relevant to its concerns.

EML welcomes the opportunity to work more closely with the CBI in relation to the matters raised and PCSIL's business model more generally. EML is committed to cooperating with the CBI and is taking steps to address concerns raised.

EML is independently regulated in multiple regions and subject to regular audits by various parties including Central banks, payment schemes, external and internal auditors and other third parties. EML takes regulatory compliance, including AML/CTF, risk management and governance very seriously, and is committed to ensuring our global operations meet the highest standards of risk and regulatory compliance.

FY21 Guidance

Given the timing and early stages of discussion with the CBI, EML is presently unable to estimate the potential direct and consequential costs (including but not limited to legal costs) and impacts of the Correspondence on the Group's consolidated FY21 results.

Excluding these costs and impacts, we remain on track to achieve the underlying results previously guided to for the FY21 year, which were:

- Underlying full year revenues of between \$180 - \$190 million;*
- Underlying full year EBITDA between \$50 - \$54 million;*
- Underlying full year NPATA between \$30 million - \$33.5 million;*
- Underlying full year Operating Cashflow Conversion from EBITDA of between 90 – 110%;*
- Underlying full year EBITDA per share of between 13.8 – 15.0 cents / share.*

C.2 Price effect of the 19 May 2021 Announcement

45. Following the release of the 19 May 2021 Announcement, the price of EML Shares fell substantially.

PARTICULARS

- i. The price of EML Shares fell from a closing price of \$5.15 on Friday 14 May 2021 to a closing price of \$2.80 on Wednesday 19 May 2021.*
- ii. Further particulars may be provided following service of the plaintiffs' expert evidence.*

D THE TRUE POSITION – PCSIL'S CONTROL STANDARDS

D.1 Standard of PFS's AML/CTF Risk Control Frameworks

46. [Not used] ~~At the time EML agreed to buy PFS, the AML/CTF risk control frameworks and governance applicable to PFS's business were not up to the standard EML applied to its other businesses.~~

PARTICULARS

~~i. EML's announcement to the ASX entitled "Investor Presentation – Transcript" dated 20 August 2021 at 9.~~

47. ~~[Not used] After EML completed the acquisition of PFS it started work to bring the AML/CTF risk control frameworks and governance applicable to PFS's business up to the standard EML applied to its other businesses.~~

PARTICULARS

~~i. EML's announcement to the ASX entitled "Investor Presentation – Transcript" dated 20 August 2021 at 9.~~

48. ~~[Not used] EML did not complete bringing the AML/CTF risk control frameworks and governance applicable to PFS's business up to the standard EML applied to its other businesses at any time prior to the end of the Relevant Period.~~

PARTICULARS

~~i. EML's announcement to the ASX entitled "Investor Presentation – Transcript" dated 20 August 2021 at 9.~~

49. ~~[Not used] During the Relevant Period, the AML/CTF risk control frameworks and governance applicable to PFS's business were not up to the standard EML applied to its other businesses (**PFS Control Standard Information**).~~

PARTICULARS

~~i. Paragraphs 46 to 48 are repeated~~

- 49A. As at 19 December 2020 and during the Relevant Period up to 18 May 2021, EML's AML/CTF risk control frameworks applicable to PCSIL had the features set out in the 13 May 2021 Report and pleaded at paragraph 39C.

PARTICULARS

i. First 13 May 2021 Letter, Appendix 1

ii. The 13 May 2021 Report.

- 49B. As at 19 December 2020 and during the Relevant Period up to 18 May 2021, by reason of the matters pleaded in paragraph 49A, EML's AML/CTF risk control frameworks applicable to PCSIL:

(a) were regarded, or were likely to be regarded, by regulatory authorities, including CBI, as characterised by material failings, such that PCSIL did not comply with its AML/CTF obligations:

(b) potentially enabled, or were likely to be regarded by regulatory authorities, including CBI, as potentially enabling, PCSIL's products and services to be utilised by criminals to undertake ML/TF activities.

(together, **PCSIL Control Standard Information**).

D.2 CBI Response - Required Remediation

50. As at and from 19 December 2020 and during the Relevant Period, by reason of the matters pleaded in paragraphs 49A and 49B, EML's AML/CTF risk control frameworks applicable to PCSIL:

(a) required, or were likely to be regarded by regulatory authorities as requiring, extensive reforms or remediation in order to be adequate and compliant with AML/CTF obligations, having regard to the volume, extent and variety of activities being conducted by PCSIL ~~CBI had made adverse findings in respect of PCSIL's compliance with AML/CTF regulations, some of which required urgent remediation;~~

(b) were such that:

(i) one or more of the Conditions for a CBI Written Direction were satisfied in respect of PCSIL, alternatively it was likely that CBI may form the view that one or more of the Conditions for a CBI Written Direction were satisfied in respect of PCSIL; and

(ii) ~~it was likely, alternatively there was a material risk that CBI would make a CBI Written Direction in Respect of PCSIL~~ requiring it to undertake remediation of its AML/CTF risk control frameworks applicable to PCSIL, and constraining its growth, which would result in material impacts to EML's earnings,

(PCSIL Required Remediation Information) ~~**(CBI Response Information)**~~.

PARTICULARS

i. — Paragraphs 33 to 39 above are repeated.

ii. — Further particulars will be provided following discovery.

D.3 PCSIL Remediation Impacts

50A. As at 19 May 2021, and during the Relevant Period to 25 July 2022 the reforms and remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were

adequate and compliant and addressed the AML/CTF regulatory issues raised by CBI as disclosed in the First 13 May 2021 Letter (CBI Issues):

- (a) would require material expenditure by PCSIL in excess of \$11.4 million; and
- (b) by reason thereof, were likely to materially impact the profitability of PCSIL.

(PCSIL Remediation Cost Impact Information).

PARTICULARS

- i. 17 August 2021 ASX Announcement entitled 'EML Announces Record Revenue of \$194.2m and underlying EBITDA of \$53.5m'.

50B. As at 19 May 2021 and during the Relevant Period to 25 July 2022, until completion of the reforms or remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were adequate and compliant and addressed the CBI Issues:

- (a) PCSIL was likely to be constrained in its ability to grow its business in Europe; and
- (b) by reason thereof, the profitability of PCSIL would be materially impacted until completion of the remediation.

(PCSIL Remediation Growth Impact Information).

PARTICULARS

- i. By reason of the matters pleaded in paragraph 38A and 39B above, until the PCSIL Required Remediation was complete, there was a material risk that the CBI would issue a CBI Written Direction to prohibit or limit PCSIL, including any of its distributors acting on PCSIL's behalf in distribution and redemption of electronic money, from issuing any further electronic money on behalf of PCSIL (First 13 May 2021 Letter (pg. 8)), such a direction would directly and materially impact PCSIL's ability to grow its business in Europe and materially impact PCSIL's profitability.
- ii. PCSIL's regulatory return for the first quarter of the financial year ended 30 June 2021 recorded that PCSIL had executed approximately 11 million payment transactions valued at €1.2 billion which was materially in excess of the CBI Authorisation, such that PCSIL's profitability would materially decrease to ensure compliance with the CBI Authorisation: First 13 May 2021 Letter, pg. 7.
- iii. Further particulars may be provided following the completion of discovery.

50C. As at 19 May 2021, and during the Relevant Period to 25 July 2022, the reforms or remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were

adequate and compliant, were unlikely to be completed by the end of FY22 (PCSIL Remediation Impact Timing Information).

PARTICULARS

- i. By reason of the matters pleaded in paragraph 38A and 39B above, it was inherently unlikely that PCSIL would be able to complete the PCSIL Required Remediation by the end of 2021.*
- ii. The 25 July 2022 Announcement pleaded at paragraphs 53AL and 53AM below.*
- iii. EML ASX Announcement titled ‘Update on regulatory matters’ dated 31 October 2022 (31 October 2022 Announcement), in which EML stated: ‘These measures will allow PFS UK to address concerns highlighted by the FCA which are similar in nature to those raised by the Central Bank of Ireland (“CBI”) and disclosed to the ASX relating to our Irish subsidiary, PFS Card Services (Ireland) Limited (“PCSIL”), for which we are currently undertaking a remediation program.’*

50D. As at and from 1 January 2022, alternatively 31 March 2022, to 25 July 2022, EML had not completed the implementation of its remediation plan in relation to the CBI Issues to the satisfaction of CBI (Incomplete Remediation Plan Implementation Information).

PARTICULARS

i. The Plaintiff relies on EML’s “Response to ASX Aware Query” dated 28 July 2022, which disclosed that on 16 June 2022 (AEST), CBI wrote to PCSIL expressing concerns regarding shortcomings in components of PCSIL’s remediation programme and requested a response in two stages on 1 and 22 July 2022 (16 June 2022 Letter), and the plaintiff thereby infers that the remediation plan was not completely implemented at any earlier time.

ii. Further particulars will be provided following discovery

D.4 PCSIL Growth Information Limitation

50E. As at [a date unknown to the plaintiff after 7 October 2021], CBI placed a material growth limitation on PCSIL’s total payment volumes, which was due to expire in early December 2022 (but which could be extended or varied) (CBI Growth Limitation Information).

PARTICULARS

i. The Plaintiffs rely on the 25 July 2022 Announcement.

ii. Further particulars will be provided following discovery.

E WHAT EML SAID FROM 19 MAY 2021 TO 7 OCTOBER 2021 EML'S STATEMENTS PRIOR TO 21 MAY 2021

51. ~~[Not used – Moved up] At all material times, materials published by EML to the ASX were available to the market of investors and potential investors in EML Shares (**Affected Market**).~~

E.1 2020 Corporate Governance Statement

52. ~~[Not used – Moved up] On 19 August 2020, EML published to the ASX a document entitled "Appendix 4G: Key to Disclosures: Corporate Governance Council Principles and Recommendations" (**Corporate Governance Statement**).~~
53. ~~[Not used – Moved up] In the Corporate Governance Statement, EML made the following statements:~~

~~*EML's approach to corporate governance goes beyond compliance. Our Board of Directors (**Board**) and all levels of management are fully committed to achieving the highest standards of corporate governance and business conduct.*~~

~~...~~

~~*We regularly review our governance practices in light of both current and emerging corporate governance developments of relevance to EML, to reflect market practice, expectations and regulation as appropriate.*~~

~~...~~

~~*Our governance framework includes: ... Robust systems of risk management and assurance...*~~

~~*The Board has established an Audit & Risk Committee...*~~

~~*The purpose of the [Audit & Risk] Committee is to oversee financial risk management and internal controls across EML. Responsibilities include:*~~

~~...~~

~~*-Internal controls: to confirm the effectiveness of EML's internal controls;*~~

~~...~~

~~*- Risk: oversee and assess the effectiveness of EML's Risk Management Framework; and*~~

~~– Review and monitor EML’s compliance with legal and regulatory obligations, internal policies and industry standards.~~

~~The Audit & Risk Committee meets as often as required in accordance with its Charter. Following each meeting, the ARC reports to the Board on any matter that should be brought to the Board’s attention and on any recommendation of the ARC that requires Board approval.~~

~~The purpose of the [Audit & Risk] Committee is to oversee financial risk management and internal controls across EML and to assess the effectiveness of EML’s Risk and Compliance management framework. Risk related responsibilities include:~~

~~– Oversee and assess the effectiveness of EML’s risk management framework, and to make recommendations in respect of the development of embedding of the risk management framework and appetite of the Board with detailed oversight of financial risk;~~

~~– Assist the Board with the monitoring and review of EML’s risk culture;~~

~~– Review and approve policies and initiatives that ensure best practise risk management, reflect stakeholder expectations and influence EML’s reputation as a responsible organisation; and~~

~~– Review and monitor EML’s compliance with legal and regulatory obligations, internal policies and industry standards.~~

~~EML has established a Risk Management Framework (**Framework**) and regularly reviews the soundness and effectiveness of that Framework. The Framework is designed to identify and manage risk on an ongoing basis. The Board sets the risk appetite for the Group, oversees the Framework and satisfies itself that the Framework is sound by reviewing reports received and asking questions when necessary to satisfy itself as questions arise. It is the responsibility of management to design and implement that Framework and to ensure that the Group operates within the risk appetite set by the Board.~~

~~...~~

~~The Group Chief Risk Officer (**Group CRO**) provides ongoing reports to the Audit & Risk Committee, as well as bi-annual assessments of the adequacy and effectiveness of the Company’s control processes and risk management~~

~~procedures. Any internal audit reviews that are undertaken are done so in coordination with the Audit & Risk Committee, with external audit assistance provided if needed.~~

~~The role of the Group CRO is to:~~

~~- coordinate the implementation of the risk management processes, risk profile and risk mitigation strategies;~~

~~- facilitate, challenge and drive risk management and risk mitigation strategies in the Group;~~

~~- review the sufficiency and effectiveness of the internal control framework;~~

~~- review systems and operations and the adequacy of controls; and~~

~~- report to Senior Management and the Audit & Risk Committee at regular intervals on the risk management process, risk mitigation strategies, material business risks and internal control framework.~~

E1. 19 May 2021 to 16 August 2021

53A. Paragraph 44 is repeated.

