

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 11/02/2021 1:25:16 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID918/2018  
File Title: MATTHEW HALL v PITCHER PARTNERS (A FIRM)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 11/02/2021 1:25:31 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

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

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



Federal Court of Australia  
District Registry: Victoria  
Division: General

**Matthew Hall**  
Applicant

**Pitcher Partners (a firm)**  
First Respondent

**Ernst & Young LLP**  
Second Respondent

To the Second Further Amended Statement of Claim dated 14 December 2020 (**2FASC**), the First Respondent says as follows:

*Note: In this Defence, the First Respondent refers to defined terms and headings as used in the 2FASC, which defined terms and headings are used in this Defence without admission.*

## **A. INTRODUCTION**

### **A.1 The Applicant and the Group Members**

1. As to the allegations contained in paragraph 1 of the 2FASC, it:
  - (a) admits that the Applicant has purported to commence this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976 (Cth)*;
  - (b) denies that the Applicant or any Group Member suffered loss and damage as a result of the First Respondent as pleaded in the 2FASC; and
  - (c) otherwise does not know and therefore cannot admit the allegations contained in paragraph 1 of the 2FASC.
2. It does not know and therefore cannot admit the allegations contained in paragraph 2 of the 2FASC.

Filed on behalf of (name & role of party)	_____	Pitcher Partners, the First Respondent
Prepared by (name of person/lawyer)	_____	Sam Bond : Kelly Powers
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[Version 2 form approved 09/05/2013]

3. It does not know and therefore cannot admit the allegations contained in paragraph 3 of the 2FASC.

## **A.2 The Respondents**

4. Save that it says that at all material times it conducted business within Victoria as accountants, auditors and advisors under the partnership name "Pitcher Partners Melbourne" and not "Pitcher Partners", it otherwise admits the allegations contained in paragraph 4 of the 2FASC.

- 4A. It admits the allegations contained in paragraph 4A of the 2FASC.

## **A.3 SGH**

5. Save that at all material times, SGH was required:
  - (a) pursuant to section 286 of the Corporations Act, to keep written financial records that:
    - (i) correctly record and explain its transactions and financial position and performance; and
    - (ii) would enable true and fair financial statements to be prepared and audited;
  - (b) pursuant to section 292 of the Corporations Act, to prepare a financial report and a directors' report for each financial year;
  - (c) pursuant to section 295 of the Corporations Act, to ensure that its financial report for a financial year contains:
    - (i) the financial statements for the year;
    - (ii) the notes to the financial statements; and
    - (iii) the directors' declaration about the statements and notes;
  - (d) pursuant to section 296 of the Corporations Act, to ensure that its financial report for a financial year complies with the accounting standards; and
  - (e) pursuant to section 297 of the Corporations Act, to ensure that its financial statements and notes for a financial year gave a true and fair view of the financial position and performance of SGH;
  - (f) save that it relies on the full terms and effect of the ASX Listing Rules, including that (in specific answer to paragraph 5(f)(ii) of the 2FASC) Listing Rule 19.12 defines "aware" to mean that "*an entity becomes aware of information if, and as soon as, an*

*officer of the entity ... has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity” and further that paragraph 5 of the 2FASC makes no allegation against it,*

it otherwise admits the allegations contained in paragraph 5 of the 2FASC.

## **B. SGH'S BUSINESS**

### **B.1 Services provided by SGH**

6. It admits the allegations contained in paragraph 6 of the 2FASC.
7. Save that it admits that from time to time during the Relevant Period SGH performed some PI Work on a “no win no fee” (or conditional fee arrangement), it otherwise does not know and therefore cannot admit the allegations contained in paragraph 7 of the 2FASC.
8. It says paragraph 8 of the 2FASC is embarrassing and liable to be struck out in the absence of particulars of the matters pleaded and, under cover of that objection, does not know and therefore cannot admit the allegations contained in paragraph 8 of the 2FASC.
9. It does not know and therefore cannot admit the allegations contained in paragraph 9 of the 2FASC.

### **B.2 SGH's acquisition of PSD**

10. Save that it refers to the full terms and effect of the “30 March Publications” as alleged, it otherwise admits the allegations contained in paragraph 10 of the 2FASC.
11. Save that it refers to the full terms and effect of the “30 March Publications” as alleged, it otherwise does not admit the allegations contained in paragraph 11 of the 2FASC.
12. Save that it refers to the full terms and effect of the “30 March Publications” as alleged, it otherwise does not admit the allegations contained in paragraph 12 of the 2FASC.
13. Save that it admits that SGH management developed a “3 year integrated financial model” (Profit & Loss, Balance Sheet, Cash Flow)” (as described in the document referred to as the “Project Malta Board Information Session dated 20 March 2015” in the particulars sub-joined as “(ii)” to paragraph 22(a) of the 2FASC -SGH.029.001.0018 at .0059), it otherwise does not know and therefore cannot admit the allegations contained in paragraph 13 of the 2FASC.

14. It admits the allegations contained in paragraph 14 of the 2FASC.

### **B.3 The significance of PI work to SGH**

15. Save that during the Relevant Period “PI Work” (as defined in the 2FASC) was a significant contributor to the revenue of SGH it otherwise does not know and therefore cannot admit the allegations contained in paragraph 15 of the 2FASC.

### **B.4 Types of UK PI Work**

16. Save that paragraph 16 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 16 of the 2FASC.

17. Save that paragraph 17 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 17 of the 2FASC.

18. Save that paragraph 18 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 18 of the 2FASC.

### **B.5 Reforms relevant to UK PI Work**

19. Save that paragraph 19 of the SOC does not make any allegation of fact against it, it refers to paragraph 20 herein and otherwise does not know and therefore cannot admit the allegations contained in paragraph 19 of the 2FASC.

20. Save that paragraph 20 of the 2FASC does not make any allegation of fact against it, it says further that:

- (a) insofar as any of the steps particularised in paragraphs A1 to A25 of Schedule A of the 2FASC included regulatory or legislative changes to personal injuries litigation designed to reduce the number and cost of personal injury claims associated with road traffic accidents as part of the alleged “RTA Claim Reform Programme” (which is not admitted) then, as particularised in those paragraphs, such steps or regulatory changes were in place by mid 2013, approximately two years prior to SGH’s announced intention to acquire the PSD;
- (b) insofar as any of the steps particularised in paragraphs A26 to A32 of Schedule A of the 2FASC concerned specific proposed changes to increase the defined “Small Claims PI Threshold” as part of the alleged “Small Claims Track Threshold Reform” (which is not admitted), then:

- (i) the expressly stated intention of the UK Government in the period from around December 2009 to as at late October 2014 was consistently either to not implement, or to defer considering whether to implement, any such reform changes insofar as they related to the Small Claims PI Threshold (as particularised in paragraphs A5(b), A16(c), A18(b)(iv), A22 A26, A27(a), A27(b)(iii), A30(b) and A31(c) of Schedule A of the 2FASC);
- (ii) as at 30 June 2015, and or the time of the alleged 28 August 2015 "Pitchers Appendix 4E Misleading Conduct Contravention" and or the further alleged "30 September Misleading Conduct Contraventions":
  - (A) there had been no change to the UK Government's position as to having previously, and repeatedly, deferred the consideration of any reform concerning potentially increasing the Small Claims PI Threshold; and
  - (B) the UK Government had not in fact taken any material step to increase the Small Claims PI Threshold for whiplash or other road traffic accident claims or otherwise implement the Small Claims Track Threshold Reform;
- (iii) Notwithstanding the statements by the UK Government on 25 November 2015, concerning its restated intention to consider consulting on reforming whiplash claims (as alleged in paragraph 88 of the 2FASC and as reported by SGH to the ASX by the "26 November Announcement", alleged in paragraph 89 of the 2FASC), in the period from 25 November 2015 to 24 February 2016 (being the conclusion of the Relevant Period as defined in paragraph 1 of the 2FASC) the UK Government did not take any material step to:
  - (A) increase the Small Claims PI Threshold for whiplash or other road traffic accident claims; or
  - (B) otherwise implement the alleged Small Claims Track Threshold Reform;
- (iv) it denies that, as at the date of filing of the 2FASC in late 2020:
  - (A) there has in fact been any implementation of an increase to the Small Claims PI Threshold by the UK Government; or
  - (B) there has in fact been any implementation of the Small Claims Track Threshold Reform (as defined in 2FASC paragraph 20(b));
- (c) it otherwise does not know and therefore cannot admit the allegations contained in paragraph 20 of the 2FASC.

21. Save that paragraph 21 of the 2FASC does not make any allegation of fact against it, it otherwise refers to paragraph 20 herein and does not know and therefore cannot admit the allegations contained in paragraph 21 of the 2FASC.
22. Save that:
- (a) paragraph 22 of the 2FASC does not make any allegation of fact against it;
  - (b) it refers to paragraph 20 herein; and
  - (c) it denies that as at 30 June 2015 the alleged Small Claims Track Threshold Reform was a reform which remained a “strong possibility”,  
  
it otherwise does not know and therefore cannot admit the allegations contained in paragraph 22 of the 2FASC.
23. It refers to paragraphs 19 to 22 herein and otherwise denies the allegations contained in paragraph 23 of the 2FASC.

#### **B.6 Potential Impact of the RTA Claim Reform Programme as at 30 June 2015**

24. Save that paragraph 24 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 24 of the 2FASC.
25. Save that paragraph 25 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 25 of the 2FASC.
26. Save that paragraph 26 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 26 of the 2FASC.
27. Save that paragraph 27 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 27 of the 2FASC.
28. Save that paragraph 28 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 28 of the 2FASC.

29. Save that paragraph 29 of the 2FASC does not make any allegation of fact against it, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 29 of the 2FASC.
30. Save that paragraph 30 of the 2FASC does not make any allegation of fact against it, it otherwise refers to paragraphs 19 to 23 herein and denies the allegations contained in paragraph 30 of the 2FASC.
31. It refers to paragraphs 24 to 30 herein and otherwise denies the allegations contained in paragraph 31 of the 2FASC.
32. It refers to paragraphs 24 to 30 herein and otherwise denies the allegations contained in paragraph 32 of the 2FASC.
33. It refers to paragraphs 24 to 30 herein and otherwise denies the allegations contained in paragraph 33 of the 2FASC.

#### **B.7 SGH's exposure to Regulatory Risk by reason of the acquisition of PSD**

34. Save that it refers to the full terms and effect of the "30 March Publications" as alleged, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 34 of the 2FASC.
35. Save that it refers to the full terms and effect of the "30 March Publications" as alleged, it otherwise refers to paragraphs 19 to 23 herein and denies the allegations contained in paragraph 35 of the 2FASC.
36. It refers to paragraph 35 herein and otherwise denies the allegations contained in paragraph 36 of the 2FASC.
37. Save that it refers to the full terms and effect of the "FY15 Full Year Financial Results Investor Presentation" as particularised and the "30 March Publications" as alleged, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 37 of the 2FASC.
38. It refers to paragraphs 34 to 37 herein and otherwise does not know and therefore cannot admit the allegation contained in paragraph 38 of the 2FASC.
39. It refers to paragraphs 30, 31 and 34 to 37 herein and otherwise denies the allegations contained in paragraph 39 of the 2FASC.

40. It refers to paragraphs 30, 31 and 39 herein and otherwise denies the allegations contained in paragraph 40 of the 2FASC.

## **B.8 SGH's exposure to Growth Strategy Risks**

41. Save that it refers to paragraphs 12 to 14 and 34 to 40 herein, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 41 of the 2FASC.

42. Save that it refers to paragraphs 12 to 14 and 41 herein, it otherwise does not know and therefore cannot admit the allegations contained in paragraph 42 of the 2FASC.

## **C. PITCHER PARTNERS' ROLE**

### **C.1 Pitchers' Due Diligence Retainer**

43. Save that:

(a) Pitcher Partners Consulting Pty Ltd was not wholly owned by "Pitchers" (being the First Respondent sued in its capacity as a firm) but was owned by Pitcher Partners Advisors Pty Ltd;

(b) it refers to and relies upon the full terms and effect of the letter dated 6 March 2015 sent by Pitcher Partners Consulting Pty Ltd to Wayne Brown as chief financial officer of SGH (cited in the particulars sub-joined to paragraph 43 of the 2FASC as PIP.900.003.0001), including that:

(i) Pitcher Partners Consulting Pty Ltd had been requested by SGH to undertake an examination for mathematical reasonability of the Slater & Gordon Financial Model "SGH Financial Model FY16 — FY18 v3";

(ii) the scope of the examination by Pitcher Partners Consulting Pty Ltd was limited to checking calculations were consistent across ranges; checking information flowed logically through the model; and checking calculation logic; and

(iii) contained an express statement to the effect that the examination was not an audit or a review engagement and did not provide assurance in relation to the Financial Model beyond the scope of works undertaken as outlined above;

it otherwise denies the allegations contained in paragraph 43 of the 2FASC.

44. Save that it refers to and relies upon the full terms and effect of the documents cited in the particulars sub-joined to paragraph 44 of the 2FASC and it refers to paragraph 43 herein, it otherwise denies the allegations contained in paragraph 44 of the 2FASC.

45. Save that it refers to paragraphs 43 and 44 herein and relies on the full terms and effect of the document entitled "Project Malta Board Information Session 27 March 2015" (SGH.029.001.0997-1212), it otherwise denies the allegations contained in paragraph 45 of the 2FASC.
- 46A. Save that it refers to and relies on the full terms and effect of the documents cited in the particulars sub-joined to paragraph 46A of the 2FASC, it otherwise denies the allegations contained in paragraph 46A of the 2FASC.
- 46B. Save that it admits receiving the EY UK Transaction Insights Report, it refers to and relies on the full terms and effect of the documents cited in the particulars sub-joined to paragraph 46B of the 2FASC, and otherwise denies the allegations contained in paragraph 46B of the 2FASC.
46. Save that it refers to paragraphs 43 to 46B herein, it otherwise denies the allegations contained in paragraph 46 of the 2FASC.

## **C.2 Pitchers' Audit Obligations**

47. As to paragraph 47,

it admits the allegations contained in paragraph 47 of the 2FASC and says further that:

- (a) SGH retained the First Respondent in respect of the FY15 audit engagement pleaded in paragraph 47 of the 2FASC in or about May 2015;
- (b) the terms of the engagement pleaded in paragraph 47 of the 2FASC were set out, inter alia, in an Engagement Letter dated 6 May 2015 (referred to in the 2FASC as PIP 002.001.0369) (**FY15 Engagement Letter**);
- (c) the First Respondent relies upon the full terms and effect of the FY15 Engagement Letter, which included terms to the following effect:
  - (i) the audit procedures selected by the First Respondent to obtain audit evidence were to depend on the First Respondent's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error (*express term under 'Scope'*);
  - (ii) there would be inherent limitations in the audit and inherent limitations of internal controls which meant there was an unavoidable risk that some material misstatement may not be detected even though the audit is properly

planned and performed in accordance with Australian Auditing Standards (*express term under "Scope"*);

- (iii) the First Respondent's audit would be conducted on the basis that the SGH directors' acknowledged and understood that they had responsibility:
  - (A) for the preparation of the financial report that gave a true and fair view in accordance with the Corporations Act and Australian Accounting Standards;
  - (B) for such internal control as the directors were to determine was necessary to enable the preparation of the financial report being free from material misstatement, whether due to fraud or error; and
  - (C) to provide the First Respondent with:
    - (I) access to all information of which the directors and management were aware was relevant to the preparation of the financial report, such as records, documentation and other matters;
    - (II) additional information that the First Respondent may request from the directors and management for the purpose of the audit; and
    - (III) unrestricted access to persons within SGH from whom the First Respondent might determine it was necessary to obtain audit evidence (*express term under "Scope"*);
  - (D) the FY15 Engagement Letter was to be effective for future years unless the First Respondent advised SGH of its amendment or replacement or the engagement is terminated (*express term under "Other"*).
- (d) the First Respondent's Terms of Engagement were attached to the FY15 Engagement Letter and were to be read in conjunction with the letter; and
- (e) the First Respondent relies upon the full terms and effect of the Terms of Engagement attached to the FY15 Engagement Letter, including:
  - (i) a term to the effect that, other than as expressly set out in the Terms of Engagement, the total liability of the First Respondent for loss or damage (including indirect and/or consequential loss or damage), caused by, resulting from, or in relation to the First Respondent's services, including, but not limited to loss or damage arising from breach of contract, negligence, any tort, equity, any statutory provision and any conduct by the First Respondent (save for fraudulent or criminal conduct, and whether or not the First Respondent was

advised of the possibility of such loss or damage, was limited (to the extent permitted by law) to an amount equal to three times the fees paid by SGH to the First Respondent in respect of the Services (*express term under clause 9.1(c) of the Terms of Engagement*);

- (ii) a term to the effect that the First Respondent may engage third parties on behalf of SGH (as agent) in which case the First Respondent was not to be responsible for the quality content or effect of advice given by such third parties and that the First Respondent was entitled to rely on the advice from such third parties without further investigation or consideration (*clauses 6.1 and 6.2 of the Terms of Engagement*);
- (iii) SGH agreed that it was responsible for advising the First Respondent of any proposed transactions or change in circumstances that may impact on the First Respondent's advice and that the First Respondent's advice was limited to the specific circumstances that applied in the course of the First Respondent's engagement (*clause 4.5 of the Terms of Engagement*); and
- (iv) The First Respondent would not provide advice relating to foreign jurisdictions, including advice in relation to the laws and requirements of any jurisdiction other than Australia and, if the First Respondent provided information on a matter that related to countries other than Australia, such information would not constitute advice or services provided under the retainer pursuant to the FY15 Engagement Letter and could not be relied on by SGH (*clause 4.7 of the Terms of Engagement*);
- (v) to the extent permitted by law, the First Respondent excluded all warranties, conditions or terms, other than those expressly set out in the terms and conditions including, but not limited to, all warranties, conditions or terms implied in fact or by law. Nothing in the clause had the effect of excluding, restricting or modifying any non-excludable statutory condition, warranty, guarantee, right, remedy or other benefit that was preserved by the *Competition and Consumer Act 2010 (Cth)* (or any other legislative provision) (*clause 9.1(a) of the Terms of Engagement*);
- (vi) where the First Respondent was not entitled to exclude a warranty, condition or term implied in fact or by law, and to the extent permitted by law, the First Respondent's liability for breach of any such warranty, condition or term was limited to, at the option of the First Respondent, either the resupply of the services or payment of the reasonable cost of having the services resupplied (*clause 9.1(b) of the Terms of Engagement*);
- (vii) SGH agreed that where the *Professional Standards Act 2003 (Vic)* (**Professional Standards Act**) or similar legislation in any state or federally applied to limit the liability of the First Respondent, it overrode any clause in

the Terms of Engagement that provided for a limit of liability in excess of the amounts provided by the legislation, but did not override any clause that provided for a limit of liability below the amounts provided by the legislation (*clause 9.1(f) of the Terms of Engagement*); and

(viii) in any claim against the First Respondent for loss, the loss was to be proportionately reduced by the extent of SGH's contribution to that loss (*clause 9.2(b) of the Terms of Engagement*).

48A. Save that it refers to and relies upon the positive allegations made in paragraphs 5 and 47 herein:

- (a) it admits that the First Respondent, in the FY15 Engagement Letter, stated it would do the things alleged in paragraphs 48A(a) and 48A(b) of the 2FASC;
- (b) it denies that the First Respondent was obligated to engage and provide instructions to EY UK by the FY15 Engagement Letter, as alleged in paragraph 48A(c) of the 2FASC;
- (c) it says further that the First Respondent was not engaged to conduct an audit of SGH UK;
- (d) it refers to the full terms and effect of the FY15 Engagement Letter (PIP.002.001.0369); and
- (e) otherwise denies the allegations contained in paragraph 48A of the 2FASC.

48. As to paragraph 48 of the 2FASC, save that:

- (a) it relies on the full terms and effect of sections 307, 307A and 308 of the Corporations Act;
- (b) it relies upon the full terms and effect of the auditing standards in force during the Relevant Period, which standards recognised the following matters (in successive iterations and notwithstanding non-material changes in language):
  - (i) the auditor's opinion on the financial report deals with whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework. Such an opinion is common to all audits of financial reports. The auditor's opinion therefore does not assure, for example, the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity;

## **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph A1.*

- (ii) an audit in accordance with the auditing standards requires the auditor to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance. It is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk to an acceptably low level. However, reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive;

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph 5.*

- (iii) an auditor is not expected to, and cannot, reduce audit risk to zero and cannot therefore obtain absolute assurance that the financial report is free from material misstatement due to fraud or error. This is because there are inherent limitations in an audit, which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive. The inherent limitations of an audit arise from: (a) the nature of financial reporting; (b) the nature of audit procedures; and (c) the need for the audit to be conducted within a reasonable period of time and at a reasonable cost;

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph A45.*

- (iv) professional judgement is essential to the proper conduct of an audit and is necessary in particular regarding decisions about: (a) materiality and audit risk; (b) evaluating whether sufficient appropriate audit evidence has been maintained; and (c) the drawing of conclusions based on the audit evidence obtained (for example, assessing the reasonableness of estimates made by management in preparing the financial report);

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph A23.*

- (v) audit risk is a function of the "risks of material misstatement" (being the risks that the financial report is materially misstated prior to audit) and "detection risk" (being the risk that the procedures performed by the auditor to reduce audit risk to an acceptable low level will not detect a misstatement that exists and that could be material, either individually or when aggregated with other misstatements). The assessment of risks is a matter of professional judgement, rather than a matter capable of precise measurement;

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraphs 13 and A32.*

- (vi) detection risk relates to the nature, timing and extent of the auditor's procedures that are determined by the auditor to reduce risk to an acceptably low level. It is therefore a function of the effectiveness of an audit procedure and of its application by the auditor. Matters such as: (a) adequate planning; (b) proper assignment of personnel to the engagement term; (c) the application of professional scepticism; and (d) supervision and review of the audit work performed, assist to enhance the effectiveness of an audit procedure and of its application and reduce the possibility that an auditor might select an inappropriate audit procedure, misapply an appropriate audit procedure, or misinterpret the audit results;

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph A43.*

- (vii) the audit process involves the exercise of professional judgement by the auditor in planning and performing an audit of a financial report;

#### **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph 16.*

- (viii) the financial report subject to audit is that of the entity, prepared by the management of the entity, with oversight from those charged with governance; and

## **PARTICULARS**

*Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved on 27 October 2009 and 11 November 2013) at paragraph 4.*

- (c) it says further that, by reason of the matters identified in paragraph 48(b) above:
- (i) the provision of audit services in accordance with the Corporations Act (of a kind as provided by the First Respondent) necessarily involved the exercise by an auditor of his or her professional judgement and the forming by the auditor of professional opinions in respect of which reasonable minds could differ; and
  - (ii) in providing such audit services, an auditor was not providing absolute assurance and was not verifying or warranting the accuracy of the contents of the financial report that had been prepared by the management of the entity the subject of the audit and for which that entity was responsible;

it otherwise admits the allegations contained in paragraph 48 of the 2FASC.

49. Save that:

- (a) it relies on the full terms and effect of the 1HY15 Engagement Letter;
- (b) it relies on the full terms and effect of the FY15 Engagement Letter; and
- (c) it refers to and relies on paragraphs 5 and 48 herein;

it otherwise denies the allegations in paragraph 49 of the 2FASC.

50. As to paragraph 50 of the 2FASC, save that:

- (a) it refers to and relies on paragraph 47 herein; and
- (b) it was an express term of Terms of Engagement attached to the FY 15 Engagement Letter that reasonable skill and care would be used in providing services under the FY15 Retainer (per Terms of Engagement clause 2);

it otherwise admits the allegations contained in paragraph 50 of the 2FASC.

### **C.3 Pitchers Audit Team**

51. It admits the allegations contained in paragraph 51 of the 2FASC.
52. As to paragraph 52 of the 2FASC:
- (a) it relies on the full terms and effect of the statutory provisions pleaded in the paragraph; and
  - (b) it otherwise does not admit the allegations contained in paragraph 52 of the 2FASC.
53. As to paragraph 53 of the 2FASC:
- (a) it relies on the full terms and effect of the statutory provisions pleaded in the paragraph; and
  - (b) otherwise denies the allegations contained in paragraph 53 of the 2FASC.

#### **C.4 Pitcher Partners' Audit Work**

54. Save that:
- (a) it refers to and relies on paragraph 47 herein; and
  - (b) it performed work and provided services in accordance with the 1HY15 Engagement Letter and the FY15 Engagement Letter;
  - (c) it denies the allegations contained in paragraphs 54(i), (j) and (k) of the 2FASC;
- it otherwise does not admit the allegations contained in paragraph 54 of the 2FASC.
55. Save that:
- (a) it refers to and relies on paragraphs 47 to 48 herein; and
  - (b) it performed work and provided services in accordance with the 1HY15 Engagement Letter and the FY15 Engagement Letter;
- it otherwise denies the allegations contained in paragraph 55 of the 2FASC.

#### **C.5 Supervision of EY UK.**

- 56A. Save that it refers to and relies on the full terms and effect of the "questionnaire" document alleged (PIP.002.001.0853) it otherwise admits the allegations in paragraph 56A of the 2FASC.
- 56B. Save that it refers to and relies on the full terms and effect of the "APM-2 Risk Factors" document alleged (PIP.002.001.0266), it otherwise admits the allegations in paragraph 56B of the 2FASC.

56C. Save that it refers to and relies on the full terms and effect of the “Slater & Gordon (UK) Audit Strategies Memorandum” document alleged (PIP.002.001.0022), it otherwise admits the allegations in paragraph 56C of the 2FASC.

56D. Save that it refers to and relies on the full terms and effect of the 21 August 2015 file note document alleged (PIP.002.001.0276), it otherwise admits the allegations in paragraph 56D of the 2FASC.

56E. Save that it denies the attendance of Ben Powers and Brendan Britten and that it refers to and relies on the full terms and effect of the 6PM 21 August 2015 file note document alleged (PIP.002.001.0275), it otherwise admits the allegations in paragraph 56E of the 2FASC.

56F. Save that it refers to and relies on the full terms and effect of the 25 August 2015 file note document alleged (PIP.002.001.0277), it otherwise admits the allegations in paragraph 56F of the 2FASC.

56G. Save that:

- (a) it denies the terms of any agreement in the terms alleged in paragraph 56G(a);
- (b) it refers to and relies on the full terms and effect of the ‘Slater & Gordon (UK) 1 Ltd - DRAFT- 30 June 2015 audit results update’ document (PIP.006.001.7652), including that it was in terms a draft report;
- (c) it refers to and relies on the full terms and effect of the 26 August 2015 email document alleged (PIP.006.001.7651),

it otherwise admits the allegations in paragraph 56G of the 2FASC.