53B. On 7 June 2021, EML published a document to the ASX entitled "Investor Briefing and Q3 FY21 Trading Update" (7 June 2021 Announcement).

53C. On 7 June 2021, Cregan presented the 7 June 2021 Announcement to investors and potential investors in EML Shares at the Macquarie Emerging Leaders Conference.

53D. The 7 June 2021 Announcement contained the following statements:

Current Status

- EML advised the market on 19 May 2021 that it had received correspondence from the CBI raising significant regulatory concerns ("Section 45 letter"). EML responded to the CBI's Section 45 letter within the deadline, on 27 May 2021.

- EML remains in an ongoing dialogue with the CBI in relation to their concerns through substantial responses, data and access to our teams.

- There is no statutory timeframe for the CBI to finalise its consideration of the matter.

- A project governance structure has been established to assist our local team in Ireland, including a subcommittee of the EML Board, members of the EML executive team, external expert regulatory consultants and legal resources.

Communication

- We are working co-operatively with the CBI and its authorised officer.

- Communication with the CBI are confidential and we will provide updates when appropriate.

- EML is proactively communicating with, and providing information if and when requested, with other regulators in the regions where EML operates.

Business Impact

- We continue to focus on EML's strong pipeline of new customers and support our existing customers, yet we are aware that ongoing uncertainty is a risk and challenge.

- Immediate one-off costs incurred for legal (Arthur Cox) and professional advisory (PriceWaterhouseCoopers) fees are expected to be less than \$2 million in FY21. In addition, we may see an impact of delayed program launches on establishment income and transaction fees which we can not quantify at this time

- Financial impacts for FY22 cannot be fully determined at this time.

53E. By reason of the matters pleaded in paragraphs 53A to 53D on 19 May 2021, alternatively 7 June 2021, EML represented to the Affected Market that the CBI Issues were likely to have a relatively minor impact on EML's financial performance and would not materially affect it beyond the incurrence of relatively minor one-off costs (**Minor Impacts Representation**).

PARTICULARS

- i. As at 19 May 2021, the Minor Impacts Representation was implied from the totality of the statements pleaded in paragraph 53A, especially the express reaffirmation of FY21 guidance (excluding the costs and impacts which EML stated it could not presently estimate).
- ii. As at 7 June 2021, the Minor Impacts Representation was implied from the totality of the statements pleaded in paragraph 53D, especially the positive statements concerning the "strong pipeline", the "delayed" program launches", and the failure to withdraw FY21 guidance.

E.2 17 August 2021 and 18 August 2021

53F. On 17 August 2021, EML published two documents to the ASX:

- (a) entitled “FY21 Results Investor Presentation and FY22 Guidance” (17 August 2021 Presentation): and
- (b) entitled “EML Announces Record Revenue of \$194.2M and Underlying EBITDA of \$53.5M” (17 August 2021 ASX Announcement).

53G. On 18 August 2021, EML held a call with market analysts, a transcript of which was published to the ASX on 20 August 2021 (18 August 2021 Investor Call).

PARTICULARS

- i. As to paragraph 53G, the transcript was published to the ASX in a document titled ‘Investor Presentation – Transcript’.*

53H. Cregan:

- (a) was a participant in the 17 August 2021 Investor Call: and
- (b) presented the 17 August 2021 Presentation as part of the 18 August 2021 Investor Call.

53I. The 17 August 2021 Presentation, the 17 August 2021 ASX Announcement and 18 August 2021 Announcement contained the following statements:

- (a) Regulatory Update

CBI Update

- EML operates in highly regulated markets around the world including Australia, the United Kingdom, Europe, and the United States. (17 August 2021 Presentation)
- EML works hard to meet our evolving regulatory requirements in each market and to maintain collaborative relationships with all of our regulators. (17 August 2021 Presentation).
- Our businesses subject [sic] to regular audits from regulators, as well as from a range of external experts. These activities are carried out in the normal course of operating our businesses and we welcome the opportunity for external perspectives in relation to what we are doing well and, from time to

time, where we can strengthen our systems and processes. (17 August 2021 Presentation).

- EML has been working constructively with the Central Bank of Ireland (CBI) in relation to regulatory concerns it raised in its May 2021 correspondence about our PFS Card Services Ireland Limited (“PCSIL”) business. (17 August 2021 Presentation).
- CBI has investigated various aspects of the PCSIL business from a governance, resourcing, reporting, risk methodologies, controls and risk frameworks, capital adequacy, safeguarding and transaction monitoring perspective. (17 August 2021 Presentation).
- EML has responded in significant detail to the CBI on all matters and has provided CBI with a detailed remediation plan addressing the concerns raised by the CBI. EML is engaged in regular contact with the CBI in the implementation of this plan. EML expects the remediation plan to be substantively complete by the end of the 2021 calendar year, with remaining items remediated by the end of March 2022. (17 August 2021 Presentation).
- EML will not recognise the contingent asset in relation to any claims under the Share Purchase Agreement entered into March 2020, unless recovery is virtually certain. (17 August 2021 Presentation).
- Actions undertaken since EML’s acquisition of PCSIL include:
 - Additional Directors now sitting on the PCSIL Board, including an independent non-Executive Chairman
 - Implementation of “GBG Predator”, a sophisticated transaction monitoring and fraud detection tool purchased by PCSIL in December 2020 and implemented in July 2021
 - Implementation of Bureau Van Dijk global Know Your Business AML solution purchased in October 2020 and implemented for Europe in November 2020
 - Implementation of eKYC solution – Jumio in November 2020
 - Implementation of eKYC solution – Ariad Next in October 2020. (17 August 2021 Presentation).

- EML is in dialogue with the CBI regarding restriction of material growth in PCSIL's business, with the expectation that such restrictions will only apply during the remediation phase. (17 August 2021 Presentation)
 - Any such restrictions are likely to affect the number of new programs PCSIL is permitted to launch while restrictions apply. (17 August 2021 Presentation)
- (b) EML has been working constructively with the Central Bank of Ireland (CBI) in relation to regulatory correspondence received in May 2021 about our PFS Card Services Ireland Limited ("PCSIL") business. The CBI has investigated various aspects of PCSIL business from a governance, resourcing, reporting, risk methodologies, controls and risk frameworks, capital adequacy, safeguarding and transaction monitoring perspective (17 August 2021 ASX Announcement, pg. 4).
- EML has responded in significant detail to the CBI on all matters and has provided the CBI with a detailed remediation plan and is actively engaged with the CBI in the implementation of this plan. We have engaged specialist advice in relation to the remediation plan and our intention is to complete a substantive part of the remediation by the end of the calendar year 2021, with remaining elements to be completed by the end of March 2022 (17 August 2021 ASX Announcement, pg. 4).
- We have incurred costs and provisions of \$11.4 million in FY21, relating to remediation, advisory and other expenses relating to this matter. (17 August 2021 ASX Announcement, pg. 4)
- (c) As a leader in this industry, we take our regulatory and compliance obligations extremely seriously and indeed we believe that it's our commitment and our investment in that area that has kind of established the foundation for growth that we've enjoyed in the last nine years. Our commitment to best practice in that area is unwavering. That's what we've communicated to the Central Bank and we're actively engaged in with the Central Bank on a remediation program which we are looking to substantially complete by the end of the 2021 calendar year, with remaining items to be completed by the end of March 2021. (18 August 2021 Investor Call).
- (d) Our focus is on the remediation project and we're well under way with this as you'd expect, given as I said the dates that I mentioned before. (18 August 2021 Investor Call).

- (e) *I think the thing that investors will be looking for in relation to the CBI matter. they'll be pleased to hear that obviously the remediation plan is in place and the CBI is comfortable obviously with us saying that we're actively engaged in that process. (18 August 2021 Investor Call).*
- (f) Guidance for FY22 was:
- (i) GDV of \$93 billion to \$100 billion;
 - (ii) Revenue of \$220 million to \$255 million;
 - (iii) EBITDA of \$58 million to \$65 million; and
 - (iv) NPATA of \$27 million to \$34 million.

53J. By reason of the matters pleaded in paragraph 53A to 53D, and 53I, on 17 August 2021, EML represented to the Affected Market that:

- (a) EML was implementing a remediation plan in relation to the CBI Issues by 31 December 2021 which would satisfy CBI's concerns (**Remediation Plan Adequacy Representation**): and
- (b) EML was likely to substantively complete its remediation plan in relation to the CBI Issues by 31 December 2021 with the remaining items to be remediated by 31 March 2022 (**Remediation Plan Timing Representation**).

(together **Remediation Plan Representations**).

PARTICULARS

- i. *The Remediation Plan Representations are partly express and partly implied from the totality of the statements pleaded in paragraph 53I, including by reason of the First Minor Impacts Representation having been made.*
- ii. *The Remediation Plan Representations are representations as to future matters and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*

53K. By reason of the matters pleaded in paragraph 53I above, on 17 August 2021, EML represented to the Affected Market that EML expected its:

- (a) GDV for FY22 to be between \$93 billion and \$100 billion;
- (b) revenue for FY22 to be between \$220 million and \$255 million;
- (c) underlying EBITDA for FY22 to be between \$58 million and \$65 million;

(d) underlying NPATA for FY22 to be between \$27 million and \$34 million.

(together and separately, **FY22 Guidance Representations**).

PARTICULARS

- i. The FY22 Guidance Representations were express.
- ii. The FY22 Guidance Representations are representations as to future matters and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.

53L. By reason of the matters pleaded in paragraphs 53A to 53D, and 53I, on 17 August 2021, EML represented to the Affected Market that:

- (a) EML would not, or was not likely to, incur financial impacts by reason of the CBI Issues over and above the provision of \$11.4 million which had been booked in relation to costs associated with implementation of the remediation plan (**Remediation Plan Impacts Representation**).
- (b) its FY22 guidance was not likely to be affected by the CBI Issues or the implementation of the remediation plan (**FY22 Guidance Unaffected by CBI Issues Representation**).

PARTICULARS

- i. The Remediation Plan Impacts Representation was implied from the totality of the statements pleaded in paragraph 53I.
- ii. The FY22 Guidance Unaffected by CBI Issues Representation was implied from the totality of the statements pleaded in paragraph 53I and 53K.
- iii. The Remediation Plan Impacts Representation and the FY22 Guidance Unaffected by CBI Issues Representation were each a representation as to future matters and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.

E.3 Continuing Representations

53M. During the period from 17 August 2021 to 7 October 2021, EML continued to make:

- (a) the Remediation Plan Adequacy Representation;
- (b) the Remediation Plan Timing Representation;
- (c) the FY22 Guidance Representation; and
- (d) the Remediation Plan Impacts Representation;

(e) the FY22 Guidance Unaffected by Remediation Plan Representation:

PARTICULARS

i. The continuing nature of the representations arises from the making of those representations, and EML not saying anything during that period to modify, qualify or contradict those representations.

EA. THE 7 OCTOBER 2021 DISCLOSURE AND ITS IMPACT

EA.1 7 October 2021

53N. On 7 October 2021 at 4.05pm, EML published a document to the ASX entitled “Central Bank of Ireland Update” (7 October 2021 Announcement).

53O. In the 7 October 2021 Announcement, EML made the following statements:

EML advises that its Irish regulated subsidiary, PFS Card Services (Ireland) Limited ('PCSIL'), has received further correspondence from the CBI regarding the CBI's regulatory concerns in relation to PCSIL and potential directions ('Correspondence'), including but not limited to the remediation plan and material growth.

The nature of those potential directions is more limited than those originally foreshadowed by the CBI in May 2021. However, as presently framed, EML considers that the directions could materially impact the European operations of the Prepaid Financial Services business.

Whilst acknowledging the remediation program currently underway and governance improvements with the PCSIL Board, the CBI has advised that PCSIL's proposed material growth policy, as requested and approved by the PCSIL Board, is higher than what the CBI would want to see.

In addition, the CBI has proposed that certain limits be applied to programs that, if implemented, could have a negative impact on the PCSIL business. EML notes that, subject to endorsement from the PCSIL Board, it is due to present to the CBI a significant and detailed analysis of limits applied across almost 27,000 programs in the next week along with a proposed recalibration of limits for certain programs.

The CBI has invited PCSIL to provide it with submissions in relation to the potential directions, which PCSIL intends to do by 28 October 2021.

The CBI and PCSIL are in ongoing dialogue regarding the concerns raised by CBI and PCSIL's remediation plan. The remediation plan remains on track.

The Correspondence does not concern EML's Australian or North American operations, or the operations of PFS' UK subsidiary ('Prepaid Financial Services Limited' which is incorporated in England and regulated by the FCA), or EML's other Irish regulated subsidiary ('EML Money DAC'), Sentenial Limited and Nuapay SAS, EML's French regulated subsidiary.

EML is independently regulated in multiple regions and subject to regular audits by various parties including Central banks, payment schemes, external and internal auditors and other third parties. EML takes regulatory compliance, including AML/CTF, risk management and governance very seriously, and is committed to ensuring our global operations meet the highest standards of risk and regulatory compliance.

EA.2 Price effect of the 7 October 2021 Announcement

53P Following the release of the 7 October 2021 Announcement, the price of EML Shares fell substantially.

PARTICULARS

- i. The price of EML Shares fell from a closing price of \$3.7 on 7 October 2021 to a closing price of \$3.16 on 8 October 2021.
- ii. Further particulars may be provided following service of the plaintiffs' expert evidence.

EB. WHAT EML SAID FROM 7 OCTOBER 2021 TO 25 APRIL 2022

EB.1 7 October 2021

53Q. Paragraph 53O is repeated.

53R. By reason of the matters pleaded in paragraphs 53O and 53U, on 7 October 2021 EML:

- (a) impliedly repeated the Remediation Plan Adequacy Representation;
- (b) impliedly repeated the Remediation Plan Timing Representation;
- (c) impliedly repeated the FY22 Guidance Representation; and

(d) impliedly repeated the FY22 Guidance Unaffected by Remediation Plan Representation.

PARTICULARS

i. The repetition is implied by EML not saying anything during that period to modify, qualify or contradict those representations.

53S. By reason of the matters pleaded in paragraphs 53O and 53U, on 7 October 2021 EML:

(a) qualified the Remediation Plan Impacts Representation by disclosing that PCSIL's growth policy could be impacted by CBI Written Directions: but

(b) represented that:

(i) EML was not likely to incur financial impacts by reason of the CBI Issues over and above the provision of \$11.4 million which had been booked in relation to costs associated with implementation of the remediation plan: and

(ii) material limits on PCSIL's ability to grow were unlikely to eventuate, given EML was still in dialogue with CBI regarding the CBI Issues and the remediation plan, which remained on track.

(Modified Remediation Plan Impacts Representation).

PARTICULARS

i. The Modified Remediation Plan Impacts Representation is partly express (the whole of the statements pleaded in paragraph 53O are repeated) and partly implied, including from the matters pleaded in paragraph 53R (especially the implied repetition of the FY22 Guidance Representation and the FY22 Guidance Unaffected by Remediation Plan Representation at paragraph 53(d)).

EB.2 17 and 25 November 2021

53T. On 17 November 2021, EML held its annual general meeting, a transcript of which was published on the ASX (2021 AGM):

53U. At the 2021 AGM, Martin made the following statements:

(a) We are making solid progress in our remediation efforts within our Irish subsidiary PCSIL and expect the outstanding issues with the Irish regulator, the Central Bank of Ireland (CBI), to be resolved.

- (b) We are expecting a comprehensive Remediation Plan in PCSIL to meet CBI's concerns. The plan is on track to be substantially completed by Christmas with any residual items in place by March 2022. The team in Ireland has established a positive working relationship with the CBI and we expect that any residual concerns will be resolved.
- (c) The Central Bank of Ireland deems all e-money institutions to be high risk, and they require firms in such sectors to have very strong AML/CTF frameworks in place to mitigate that inherent risk consistent with their expectations. The Boards of PCSIL (our Irish regulated entity) and EML have endorsed a Remediation Plan that has been in progress for some months. We have designed the Remediation Plan such that, once fully implemented, it will see PCSIL meet or exceed the CBI's expectations. We report updates to the Central Bank of Ireland monthly and have provided three updates to date, with the fourth due at the end of November. 45% of Level 1 tasks were completed as at the end of October.
- (d) We have engaged resources, both internal and external, to ensure that we meet the completion date of the end of Q3FY22. We expect the business in Europe will emerge stronger and more robust once it completes implementation of the Remediation Plan, and will be allowed to grow the business within the new risk and controls frameworks being established.
- (e) We have made significant improvements to our transaction monitoring capabilities, with over 180 unique rule sets now employed. In the first 3 weeks of October 2021 PCSIL processed 8.16 million transactions and declined 1.17 million transactions that did not comply within these rules sets. From a fraud monitoring perspective our non-recovered fraud losses in PCSIL, post-acquisition in April 2020, are de minimus.
- (f) EML operates in highly regulated markets in Australia, New Zealand, the United Kingdom, Europe and North America. Our business is subject to regular audits in the normal course of business and we welcome the opportunity to further strengthen our processes to ensure that we meet the highest standards of risk and regulatory compliance. We have approached our Remediation Plan in this light and there are no other regulatory matters of concern that have been raised to our attention by other regulators in other markets in which we operate, allowing us to continue to successfully execute on our growth strategy in those markets (pg. 18).

53V. At the 2021 AGM, Cregan made the following statements:

- (a) Moving onto Slide 18 and our regulatory update, EML has been working constructively with the Central Bank of Ireland (CBI) in relation to regulatory concerns it raised in May about our subsidiary, Prepaid Card Services Ireland Limited (“PCSIL”).
- (b) Our advisors in Ireland understand Ireland’s unique regulatory landscape and are accustomed to dealing with the CBI which regards e-money institutions as “inherently high risk” and expects these institutions to have very strong AML and CTF frameworks in place to mitigate this risk.
- (c) As outlined in August and re-iterated today, the Central Bank of Ireland has not identified any instances of Financial crime, AML or CTF events, nor deficiencies with respect to safeguarding, capital adequacy, or solvency measures.
- (d) The remediation plan that we committed ourselves to is focused on our control frameworks and it is the position of the Central Bank that unless control frameworks are to their expectation then an unacceptable risk of AML/CTF exists.
- (e) PCSIL has completed 45% of the Level 1 tasks in the remediation plan is well advanced on remaining items, has provided three detailed updates to the Central Bank and will continue to provide monthly progress updates through to completion.
- (f) As advised to shareholders on October 7th the company received a second “minded to” letter referring to material growth and program limits. The PCSIL Board responded to the CBI in writing on the 28th of October and as does not yet have a formal response.
- (g) The Board of PCSIL continues to engage with the CBI and will update investors when we have sufficient certainty with regard to next steps. What we can provide certainty on is that our focus to implement the remediation plan as quickly as possible is unchanged.

53W. On 25 November 2021, EML published to the ASX a document entitled “Central Bank of Ireland Update” (25 November 2021 Announcement).

53X. The 25 November 2021 Announcement was approved by Cregan.

53Y. The 25 November 2021 Announcement contained the following statement: “The remediation plan is on track. PCSIL is committed to the timeline as established by the PCSIL Board and the EML Board.”

53Z. By reason of the matters pleaded in paragraphs 53U to 53V and 53Y, on each of 17 and 25 November 2021, EML:

- (a) impliedly repeated the Remediation Plan Adequacy Representation:
- (b) expressly repeated the Remediation Plan Timing Representation:
- (c) impliedly repeated the FY22 Guidance Representation:
- (d) impliedly repeated the FY22 Guidance Unaffected by Remediation Plan Representation; and
- (e) impliedly repeated the Modified Remediation Plan Impacts Representation.

PARTICULARS

- i. The repetition is implied by EML not saying anything to modify, qualify or contradict those representations.*

EB.3 16 February 2022

53AA. On 16 February 2022, EML:

- (a) published to the ASX a document entitled “EML Reports Record GDV of \$31.6BN and Revenues of \$114.4M for the First Half of FY22” (**16 February 2022 Announcement**):
- (b) published to the ASX a document entitled “Investor Presentation” (**16 February 2022 Presentation**): and
- (c) held a call with market analysts, a transcript of which EML published to the ASX on 23 February 2022 (**16 February 2022 Investor Call**).

53AB. Cregan:

- (a) authorised the release of the 16 February 2022 Announcement; and
- (b) presented the 16 February 2022 Presentation as part of the 16 February 2022 Investor Call.

53AC. The 16 February 2022 Announcement, the 16 February 2022 Presentation and the 16 February 2022 Investor Call, contained the following statements:

- (a) In the second half of the year, we would expect to see a recovery in revenue growth rate and gross margins as we sign and launch new programs in Europe. (16 February 2022 Investor Call).
- (b) We are reaffirming our Underlying guidance for FY22 as follows:
- Gross Debit Volume between \$81 - \$88 billion (FY21: \$19.7 billion)
 - Revenue between \$230 million - \$250 million (up 18-29% on FY21)
 - Gross Profit Margin of ~69% (up 2% on FY21)
 - Overheads between \$103 million - \$112 million (up 24-46% on FY21)
 - Underlying EBITDA forecasted between \$58 - \$65 million (up 8-21% on FY21)
 - Underlying NPATA forecasted between \$27 million - \$34 million (down 17% - up 5% on FY21). (16 February 2022 Announcement).
- (c) Expect 2H improvement – A number of initiatives have been completed or are underway that will deliver benefits to H2 FY2022 performance. (16 February 2022 Presentation)
- (d) We remain in line with our guidance expectations as H2 FY2022 will benefit from improved trading conditions, including:
- improved interest revenue with further investments in bonds and the benefit of 40bps improvement in the GBP cash rate (+15bps in Dec 21 and +25bps Feb 22):
 - improved economics on revised commercial agreements with our schemes:
 - introduction of new inactive account maintenance fees on European GOR revenue stream and a non-recurring catch up for historical programs:
 - commenced launching new European programs in December as CBI licence restrictions eased. (16 February 2022 Presentation).

53AD. By reason of the matters pleaded in paragraphs 53AC, on 16 February 2022, EML:

- (a) impliedly repeated the Remediation Plan Adequacy Representation:

- (b) expressly repeated the Remediation Plan Timing Representation:
- (c) expressly repeated the FY22 Guidance Representation:
- (d) impliedly repeated the Modified Remediation Plan Impacts Representation; and
- (e) impliedly repeated the FY22 Guidance Unaffected by Remediation Plan Representation:

PARTICULARS

- i. The repetition is implied by EML not saying anything during that period to modify, qualify or contradict those representations.*

EB.4 Continuing Representations

53AE. During the period from 7 October 2021 to 26 April 2022, EML continued to make:

- (a) the Remediation Plan Adequacy Representation:
- (b) the Remediation Plan Timing Representation:
- (c) the FY22 Guidance Representation:
- (d) the Modified Remediation Plan Impacts Representation; and
- (e) the FY22 Guidance Unaffected by Remediation Plan Representation:

PARTICULARS

- i. The continuing representation is implied by the making of those representations, their repetition as pleaded in paragraphs 53T and 53X, and EML not saying anything during that period to modify, qualify or contradict those representations.*

EC. THE 26 APRIL 2022 DISCLOSURE AND ITS IMPACT

EC.1 26 April 2022

53AF. On 26 April 2022, EML published a document to the ASX entitled “Q3 Trading Update and FY2022 Guidance Revision” (26 April 2022 Announcement).

53AG. In the 26 April 2022 Announcement, EML made the following statements:

- (a) GDV downgraded to \$79 billion - \$84 billion from \$81 billion to \$88 billion:
- (b) Revenue was downgraded to \$225 million to \$235 million from \$230 million to \$250 million:

- (c) EBITDA was downgraded to \$52 million to \$55 million from \$58 million to \$65 million, an 8% reduction; and
- (d) NPATA was downgraded to \$27 million to \$30 million from \$27 million to \$34 million.

EC.2 The price impact of the 26 April 2022 Announcement

53AH. Following the release of the 26 April 2022 Announcement, the price of EML Shares fell substantially.

PARTICULARS

- i. The price of EML Shares fell from a closing price of \$2.71 on 26 April 2022 to a closing price of \$1.665 on 26 April 2022.
- ii. Further particulars may be provided following service of the plaintiffs' expert evidence.

ED. WHAT EML SAID FROM 26 APRIL 2022 TO 25 JUNE 2022

53AI. Paragraph 53AG is repeated.

53AJ. By reason of the matters pleaded in paragraphs 53S and 53U, on 26 April 2022 EML:

- (a) impliedly repeated the Remediation Plan Adequacy Representation; and
- (b) impliedly repeated the Remediation Plan Timing Representation.

53AK. By reason of the matters pleaded in paragraphs 53S and 53U, on 26 April 2022 EML:

- (a) modified the FY22 Guidance Representation (**Modified FY22 Guidance Representation**); and
- (d) modified the FY22 Guidance Unaffected by Remediation Plan Representation, and represented that its modified FY22 guidance was not likely to be affected by the CBI Issues or the implementation of the remediation plan (**Modified FY22 Guidance Unaffected by CBI Issues Representation**).