56H. Save that:

- (a) it refers to and relies on the full terms and effect of the 27 August 2015 email and attached report alleged (PIP.006.001.7690 and PIP.006.001.7691);
- (b) it refers to and repeats paragraph 56G herein;
- (c) it admits the allegation that the report was “substantially identical” to the draft report referred to in paragraph 56G of the 2FASC; and

otherwise admits the allegations in paragraph 56H of the 2FASC.

56I. Save that it refers to and relies on the full terms and effect of the 27 August 2015 email and attached audit pack referred to in the particulars subjoined to paragraph 56I of the 2FASC (PIP.005.001.0627 and PIP.005.001.0628), it otherwise admits the allegations in paragraph 56I of the 2FASC.

## **D. SGH'S FINANCIAL STATEMENTS**

### **D.1. Appendix 4E**

56J. Save that it says that it performed work to the effect of that summarised in the document referred to in the particulars, to the full terms and effect of which it shall refer at trial, it otherwise denies the allegations in paragraph 56J of the 2FASC.

56K. Save that it admits receiving the draft version of the FY15 financial statements alleged and refers to and relies on the full terms and effect of the document (PIP .002.001.0410), it otherwise does not admit the allegations contained in paragraph 56K of the 2FASC.

56L. Save that it refers to and relies on the full terms and effect of the email and attached draft version of preliminary accounts and further draft of preliminary accounts documents referred to in the particulars subjoined to paragraph 56L of the 2FASC (PIP.006.002.2220, PIP.006.002. 2221 and PIP.002.001.0857), it otherwise admits the allegations in paragraph 56L of the 2FASC.

56M. Save that:

- (a) it refers to and relies on the full terms and effect of the interim report document referred to in the particulars subjoined to paragraph 56M of the 2FASC (PIP.002.001.0243);
- (b) in addition to the conditions precedent to the First Respondent providing an unqualified audit opinion on the FY15 Financial Report (as alleged in paragraph 56M(a) of the 2FASC), the First Respondent also required that the FY15 Financial Report first be approved by the SGH Board;
- (c) it says that the item alleged in paragraph 56M(b)(iii) of the 2FASC was titled, "Review of UK component auditor working papers and return of Component Auditor Questionnaire to PP",

it otherwise admits the allegations in paragraph 56M of the 2FASC.

56N. Save that:

- (a) it refers to and relies on the full terms and effect of the minutes of the ACRM meeting on 27 August 2015 (PIP.002.001.0054), the 28 August 2015 file note of Fitzpatrick (PIP.002.001.0286) and the File note of Straubinger dated 27 August 2015 (PIP.002.001.0628),
- (b) it refers to and repeats paragraph 56M(b) herein;

it otherwise denies the allegations in paragraph 56N of the 2FASC.

56O. Save that it refers to and relies on the full terms and effect of the documents referred to in the particulars subjoined to paragraph 56O of the 2FASC (PIP.002.001.0218 and PIP.002.001.0562), it otherwise admits the allegations in paragraph 56O of the 2FASC.

56P. Save that:

- (a) it refers to and relies on the full terms and effect of the documents referred to in the particulars subjoined to paragraph 56P of the 2FASC (PIP.002.001.0054 and PIP.002.001.0048);
- (b) it says that, on or about 28 August 2015, Andrew Alexander Grech (of SGH) signed a Compliance Statement of a document titled Appendix 4E;
- (c) it relies on the full terms and effect of the Appendix 4E document, which terms included:
  - (i) the title "Appendix 4E Statement Preliminary final report (the accounts are in the process of being audited)";
  - (ii) "[t]his financial report does not include all the notes of the type normally included in an annual financial report. Accordingly, this report is to be read in conjunction with the Annual Report for the year ended 30 June 2015 and the announcements made by the Group during the reporting period in accordance with the continuous disclosure requirements of the Corporations Act 2001 and the ASX Listing Rules"; and
  - (iii) "On 29 May 2015, the Company acquired businesses from Quindell Plc, which it now refers to as the Professional Services Division (PSD). The Company is continuing a process of reviewing the businesses and assets within the PSD and in that context continues to gain a better understanding of those assets and businesses,"

it otherwise denies the allegations contained in paragraph 56P of the 2FASC.

56Q. Save that:

- (a) it refers to and repeats paragraph 56P herein;
- (b) it admits that the Appendix 4E recorded that SGH (and its controlled entities) had intangible assets in the sum of \$1,229,398,000 (MHL.001.001.0026 at page 4) and that the sum of \$1,082,519,000 was recorded as an addition to non-current assets, including goodwill, within the PSD segment of the group's operations (MHL.001.001.0026 at page 20);

it otherwise admits the allegations in paragraph 56Q of the 2FASC.

## D.2. Pitchers Continuing Work

56R. Save that:

- (a) it refers to and relies on the full terms and effect of the file note of Fitzpatrick dated 16 September 2015 (PIP.002.001.0620);
- (b) Fitzpatrick's file note of 16 September 2015 stated, inter alia, "PSD impairment – prudent to undertake and will need to exclude any cashflows from NIHL matters. Going concern also flows from this need for group forecasts and cashflow model and input from EY re UK position";

it otherwise does not admit the allegations in paragraph 56R of the 2FASC.

56S. Save that:

- (a) it admits receiving a report from Deloitte Touche Tohmatsu entitled 'Valuation critique on Deferred Consideration' dated 18 September 2015 and
- (b) it refers to and relies upon the full terms and effect of that document (PIP.002.001.0566);

it otherwise admits the allegations in paragraph 56S of the 2FASC.

56T. Save that:

- (a) it refers to and repeats paragraph 56N above;
- (b) it admits receiving the further status update reports from EY UK (PIP.002.001.0238, PIP.006.002.5100, PIP.006.001.1710, PIP.005.003.0277, and PIP.002.001.0183), the full terms and effect of which it shall refer to at trial;

it otherwise denies the allegations in paragraph 56T of the 2FASC.

56U. Save that a conference call was held on or about 23 September 2015 between SGH management, the First Respondent and EY UK, and it refers to and relies upon the full terms and effect of the file note referred to in the particulars sub-joined to paragraph 56U of the 2FASC (PIP.002.001.0287), it otherwise admits the allegations in paragraph 56U of the 2FASC.

56V. Save that:

(a) it refers to and relies upon the full terms and effect of the email of Howarth (EY UK) referred to in the particulars sub-joined to paragraph 56V of the 2FASC (PIP.004.001.0005);

(b) it does not admit the allegations in 56V(b) of the 2FASC;

it otherwise admits the allegations contained in paragraph 56V of the 2FASC.

56W. Save that it refers to and relies upon the full terms and effect of the email of Horwath (EY UK) referred to in the particulars sub-joined to paragraph 56W of the 2FASC (PIP.004.001.0287), it otherwise admits the allegations in paragraph 56W of the 2FASC.

56X. Save that:

(a) handwritten comments were made on an email from Horwath received on 24 September 2015 (within the document PIP.002.001.0287, but not the email alleged in paragraph 56V of the 2FASC);

(b) the handwritten comment stated, inter alia, "PP considered 24/9 and formed the view that so long as managements [sic] cash flow forecasts were reliable and based on reasonable assumptions – the lower end of the range was supportable. PP view is that to use upper end of range you would have to form the view that forecasts and underlying assumptions were unreliable / not supportable";

it otherwise admits the allegations in paragraph 56X of the 2FASC.

56Y. Save that it refers to and relies upon the full terms and effect of the file note of Harrison referred to in the particulars sub-joined to paragraph 56Y of the 2FASC (PIP.002.001.0454), it otherwise admits the allegations in paragraph 56Y of the 2FASC.

56Z. It admits the allegations in 56Z of the 2FASC.

56AA. Save that it refers to and relies on the full terms and effect of the Final EY Report (PIP.002.001.0183) it otherwise admits the allegations in 56AA of the 2FASC.

### **D.3. FY15 Statutory Accounts**

56. Save that it admits that on 29 September 2015 Mr Fitzpatrick signed the audit report, in his name and in the name of the First Respondent pursuant to s 324AB(3) of the

*Corporations Act*, in respect of the year ended 30 June 2015 (defined in the particulars sub-joined to paragraph 47 of the 2FASC as the “Pitchers Audit Report”), it otherwise admits the allegations contained in paragraph 56 of the 2FASC.

57. Subject to the production and inspection of the publication of the announcement alleged, it admits that the announcement alleged was published and lodged with the ASX on 30 September 2015 and otherwise denies the allegations contained in paragraph 57 of the 2FASC.

58. Save that it relies on the full terms and effect of the FY15 Statutory Accounts, it otherwise admits the allegations contained in paragraph 58 of the 2FASC.

59. Save that:

(a) it refers to the full terms and effect of the FY15 Statutory Accounts;

(b) it says further that for the impairment test performed by SGH in relation to PSD:

(i) the recoverable amount of the PSD CGU was £756 million as at 30 June 2015, which was determined based on a value in use calculation using cash flow projections from the financial forecasts approved by senior management of SGH covering a five year period; and,

(ii) based on the provisional accounting for the PSD CGU, exceeded its carrying amount by approximately £123 million at 30 June 2015;

it otherwise does not admit the allegations contained in paragraph 59 of the 2FASC.

60. Save that it refers to the full terms and effect of the FY15 Statutory Accounts and the 2015 Report, it otherwise does not admit the allegations contained in paragraph 60 of the 2FASC.

## **E. SGH'S TRUE FINANCIAL POSITION**

### **E.1A. Risk Indicator – Market Capitalisation Information.**

61A. Save that it refers to and relies upon the full terms and effect of the EY Report referred to in the particulars sub-joined to paragraph 61A of the 2FASC (PIP.002.001.0183), it otherwise does not admit the allegations in paragraph 61A of the 2FASC.

61B. It refers to paragraphs 42 and 61A herein and otherwise does not know and cannot admit the allegations contained in paragraph 61B of the 2FASC.

### **E.1B Risk Indicator - Inadequate PSD Financial Reporting Information**

61C. Save that it refers to and relies upon the full terms and effect of the spreadsheet referred to in the particulars sub-joined to paragraph 61C of the 2FASC (PIP.002.001.0633) it otherwise does not admit the allegations in paragraph 61C of the 2FASC.

61D. It refers to paragraphs 42 and 61C herein and otherwise does not know and cannot admit the allegations contained in paragraph 61D of the 2FASC.

#### **E.1 Risk Indicator – Negative Cash Flow Information**

61. Save that it refers to and relies on the full terms and effect of the documents referred to in the particulars sub-joined to paragraph 61 of the 2FASC, it otherwise does not admit the allegations contained in paragraph 61 of the 2FASC.

62. It refers to paragraphs 42 and 61 herein and otherwise does not know and cannot admit the allegations contained in paragraph 62 of the 2FASC.

#### **E.2 Risk Indicator – Achievability of forecast assumptions**

63. It relies on the full terms and effect of the documents referred to in the particulars sub-joined to paragraph 63 of the 2FASC and otherwise does not know and cannot admit the allegations contained in paragraph 63 of the 2FASC.

64. It refers to paragraphs 42 and 63 herein and otherwise does not know and cannot admit the allegations contained in paragraph 64 of the 2FASC.

#### **E.3 Risk Indicator – Unachieved forecast assumptions**

65. It relies on the full terms and effect of the documents referred to in the particulars sub-joined to paragraph 63 and 61 of the 2FASC and otherwise does not admit the allegations contained in paragraph 65 of the 2FASC.

66. It refers to paragraphs 42 and 65 herein and otherwise does not know and cannot admit the allegations contained in paragraph 66 of the 2FASC.

#### **E.4 Risk Indicator – Dilution Rates**

67. It refers to paragraph 13 herein and otherwise does not know and cannot admit the allegations contained in paragraph 67 of the 2FASC.

68. It does not know and cannot admit the allegations contained in paragraph 68 of the 2FASC.

69. It refers to paragraph 13 herein and otherwise does not know and cannot admit the allegations contained in paragraph 69 of the 2FASC.
70. It does not know and cannot admit the allegations contained in paragraph 70 of the 2FASC.
71. It refers to paragraph 42 and 70 herein and otherwise does not know and cannot admit the allegations contained in paragraph 71 of the 2FASC.

#### **E.5 Growth Strategy Risks**

72. It refers to paragraphs 30, 31, 33, and 42 herein and otherwise does not know and cannot admit the allegations contained in paragraph 72 of the 2FASC.

#### **E.6 Effect of the Growth Strategy Risk Indicators and Growth Strategy Risks (Material Impairment)**

73. It denies the allegations contained in paragraph 73 of the 2FASC.
- 74A. Save that it admits that the Appendix 4E did not impair the value of the Appendix 4E PSD Goodwill Asset or recognise an expense from such an impairment, it denies the allegations contained in paragraph 74A of the 2FASC.
- 74B. It denies the allegations contained in paragraph 74B of the 2FASC.
- 74C. Save that it says that the audit, including work to be performed by EY (UK) the component auditor, had not been completed and was on-going, it denies the allegations contained in paragraph 74C of the 2FASC.
- 74D. It denies the allegations contained in paragraph 74D of the 2FASC.
- 74E. It denies the allegations contained in paragraph 74E of the 2FASC.
- 74F. It denies the allegations contained in paragraph 74F of the 2FASC.
74. It denies the allegations contained in paragraph 74 of the 2FASC.
75. It denies the allegations contained in paragraph 75 of the 2FASC.
76. It denies the allegations contained in paragraph 76 of the 2FASC.
- 77A. It denies the allegations contained in paragraph 77A of the 2FASC.
77. It denies the allegations contained in paragraph 77 of the 2FASC.