PARTICULARS

- i. The Modified FY22 Guidance Representation was express.
- ii. The Modified FY22 Guidance Unaffected by CBI Issues Representation was implied from the totality of the statements pleaded in paragraph 53AG, and the absence of any express statement that attributed the modification to FY22 guidance to the CBI Issues.

iii. The Modified FY22 Guidance Representation and the Modified FY22 Guidance Unaffected by CBI Issues Representation were each a representation as to future matters and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.

EE. THE 25 JULY 2022 DISCLOSURE AND ITS IMPACT

EE.1 25 July 2022

53AL. On 25 July 2022, EML published a document to the ASX entitled “Central Bank of Ireland Update” (25 July 2022 Announcement).

53AM. In the 25 July 2022 Announcement, EML made the following statements:

EML’s Irish subsidiary, PFS Card Services (Ireland) Limited (‘PCSIL’), has been undertaking a remediation programme at the direction of Central Bank of Ireland since July 2021, with the assistance of external expert advisors. Whilst PCSIL has undertaken and completed significant work, there is more to do. The Central bank has constructively engaged with PCSIL and identified shortcomings in components of the remediation programme, principally the sequencing and approach taken to the risk assessment of its distributors, corporates and customers.

PCSIL will adopt a revised approach to these components and completion of this work may result in additional controls being embedded into the internal control framework. Many activities in preparation for third party assurance have already commenced and it is anticipated that the adjustments to the remediation programme will result in assurance being finalised in 2023.

PCSIL has been operating under a material growth limitation over its total payment volumes which is due to expire in early December 2022. While a further regulatory direction or limitation is unknown, EML’s new Managing Director and Group CEO Emma Shand and the Boards of both PCSIL and EML are actively engaging with the Central Bank of Ireland.

We welcome the European Central Bank’s decision on 21 July to raise the cash rate by 50 basis points which is expected to immediately benefit our European business by approximately \$4M on an annualised basis. EML expects a favourable interest rate environment to partially offset the elevated cost base in Europe due to the remediation programme.

EML is wholly committed to full compliance with its regulatory obligations. We are confident that a best-in-class internal control environment provides enhanced customer and stakeholder value and positions EML well for scalable and sustainable growth in Europe and beyond.

EML looks forward to further engagement with the investor community on release of our FY22 results on 22 August 2022. Details of EML's scheduled investor call were announced on the ASX platform on 20 July 2022.

EE.2 Price impact of the 25 July 2022 Announcement

53AN. Following the release of the 25 July 2022 Announcement, the price of EML Shares fell substantially.

PARTICULARS

- i. The price of EML Shares fell from a closing price of \$1.950 on 22 July 2022 to a closing price of \$0.93 on 25 July 2022.
- ii. Further particulars may be provided following service of the plaintiffs' expert evidence.

EF. THE TRUE POSITION (19 MAY 2021 to 25 JULY 2022)

EF.1 The true state of the Remediation Plan as at 19 May 2021

53AO. As at and from 19 May 2021, EML's remediation plan in relation to the CBI Issues was under development, and EML had no reasonable basis to consider that it would satisfy CBI's concerns as to the CBI Issues by any particular time, or at all.

PARTICULARS

- i. The Plaintiffs rely on EML's "Response to ASX Aware Query" dated 28 July 2022, which disclosed that on 16 June 2022 (AEST), CBI wrote to PCSIL expressing concerns regarding shortcomings in components of PCSIL's remediation programme and requested a response in two stages on 1 and 22 July 2022 (16 June 2022 Letter), and the plaintiff thereby infers that at all earlier times, the remediation plan had similar shortcomings.
- ii. The 25 July 2022 Announcement.
- iii. The 31 October 2022 Announcement.
- iv. Further particulars may be provided following discovery.

EE.2 The true state of the Remediation Plan's Cost Impact as at and from 19 May 2021

53AP. As at and from 19 May 2021, EML had no reasonable basis to consider that the implementation of its remediation plan was likely to have a relatively minor impact on EML's financial performance and would not materially affect it beyond the incurrence of relatively minor one-off costs.

PARTICULARS

- i. The particulars to paragraph 53AO are repeated.*

EE.3 The true state of the Remediation Plan as at 17 August 2021

53AQ. As at and from 17 August 2021, EML had no reasonable basis to consider that its remediation plan would satisfy CBI's concerns as to the CBI Issues by any particular time, or at all.

PARTICULARS

- i. The Plaintiffs repeat the particulars to paragraph 53AO.*
- ii. Further particulars will be provided following discovery.*

EE.4 The true state of the Remediation Plan Timing Implementation as at 17 August 2021

53AR. As at and from 17 August 2021, EML had no reasonable basis for thinking that EML was likely to substantively complete implementation of its remediation plan in relation to the CBI Issues by 31 December 2021 with the remaining items to be remediated by 31 March 2022, to the satisfaction of CBI.

PARTICULARS

- i. Paragraph 53AQ and the particulars thereto are repeated.*
- ii. Further particulars will be provided following discovery.*

EE.5 The true state of the Remediation Plan's Cost Impact as at and from 17 August 2021

53AS. As at and from 17 August 2021, EML had no reasonable basis to consider that:

- (a) EML would not, or was not likely to, incur financial impacts by reason of the CBI Issues over and above the provision of \$11.4 million which had been booked in relation to costs associated with implementation of the remediation plan; or
- (b) EML's FY22 guidance was not likely to be affected by the CBI Issues or the implementation of the remediation plan.

PARTICULARS

- i. Paragraphs 53AM and 53AN and the particulars thereto are repeated.
- ii. Further particulars will be provided following discovery.

EF.6 The true state of the Remediation Plan's Cost as at and from 7 October 2021

53AT. As at and from 7 October 2021, EML had no reasonable basis to consider that EML:

- (a) was not likely to incur financial impacts by reason of the CBI Issues over and above the provision of \$11.4 million which had been booked in relation to costs associated with implementation of the remediation plan; and
- (b) material limits on PCSIL's ability to grow were unlikely to eventuate.

PARTICULARS

- i. As to sub-paragraph (a), paragraphs 53AQ, 53AR and 53AS, and the particulars thereto are repeated.
- ii. As to sub-paragraph (b), given the nature of the CBI Issues in the absence of confirmation by CBI that it would not place limits on PCSIL's ability to grow, it was unreasonable to consider that no such limit would be placed.
- iii. Further particulars will be provided following discovery.

EF.7 The true state of PCSIL's Growth Limitation

53AU As at [a date unknown to the plaintiff after 7 October 2021], CBI placed a material growth limitation on PCSIL's total payment volumes, which was due to expire in early December 2022 (but which could be extended or varied).

PARTICULARS

- i. The Plaintiff relies on the 25 July 2022 Announcement.
- ii. Further particulars will be provided following discovery.

EF.8 The true state of the Incomplete Remediation Plan Implementation as at and from 1 January 2022

53AV. As at and from 1 January 2022, alternatively 31 March 2022, EML had not completed the implementation of its remediation plan in relation to the CBI Issues to the satisfaction of CBI.

PARTICULARS

- i. The plaintiffs refer to the particulars to paragraph 50D.
- ii. Further particulars will be provided following discovery.

EF.9 The true state of the Remediation Plan as at 26 April 2022

53AW As at 26 April 2022, EML had no reasonable basis to consider that its modified FY22 guidance was not likely to be affected by the CBI Issues or the implementation of the remediation plan.

PARTICULARS

- i. Paragraphs 53AQ, 53AR, 53AS, 53AT, 53AU and 53AV and the particulars thereto are repeated.*
- ii. Further particulars will be provided following discovery.*

EF.10 The true cost of the PCSIL Remediation Plan on and from 19 May 2021

53AX As at 19 May 2021, the reform and remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were adequate and compliant and addressed the CBI Issues:

- (a) would require material expenditure by PCSIL [in an amount not presently known to the plaintiffs] but in excess of \$11.4 million: and
- (b) by reason thereof, was likely to, or did have, a material impact on the profitability of PCSIL.

PARTICULARS

- i. The particulars to paragraph 50A are repeated.*

EF.11 The true state of the PCSIL Remediation Impact on Growth on and from 19 May 2021

53AY. As at 19 May 2021 and during the Relevant Period to 25 July 2022, until completion of the reforms and remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were adequate and compliant and addressed the CBI Issues:

- (a) PCSIL was constrained in its ability to grow its business in Europe: and
- (b) by reason thereof, the profitability of PCSIL was, or alternatively was likely to be, materially impacted until completion of the reforms and remediation to the AML/CTF frameworks to the satisfaction of CBI.

PARTICULARS

- i. The particulars to paragraph 50B are repeated.*
- ii. Further particulars may be provided following the completion of discovery.*

EF.12 The true state of the PCSIL Remediation Completion Timing on and from 19 May 2021

53AZ. As at 19 May 2021, and during the Relevant Period to 25 July 2022, the reforms and remediation necessary to ensure that PCSIL's AML/CTF risk and control frameworks were adequate and compliant, was unlikely to be completed by the end of FY22 because:

- (a) CBI continued to identify deficiencies with PCSIL's remediation plan; and
- (b) CBI continued to identify deficiencies with PCSIL's remediation plan implementation,

such that all deficiencies identified by CBI could not be remediated by PCSIL by the end of FY22.

PARTICULARS

- i. *By reason of the matters pleaded in paragraphs 38A and 39C above, it was inherently unlikely that PCSIL would be able to complete the PCSIL Required Remediation by the end of 2021.*
- ii. *The 25 July 2022 Announcement pleaded at paragraphs 53AL and 53AM above.*
- iii. *EML ASX Announcement titled 'Update on regulatory matters' dated 31 October 2022 (31 October 2022 Announcement), in which EML stated: 'These measures will allow PFS UK to address concerns highlighted by the FCA which are similar in nature to those raised by the Central Bank of Ireland ("CBI") and disclosed to the ASX relating to our Irish subsidiary, PFS Card Services (Ireland) Limited ("PCSIL"), for which we are currently undertaking a remediation program.'*
- iv. *Further and better particulars will be provided after discovery.*

EF.13 The true state of PCSIL's Control Standards

53.AAA. At all material times to 19 May 2021:

- (a) the PCSIL AML/CTF risk control framework were regarded by CBI as, characterised by material failings, including that PCSIL was engaging in conduct in breach of its CBI Authorisation; and
- (b) PCSIL did not comply with its AML/CTF obligations under the CJA 2010,

such that it was regarded by regulatory authorities as potentially enabling PCSIL's products and services to be utilised by criminals to undertake ML/TF activities.

PARTICULARS

- i. The plaintiff repeats paragraphs 38A and 39B.*
- ii. Further and better particulars may be provided after discovery.*

EF.14 PCSIL's true growth position resulting from the CBI Growth Limitation

53AAB. As at [a date unknown to the plaintiff after 7 October 2021], CBI placed a material growth limitation on PCSIL's total payment volumes, which was due to expire in early December 2022 (but which could be extended or varied), with the consequence that:

- (i) PCSIL did not engage in transaction volumes above the limitation; and
- (ii) PCSIL could not engage in transaction volumes above the limitation.

such that PCSIL's ability to grow materially was curtailed and impacted.

PARTICULARS

- i. The Plaintiffs rely on the 25 July 2022 Announcement.*
- ii. Further particulars will be provided following discovery.*

F MISLEADING OR DECEPTIVE CONDUCT

F.1 Compliance Representations (19 December 2020 to 19 May 2021)

54. ~~[Not used / Moved Up] By reason of the matters pleaded in paragraphs 52 and 53 above, on 19 August 2020, EML represented to the Affected Market that:~~

- ~~(a) EML's corporate governance exceeded compliance;~~
- ~~(b) EML's governance practices reflect market practice, expectations and regulation as appropriate; and~~
- ~~(c) EML's governance framework includes robust systems of risk management and assurance;~~

~~(together and separately, **Compliance Representations**).~~

55. ~~[Not used / Moved Up] Further, by reason of the matters pleaded in paragraphs 52 and 53 above, on 19 August 2020, EML represented to the Affected Market that EML had a reasonable basis for making the Compliance Representations (**Compliance Basis Representation**).~~

PARTICULARS

~~ii. The Compliance Basis Representation was implied from the making of the Compliance Representations.~~

56. ~~[Not used / Moved Up] During the Relevant Period, EML continued to make the Compliance Representations and the Compliance Basis Representation.~~

PARTICULARS

~~i. The continuing representation is implied by EML not saying anything during the Relevant Period to modify, qualify or contradict the Compliance Representations and the Compliance Basis Representation.~~

F.2 Misleading or deceptive conduct

57. The making and failing to correct and/or qualify each of the Compliance Representations and/or the Compliance Basis Representation was conduct engaged in by EML:
- (a) in trade or commerce; and
 - (b) in relation to EML Shares.
58. As at 19 August 2020 and during the ~~Relevant Period~~ period from 19 December 2019 to 19 May 2021, EML did not have reasonable grounds for making or maintaining the Compliance Representations and the Compliance Basis Representation in the circumstances pleaded in paragraphs 46 to 49 49A, 49B and 50 above.
59. During the ~~Relevant Period~~ period from 19 December 2019 to 19 May 2021, by failing to correct and/or qualify the Compliance Representations and/or the Compliance Basis Representation in the circumstances pleaded in paragraphs 46 to 50 58 above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
60. By reason of the matters ~~pleaded~~ pleaded in paragraphs ~~54~~ 57 to 59 EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

F.2 Minor Impacts Representations (19 May 2021 / 17 August 2021)

- 60A. The making and failing to correct and/or qualify the Minor Impacts Representation was conduct engaged in by EML:
- (a) in trade or commerce; and
 - (b) in relation to EML Shares.