**E.7. Required Impairment Testing and Material Impairment**

- 78AA. It denies the allegations contained in paragraph 78AA of the 2FASC.
- 78AB. Save that it refers to paragraph 74A herein, it otherwise denies the allegations contained in paragraph 78AB of the 2FASC.
- 78AC. It denies the allegations contained in paragraph 78AC of the 2FASC.
- 78AD. It denies the allegations contained in paragraph 78AD of the 2FASC.
- 78AE. It denies the allegations contained in paragraph 78AE of the 2FASC.
- 78AF. It denies the allegations contained in paragraph 78AF of the 2FASC.
- 78AG. It denies the allegations contained in paragraph 78AG of the 2FASC.
- 78AH. It denies the allegations contained in paragraph 78AH of the 2FASC.
- 78AI. It denies the allegations contained in paragraph 78AI of the 2FASC.
- 78AJ. It denies the allegations contained in paragraph 78AJ of the 2FASC.
- 78AK. It denies the allegations contained in paragraph 78AK of the 2FASC.
- 78AL. It denies the allegations contained in paragraph 78AL of the 2FASC.

**E.8. Going Concern Uncertainty.**

- 78AM. It denies the allegations contained in paragraph 78AM of the 2FASC.
- 78AN. It denies the allegations contained in paragraph 78AN of the 2FASC.
- 78AO. It denies the allegations contained in paragraph 78AO of the 2FASC.
- 78AP. It denies the allegations contained in paragraph 78AP of the 2FASC.
- 78AQ. It denies the allegations contained in paragraph 78AQ of the 2FASC.

**F. PITCHERS' CONTRAVENING CONDUCT**

**F.1 Pitcher Partners' Appendix 4E Misleading Conduct Contraventions**

- 78A. Save that it refers to and repeats paragraphs 47, 48 and 56A to 56AA above, it otherwise denies the allegations contained in paragraph 78A of the 2FASC.
- 78B. It denies the allegations contained in paragraph 78B of the 2FASC.
- 78C. Save that it says that the audit work, including work to be performed by EY (UK), had not been completed and was on-going, it denies the allegations contained in paragraph 78C of the 2FASC.
- 78D. It denies the allegations contained in paragraph 78D of the 2FASC.
- 78E. Save that it refers to and repeats paragraphs 56A to 56AA above, it otherwise denies the allegations contained in paragraph 78E of the 2FASC.
- 78F. Save that it refers to and repeats paragraphs 56A to 56AA above, it otherwise denies the allegations contained in paragraph 78F of the 2FASC.
- 78G. It denies the allegations contained in paragraph 78G of the 2FASC.
- 78H. It denies the allegations contained in paragraph 78H of the 2FASC.
- 78I. It denies the allegations contained in paragraph 78I of the 2FASC.
- 78J. It denies the allegations contained in paragraph 78J of the 2FASC.
- 78K. It denies the allegations contained in paragraph 78K of the 2FASC.

## **F.2. Pitcher Partners' 30 September Misleading Conduct Contraventions**

78. As to the allegations contained in paragraph 78 of the 2FASC:
- (a) it repeats paragraphs 47 and 48 above;
  - (b) it says that, on or about 29 September 2015, Andrew Alexander Grech and Raymond John Skippen (of SGH) signed the Directors' report and Directors' declaration in respect of the financial statements for the year ended 30 June 2015;
  - (c) it says that, after Mr Grech and Mr Skippen took the actions pleaded in paragraph 78(b) above, Mr Fitzpatrick signed the audit report, in his name and in the name of the First Respondent pursuant to s 324AB(3) of the *Corporations Act*, in respect of the year ended 30 June 2015 (defined in the 2FASC as "Pitchers Audit Report");
  - (d) it says further that, by the Pitchers Audit Report, the First Respondent stated that it had formed the opinion that the financial report of SGH and controlled entities was in accordance with the *Corporations Act*, including:

- (i) giving a true and fair view of the consolidated entity's financial position as at 30 June 2015 and of its performance for the year ended on that date; and
  - (ii) complying with Australian Accounting Standards and the *Corporations Regulations 2001* (***Corporations Regulations***);
- (e) it relies on the full terms and effect of the Pitchers Audit Report , which terms included that:
- (i) the directors of SGH were responsible for the preparation of the financial report that gave a true and fair view in accordance with Australian Accounting Standards and the *Corporations Act* and for such internal control as the directors determined was necessary to enable the preparation of the financial report that gave a true and fair view and was free from material misstatement, whether due to fraud and error;
  - (ii) the responsibility of the First Respondent was to express an opinion on the financial report based on its audit. The First Respondent conducted its audit in accordance with Australian Auditing Standards, which require that the First Respondent comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial report is free from material misstatement; and
  - (iii) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report; and
- (f) it otherwise denies the allegations contained in paragraph 78 of the 2FASC.

79. It denies the allegations in paragraph 79 of the 2FASC.

80. It denies the allegations in paragraph 80 of the 2FASC.

81. As to the allegations contained in paragraph 81 of the 2FASC, it repeats paragraph 78 above and otherwise denies the allegations in paragraph 81 of the 2FASC.

- 82. It denies the allegations contained in paragraph 82 of the 2FASC.
- 83. It denies the allegations contained in paragraph 83 of the 2FASC.
- 84. It denies the allegations contained in paragraph 84 of the 2FASC.
- 85. It denies the allegations contained in paragraph 85 of the 2FASC.
- 86. It denies the allegations contained in paragraph 86 of the 2FASC.

### **F.3 Continuing nature of the Pitchers Misleading Conduct Contraventions**

- 87. It denies the allegations contained in paragraph 87 of the 2FASC.

### **GA. EY UK'S ROLE**

- 88A. It admits the allegations contained in paragraph 88A of the 2FASC to the extent that they are pleaded in the First Respondent's Amended Cross-Claim against EY UK in this proceeding (the **Cross Claim against EY UK**) and otherwise does not admit the allegations therein.
- 88B. It admits the allegations contained in paragraph 88B of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.
- 88C. It admits the allegations contained in paragraph 88C of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.
- 88D. Save that paragraph 88D of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88D of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.
- 88E. Save that paragraph 88E of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88E of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

### **GB. EY UK'S FY15 COMPONENT AUDIT AND CONTRAVENING CONDUCT**

#### **GB.1 EY UK's FY15 Representations**

88F. Save that paragraph 88F of the SOC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88F of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88G. It admits the allegations contained in paragraph 88G of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88H. It admits the allegations contained in 88H of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88I. It admits the allegations contained in paragraph 88I of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88J. It admits the allegations contained in paragraph 88J of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

## **GB.2 SGH's approach to goodwill impairment in FY15**

88K. It admits the allegations contained in paragraph 88K of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88L. It admits the allegations contained in paragraph 88L of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88M. Save that paragraph 88M of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88M of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88N. Save that paragraph 88N of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88N of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88O. Save that paragraph 88O of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88O of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88P. Save that paragraph 88P of the 2FASC do not make any allegation of fact against it, it admits the allegations contained in paragraph 88P of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88Q. Save that paragraph 88Q of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88Q of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations therein.

### **GB.3 EY UK's Misleading or Deceptive Conduct**

88R. Save that paragraph 88R of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88R of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88S. Save that paragraph 88S of the SOC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88S of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88T. Save that paragraph 88T of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88T of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

88U. Save that paragraph 88U of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88U of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

### **GB.4 Causation**

88V. It admits the allegations contained in paragraph 88V of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations therein.

88W. It admits the allegations contained in paragraph 88W of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations therein.

88X. Save that paragraph 88X of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 88X of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations therein.

## **G. LOSS & DAMAGE ARISING FROM PITCHERS' CONTRAVENTIONS AND EY UK'S CONTRAVENTIONS**

### **G.1 The 26 November Announcement, and its consequences**

88. Save that the allegations contained in paragraph 88 of the 2FASC do not make any allegation of fact against it, it otherwise does not admit the allegations contained in paragraph 88 of the 2FASC.

89. Save that the allegations contained in paragraph 89 of the 2FASC do not make any allegation of fact against it, it otherwise relies on the full terms and effect of the 26 November Announcement as alleged and otherwise does not admit the allegations contained in paragraph 89 of the 2FASC.

90. Save that it relies on the full terms and effect of the 26 November Announcement as alleged, it otherwise does not admit the allegations contained in paragraph 90 of the 2FASC.

91. Save that the allegations contained in paragraph 91 of the 2FASC do not make any allegation of fact against it, it otherwise does not know and cannot admit the allegations contained in paragraph 91 of the 2FASC.

## **G.2 The suspension of SGH Shares**

92. Save that the allegations contained in paragraph 92 of the 2FASC do not make any allegation of fact against it, it otherwise does not admit the allegations contained in paragraph 92 of the 2FASC.

## **G.3 The 29 February Publications, and their consequences**

93. Save that the allegations contained in paragraph 93 of the 2FASC do not make any allegation of fact against it, it otherwise does not admit the allegations contained in paragraph 93 of the 2FASC.

94. Save that the allegations contained in paragraph 94 of the 2FASC do not make any allegation of fact against it, it otherwise does not admit the allegations contained in paragraph 94 of the 2FASC.

95. Save that the allegations contained in paragraph 95 of the 2FASC do not make any allegation of fact against it, it relies on the full terms and effect of the documents defined as the 29 February Announcement, the 29 February Presentation and the FY16 Half Year Report, and otherwise does not admit the allegations contained in paragraph 95 of the 2FASC.

96. Save that the allegations contained in paragraph 96 of the 2FASC do not make any allegation of fact against it, it relies on the full terms and effect of the ASIC 29 February Media Release, and otherwise does not admit the allegations contained in paragraph 96 of the 2FASC.

97. Save that the allegations contained in paragraph 97 of the 2FASC do not make any allegation of fact against it, it otherwise does not admit the allegations contained in paragraph 97 of the 2FASC.

98. Save that the allegations contained in paragraph 98 of the 2FASC do not make any allegation of fact against it, it otherwise does not know and cannot admit the allegations contained in paragraph 98 of the 2FASC.

99. Save that the allegations contained in paragraph 99 of the 2FASC do not make any allegation of fact against it, it otherwise does not know and cannot admit the allegations contained in paragraph 99 of the 2FASC.

#### **G.4 Market-based causation**

100. As to the allegations contained in paragraph 100 of the 2FASC, it
- (a) admits the allegations contained in paragraphs 100(a) and 100(b) of the 2FASC;
  - (b) denies the allegations contained in paragraphs 100(c) and 100(d) of the 2FASC; and
  - (c) admits the allegations contained in paragraph 100(e) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations in paragraph 100(e) of the SOC.
101. As to the allegations contained in paragraph 101 of the 2FASC:
- (a) It denies the allegations contained in paragraph 101(a) of the 2FASC;
  - (b) save that paragraph 101(b) of the 2FASC does not make any allegation of fact against it, it admits the allegations contained in paragraph 101(b) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations in paragraph 101(b) of the 2FASC.
102. As to the allegations contained in paragraph 102 of the 2FASC:
- (a) save that paragraphs 102(a)(iii) and 102(b)(ii) of the 2FASC do not make any allegations of fact against it, it admits the allegations contained in paragraphs 102(a)(iii) and 102(b)(ii) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations contained in paragraphs 102(a)(iii) and 102(b)(ii) of the 2FASC; and
  - (b) otherwise denies the allegations contained in paragraph 102 of the 2FASC.
103. As to the allegations contained in paragraph 103 of the 2FASC, it:
- (a) does not know and cannot admit that, or when, or in what amount, the Applicant and Group Members have acquired any interest in SGH Shares;
  - (b) refers to paragraphs 100 and 101 herein; and
  - (c) otherwise denies the allegations in paragraph 103 of the 2FASC.
104. As to the allegations contained in paragraph 104 of the 2FASC, it:
- (a) repeats paragraph 103 herein;

- (b) admits the allegations contained in paragraph 104(b) of the 2FASC only to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations contained in paragraph 104(b) of the 2FASC; and
- (c) otherwise denies the allegations in paragraph 104 of the 2FASC.

## **G.5 Reliance**

105. As to the allegations contained in paragraph 105 of the 2FASC, it:

- (a) admits the allegations contained in paragraph 105(b) of the SOC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations contained in paragraph 105(b) of the 2FASC; and
- (b) otherwise denies the allegations contained in paragraph 105 of the 2FASC.

106. As to the allegations contained in paragraph 106 of the 2FASC, it:

- (a) admits the allegations contained in paragraph 106(b) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations contained in paragraph 106(b) of the 2FASC; and
- (b) otherwise denies the allegations contained in paragraph 106 of the 2FASC.

## **G.6 Alleged loss or damage suffered by the Applicant and Group Members**

107. As to the allegations contained in paragraph 107 of the 2FASC, it:

- (a) admits the allegations contained in paragraph 107(b) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise denies the allegations contained in paragraph 107(b) of the 2FASC;
- (b) denies the allegations contained in paragraph 107 of the 2FASC; and
- (c) says further or alternatively that the risks that:
  - (i) the FY15 Financial Report and or Appendix 4E might contain a material misstatement and/or that such material misstatement might not be detected by the auditor;
  - (ii) at any given time, the price of SGH Shares on ASX might be affected by an error in the FY15 Financial Report and or Appendix 4E;

- (iii) at any given time, the price of SGH Shares on ASX might be different from the true value of SGH Shares; and
- (iv) the price of SGH Shares on ASX might fluctuate to a significant degree, were each:
  - (v) an obvious and/or inherent risk; and
  - (vi) an inherent feature of the market for trading in shares operated by ASX during the Relevant Period;
- (d) in the circumstances of paragraph 107(c) above and paragraphs 47, 48 and 78 herein, and having regard to the subject matter, scope and purpose of s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 18 of the *ACL*, it is not appropriate for any liability of the First Respondent to extend to the loss alleged in paragraph 107 of the 2FASC; and
- (e) if (which is not presently known to the First Respondent), the Applicant or any Group Member has recovered any amount from any third party (including any adviser), whether in cash or in kind, or by way of formal or informal settlement or external dispute resolution scheme under the *Corporations Act* or otherwise, or by way of any scheme of arrangement under the *Corporations Act*, or by any other means, in respect of the loss claimed by the Applicant or Group Member in these proceedings, such amount must be brought to account by the Applicant or Group Member.