60B. As at and from 19 May 2021, alternatively 7 June 2021, EML did not have reasonable grounds for making or maintaining, the Minor Impacts Representation in the circumstances pleaded in paragraph 49A, 49B, 50 and 50A to 50C, and 53AO to 53AP50 above.

60C. During the period from 19 May 2021, alternatively 7 June 2021, to 25 July 2022, by failing to correct and/or qualify the Minor Impacts Representation in the circumstances pleaded in paragraph 60B above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60D. By reason of the matters pleaded in paragraphs 60A to 60C EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.3 Remediation Plan Adequacy and Timing Representations (17 August 2021 onwards)

60E. The making and failing to correct and/or qualify each of the Remediation Plan Adequacy Representation and Remediation Plan Timing Representation was conduct engaged in by EML:

- (a) in trade or commerce; and
- (b) in relation to EML Shares.

60F. As at:

- (a) 17 August 2021 and during the period from 17 August 2021 onwards, EML did not have reasonable grounds for making or maintaining the Remediation Plan Adequacy Representation and Remediation Plan Timing Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50D, and 53AQ to 53AS50 above;
- (b) 7 October 2021, EML did not have reasonable grounds for making or maintaining the Remediation Plan Adequacy Representation and Remediation Plan Timing Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50C, and 53AQ to 53AS, and 53AT50 above; and
- (c) 1 January 2022, alternatively 31 March 2022, EML did not have reasonable grounds for making or maintaining the Remediation Plan Adequacy Representation and Remediation Plan Timing Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50D, and 53AQ to 53AS, 53AT, 53AU50 and 53AV above.

60G. During the period from 17 August 2021 to 25 July 2022, by failing to correct and/or qualify the Remediation Plan Adequacy Representation and Remediation Plan Timing Representation in the circumstances pleaded in paragraph 60F above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60H. By reason of the matters pleaded in paragraphs 60E to 60G EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.4 FY22 Guidance Representations (17 August 2021 onwards)

60I. The making and failing to correct and/or qualify the FY22 Guidance Representations was conduct engaged in by EML:

- (a) in trade or commerce; and
- (b) in relation to EML Shares.

60J. As at:

- (a) 17 August 2021 and during the period from 17 August 2021 onwards, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS50 above;
- (b) 7 October 2021, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, and 53AT50 above;
- (c) the date pleaded in paragraph 53AU, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, 53AT and 53AU50 above; and
- (d) 1 January 2022, alternatively 31 March 2022, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, 53AT, 53AU50 and 53AV above.

60K. During the period from 17 August 2021 to 25 July 2022, by failing to correct and/or qualify the FY22 Guidance Representations in the circumstances pleaded in paragraph 60J

above. EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60L. By reason of the matters pleaded in paragraphs 60I to 60K above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.5 Remediation Plan Impacts Representation (17 August 2021 onwards)

60M. The making and failing to correct and/or qualify the Remediation Plan Impacts Representation was conduct engaged in by EML:

- (c) in trade or commerce; and
- (d) in relation to EML Shares.

60N. As at 17 August 2021 and during the period from 17 August 2021 to 7 October 2021, EML did not have reasonable grounds for making, or maintaining, the Remediation Plan Impacts Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50C50 above.

60O. During the period from 17 August 2021 to 7 October 2021, by failing to correct and/or qualify the Remediation Plan Impacts Representation in the circumstances pleaded in paragraph 60J above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60P. By reason of the matters pleaded in paragraphs 60M to 60P above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.6 FY22 Guidance Unaffected by CBI Issues Representation (17 August 2021 onwards)

60Q. The making and failing to correct and/or qualify the FY22 Guidance Unaffected by CBI Issues Representation was conduct engaged in by EML:

- (e) in trade or commerce; and
- (f) in relation to EML Shares.

60R. As at:

- (a) 17 August 2021 and during the period from 17 August 2021 onwards, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Unaffected

by CBI Issues Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS50 above;

(b) 7 October 2021, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Unaffected by CBI Issues Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, and 53AT50 above;

(c) the date pleaded in paragraph 53AU, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Unaffected by CBI Issues Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, 53AT and 53AV50 above; and

(d) 1 January 2022, alternatively 31 March 2022, EML did not have reasonable grounds for making or maintaining the FY22 Guidance Unaffected by CBI Issues Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, 53AT, 53AU50 and 53AV above.

60S. During the period from 17 August 2021 to 25 July 2022, by failing to correct and/or qualify the FY22 Guidance Unaffected by CBI Issues Representation in the circumstances pleaded in paragraph 60J above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60T. By reason of the matters pleaded in paragraphs 60Q to 60S above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.7 Modified Remediation Plan Impacts Representation (7 October 2021)

60U. The making and failing to correct and/or qualify the Modified Remediation Plan Impacts Representation was conduct engaged in by EML:

(a) in trade or commerce; and

(b) in relation to EML Shares.

60V. As at:

(a) 7 October 2021, EML did not have reasonable grounds for making or maintaining the Modified Remediation Plan Impacts Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50D, and 53AQ to 53AS, and 53AT50 above;

(b) the date pleaded in paragraph 53AU, EML did not have reasonable grounds for making or maintaining the Modified Remediation Plan Impacts Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50C, and 53AQ to 53AS, 53AT and 53AU50 above:

(c) 1 January 2022, alternatively 31 March 2022, EML did not have reasonable grounds for making or maintaining the Modified Remediation Plan Impacts Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50D, and 53AQ to 53AS, 53AT, 53AU50 and 53AV above: and

(d) 26 April 2022, EML did not have reasonable grounds for making the Modified Remediation Plan Impacts Representation in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50D, and 53AQ to 53AS, 53AT, 53AU50, 53AV and 53AW above.

60W. During the period from 7 October 2021 to 25 July 2022, by failing to correct and/or qualify the Modified Remediation Plan Impacts Representation in the circumstances pleaded in paragraph 60V above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60X. By reason of the matters pleaded in paragraphs 60U to 60W above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.8 Modified FY22 Guidance Representation (26 April 2022)

60Y. The making and failing to correct and/or qualify the Modified FY22 Guidance Representations was conduct engaged in by EML:

(a) in trade or commerce; and

(b) in relation to EML Shares.

60Z. As at 26 April 2022 and during the period from 26 April 2022, EML did not have reasonable grounds for making the Modified FY22 Guidance Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50E, and 53AQ to 53AS, 53AT, 53AU50, 53AV and 53AW above.

60AA. During the period from 26 April 2022 to 25 July 2022, by failing to correct and/or qualify the Modified FY22 Guidance Representations in the circumstances pleaded in paragraph 60Z above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60AB. By reason of the matters pleaded in paragraphs 60Y to 60AA above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

F.9 Modified FY22 Guidance Unaffected by CBI Issues Representations (26 April 2022)

60AC. The making and failing to correct and/or qualify the Modified FY22 Guidance Unaffected by CBI Issues Representations was conduct engaged in by EML:

- (c) in trade or commerce; and
- (d) in relation to EML Shares.

60AD. As at 26 April 2022 and during the period from 26 April 2022 to 25 July 2022, EML did not have reasonable grounds for making the Modified FY22 Guidance Unaffected by CBI Issues Representations in the circumstances pleaded in paragraphs 49A, 49B, 50 and 50A to 50C, and 53AQ to 53AS 53AT, 53A50U 53AV and 53AW above.

60AE. During the period from 26 April 2022 to 25 July 2022, by failing to correct and/or qualify the Modified FY22 Guidance Unaffected by CBI Issues Representations in the circumstances pleaded in paragraph 60AD above, EML engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60AF. By reason of the matters pleaded in paragraphs 60AC to 60AE above EML contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G CONTINUOUS DISCLOSURE CONTRAVENTIONS

G.1 PCSIL PFS Control Standard Information Contravention

61. During the Relevant Period to 19 May 2021, the PCSIL PFS Control Standard Information was information:

- (a) of which EML was aware (within the meaning of ASX Listing Rule 19.12);
- (b) that a reasonable person would expect to have a material effect on the price or value of EML Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable from 23 March 2021); and/or
- (c) EML was negligent with respect to whether the information would have a material effect on the price or value of the EML Shares within the meaning of s 674(2)(d) of

the Corporations Act (as applicable during the period from 19 December 2020 to 23 March 2021).

PARTICULARS

As to (a):

- i. ~~During the Relevant Period~~ period from 19 December 2020 to 19 May 2021 some EML Officers, ~~including Cregan,~~ had actual knowledge of:
 - a. ~~the risk of money laundering associated with PCSIL's business as pleaded in paragraph 31 above;~~
 - b. ~~the Non-compliant AML/CTF Information (EML's announcement to the ASX entitled "Investor Presentation" dated 20 August 2021 at 9);~~
 - c. ~~the recent enforcement action taken by ACPR against PFS by the ACPR as pleaded in paragraph 32 above;~~
 - d. ~~the letter sent by CBI complaining of inadequate AML/CTF in the sector as pleaded in paragraph 33 above;~~
 - e. ~~the increased interactions with CBI as pleaded in paragraph 35 above;~~
 - f. of the 13 May 2021 Teleconference;
 - g. of the First 13 May 2021 Letter;
 - h. that the volume and value of PCSIL's transactions exceeded the projections the subject of the 4 April 2019 Authorisation;
 - i. that PCSIL did not have the requisite board of directors as required under the 4 April 2019 Authorisation;
 - j. that PCSIL had appointed persons to perform pre-approval control functions without authorisation;
 - k. of the non-compliance and deficiencies identified by the CBI in the 8 January 2021 Report in respect of PFS UK and that PFS UK and PCSIL had the same AML/CTF risk and control frameworks;
 - l. Paragraph 38A is repeated.
 - m. of the 7 May 2021 Letter;
 - n. of the 10 May 2021 Letter;
 - o. of the 12 May 2021 Email;
 - p. of the Second 13 May 2021 Letter; and
 - q. of the 13 May 2021 Report.
- ii. Wenk:
 - a. was at all material times EML's group general counsel;
 - b. in the performance of his role as EML's group general counsel ought to have known (1) at the time EML agreed to buy PFS UK and PCSIL, the AML/CTF risk control frameworks and governance applicable to the PFS UK and PCSIL business were not up to the same standard EML applied to its other businesses; (2) after EML completed its

acquisition of PFS UK and PCSIL, EML started work to bring the AML/CTF risk control frameworks and governance applicable to the PFS UK and PCSIL businesses up to the standard EML applied to its other businesses; and (3) EML did not bring the AML/CTF risk control frameworks and governance applicable to the PFS UK and PCSIL businesses up to the standard EML applied to its other businesses at any time prior to the end of the Relevant Period.

iii. Tissera-Isaacs:

- a. was at all material times EML's head of corporate compliance;
- b. in the performance of her role as EML's head of corporate compliance ought to have known (1) at the time EML agreed to buy PFS UK and PCSIL, the AML/CTF risk control frameworks and governance applicable to the PFS UK and PCSIL businesses were not up to the same standard EML applied to its other businesses; (2) after EML completed its acquisition of PFS UK and PCSIL, EML started work to bring the AML/CTF risk control frameworks and governance applicable to the PFS' UK and PCSIL businesses up to the standard EML applied to its other businesses; and (3) EML did not bring the AML/CTF risk control frameworks and governance applicable to PFS' UK and the PCSIL businesses up to the standard EML applied to its other businesses at any time prior to the end of the Relevant Period.

iv. Betts:

- a. was at all material times EML's group risk officer;
- b. in the performance of his role as EML's group risk officer ought to have known (1) at the time EML agreed to buy PFS UK and PCSIL, the AML/CTF risk control frameworks and governance applicable to the PFS' UK and PCSIL business were not up to the same standard EML applied to its other businesses; (2) after EML completed its acquisition of PFS UK and PCSIL, EML started work to bring the AML/CTF risk control frameworks and governance applicable to the PFS' UK and PCSIL businesses up to the standard EML applied to its other businesses; and (3) EML did not bring the AML/CTF risk control frameworks and governance applicable to the PFS' UK and PCSIL businesses up to the standard EML applied to its other businesses at any time prior to the end of the Relevant Period.

v. Britton:

- a. was:
 - i. at all material times until March 2021 PFS UK chief compliance officer and CEO of PCSIL; and
 - ii. at all material times from March 2021 the chief executive officer of EML Europe;
- b. in the performance of his role as PFS' UK chief compliance officer, CEO of PCSIL and EML's chief executive officer of EML Europe ought to have known (1) shortly after EML

agreed to buy PFS UK and PCSIL, the AML/CTF risk control frameworks and governance applicable to PFS' UK and PCSIL's businesses were not up to the same standard EML applied to its other businesses; (2) after EML completed its acquisition of PFS UK and PCSIL, EML started work to bring the AML/CTF risk control frameworks and governance applicable to PFS' UK and PCSIL businesses up to the standard EML applied to its other businesses; and (3) EML did not bring the AML/CTF risk control frameworks and governance applicable to PFS' UK and PCSIL businesses up to the standard EML applied to its other businesses at any time prior to the end of the Relevant Period.

As to (c):

- i. Prior to 19 May 2021, EML had s made the statements pleaded in paragraphs 53 31D and 54 above.
- ii. Each of the statements s set out in (i) above was published in a manner likely to bring what was said in those statements to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell EML Shares.
- iv. During the Relevant Period, the true position was as pleaded in ~~Part D~~ Part E.11 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and EML (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares.
- vi. EML's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, as set out in (iii) above.
- vii. During the Relevant Period, some of EML's directors and officers had actual knowledge of: the matter particulars in (i) to 61(a) above.
 - ~~a. the risk of money laundering associated with PCSIL's business as pleaded in paragraph 0 above;~~
 - ~~b. the Non-compliant AML/CTF Information (EML's announcement to the ASX entitled "Investor Presentation" dated 20 August 2021 at 9);~~
 - ~~c. the recent enforcement action taken by the ACPR against PFS by the ACPR as pleaded in paragraph 0 above;~~
 - ~~d. the letter sent by CBI complaining of inadequate AML/CTF in the sector as pleaded in paragraph B.4 above;~~

- ~~e. the increased interactions with CBI as pleaded in paragraph 31~~
- ~~above;~~
- ~~f. the 13 May 2021 Teleconference; and~~
- ~~g. the 13 May 2021 Letter.~~
- viii. *Having regard to (iv) above, EML's directors and officers who had the actual knowledge as set out in (vii) above failed to:*
 - a. *consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicate their actual knowledge to all EML directors and officers (and those persons with responsibility for EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether the actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.*
- ix. *Alternatively, having regard to (vi) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who had actual knowledge as set out in (vii) above:*
 - a. *considered whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicated their knowledge to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.*
- x. *Alternatively, having regard to (iv) above, EML's directors and officers who did not have actual knowledge as set out in (vii) above failed to obtain that information which they ought to have obtained in the course of their duties and:*
 - a. *consider whether it qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicate it to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance*

with ASX Listing Rule 3.1) so that EML could properly consider whether it qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.

- xi. *Alternatively, having regard to (vi) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who did not have actual knowledge as set out in (vii) above obtained that information which they ought to have obtained in the course of their duties and:*
 - a. *considered whether their knowledge so obtained qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and*
 - b. *communicated their knowledge so obtained to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.*

- 62. The PFS PCSIL Control Standard Information was information that until 19 May 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act; and
- 63. Pursuant to ASX Listing Rule 3.1, EML became obliged to tell the ASX the PFS PCSIL Control Standard Information on and from 19 December 2020.
- 64. EML did not communicate the PCSIL PFS Control Standard Information to the ASX Before 19 May 2021.
- 65. By reason of the matters pleaded in paragraphs 61 to 64 above, EML contravened s 674(2) of the Corporations Act during the Relevant Period (being a **Continuous Disclosure Contravention**).

G.2 ~~CBI Response Information~~ PCSIL Required Remediation Information Contravention

- 66. During the ~~Relevant Period, the CBI Response Information~~ period from 19 December 2020 to 19 May 2021, the PCSIL Required Remediation Information was information:
 - (a) of which EML was aware (within the meaning of ASX Listing Rule 19.12); and

- (b) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of EML Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable from 23 March 2021); and/or
- (c) EML was negligent with respect to whether the information would have a material effect on the price or value of the EML Shares within the meaning of s 674(2)(d) of the Corporations Act ~~(as applicable during the period from 19 December 2020 to 23 March 2021).~~

PARTICULARS

~~i. The plaintiffs repeat the particulars to paragraph 62 above.~~

As to (a):

iii. From on or about 16 June 2022 some EML Officers had actual knowledge of the 16 June 2022 Letter.

iv. Betts:

a. was at all material times EML's group risk officer:

b. in the performance of his role as EML's group risk officer ought to have known (1) the deficiencies and non-compliance with PCSIL's AML/CTF risk and control frameworks; (2) that PCSIL could not improve its AML/CTF risk and control frameworks to be effective and compliant by the end of FY22.

v. Shore:

c. was at all material times EML's chief financial officer:

d. in the performance of his role as EML's chief financial officer ought to have known that the remediation of deficiencies and non-compliance with PCSIL's AML/CTF risk and control frameworks would materially increase overheads and materially decrease revenue in FY22.

As to (c):

i. Prior to 25 July 2022, EML has made the statements pleaded 53B, 53D, 53E and 53I above.

ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.

iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell EML Shares.

iv. During the Relevant Period, the true position was as pleaded in Part EF.10 above but was not known to the Affected Market.

v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and EML (and its directors and officers) acting reasonably would have considered that such

qualification or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares.

- vi. EML's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, as set out in (iii) above.
- vii. During the Relevant Period, some of EML's directors and officers had actual knowledge of the matter particularised in (ii) to 66(a) above.
- viii. Having regard to (v) above, EML's directors and officers who had the actual knowledge as set out in (vii) above failed to:
 - a. consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicate their actual knowledge to all EML directors and officers (and those persons with responsibility for EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether the actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
- ix. Alternatively, having regard to (vii) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who had actual knowledge as set out in (viii) above:
 - a. considered whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicated their knowledge to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
- x. Alternatively, having regard to (v) above, EML's directors and officers who did not have actual knowledge as set out in (viii) above failed to obtain that information which they ought to have obtained in the course of their duties and:

- a. consider whether it qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicate it to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether it qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
 - xi. Alternatively, having regard to (vii) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who did not have actual knowledge as set out in (viii) above obtained that information which they ought to have obtained in the course of their duties and:
 - a. considered whether their knowledge so obtained qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicated their knowledge so obtained to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
67. The ~~CBI-Response Information~~ Remediation Plan Information was information that until ~~19 May 2024~~ 25 July 2022 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
68. Pursuant to ASX Listing Rule 3.1, EML became obliged to tell the ASX the ~~CBI-Response Information~~ Remediation Plan Information on and from ~~19 December 2020~~ 17 August 2021.
69. EML did not communicate the ~~CBI-Response Information~~ Remediation Plan Information to the ASX ~~before 19 May 2024~~ before 25 July 2022.
70. By reason of the matters pleaded in paragraphs 66 to 69 above, EML contravened s 674(2) of the Corporations Act during the Relevant Period (being a Continuous Disclosure Contravention).

G.3 Required Remediation Impact and Timing Information Contravention

70A. During the period from 19 April 2021 to 25 July 2022, the PCSIL Remediation Cost Impact Information, PCSIL Remediation Growth Impact Information and PCSIL Remediation Impact Timing Information (each being Required Remediation Impact and Timing Information):

- (a) of which EML was aware (within the meaning of ASX Listing Rule 19.12); and
- (b) that a reasonable person would expect to have a material effect on the price or value of EML Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act; and/or
- (c) EML was negligent with respect to whether the information would have a material effect on the price or value of the EML Shares within the meaning of s 674(2)(d) of the Corporations Act.

PARTICULARS

i. As to paragraph 70A(a), the plaintiffs repeat the particulars to paragraph 66(a) above.

As to (c):

ii. Prior to 25 July 2022, EML has made the statements pleaded 53F, 53H, 53I and 53L above.

iii. Each of the statements set out in (ii) above was published in a manner likely to bring what was said to the attention of the Affected Market.

iv. By reason of (iii) above, the contents of those statements in (ii) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell EML Shares.

v. During the Relevant Period, the true position was as pleaded in Part EF.7 and EF.9 above but was not known to the Affected Market.

vi. Had the true position referred to in (v) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (ii) above, and EML (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares.

vii. EML's directors and officers knew that it made the statements set out in (ii) above, that they had been made to the Affected Market as set out in (iii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, as set out in (iv) above.

- viii. During the Relevant Period, some of EML's directors and officers had actual knowledge of the matter particulars in (ii) to 66(a) above.
- ix. Having regard to (v) above, EML's directors and officers who had the actual knowledge as set out in (vii) above failed to:
- a. consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicate their actual knowledge to all EML directors and officers (and those persons with responsibility for EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether the actual knowledge qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
- x. Alternatively, having regard to (vii) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who had actual knowledge as set out in (viii) above:
- a. considered whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicated their knowledge to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.
- xi. Alternatively, having regard to (v) above, EML's directors and officers who did not have actual knowledge as set out in (viii) above failed to obtain that information which they ought to have obtained in the course of their duties and:
- a. consider whether it qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and
 - b. communicate it to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether it qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to

influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.

xii. Alternatively, having regard to (vii) above, EML failed to ensure that its systems involved processes to ensure that those EML directors and officers who did not have actual knowledge as set out in (viii) above obtained that information which they ought to have obtained in the course of their duties and:

a. considered whether their knowledge so obtained qualified or contradicted all or any of EML's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made; and

b. communicated their knowledge so obtained to all EML directors and officers (and those persons with responsibility for monitoring EML's compliance with ASX Listing Rule 3.1) so that EML could properly consider whether their actual knowledge qualified or contradicted all or any of EML's statements set out in (ii) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell EML Shares, so concluding and then causing a corrective disclosure to be made.

70B. The PCSIL Remediation Cost Impact Information, PCSIL Remediation Growth Impact Information and PCSIL Remediation Impact Timing Information was information that prior to 25 July 2022 was not all generally available within the meaning of s 674(2)(c) of the Corporations Act.

70C. Pursuant to ASX Listing Rule 3.1, EML became obliged to tell the ASX the PCSIL Remediation Cost Impact Information, PCSIL Remediation Growth Impact Information and PCSIL Remediation Impact Timing Information on and from 19 May 2021.

70D. EML did not communicate all the PCSIL Remediation Cost Impact Information, PCSIL Remediation Growth Impact Information and PCSIL Remediation Impact Timing Information to the ASX before 25 July 2022.

70E. By reason of the matters pleaded in paragraphs 70A to 70D above, EML contravened s 674(2) of the Corporations Act during the Relevant Period (being a Continuous Disclosure Contravention).

G.4 CBI Limitation Growth Contravention

70F. During the period from 7 October 2021 to 25 July 2022, the CBI Limitation Growth Information was information:

(a) of which EML was aware (within the meaning of ASX Listing Rule 19.12); and

- (b) that a reasonable person would expect to have a material effect on the price or value of EML Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act; and/or
- (c) EML was negligent with respect to whether the information would have a material effect on the price or value of the EML Shares within the meaning of s 674(2)(d) of the Corporations Act.

PARTICULARS

- i. The 25 July ASX Announcement.*
- ii. Further and better particulars will be provided following discovery.*

70G. The CBI Limitation Growth Information was information that prior to 25 July 2022 was not all generally available within the meaning of s 674(2)(c) of the Corporations Act.

70H. Pursuant to ASX Listing Rule 3.1, EML became obliged to tell the ASX the CBI Limitation Growth Information on and from a date not currently known to the plaintiffs but no later than 7 October 2021.

70I. EML did not communicate all the CBI Limitation Growth Information to the ASX before 25 July 2022.

70J. By reason of the matters pleaded in paragraphs 70F to 70I above, EML contravened s 674(2) of the Corporations Act during the Relevant Period (being a Continuous Disclosure Contravention).

G.5 Incomplete Remediation Plan Information Contravention

70K. During the period from 1 January 2022, alternatively 31 March 2022, to 25 July 2022, the Incomplete Remediation Implementation Plan Information was information:

- (d) of which EML was aware (within the meaning of ASX Listing Rule 19.12); and
- (e) that a reasonable person would expect to have a material effect on the price or value of EML Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act; and/or
- (f) EML was negligent with respect to whether the information would have a material effect on the price or value of the EML Shares within the meaning of s 674(2)(d) of the Corporations Act.