108. As to the allegations contained in paragraph 108 of the 2FASC, it:

- (a) admits the allegations contained in paragraph 108(b) of the 2FASC to the extent that they are pleaded in the First Respondent's Cross-Claim against EY UK and otherwise does not admit the allegations contained in paragraph 108(b) of the 2FASC;
- (b) refers to and repeats paragraph 107 herein; and
- (c) otherwise denies the allegations contained in paragraph 108 of the 2FASC.

#### **H. LIMITATION OF LIABILITY UNDER PROFESSIONAL STANDARDS SCHEMES**

109. At all relevant times, the Chartered Accountants Australia and New Zealand Professional Standards Scheme (Victoria) (**the 2014 Scheme**) was in force pursuant to the Professional Standards Act.

#### **PARTICULARS**

*The 2014 Scheme was gazetted by Victorian Government Gazette No. S264 dated 5 August 2014, and commenced operation from 8 October 2014 and will remain in operation for 5 years. The 2014 Scheme was amended by Victorian Government Gazette No S246 dated 28 August 2015 to replace all instances of "the Institute of Chartered Accountants in Australia" with Chartered Accountants Australia and New Zealand" and "The Institute" with "CA ANZ".*

110. At all relevant times, the First Respondent was a partnership comprised of persons who were each:
- (a) a participating member of the Institute of Chartered Accountants in Australia (now Chartered Accountants Australia and New Zealand) (**CA ANZ**) holding a current Australian Certificate of Public Practice issued by CA ANZ; and
  - (b) was not a holder of an Australian financial services licence or an authorised representative or employee of such an Australian financial services licensee,
- and was, therefore, entitled to the benefit of the 2014 Scheme.
111. The services provided by the First Respondent pursuant to the Due Diligence Retainer were "Category 3 services" as defined in the 2014 Scheme.
112. The services provided by the First Respondent pursuant to the Audit Retainer were "Category 1 services" as defined in the 2014 Scheme.
113. Under clause 3.9 of the 2014 Scheme, where a proceeding is brought against a participant relating to liability in connection with a combination of Category 1 services and Category 3 services, the participant's liability under the 2014 Scheme for damages in excess of \$2 million will be determined in accordance with clauses 3.2 and 3.3 of the 2014 Scheme, such that a participant's liability for damages will be limited to the applicable monetary ceilings or limitation amounts specified therein.
114. In accordance with the Professional Standards Act, the First Respondent's civil liability in respect of a cause of action founded on an act or omission occurring during the period when the 2014 Scheme was in force is limited to an amount of the applicable monetary ceilings or limitation amounts specified therein.
115. At all material times, the 2014 Scheme was prescribed in accordance with:
- (a) s 1044B of the Corporations Act;
  - (b) s 12GNA of the ASIC Act; and

- (c) s 137 of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

#### **PARTICULARS**

*The 2014 Scheme was prescribed under Regulation 7.10.02 of the Corporations Regulations, Regulation 3A of the Australian Securities and Investments Commission Regulations 2001 (**ASIC Regulations**), and Regulation 8A of the Competition and Consumer Regulations 2010 (**CCR**) from 1 December 2014. The amended version of the 2014 Scheme was prescribed under Regulation 7.10.02 of the Corporations Regulations, Regulation 3A of the ASIC Regulations and Regulation 8A of the CCR from 27 February 2016.*

116. In accordance with each of:

- (a) s 1044B of the Corporations Act;
- (b) s 12GNA of the ASIC Act; and
- (c) s 137 of the CCA,

the Professional Standards Act applies to limit the First Respondent's liability for the claims made against it in this proceeding.

#### **I. FAILURE TO TAKE REASONABLE CARE**

117. If (which is not presently known to the First Respondent), the decision of the Applicant or any Group Member to purchase SGH Shares, and/or retain such shares, in respect of which the Applicant or Group Member now makes claims based on alleged contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act, or s 18 of the ACL, involved a failure by the Applicant or Group Member to take reasonable care, then, by reason of:

- (a) s 1041I of the Corporations Act;
- (b) s 12GF of the ASIC Act; and/or
- (c) s 137B of the CCA,

and, in circumstances where the First Respondent did not intend to cause, and did not fraudulently cause, the loss or damage the subject of the claims, any liability of the First Respondent to those claims is limited to an amount which the Court thinks just and equitable having regard to the responsibility of the Applicant or Group Member.

#### **PARTICULARS**

*Further particulars may be provided following discovery in respect of the claims by the Applicant and, prior to the trial of each Group Member's claims, by that Group Member.*

## **J. PROPORTIONATE LIABILITY**

118. In further answer to the entire 2FASC, if, which is denied, the First Respondent is liable to the Applicant for any loss or damages alleged in the 2FASC (**Claimed Loss**) on the basis alleged by the Applicant in the 2FASC, then for the purpose of this Defence only:

- (a) each of the claims made by the Applicant against the First Respondent in the 2FASC is an "apportionable claim" within the meaning of s 1041L of the *Corporations Act*, s 12 GP of the *ASIC Act* and s 87CB of the *CCA*;
- (b) SGH is a person whose acts or omissions caused the Claimed Loss and it is legally liable to the Applicant and Group Members for that Claimed Loss;

### **PARTICULARS**

*The First Respondent repeats paragraphs 56P and 78 of this Defence. Further to paragraphs 56P and 78, and solely for the purpose of this Defence and on the assumption that the Applicant establishes the matters alleged in the 2FASC, it says:*

- I. On or about 10 February 2015, SGH lodged with the ASX its **1HY15 Financial Report** in which Skippen and Grech (as executive directors of SGH and on behalf of the directors and officers of SGH during the Relevant Period, being Andrew Alexander Grech, Raymond John Skippen, Kenneth John Fowlie, Ian Robert Court, Erica Maree Lane, Rhonda O'Donnell and Wayne Brown) declared that the financial statements and notes of the 1HY15 Financial Report:*
  - a. were "in accordance with the Corporations Act 2001";*
  - b. complied with "Australian Accounting Standard AASB 134 Interim Financial Reporting and the Corporations Regulations 2001, and other mandatory professional reporting requirements"; and*
  - c. gave a "true and fair view of the financial position of the consolidated entity as at 31 December 2014 and of its performance for the half year ended on that date".*
- II. By reason of the matters particularised in (I.) above, SGH and each of Grech, Fowlie, Court, Skippen, Lane, and O'Donnell represented to, inter alia, the Affected Market (including Group Members) as defined in [1] and [5(b)(ii)] of the 2FASC, that the 1HY15 Report complied with Accounting Standards and the Corporations Regulations 2001 and other mandatory professional requirements and gave a true and fair view of the financial position and performance of SGH as at 31 December 2014 (the **1HY15 SGH Directors' Declaration Representation**).*

- III. On or about 28 August 2015, SGH lodged with the ASX its **FY15 Appendix 4E** in which Grech (as executive director of SGH and on behalf of the directors and officers of SGH during the Relevant Period, being Grech, Skippen, Fowlie, Court, Lane, O'Donnell and Brown) signed the Compliance Statement of the FY15 Appendix 4E which declared that that the FY15 Appendix 4E complied with the relevant requirements referred to in paragraph 5(f) herein and paragraph 5(f) of the 2FASC.
- IV. By reason of the matters particularised in (III.) above, each of SGH, Grech, Fowlie, Court, Skippen, Lane and O'Donnell represented to, inter alia, the Affected Market (including Group Members) as defined in [1] and [5(b)(ii)] of the 2FASC), that the FY15 Appendix 4E complied with Accounting Standards and the Corporations Regulations 2001 and other mandatory professional requirements and gave a true and fair view of the financial position and performance of SGH and the SGH Group (**the FY15 Appendix 4E Compliance Representation**).
- V. On or about 29 September 2015, SGH lodged with the ASX its **FY15 Financial Report** in which Skippen and Grech (as executive directors of SGH and on behalf of the directors and officers of SGH during the Relevant Period, being Grech, Skippen, Fowlie, Court, Lane, O'Donnell and Brown) declared that the financial statements and directors' report set out in the FY15 Financial Report:
- a. were "in accordance with the Corporations Act 2001";
  - b. complied with "Accounting Standards and the Corporations Regulations 2001, and other mandatory professional requirements"; and
  - c. gave a "true and fair view of the financial position of the consolidated entity as at 30 June 2015 and of its performance as represented by the results of its operations, changes in equity and its cash flows, for the year ended on that date".
- VI. By reason of the matters particularised in (V.) above, SGH and each of Grech, Fowlie, Court, Skippen, Lane and O'Donnell represented to, inter alia, the Affected Market (including Group Members), that the FY15 Financial Report complied with Accounting Standards and the Corporations Regulations 2001 and other mandatory professional requirements and gave a true and fair view of the financial position and performance of SGH as at 30 June 2015 (**the FY15 SGH Directors' Declaration Representation**).
- VII. As at early 2015 and in any event by 30 March 2015, information as to the matters pleaded in paragraphs 12, and 19 to 40 of the Statement of Claim (**the Reform Affected Claims Information**) came, or ought reasonably to have come, into the possession of SGH and Grech and/or Fowlie, Court, Skippen, Lane, O'Donnell and/or Brown in the course of the performance of their respective duties.
- VIII. The Reform Affected Claims Information would have:
- a. affected the significant assumptions used by SGH and its directors in making accounting estimates, including those measured at fair value,

- and such that the value attributed to identifiable intangibles for the acquisition of PSD were not complete;*
- b. affected the forecasts and underlying assumptions utilised in the goodwill impairment calculations of the cash generating units, including PSD; and*
  - c. materially altered reasonable expectations as to the future results of PSD and led to an impairment of PSD's goodwill on acquisition.*
- IX. Further, the First Respondent repeats paragraphs 10 to 42 and 59 to 77A of the 2FASC, concerning the actions and matters within the knowledge of SGH and its directors and officers as to SGH's net asset position, Growth Strategy Risks and material overstatements in the FY15 Financial Report.*
- X. By reason of the matters particularised in (VII.) to (IX.) above:*
- a. significant assumptions used by SGH and its directors and officers in making accounting estimates, including those measured at fair value, would not have been reasonable and, in particular, the value attributed to identifiable intangibles for the acquisition of PSD would not have been complete and would not have been valued using appropriate valuation assumptions and models;*
  - b. the forecasts, and underlying assumptions utilised in the goodwill impairment calculations of the cash generating units, including relevantly, PSD, and the assumptions in relation to growth rates and working capital improvements would not have represented a reasonable estimate by management; and*
  - c. SGH and its directors and officers' increased understanding of the PSD business since acquisition ought to have included an understanding of the Reform Affected Claims Information, which would have materially altered its expectations of the future results of PSD and led to an impairment of PSD's goodwill on acquisition.*
- XI. By reason of the matters particularised in (VII.) to (X.) above, SGH's FY15 financial statements, referred to in (I.) and (V.) above, and SGH's FY15 Appendix 4E, referred to in (III.) above, did not give a true and fair view of SGH's financial position and performance as at the relevant dates of those FY15 financial statements and FY15 Appendix 4E, and did not comply with Accounting Standards and the Corporations Regulations 2001 and other mandatory professional requirements.*
- XII. By publishing each of the 1HY15 Financial Report, the FY15 Financial Report, and the FY15 Appendix 4E, containing each of the 1HY15 SGH Directors' Declaration Representation, the FY15 SGH Directors' Declaration Representation and the FY15 Appendix 4E Compliance Representation, and or failing to correct or qualify those representations (collectively, the **"FY15 Declaration Representations"**), SGH (and, relevantly for paragraphs 118(c) and 118(d) of this defence, each of Grech, Fowlie, Court, Skippen, Lane, O'Donnell and Brown) engaged in conduct:*
- a. in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;*

- b. *in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or*
- c. *in trade or commerce within the meaning of section 18 of the ACL.*

XIII. *In the circumstances particularised in paragraphs (VII.) to (XI.) above, SGH (and, relevantly for paragraphs 118(c) and 118(d) of this defence, each of Grech, Fowlie, Court, Skippen, Lane, O'Donnell and Brown) engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by making and or failing to correct each of the FY15 Declaration Representations.*

XIV. *By reason of the matters particularised in paragraphs (XII.) to (XIII.) above, SGH (and, relevantly for paragraphs 118(c) and 118(d) of this defence, each of Grech, Fowlie, Court, Skippen, Lane, O'Donnell and Brown) contravened:*

- a. *section 1041H of the Corporations Act;*
- b. *section 12DA of the ASIC Act; and/or*
- c. *section 18 of the ACL.*

*(the **SGH and Directors' Misleading Contraventions**)*

XV. *The First Respondent repeats paragraphs 88 to 104 of the 2FASC, concerning ASX announcements and SGH share prices from 26 November 2015 to 1 March 2016 and market-based causation, save that the phrase "Pitchers Misleading Conduct Contraventions" (in 2FASC [100], [101], [102], [104], [107] and [108]) is to be replaced with the words "the SGH and Directors' Misleading Contraventions".*