PARTICULARS

- i. The 25 July ASX Announcement.*
- ii. Further and better particulars will be provided following discovery.*

70L. The Incomplete Remediation Implementation Plan Information was information that prior to 25 July 2022 was not all generally available within the meaning of s 674(2)(c) of the Corporations Act.

70M. Pursuant to ASX Listing Rule 3.1, EML became obliged to tell the ASX the Incomplete Remediation Implementation Plan Information on and from 1 January 2022, alternatively 31 March 2022.

70N. EML did not communicate all the CBI Limitation Growth Information to the ASX before 25 July 2022.

70O. By reason of the matters pleaded in paragraphs 70K to 70N above, EML contravened s 674(2) of the Corporations Act during the Relevant Period (being a Continuous Disclosure Contravention).

H CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS**H.1 Acquisition of EML Shares**

71. During the Relevant Period, the plaintiffs and the Group Members acquired interests in EML Shares.

PARTICULARS

- i. Paragraph 2 above is repeated.*
- ii. Particulars of acquisitions by Group Members will be provided after the trial of the plaintiffs' claim.*

H.2 Market-based causation

72. The plaintiffs and the Group Members acquired their interests in EML Shares in a market of investors or potential investors in EML Shares:

- (a) operated by the ASX;
- (b) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the Corporations Act;
- (c) where EML had the obligations pleaded in paragraphs 5 and 6 above;

- (d) where the price or value of EML Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and section 674(2) of the Corporations Act;
- (e) where:
 - (i) material information had not been disclosed at the time it ought to have been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of EML Shares, namely:
 - (ii) the information the subject of the Continuous Disclosure Contraventions; and/or
 - (iii) information correcting or qualifying the representations the subject of the Misleading Conduct Contraventions (individually and together, the **Material Representations**),

(individually and together, the **Material Information**);
- (f) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions) that a reasonable person would expect to have a material effect on the price or value of EML Shares, in that if it had not been engaged in no investors or potential investors in EML Shares would have been in a position to read or rely upon the Misleading Representations.

73. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (**Market Contraventions**) caused the market price of EML Shares to be, or materially contributed to the market price of EML Shares being, substantially greater than:

- (a) their true value; and/or
- (b) the market price that would have prevailed but for the Market Contraventions,

from the respective dates that those Market Contraventions commenced, as pleaded in this Amended Statement of Claim.

PARTICULARS

- ii. *The extent to which the Market Contraventions caused the price for EML Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed*

during the Relevant Period will be provided following expert evidence.

74. The declines in the price of EML Shares pleaded in ~~paragraph 45 above was caused or materially contributed to by the market's reaction to:~~

(a) paragraph 44 above was caused or materially contributed to by the market's reaction to:

(i) the information contained in the 19 May 2021 Announcement; and

(ii) the Market Contraventions which commenced prior to, and were continuing as at, 19 May 2021;

(b) paragraph 53P above was caused or materially contributed to by the market's reaction to:

(i) the information contained in the 7 October 2021 Announcement; and

(ii) the Market Contraventions which commenced prior to, and were continuing as at 7 October 2021;

(c) paragraph 53AH above was caused or materially contributed to by the market's reaction to:

(i) the information contained in the 26 April 2022 Announcement; and

(ii) the Market Contraventions which commenced prior to, and were continuing as at 26 April 2022;

(d) paragraph 53AN above was caused or materially contributed to by the market's reaction to:

(i) the information contained in the 25 July 2022 Announcement; and

(ii) Market Contraventions which commenced prior to, and were continuing as at, 25 July 2022.

PARTICULARS

i. The extent to which the Market Contraventions caused the price for EML Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.

75. Further, or alternatively, if EML had:

- (a) disclosed to the market the Material Information at any time in the Relevant Period prior to when it was disclosed or revealed to the Affected Market; and/or
- (b) not engaged in the conduct the subject of the Misleading Conduct Contraventions, the price of EML Shares would have fallen substantially.

PARTICULARS

- i. The extent to which the price for EML Shares would have fallen will be provided following expert evidence.*

H.3 Reliance

76. Further, or in the alternative, in the decision to acquire EML Shares:

- (a) some Group Members would not have acquired EML Shares at the prices and in the volumes that they did, if the Material Information had been disclosed to them and/or the ASX;
- (b) some Group Members acquired EML Shares at the prices and in the volumes that they did in reliance upon some or all of the Material Representations (and/or EML not having corrected or qualified such representations).

PARTICULARS

- i. The identity of all those Group Members which or who relied directly on any or all of the representations referred to in the paragraph above are not within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the plaintiffs' claims and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

H.4 Loss and damage

77. The plaintiffs and the Group Members suffered loss and damage resulting from the Market Contraventions.

PARTICULARS

- i. The loss suffered by the plaintiffs will be calculated by reference to:*
 - A. the difference between the price at which they acquired their interest in the EML Shares and the true value of that interest;*

- B. *alternatively, the difference between the price at which they acquired its interest in the EML Shares and whatever is 'left in hand', or has been realised upon a sale;*
 - C. *alternatively, the difference between the price at which they acquired their interest in the EML Shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;*
 - D. *alternatively, the difference between the price at which they acquired their interest in the EML Shares and the price that would have prevailed but for the Market Contraventions;*
 - E. *in addition to the loss in A to D, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the EML Shares.*
- ii. *Further particulars in relation to the plaintiffs' losses will be provided after the service of evidence in chief.*
 - iii. *Particulars of the losses of Group Members are not known within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the plaintiffs' claim and identified common' issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

I COMMON QUESTIONS

The questions of law or fact common to the claims of the plaintiffs and Group Members are:

1. Whether EML made and continued during the Relevant Period to make the:
 - (a) ~~the~~-Compliance Representations; ~~and~~
 - (b) ~~the~~-Compliance Basis Representation-;
 - (c) Minor Impacts Representation;
 - (d) Remediation Plan Adequacy Representation;
 - (e) Remediation Plan Timing Representations;
 - (f) Remediation Plan Representations;
 - (g) FY22 Guidance Representation;

- (h) Remediation Plan Impacts Representation:
 - (i) FY22 Guidance Unaffected by CBI Issues Representation:
 - (j) Modified Remediation Plan Impacts Representation:
 - (k) Modified FY22 Guidance Representation: and
 - (l) the Modified FY22 Guidance Unaffected by CBI Issues Representation.
2. Whether the following matters occurred and/or are true ~~during the Relevant Period:~~
- (a) ~~the matters pleaded in paragraphs 46 to 49 (Standard of of PFS' AML/CTF Risk Control Frameworks); and~~
 - (b) ~~the matters pleaded in paragraphs 50 (Findings by CBI).~~
 - (c) the matters pleaded in Part D.1 (Standard of PCSIL's AML/CTF Risk Control Frameworks):
 - (d) the matters pleaded in part D.2 (PSCIL Required Remediation):
 - (e) the matters pleaded in part EF.1 (the true state of the Remediation Plan as at 19 May 2021):
 - (f) the matters pleaded in part EF.2 (the true state of the Remediation Plan's Cost Impact as at and from 19 May 2021):
 - (g) the matters pleaded in part EF.3 (the true state of the Remediation Plan as at 17 August 2021):
 - (h) the matters pleaded in part EF.4 (the true state of the Remediation Plan Timing Implementation as at 17 August 2021):
 - (i) the matters pleaded in part EF.5 (the true state of the Remediation Plan's Cost Impact as at and from 17 August 2021):
 - (j) the matters pleaded in part EF.6 (the true state of the Remediation Plan's Cost as at and from 7 October 2021):
 - (k) the matters pleaded in part E.7 (true state of PCSIL's Growth Limitation):
 - (l) the matters pleaded in part EF.8 (true state of the Incomplete Remediation Plan Implementation as at and from 1 January 2022):

- (m) the matters pleaded in part EF.9 (the true state of the Remediation Plan as at 26 April 2022):
 - (n) the matters pleaded in part EF.10 (the true cost of the PCSIL Remediation Plan on and from 19 May 2021):
 - (o) the matters pleaded in part EF.11 (the true state of the PCSIL Remediation Impact on Growth on and from 19 May 2021):
 - (p) the matters pleaded in part EF.12 (the true state of the PCSIL Remediation Completion Timing on and from 19 May 2021):
 - (q) the matters pleaded in part EF.13 (the true state of PCSIL's Control Standards):
and
 - (r) the matters pleaded in part EF.14 (PCSIL's true position resulting from the CBI Growth Limitation).
3. Whether EML contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL by making, maintaining and/or failing to qualify the:
- (a) ~~the~~ Compliance Representations;
 - (b) ~~the~~ Compliance Basis Representation;
 - (c) Minor Impacts Representation:
 - (d) Remediation Plan Adequacy Representation:
 - (e) Remediation Plan Timing Representations:
 - (f) Remediation Plan Representations:
 - (g) FY22 Guidance Representation:
 - (h) Remediation Plan Impacts Representation:
 - (i) FY22 Guidance Unaffected by CBI Issues Representation:
 - (j) Modified Remediation Plan Impacts Representation:
 - (k) Modified FY22 Guidance Representation: and
 - (l) the Modified FY22 Guidance Unaffected by CBI Issues Representation.

4. Whether and when EML knew or ought to have known ~~during the Relevant Period:~~

- (a) ~~PFS~~ PCSIL Control Standard Information; and
- (b) ~~CBI Response~~ Remediation Plan Information;
- (c) PCSIL Required Remediation Information;
- (d) PCSIL Remediation Cost Impact Information;
- (e) PCSIL Remediation Growth Impact Information;
- (f) PCSIL Remediation Impact Timing Information;
- (g) Incomplete Remediation Plan Implementation Information; and
- (h) the CBI Growth Limitation Information.

5. Whether ~~during the Relevant Period:~~

- (a) ~~PFS~~ PCSIL Control Standard Information; ~~and~~
- (b) ~~CBI Response~~ Remediation Plan Information
- (c) PCSIL Required Remediation Information;
- (d) PCSIL Remediation Cost Impact Information;
- (e) PCSIL Remediation Growth Impact Information;
- (f) PCSIL Remediation Impact Timing Information;
- (g) Incomplete Remediation Plan Implementation Information; and
- (h) the CBI Growth Limitation Information.

was information a reasonable person would expect to have a material effect on the value of EML Shares.

6. Whether the ~~from 26 May 2020 until 23 March 2021:~~

- (a) ~~PFS~~ PCSIL Control Standard Information; ~~and~~
- (b) ~~CBI Response~~ Remediation Plan Information;
- (c) PCSIL Required Remediation Information;

- (d) PCSIL Remediation Cost Impact Information;
- (e) PCSIL Remediation Growth Impact Information;
- (f) PCSIL Remediation Impact Timing Information;
- (g) Incomplete Remediation Plan Implementation Information; and
- (h) the CBI Growth Limitation Information.

was information that EML was negligent with respect to whether it would have a material effect on the price or value of the EML Shares.

7. ~~Whether during the Relevant Period:~~

- (a) ~~PFS~~ PCSIL Control Standard Information; and
- (b) ~~CBI Response~~ Remediation Plan Information;
- (c) PCSIL Required Remediation Information;
- (d) PCSIL Remediation Cost Impact Information;
- (e) PCSIL Remediation Growth Impact Information;
- (f) PCSIL Remediation Impact Timing Information;
- (g) Incomplete Remediation Plan Implementation Information; and
- (h) the CBI Growth Limitation Information.

was not generally available.

8. ~~When~~ Whether during the Relevant Period EML was obliged to disclose to the ASX:

- (a) ~~PFS~~ PCSIL Control Standard Information; and
- (b) ~~CBI Response~~ Remediation Plan Information;
- (c) PCSIL Required Remediation Information;
- (d) PCSIL Remediation Cost Impact Information;
- (e) PCSIL Remediation Growth Impact Information;
- (f) PCSIL Remediation Impact Timing Information;

- (g) Incomplete Remediation Plan Implementation Information: and
- (h) the CBI Growth Limitation Information.

and contravened s 674(2) of the Corporations Act by failing to do so.

9. Whether any of the ~~Misleading Conduct~~ Market Contraventions and/or the ~~Contravening Omissions~~ caused the price or value of EML Shares to be higher during the Relevant Period than they would have been had the Market Contraventions ~~Misleading Conduct~~ and/or the ~~Contravening Omissions~~ not occurred, and if so, to what extent or by what amount.
10. Whether any, and if so, what relief other than monetary relief should be granted in favour of the Plaintiffs and Group Members.