XVI. *The First Respondent repeats paragraphs 105 to 106 of the 2FASC, concerning reliance by the Applicant and Group Members, save that the phrases "Pitchers Appendix 4E Opinion", "Pitchers Opinion" and "Pitchers Representation to ASX" (in 2FASC [105] and [106]) is to be replaced with the words "the FY15 SGH and Directors' Misleading Representations"*

XVII. *The First Respondent repeats paragraphs 107 to 108 of the 2FASC, concerning the Applicant and Group Members' alleged loss and damage, save that the phrase "Pitchers Misleading Conduct Contraventions" (in 2FASC [107] and [108]) be replaced with the words "the SGH and Directors' Misleading Contraventions" and says that the loss and damage suffered by the Applicant and Group Members was caused by the contraventions that are referred to in paragraph (XIV.) above.*

*Further particulars may be provided after discovery.*

- (c) Andrew Alexander Grech and Raymond John Skippen are persons whose acts or omissions caused the Claimed Loss and they are legally liable to the Applicant and Group Members for that Claimed Loss;

## **PARTICULARS**

*The First Respondent repeats paragraphs 56P and 78 of this Defence.  
Further, Pitcher Partners repeats the particulars sub-joined to 118(b)  
above.  
Further particulars may be provided after discovery.*

- (d) further or in the alternative to sub-paragraph (c) above, the directors and officers of SGH during the Relevant Period, being Andrew Alexander Grech, Raymond John Skippen, Kenneth John Fowlie, Ian Robert Court, Erica Maree Lane, Rhonda O'Donnell and Wayne Brown, are persons whose acts or omissions caused the Claimed Loss and they are legally liable to the Applicant and Group Members for that Claimed Loss;

#### **PARTICULARS**

*The First Respondent repeats paragraphs 56P and 78 of this Defence.  
Further, Pitcher Partners repeats the particulars sub-joined to 118(b)  
above.  
Further particulars may be provided after discovery.*

- (e) Ernst & Young LLP (**EY UK**) is a person whose acts or omissions caused the Claimed Loss;

#### **PARTICULARS**

- I. In or about July 2015, EY UK was engaged by Slater & Gordon (UK) LLP (**SGH UK**) to audit and report on the financial statements of SGH UK for the year ended 30 June 2015. This engagement required EY UK to, inter alia:*
- a. express an opinion on whether the SGH UK financial statements gave a true and fair view of the state of affairs as at the balance sheet date; and*
  - b. report, in accordance with instructions received from the First Respondent, to the First Respondent on the financial information prepared in accordance with International Financial Reporting Standards for SGH consolidation purposes.*
- II. The key assumptions used by SGH in relation to the goodwill impairment testing of the Slater Gordon Solutions CGU in FY15, including discount rates and the underlying cash flows, were also reviewed by EY UK.*

#### **Sub-particulars**

- a. On 24 September 2015, John Howarth (EY UK) sent an email to, inter alia, Andrew Grech, Joanna Walker and Sally Chicco (SGH), stating that:*
  - i. "in our minds, the discount rate used is not an issue – it is at the lower end of our acceptable range";*
  - ii. "the discussion yesterday was equally helpful to understand the key risks to achieving the 'steady state' cash flows – we discussed the key risks and overnight Matt [Jackson] has provided responses on the working capital and the tax rate"; and*
  - iii. "to me, these factors point out to the issue that the headroom on the goodwill is tight – as you would expect given the proximity of the acquisition to year end".*

- b. Further sub-particulars may be provided prior to trial.
- III. On or about 28 September 2015, EY UK issued a report on their audit of SGH UK for the year ended 30 June 2015 (**EY UK Audit Results Update Report**).
- IV. The EY UK Audit Results Update Report stated, *inter alia*, that:
- a. the objective of EY UK's work was to provide an audit opinion on the consolidated SGH UK group entity for the year ended 30 June 2015, in accordance with group accounting policies;
  - b. the discount rate used by SGH for the impairment review of PSD was at the lower end of EY UK's considered acceptable range; and
  - c. the work performed by EY UK provided evidence that the goodwill carrying value associated with PSD as at 30 June 2015 was supported by the underlying cash flows.
- V. By reason of the matters in (II) to (IV) above, EY UK represented that:
- a. the discounted rate used by SGH for the impairment review of PSD was appropriate (**Discount Rate Representation**);
  - b. the goodwill carrying value associated with PSD as at 30 June 2015 was supported by the underlying cash flows (**Goodwill Carrying Value Representation**); and
  - c. there were no changes in the economic circumstances or government regulations which affected PSD (**UK Government Regulations Representation**),
- (each and together, the **EY UK Audit Representations**).
- VI. In the premises, and to the extent that the Applicant and Group Members suffered the Claimed Loss by reason of the conduct pleaded in the Statement of Claim, the EY UK Audit Representations were misleading or deceptive or likely to mislead or deceive.
- VII. Further particulars may be provided after discovery and expert evidence.
- (f) Arnold Bloch Leibler (**ABL**) is a person whose acts or omissions caused the Claimed Loss and it is legally liable to the Applicant and Group Members for that Claimed Loss;

## PARTICULARS

- i. On 30 March 2015, SGH published and lodged with the ASX (and published on SGH's website) (with the knowledge and authority of the SGH board):
  - a. an announcement entitled "Slater and Gordon executes agreement to acquire Quindell's Professional Services Division and launches A\$890m accelerated renounceable entitlement offer" (**30 March Announcement**), which was classified "price-sensitive" and marked ("\$\$") on ASX's website;
  - b. a presentation entitled "Professional Services Division Acquisition and Entitlement Offer" (**30 March Presentation**);

- c. a cleansing notice (**30 March Cleansing Notice**) under s 708AA(2)(f) of the Corporations Act as notionally modified by Class Order 08/35 issued by the Australian Securities and Investments Commission (ASIC); and
  - d. an Appendix 3B – new issue announcement (**30 March Appendix 3B**), (**the 30 March Publications**)
- II. In the 30 March Announcement, SGH stated that it was seeking to raise approximately \$890 million in new equity to fund the acquisition of PSD through a 2 for 3 pro rata renounceable entitlement offer (**Entitlement Offer**).
- III. On a date unknown to Pitcher Partners but no later than on or about 24 March 2015 (**ABL Retainer Date and DDC Establishment Date**):
- a. ABL was retained as the "Australian legal adviser to Slater & Gordon" for the purposes of the Entitlement Offer (**ABL Retainer**); and
  - b. SGH established a due diligence committee (**DDC**) to oversee and coordinate the due diligence process for the Entitlement Offer.
- IV. At all material times, the due diligence process which the DDC was to oversee and coordinate was directed to the potential liability under Australian and New Zealand law for the Entitlement Offer and the issuing of the following documents:
- a. a notice prepared in compliance with section 708AA(7) of the Corporations Act to be lodged with ASX at the outset of the Entitlement Offer (called the "Cleansing Notice") (that is, the 30 March Cleansing Notice);
  - b. an offer booklet (including an entitlement and acceptance form) setting out the terms of the Entitlement Offer to be sent to SGH's eligible retail shareholders (called the "Booklet");
  - c. an ASX announcement in respect of the Entitlement Offer (that is, the 30 March Announcement) and the acquisition and a presentation pack for institutional shareholders and other "exempt investors", which was also to be sent to retail investors as part of the Booklet (called the "Investor Presentation") (that is, the 30 March Announcement and the 30 March Presentation),
- (the Offer Documents).**
- V. ABL, represented by partner Jonathan Wenig (**Wenig**), chaired and was a member of the DDC.
- VI. As a member of the DDC, ABL was responsible, in respect of the Entitlement Offer, to, inter alia:
- a. determine the due diligence processes and recommend their approval by the SGH Board;
  - b. identify key issues and risk factors on which the due diligence process would focus;

- c. *allocate responsibility for investigating each relevant area (including appointment of experts);*
- d. *ensure that there was adequate supervision at all stages of the due diligence process so that a complete and thorough understanding of all relevant issues had been obtained prior to finalising each DDC report and the Offer Documents;*
- e. *receive and adopt reports and sign-offs from reporting experts;*
- f. *maintain a register of material issues which constituted a register of all material issues raised, identified the nature of the issue and how it was resolved;*
- g. *supervise and assist in the drafting of the Offer Documents and, in particular ensure that:*
  - i. *the Cleansing Notice, when read together with the Investor Presentation contained all the information required to satisfy the content requirements set out in the Corporations Act;*
  - ii. *there were no material misstatements in or omissions from the Offer Documents; and*
  - iii. *the Offer Documents otherwise complied with the Corporations Act and were not misleading or deceptive (including by omission);*
- h. *consider SGH's current and ongoing continuous disclosure systems including identifying all information which had been withheld from disclosure to ASX by SGH in accordance with its continuous disclosure obligations;*
- i. *ensure that the due diligence process was documented to provide evidence of the enquiries that had been made and the basis on which opinions had been formed;*
- j. *review the scope of work provided by ABL in relation to the legal due diligence and ensure that the scope and conduct of the legal due diligence was adequate based on the scope of work provided;*
- k. *co-ordinate and supervise the verification of statements contained in the Offer Documents in accordance with the SGH Due Diligence Planning Memorandum (DDPM) (SGH.029.001.0331\_2), which was drafted by ABL;*
- l. *report to the SGH Board from time to time and provide a final DDC report on the due diligence process to the SGH Board and for the benefit of each member of the DDC (and their representatives) as contemplated by the DDPM;*
- m. *following lodgement of the Offer Documents, continue to receive and assess information about new circumstances that come to a member's attention and which may necessitate the issue of supplementary disclosure in accordance with clause 12 of the DDPM; and*
- n. *maintain custody of due diligence materials (including minutes, reports and verification notes) for an appropriate period of time,*

**(ABL DDC Member Responsibilities)**

- VII. *At all material times after the DDC Establishment Date, Wenig (as chair of the DDC) was responsible to:*
- a. *ensure that the meetings of the DDC were properly conducted;*
  - b. *ensure that all members of the DDC were appropriately heard; and*
  - c. *ensure that all agenda items and issues were adequately discussed,*

**(ABL DDC Chair Responsibilities)**

- VIII. *By reason of the ABL Retainer and/or the ABL DDC Chair Responsibilities, ABL had responsibility for considering, and verifying, for each statement contained in the 30 March Cleansing Notice that:*
- a. *the statement, considered in the context in which it appeared in the Offer Documents, was neither misleading nor deceptive;*
  - b. *there were no matters relevant to the subject to which the statement related which were omitted from the Offer Documents; and*
  - c. *the statement could be cross referred to independent source materials to establish the truth and accuracy of the statement or, where that was not feasible, the truth and accuracy of the statement was based on direct personal knowledge and expertise and/or an analysis demonstrating that the relevant statement had been made on reasonable grounds,*

**(ABL DDC Verification Responsibility)**

- IX. *ABL had responsibility for providing to the directors of SGH a legal opinion that:*
- a. *in relation to the Entitlement Offer, SGH and the Entitlement Offer satisfied the conditions in section 708AA(2) of the Corporations Act;*
  - b. *the 30 March Cleansing Notice complied with section 708AA(7) of the Corporations Act, and was not defective within the meaning of section 708AA(11) of the Corporations Act;*
  - c. *the Offer Documents did not contain any statement that was false, misleading, or deceptive, or likely to mislead or deceive) including by way of omissions from the Offer Documents, having regard to the content requirements of section 708AA(7) of the Corporations Act; and*
  - d. *the due diligence process, as described in the DDPM,*
    - i. *had been implemented, completed, and conducted, as the case may be, in accordance with the terms of the DDPM in all material respects or that there were no material deviations from it not approved by the DDC;*
    - ii. *was appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act; and*
    - iii. *constituted the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, and to ensure that the Offer Documents were true and not misleading or deceptive and that there were no omissions from*

the Offer Documents that were required to be included by the  
Corporations Act,  
**(ABL Legal Opinion Responsibilities)**

- X. By reason of the ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibility and the ABL Legal Opinion Responsibilities, a reasonable person in the position of ABL and/or Wenig would have foreseen that:
- a. the Offer Documents were to be communicated to persons to whom the Entitlement Offer was addressed (either originally as eligible shareholders, or through the institutional shortfall bookbuild and retail shortfall bookbuild) (**Potential Entitlement Offer Participants**) for the purpose of enabling them to consider whether to acquire an interest in full paid ordinary shares in SGH (**SGH Shares**) pursuant to the Entitlement Offer;
  - b. in determining whether to acquire SGH Shares pursuant to the Entitlement Offer, Potential Entitlement Offer Participants would, or may:
    - i. rely on the Offer Documents;
    - ii. rely on the Offer Documents having been published in a manner which complied with all applicable laws, including that the 30 March Cleansing Notice was not defective by reason of being false or misleading in a material particular, or omitting a matter or thing the omission of which rendered them misleading in a material respect;
    - iii. rely on the statement in the 30 March Cleansing Notice that SGH had complied with s 674 of the Corporations Act (**Section 708AA Notice Statement**), that is, that SGH had complied with SGH's continuous disclosure obligations; and
    - iv. rely on SGH's representations that the due diligence process had been extensive, thorough, and appropriate, taking into account the scale of the PSD acquisition;
  - c. matters contained in the Offer Documents (and the omission of matters which ought to have been disclosed in the Offer Documents) were likely to lead Potential Entitlement Offer Participants to acquire SGH Shares through the Entitlement Offer and pay the offer price under the Entitlement Offer (being A\$6.37 per new SGH Share) (**Offer Price**); and
  - d. Potential Entitlement Offer Participants who acquired SGH Shares through the Entitlement Offer were at risk of incurring economic loss.
- XI. Further, a reasonable person in the position of ABL and/or Wenig would have foreseen that:
- a. the price or value of SGH Shares on the financial market operated by the ASX would be informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1;
  - b. if:
    - i. material information had not been disclosed to ASX (or to the market of investors or potential investors in SGH Share), which a reasonable person would expect, had it been disclosed, would

*have had a material adverse effect on the price or value of SGH Shares; and/or*

- ii. misleading or deceptive statements had been made to ASX (or to the market of investors or potential investors in SGH Shares), which statements a reasonable person would expect to have a material effect on the price or value of SGH Shares, in that if they had not been made no investors or potential investors in SGH Shares would have been in a position to read or rely upon them,*

*then the market price of SGH Shares on the financial market operated by ASX may be substantially greater than their true value and/or the market price that would have prevailed had such information been disclosed, and/or such misleading or deceptive statements not been made, or having been made had been qualified or contradicted (**Uninflated Price**);*

- c. if the Offer Documents (including the Cleansing Statement) disclosed:
  - i. material information which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of SGH Shares; and/or*
  - ii. information which contradicted or qualified statements made to ASX (or to the market of investors or potential investors in SGH Shares),**

*then the market price of SGH Shares on the financial market operated by ASX was likely to decline; and*

- d. if the Entitlement Offer proceeded in the circumstance pleaded in paragraph 60(c), Potential Entitlement Offer Participants who acquired SGH Shares through the Entitlement Offer at the Offer Price (or a price which was higher than the Uninflated Price) were at risk of incurring economic loss.*

*XII. Further, a reasonable person in the position of ABL and/or Wenig would have foreseen that:*

- a. in the absence of a legal opinion from ABL which set out the matters pleaded in paragraph IX above:
  - i. the Offer Documents would not be published in the same form, or at all;*
  - ii. the Potential Entitlement Offer Participants would not acquire SGH Shares through the Entitlement Offer at the same price or at all;**
- b. if performance of the ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibility and ABL Legal Opinion Responsibilities resulted in ABL issuing a legal opinion from ABL which set out the matters pleaded in paragraph IX above, in circumstances where:
  - i. in relation to the Entitlement Offer, SGH and the Entitlement Offer did not satisfy the conditions in section 708AA(2) of the Corporations Act;*
  - ii. the 30 March Cleansing Notice did not comply with section 708AA(7) of the Corporations Act;**

- iii. *the 30 March Cleansing Notice was defective within the meaning of section 708AA(11) of the Corporations Act;*
- iv. *the Offer Documents did contain a statement that was false, misleading, or deceptive, or likely to mislead or deceive (including by way of omissions from the Offer Documents), having regard to the content requirements of section 708AA(7) of the Corporations Act; or*
- v. *the due diligence process, as described in the DDPM:*
  - 1. *had not been implemented, completed, and conducted, as the case may be, in accordance with the terms of the DDPM in all material respects or that there were no material deviations from it not approved by the DDC;*
  - 2. *was not appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act ; or*
  - 3. *did not constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, to ensure that the Offer Documents were true and not misleading or deceptive and that there were no omissions from the Offer Documents that were required to be included by the Corporations Act,*

*this was likely to result in the Offer Documents being published by SGH in a form in which Potential Entitlement Offer Participants were invited to acquire SGH Shares and pay the Offer Price on the basis of Offer Documents which would not otherwise have been published in the same form, or at all, and acquiring SGH Shares through the Entitlement Offer at the same price or at all.*

- XIII. *At all material times, Potential Entitlement Offer Participants had substantially less capacity to determine whether the Offer Documents were inaccurate and/or misleading and/or incomplete by reason of the existence and non-inclusion within the Offer Documents of information of which SGH was aware, or which ought reasonably to have come into the possession of SGH Officers in the course of the performance of their respective duties, than did ABL (as a member of the DDC) and Wenig (as Chairman of the DDC).*
- XIV. *At all material times, by reason of the matters pleaded in paragraphs X to XIII above, Potential Entitlement Offer Participants (including the Applicant and those Group Members who acquired SGH Shares through the Entitlement Offer) were in a position of vulnerability.*
- XV. *By reason of the matters pleaded in paragraphs X to XIV above, a reasonable person in the position of ABL and/or Wenig would have foreseen a not insignificant risk of harm to Potential Entitlement Offer Participants if ABL's and/or Wenig's performance of the ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibility and ABL Legal Opinion Responsibilities resulted in ABL issuing a legal opinion which set out the matters pleaded in paragraph IX above, in circumstances where:*

- a. *the Entitlement Offer did not satisfy the conditions in section 708AA(2) of the Corporations Act;*
- b. *the 30 March Cleansing Notice did not comply with section 708AA(7) of the Corporations Act, or was defective within the meaning of section 708AA(11) of the Corporations Act;*
- c. *the Offer Documents did contain a statement that was false, misleading, or deceptive, or likely to mislead or deceive) including by way of omissions from the Offer Documents, having regard to the content requirements of section 708AA(7) of the Corporations Act; or*
- d. *the due diligence process, as described in the DDPM:*
  - i. *was not appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act; or*
  - ii. *did not constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, to ensure that the Offer Documents were true and not misleading or deceptive and that there were no omissions from the Offer Documents that were required to be included by the Corporations Act.*

XVI. *By reason of the matters in X to XV above, ABL had a duty to potential Entitlement Offer participants to exercise reasonable care and skill in the performance of the ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibility and the ABL Legal Opinion Responsibilities (ABL Duty of Care).*

- XVII. *On a date unknown to the First Respondent prior to 30 March 2015:*
- a. *ABL assisted SGH in preparing and/or settling the 30 March Announcement and the 30 March Presentation, including by amending the section of the 30 March Presentation entitled "Key Risks".*
  - b. *ABL reviewed and/or finalised the 30 March Cleansing Notice (including the Section 708AA Notice Statement).*
  - c. *ABL undertook work to review and consider whether:*
    - i. *the Section 708AA Statement, considered in the context in which it appeared in the Offer Documents, was misleading or deceptive;*
    - ii. *there were no matters relevant to the subject to which the Section 708AA Statement related which were omitted from the Offer Documents; and*
    - iii. *the Section 708AA Statement could be cross referred to independent source materials to establish the truth and accuracy or the statement or, where that was not feasible, the truth and accuracy of the statement was based on direct personal knowledge and expertise and/or an analysis demonstrating that the relevant statement had been made on reasonable grounds,*

**(Work done by ABL)**

XVIII. *On:*

- a. a date unknown to the First Respondent prior to 27 March 2015, ABL issued:
- i. ABL's Legal Due Diligence Report (**DD Report**) to the directors of SGH and the members of the DDC; and
  - ii. **the Unsigned ABL Legal Opinion Letter** to the directors of SGH;

**Sub-particulars**

1. The DD Report is undated but was provided to SGH prior to 27 March 2015 as it was included in the board pack made available to directors of SGH to be held that date and is stamped "Board – 27 Mar 2015 (Transaction Pack) (Video Conference) – Equity Raising" (SGH.029.001.0331\_2);
  2. The Unsigned ABL Legal Opinion Letter is dated 23 March 2015 and was provided to SGH prior to 27 March 2015, as it was included in the board pack made available to directors of SGH to be held that date and is stamped "Board – 27 Mar 2015 (Transaction Pack) (Video Conference) – Equity Raising" (SGH.029.001.0331\_2).
- b. 29 March 2015, ABL (through Wenig) issued **the ABL Signed Legal Opinion Letter**, to the SGH Board (copied to other members of the DDC), which was in substantially the same terms as the Unsigned ABL Legal Opinion Letter;

**Sub-particulars**

1. The only differences between the ABL Signed Legal Opinion Letter and the Unsigned ABL Legal Opinion Letter were that the Unsigned ABL Legal Opinion Letter:
  - a. used the word "institutional tradeable retail" instead of the word "renounceable", on p.1, paragraph 1;
  - b. did not refer to Macquarie Capital (Australia) Ltd (ACN 123 199 548) as an underwriter, on p.2, paragraph 2, and generally used the term "Underwriter" instead of "Underwriters";
  - c. contained an extraneous word ("the") on p.2, paragraph 1(c), line 2;
  - d. did not contain the date of the DDPM ("on 29 March 2015") on p.2, paragraph 1(d)
  - e. did not contain the date of the Underwriting Agreement ("on or about 30 March") on p.6, paragraph 12(a);
  - f. contained sub-paragraph 12(a)(ii)(C) in terms which permitted disclosure if "filed with a government or other agency or quoted or referred to in a public document"; and
  - g. did not contain the words "(including the Underwriters)" after the word "observer" on p.6,

paragraph 12(a)(ii)(E), which became 12(a)(ii)(D) in the ABL Signed Legal Opinion Letter.

XIX. The Unsigned ABL Legal Opinion Letter and the ABL Signed Legal Opinion Letter stated the following:

a. that:

i. we believe that SGH and the Entitlement Offer satisfied the conditions in section 708AA(2) of the Corporations Act;

ii. there is no matter known to us that would cause us to believe, and we do not believe that the 30 March Cleansing Notice does not comply with section 708AA(7) of the Corporations Act or was defective within the meaning of section 708AA(11) of the Corporations Act;

iii. nothing had come to our attention that causes us to believe, and we do not believe, that the Offer Documents contain any statement that is false, misleading, or deceptive, or likely to mislead or deceive (including by way of statements included in or omissions from the Offer Documents), having regard to the content requirements of section 708AA(7) of the Corporations Act,

(together, **Offer Documents Legal Opinions**);

b. nothing has come to our attention which causes us to believe, and we do not believe, that the Due Diligence Process, and the scope of the due diligence inquiries as described in the DDPM,

i. has not been implemented, completed, and conducted, as the case may be, in accordance with the terms of the DDPM in all material respects (or that there were any material deviations from it not approved by the DDC);

ii. would not be appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act;

iii. should constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, and to ensure that the Offer Documents are true and not misleading or deceptive and that there are no omissions from the Offer Documents that were required to be included by the Corporations Act,

(together, **Due Diligence Legal Opinion**),

(together, **ABL Legal Opinions**).

XX. By the ABL Legal Opinions, ABL and Wenig represented to the SGH Board (and other members of the DDC) that the ABL Legal Opinions were based upon reasonable grounds and were the product of an exercise of reasonable skill and care (**ABL Legal Opinions Basis Representation**).

#### **Sub-particulars**

1. The ABL Legal Opinions Basis Representation was implied from the conduct of ABL and/or Wenig in giving the ABL Legal Opinions, coupled with the absence of any

or any adequate reservation or qualification to that opinion.

- XXI. *ABL and Wenig engaged in the conduct pleaded in paragraphs XVII to XX above for the purpose of carrying out the ABL Retainer, ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibilities, and/or ABL Legal Opinion Responsibilities.*
- XXII. *After the DDC Establishment Date:*
- a. *Wenig (together with other ABL Lawyers) attended, or participated by telephone in, a number of meetings of the DDC, at which information was presented for consideration by the DDC;*
  - b. *at all material times, ABL and/or Wenig had access to and was provided with:*
    - i. *all advices, reports and other materials provided by each of ABL, executives and management of SGH, Baker & McKenzie, Macfarlanes and Mutual Trust (as "Reporting Persons" for the purposes of the DDPM); and*
    - ii. *all materials provided to and produced by the DDC (including all minutes of meetings, expert reports, verification questions and answers)*
  - c. *On a date unknown to the First Respondent after the ABL Retainer Date and prior to 11:30AM on 29 March 2015, ABL and/or Wenig accessed and reviewed the following documents:*
    - i. *drafts and final forms of questionnaires and certificates by management of SGH and other reports and sign-offs;*
    - ii. *all documents released to ASX by SGH from 5 February 2015;*
    - iii. *SGH's continuous disclosure policy;*
    - iv. *all minutes of SGH's board meetings from 5 February 2015;*
    - v. *all correspondence between SGH and ASIC and ASX in relation to continuous disclosure matters from 5 February 2015; and*
    - vi. *successive drafts of the Offer Documents.*
  - d. *the documents to which ABL had access and reviewed, by reason of the matters pleaded in a – c above, included:*
    - i. *a report dated 9 February 2015 prepared by Instinctif Partners entitled "Slater and Gordon: Report on political and regulatory due diligence" and its annexures (**Instinctif Report**) (SGH.029.002.0624);*

- ii. *an EY Report (SGH.029.002.0001), which was identified as Report 1, and described as "Draft Report provided" in Appendix 1 to Annexure C to ABL's DD Report (SGH.029.001.0331);*
- iii. *the FRP Report (SGH.029.002.0690-0702), which was identified as Report 6.2 and described as "Draft Report provided" in ABL's DD Report (SGH.029.001.0331\_2);*
- iv. *the Underwriters' Questionnaire, which was Annexure C to ABL's DD Report (SGH.029.001.0331\_2); and*
- v. *a document entitled Project Malta Board Information Session dated 20 March 2015 (20 March Board Report) (SGH.029.001.0018).*