AND THE PLAINTIFF CLAIMS on their own behalf and on behalf of Group Members:

1. An order pursuant to s 1041I of the Corporations Act that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of s 1041H of the Corporations Act;
2. An order pursuant to s 12GF of the ASIC Act that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of s 12DA(1) of the ASIC Act.
3. An order pursuant to s 236 of the ACL that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of s 18 of the ACL.
4. An order pursuant to s 1317HA(1) and/or s 1325 of the Corporations Act that the Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Defendant in contravention of s 674(2) of the Corporations Act.
5. Interest pursuant to statute on any damages, compensation or monetary sum awarded.
6. Costs.

Date: 20 December 2022



Signed by Craig Allsopp
Lawyer for the Plaintiffs

W A D Edwards
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O T D Nanlohy
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Solicitors for the Plaintiffs

Annexure A

Appendix A outlines the key findings identified by the Central Bank in the course of supervisory engagements with certain Schedule 2 Firms in 2020 and outlines the Central Bank's expectations in relation to those findings for all Schedule 2 Firms.

While the Central Bank expects you to assess your firm against all of the risk areas outlined in Appendix A, it recommends that you prioritise assessment of the areas of Governance, Risk Assessment and Customer Due Diligence in the first instance. The Central Bank considers that the findings identified in these areas are the most serious in nature and therefore should be considered and addressed immediately. The remaining findings should be considered and, where deficiencies/weaknesses are identified, an action plan should be put in place to fully address these in a timely manner. Any remedial action required as a result of assessing your firm against Appendix A should be brought to the attention of the Board.

*In addition to the issues raised in Appendix A, Schedule 2 Firms are particularly reminded of the key obligations to establish and maintain robust AML/CTF frameworks tailored to mitigate ML/TF risks inherent in their specific business activities and to ensure that they can demonstrate to the Central Bank that they are in compliance with their obligations under the [Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (**CJA 2010**)].*

The Central Bank will continue to conduct supervisory engagements with Schedule 2 Firms throughout 2021 and expects that firms will have reviewed the content of this letter and Appendix A and retain evidence of any assessment conducted by the firm.

A breach of the CJA 2010 may result in significant criminal or administrative sanctions, it is imperative that the implications of non-compliance are understood by the Board and Senior Management of Schedule 2 Firms and that all necessary steps to ensure ongoing compliance have been taken. The Central Bank is prepared to use the full range of its regulatory tools where firms do not comply with their CJA 2010 obligations. This includes, where necessary, the pursuit of enforcement action against firms.

Appendix A – details of the Central Bank findings arising from supervisory engagements of Schedule 2 Firms in 2020

Board oversight and Governance – Findings

- 1. Firms could not demonstrate that AML/CFT & FS was a regular agenda item at board meetings. For the majority of firms subject to an engagement, AML/CFT & FS was only discussed at board meetings after the firm received notification of intended engagement from the Central Bank.*

2. *Firms failed to provide any detailed reporting to their Boards in order to allow robust challenge and discussion on AML/CFT & FS matters.*
3. *Firms failed to implement the requirements of the CJA 2010 in a timely manner. While the requirement for firms to register with the Central Bank came into force in November 2018, the requirements of the CJA 2010 applied to Schedule 2 Firms since 2010. Firms could not demonstrate compliance with CJA 2010 prior to registering with the Central Bank. Many firms were unaware that the CJA 2020 applied to the firm prior to 2018. This indicates weaknesses in the firms' AML/CFT & FS oversight in terms of ensuring that the firm is fully cognisant at all times of its obligations and of the effects of any changes in these obligations.*
4. *A large number of firms engaged with had outsourced the day-to-day AML/CFT & FS activities of the firm to third party service providers. Firms were unable to demonstrate appropriate oversight of AML/CFT & FS functions conducted by the third party service providers.*
5. *Where the day-to-day AML/CFT & FS activities of the firm were outsourced, firms failed to have the necessary processes in place to ensure outsourcing arrangements were appropriately documented, sufficiently detailed and/or kept up to date.*
6. *Firms had not always formally documented the responsible role or individual for AML/CFT & FS within the firm. In a number of instances, where firms had appointed Money Laundering Reporting Officers (MLRO), the MLRO, or the person with responsibility for AML/CFT & FS compliance, could not demonstrate sufficient knowledge of AML/CFT & FS, or the CJA 2010, leading to firms not meeting their obligations as set out in CJA 2010.*

The Central Bank's expectations

1. *Firms should be able to demonstrate that AML/CFT & FS is a regular agenda item at Board meetings.*
2. *Firms must have a framework in place for monitoring and identifying updates to legislation that are applicable to the firm and must have a process in place to ensure timely updates to their AML/CFT & FS framework to ensure compliance with these updates.*
3. *When outsourcing any AML/CFT & FS activities, the Central Bank expects:*
 - a. *Firms to have written contracts/service level agreements clearly setting out the obligations and responsibilities of the respective parties;*
 - b. *The Board to be able to demonstrate that it has full oversight of AML/CFT & FS outsourced activities through assurance testing; and*
 - c. *Firms to be in a position to evidence that they are actively monitoring the progress of any management action points resulting from reviews conducted.*
4. *The roles and responsibilities of a firm's Board, Senior Management/MLRO regarding key elements of the firm's AML/CFT & FS framework should be clearly defined and documented.*
5. *The MLRO must have a direct reporting line and access to the Board providing sufficiently detailed reports on a frequent basis.*

Money Laundering and Terrorist Financing (ML/TF) Risk assessment – Findings

1. *The majority of the firms inspected could not demonstrate that they had assessed and documented their ML/TF risks as they pertain to the firm's customers and business activities.*
2. *Some firms could not demonstrate that they had completed a holistic business wide ML/TF risk assessment tailored to the risks associated with the customers and business activities of the firm.*
3. *Reliance was often placed on the risk assessment of the outsourced service provider without the firm ensuring that the risk assessment was reflective of the risks to which the firm is exposed.*
4. *Some firms relied on a risk assessment completed at parent entity level rather than a risk assessment of the firm itself. As a result, the firm had not considered the risks associated with the customers and business activities relevant to the firm.*
5. *In some instances, a third party provided the firm with an overall residual risk rating pertaining to the business wide risks of the firm, however, the firm could not explain how the rating had been reached and therefore could not confirm that it accurately reflected the risk for the firm. Additionally, the firm relied on this rating to determine the level of due diligence required it was required to undertake.*

The Central Bank's expectations

1. *Firms must determine the ML/TF risks facing their business as a whole. Where a firm relies on a third party or parent entity to conduct a risk assessment on its behalf, it must relate to the risk and controls associated with the firm and not solely those associated with the third party or parent entity.*
2. *Firms must document their consideration of the ML/TF & FS risks pertaining to their particular services/products, customers, jurisdictions and distribution channels, mindful of the nature, scale and complexity of the firm's business model.*
3. *The business wide ML/TF risk assessment must be reviewed at least annually. The consideration and approval by the firm's Board of this ML/TF risk assessment must be formally evidenced.*

AML/CFT Policies & Procedures – Findings

1. *In a number of instances, firms did not have their own AML/CFT & FS policies and procedures; rather they relied on those of the third party service provider to which AML/CFT & FS activities were outsourced without assessing whether these policies and procedures were appropriate for the firm.*
2. *Where the firm did have their own AML/CFT & FS policies and procedures, it was noted in some instances that they were not adequately tailored to the firm's business model nor were they sufficiently detailed.*
3. *Some firms could not satisfactorily evidence consideration and approval of the AML/CFT & FS policies and procedures by their Boards and/or Senior Management.*

The Central Bank's expectations

1. *Firms, as a designated person in their own right, must ensure that the AML/CFT & FS policies and procedures in place are:*
 - a. *Appropriately tailored to and reflect the specific customers and business activities and the associated risks inherent to the firm; and*
 - b. *Consistent with Irish legislative requirements.*
2. *Firms must ensure that policies and procedures are subject to review on at least an annual basis and are updated and reviewed more frequently as and when required.*
3. *Consideration and approval of the AML/CFT & FS policies and procedures by the Board must be satisfactorily evidenced.*

Customer Due Diligence - Findings

1. *For a large proportion of firms engaged in Lending, where the entity is structured as Special Purpose Entity (SPE), firms were inconsistent in determining who the customer of the firm is in order to conduct Customer Due Diligence (CDD). Certain firms were concentrating CDD efforts on the borrower of the SPE but not on the loan noteholders funding the SPE to facilitate the loan to the borrower. In other instances, firms were conducting CDD on the loan noteholders and not the borrower.*
2. *Firms displayed varying levels of understanding in relation to CDD, there was a number of instances identified where firms had applied an exemption to CDD referencing section 34 of the CJA 2010, without ensuring the customer met the criteria of section 34, including determining the customer as low risk. In some instances, this exemption had been applied to customers deemed higher risk by the firm.*

The Central Bank's expectations

1. *In order to assess the ML/TF & FS risk associated with the business of the firm, firms must consider the ML/TF & FS risk arising from loan noteholders and borrowers and must conduct appropriate due diligence in accordance with the level of risk.*
2. *Firms should ensure CDD policies and procedures are appropriate, up to date and in-line with legislative obligations.*

Politically Exposed Persons ('PEPs') and Financial Sanctions ('FS') - Findings

1. *Policies and procedures concerning the identification of potential PEP and FS exposures were high level and lacked any clarity around what steps should be taken if an alert resulted in a positive hit.*
2. *In instances where screening tools were relied upon, there was no evidence of any assurance testing or monitoring being carried out on these to ensure on an ongoing basis that they were fit for purpose.*

The Central Bank's expectations

1. *Firms should ensure appropriate policies and procedures are in place to identify and escalate PEP and FS alerts. This should include the process and the appropriate reporting lines to be followed in the event of a FS or PEP being identified.*
2. *Where screening tools are relied upon, firms should ensure appropriate oversight and ongoing assurance testing and monitoring is in place to ensure they are fit for purpose.*

Suspicious Transaction Reporting ('STR') - Findings

1. *Policies and procedures relating to STR were high level and lacked clarity around the steps to be taken in the event of a suspicion arising.*
2. *In most instances, reliance was placed on the STR procedures of the entity, to which such activities were outsourced, with no oversight by the firm of these procedures.*
3. *The MLRO's, or equivalents, details were not contained in the procedures or training materials. Consequently, firms could not demonstrate to the Central Bank how employees of the firm were made aware of who to contact in the event of a suspicion arising.*
4. *As there was no board reporting relating to AML/CFT & FS pre 2019, there was no evidence of statistics relating to STRs being reported to the Board.*
5. *Firms were not aware of the GoAML system, which is required to report STRs to the Financial Intelligence Unit.*

The Central Bank's expectations

1. *Firms should have sufficiently detailed policies and procedures relating to STR to assist staff members in fulfilling their obligations and escalating suspicions, as an example, employees should be made aware of the escalation process, including the personnel to whom suspicions should be raised/reported.*
2. *Where third parties are being relied upon to provide AML/CFT & FS services, the firm should ensure the third party is subject to the appropriate level of oversight.*
3. *The levels of STRs being made by the firm should be regularly reported to the board.*
4. *STRs submitted to FIU Ireland⁵ [5: FIU Ireland is part of the Garda National Economic Crime Bureau] can only be submitted via the goAML application⁶ [6: The goAML application is an electronic application which provides FIU Ireland with a central reception point for receiving, processing and analysing STRs - <https://fiu-ireland.ie/Account/LogOn>]. Firms should ensure that they are registered, and familiar with, the goAML system to ensure that STRs can be submitted in a timely manner. Similarly, the Revenue Commissioners (Revenue) require firms to submit STRs using Revenue's Online Service (ROS) only⁷ [7: For further information, please refer to the Revenue website. <https://www.revenue.ie/en/online-services/services/register-for-an-onlineservice/submit-suspicious-transaction-reports.aspx>].*

Training - Findings

1. *Training materials were not tailored to the activities of the firm. In most instances, training was outsourced to a third party provider and a generic training course was provided to staff. This did not include any reference to the risks associated with the firm itself or include any specifics relating to the firm, such as what might be considered a red flag in the context of customer transactions or what staff should do in the event of identifying a potentially suspicious transaction.*
2. *In some instances, directors, senior management and customer facing staff received the same general training as all staff without any additional or tailored training. These staff play a pivotal role in identifying ML/TF issues and/or suspicions and are not receiving the requisite level of training.*
3. *Training materials were not always up to date and reflective of current legislative requirements.*

The Central Bank's expectations

1. *Training materials should be tailored to the activities of the firm and should be reflective of the standards and practices that the firm should be exhibiting to meet their obligations.*
2. *Training processes should be reviewed to ensure that the appropriate level of training is being received by all staff, consideration is required as to the necessity for bespoke training for customer facing staff, directors and senior management of the firm given their important role in the management of ML/TF & FS risk.*
3. *Training materials should be kept up to date and in line with legislative requirements.*