***(materials to which ABL had access and reviewed)***

- XXIII. *By reason of the materials to which ABL had access and reviewed, as at early 2015 and in any event by 29 March 2015, information as to the Reform Affected Claims Information came, or ought reasonably to have come, into the possession of ABL and/or Wenig in the course of carrying out the ABL Retainer, ABL DDC Member Responsibilities, ABL DDC Chair Responsibilities, ABL DDC Verification Responsibilities, and/or ABL Legal Opinion Responsibilities.*
- XXIV. *The DDC met for the first time on 24 March 2015, only five days before signing and delivering the ABL Signed Legal Opinion Letter to the SGH Board.*
- XXV. *The DDC did not obtain final due diligence reports from all due diligence advisers, including the ABL DD Report.*
- XXVI. *If an appropriate due diligence exercise had been conducted prior to SGH undertaking the Entitlement Offer, then the 30 March Publications would not have been published in a form that did not disclose, address or otherwise take into account the Reform Affected Claims Information.*
- XXVII. *Further, or in the alternative to paragraph XXVI, by reason of the materials to which ABL had access and reviewed, the ABL Signed Legal Opinion Letter, and the matters pleaded at paragraphs XXIII to XXV above and XXVIII below, the due diligence process:*
  - a. *was not appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act, and/or*
  - b. *did not constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, and/or to ensure that the Offer Documents were true and not misleading or*

*deceptive, and/or that there were no omissions from the Offer Documents that were required to be included by the Corporations Act.*

- XXVIII. By reason of the matters pleaded in paragraphs XXIII to XXVI:*
- a. there were no reasonable grounds for the Offer Documents Legal Opinions; and*
  - b. the Offer Documents Legal Opinions were misleading or deceptive, or likely to mislead or deceive.*
- XXIX. By reason of the matters pleaded in paragraphs XXIII to XXVII:*
- a. there were no reasonable grounds for the Due Diligence Legal Opinion; and*
  - b. the Due Diligence Legal Opinion were misleading or deceptive, or likely to mislead or deceive.*
- XXX. By reason of the matters pleaded in paragraphs XXVIII and/or XXIX, the ABL Legal Opinions Basis Representation was misleading or deceptive, or likely to mislead or deceive.*
- XXXI. The members of the DDC other than ABL relied upon the ABL Legal Opinions and ABL Legal Opinions Basis Representation in issuing the DDC Report to the directors of SGH.*
- XXXII. On or about 29 March 2015, the board of SGH relied upon the ABL Legal Opinions and ABL Legal Opinions Basis Representation in resolving to:*
- a. publish the 30 March Publications in the form in which they were published;*
  - b. proceed with the Entitlement Offer for the purpose of funding the acquisition of PSD; and*
  - c. enter into the documents pursuant to which SGH agreed to acquire PSD.*
- XXXIII. Were it not for the ABL Legal Opinions and ABL Legal Opinions Basis Representation, SGH would not have published the 30 March Publications in the form in which they were published, including not disclosing, addressing or otherwise taking into account the Reform Affected Claims Information.*
- XXXIV. By reason of the matters pleaded in paragraph XXXIII, were it not for the ABL Legal Opinions and ABL Legal Opinions Basis Representation, the Affected Market (including Potential Entitlement Offer Participants) would not have received the 30 March Publications in the form in which they were published.*
- XXXV. By reason of the matters pleaded above, the 30 March Publications were misleading or deceptive, or likely to mislead or deceive the Affected Market.*

XXXVI. *The matters pleaded in paragraph XXXV were continuing in nature, and continued to be uncorrected in the Affected Market from and after 30 March 2015 during the Relevant Period.*

XXXVII. *The work done by ABL, the ABL Legal Opinions and the ABL Legal Opinions Basis Representation was conduct engaged in by ABL and Wenig:*

- a. in relation to financial products (being SGH Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;*
- b. in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or*
- c. in trade or commerce, within the meaning of section 2 of the ACL.*

XXXVIII. *By reason of the matters pleaded above, as at 29 March 2015, ABL and Wenig contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act, and/or s 18 of the ACL (**ABL Misleading Conduct Contraventions**).*

XXXIX. *Further, or alternatively, the conduct of Wenig in giving the ABL Legal Opinions, and making the ABL Legal Opinions Basis Representation (and in failing to correct or qualify those opinions and representations):*

- a. was conduct which was, as pleaded above, misleading or deceptive or likely to mislead or deceive;*
- b. was conduct engaged in on behalf of, and as agent of, every other partner of ABL and the firm ABL, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each partner of ABL and the firm ABL;*
- c. by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of ABL, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Wenig, being a partner of ABL who was party to the act of expressing the ABL Legal Opinions (and the ABL Legal Opinions Basis Representation) (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and*
- d. by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of ABL*

*(each such contravention of such provisions being an ABL Misleading Conduct Contravention).*

XL. *By reason of the matters pleaded above, a reasonable person in the position of ABL who had access to the materials to which ABL had access and reviewed, and the knowledge which ABL and/or Wenig ought to have had, or had would:*

- a. not have provided the ABL Legal Opinions (and particularly Offer Documents Legal Opinions) in respect of the 30 March Publications*

*without disclosure in the Offer Documents of the Reform Affected Claims Information;*

- b. not have provided the ABL Legal Opinions (and particularly the Offer Documents Legal Opinions) in respect of the 30 March Publications to the extent they failed to disclose, address or otherwise take into account of the Reform Affected Claims Information;*
- c. not have provided the ABL Legal Opinions in respect of the 30 March Cleansing Notice unless SGH had disclosed to the Affected Market prior to, or with the 30 March Publications the Reform Affected Claims Information;*
- d. not have provided the ABL Legal Opinions (and particularly the Due Diligence Legal Opinion) unless the due diligence process had identified and resulted in (a) to (c) above; and*
- e. not have provided the ABL Legal Opinions (and particularly the Due Diligence Legal Opinion) because the due diligence process:*
  - i. was not extensive, thorough and appropriate, taking into account the scale of the PSD acquisition;*
  - ii. had not been implemented, completed, or conducted, as the case may be, in accordance with the terms of the DDPM in all material respects;*
  - iii. was not appropriate to ensure that the Offer Documents met the disclosure requirements of section 708AA(7) of the Corporations Act; and/or*
  - iv. did not constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act, and/or to ensure that the Offer Documents were true and not misleading or deceptive, and/or that there were no omissions from the Offer Documents that were required to be included by the Corporations Act.*

*XL I. By reason of the matters pleaded in paragraph XL above individually, and in any combination, ABL breached the ABL Duty of Care (**ABL Duty Breaches**).*

*XL II. Were it not for the ABL Misleading Conduct Contraventions, or any of them, and/or the ABL Duty Breaches, the Entitlement Offer would not have proceeded.*

*XL III. Further, or in the alternative to paragraph XL II, had the ABL Misleading Conduct Contraventions, or any of them and/or the ABL Duty Breaches not occurred, the acquisition of PSD would not have occurred, or would not have occurred in the way in which it did occur.*

- XLIV. *In the Relevant Period, the ABL Misleading Conduct Contraventions and/or ABL Duty Breaches caused or materially contributed to:*
- a. *the market price of SGH Shares being substantially greater than their true value and/or the market price that would have prevailed but for those ABL Misleading Conduct Contraventions and/or ABL Duty Breaches, from 30 March 2015; and*
  - b. *the Offer Price for SGH Shares under the Entitlement Offer being substantially higher than the Offer Price that would have pertained but for those ABL Misleading Conduct Contraventions and/or ABL Duty Breaches, in that the Offer Price, was fixed by reference to a 15.6% (or any) discount to the closing price for SGH on the ASX Shares on Friday 27 March 2015, and that Offer Price would need to have been further discounted in order to remain competitively discounted to the market price which would have prevailed, as pleaded in sub-paragraph (a) above.*
- XLV. *On and from 26 November 2015, the market price of SGH Shares declined substantially.*
- XLVI. *The declines in the price of SGH Shares pleaded in paragraph XLV above:*
- a. *were caused or materially contributed to by:*
    - i. *the market's reaction to the information communicated to the Affected Market in the 26 November 2015 Announcement, in the context of what had been communicated to the Affected Market prior to those announcements; and*
    - ii. *the ABL Misleading Conduct Contraventions and/or ABL Duty Breaches;*
  - b. *would, to the extent they removed inflation from the price of SGH Shares, have occurred, or substantially occurred, earlier if:*
    - i. *SGH had disclosed to the Affected Market the Reform Affected Claims Information; and/or*
    - ii. *SGH had addressed or otherwise taken account of the Reform Affected Claims Information in the 30 March Publications.*
- XLVII. *Further, or in the alternative, in the decision to acquire an interest in SGH Shares:*
- a. *the Applicant and some Group Members (including some Group Members who were Potential Entitlement Offer Participants) would not have acquired interests in SGH Shares at the price they acquired them, or at all, if they had known the Reform Affected Claims Information, which would not have remained undisclosed were it not for the ABL Misleading Conduct Contraventions and/or ABL Duty Breaches;*

b. *the Applicant and some Group Members (including some Group Members who were Potential Entitlement Offer Participants) relied directly on some or all of the 30 March Publications, which would have addressed or otherwise taken account of the Reform Affected Claims Information were it not for the ABL Misleading Conduct Contraventions and/or ABL Duty Breaches.*

XLVIII. *By reason of the matters pleaded above, the Applicant and Group Members (including those Group Members who were Potential Entitlement Offer Participants) have suffered loss and damage by and resulting from the ABL Misleading Conduct Contraventions (or any one or combination of them).*

XLIX. *By reason of the matters pleaded above, the Applicant and Group Members who were Potential Entitlement Offer Participants have suffered loss and damage by and resulting from the ABL Duty Breaches (or any one or combination of them).*

L. *The First Respondent refers to and repeats the Statement of Claim dated 13 September 2019 filed in proceeding VID1010/2019, Matthew Hall v Arnold Bloch Leibler (A Firm).*

LI. *Further particulars may be provided after discovery and expert evidence.*

(g) by reason of sub-paragraphs 118(a) to 118(f) above, each of the persons there identified is, collectively or severally, together with the First Respondent, a "concurrent wrongdoer" within the meaning of s 1041L(3) of the *Corporations Act*, s 12GP(3) of the *ASIC Act* and s 87CB(3) of the *CCA* in relation to the claims brought by the Applicant in the 2FASC.

119. In the premises, pursuant to s 1041N of the *Corporations Act*, s 12GR of the *ASIC Act* and s 87CD of the *CCA* (as the case may be), any liability of the First Respondent to the Applicant in respect of loss or damage alleged in the 2FASC (which liability is denied) should be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of the responsibility of each of SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell Brown, EY (UK) and ABL and to the extent of the responsibility of the First Respondent (if any) for that loss or damage.

119A. Further or alternatively to paragraphs 118 and 119:

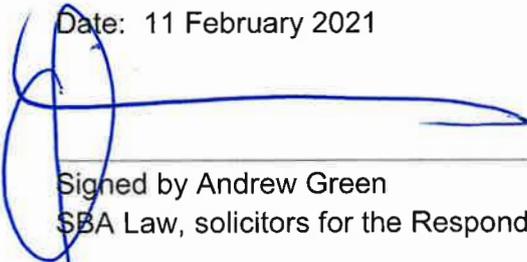
(a) the First Respondent has by cross claims filed in the proceeding alleged that each of SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell, Brown and EYUK engaged in further misleading and deceptive conduct in contravention of s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 18 of the *ACL* that has caused, and is continuing to cause, loss and damage to the First Respondent;

- (b) The First Respondent contends that SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell, Brown and EYUK are not legally liable to the Applicant and Group Members for this further misleading and deceptive conduct ("the further misleading and deceptive conduct"), and consequently the responsibility attaching to each of SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell, Brown and EYUK for that conduct does not fall within the scope of the proportionate liability provisions in s 1041N of the *Corporations Act*, s 12GR of the *ASIC Act* and s 87CD of the *CCA*;
- (c) If (which is denied) the further misleading and deceptive conduct by SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell, Brown and EYUK does fall within the scope of the proportionate liability provisions, then pursuant to s 1041N of the *Corporations Act*, s 12GR of the *ASIC Act* and s 87CD of the *CCA* and in addition to any apportionment under paragraphs 118 and 119 above, any liability of the First Respondent to the Applicant in respect of loss and damage alleged in the 2FASC should be further limited to an amount reflecting that proportion of the loss or damage claimed by the Applicant that the Court considers just having regard to the extent of the responsibility of SGH, Grech, Fowlie, Court, Skippen, Lane, O'Donnell, Brown and EYUK for the further misleading and deceptive conduct.

#### **K. RELIEF FROM LIABILITY**

120. The proceedings against the First Respondent are civil proceedings for alleged negligence, default or breach of duty in the First Respondent's capacity as auditor of SGH.
121. At all material times, the First Respondent acted honestly.
122. In all of the circumstances of the case, and in answer to the whole of the 2FASC, if (which is denied) the First Respondent is liable to the Applicant or any Group Member, the First Respondent ought fairly be excused from any liability, in whole or in part, pursuant to s 1318 of the *Corporations Act*.

Date: 11 February 2021



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Signed by Andrew Green  
SBA Law, solicitors for the Respondent

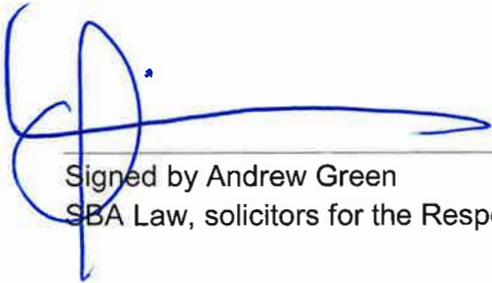
This pleading was prepared and settled by C Caleo QC, J P Tomlinson and J A Davaris of counsel.

**Certificate of lawyer**

I, Andrew Green, certify to the Court that, in relation to the defence filed on behalf of Pitcher Partners (a firm), the Respondent, the factual and legal material available to me at present provides a proper basis for:

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

Date: 11 February 2021



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Signed by Andrew Green  
SBA Law, solicitors for the Respondent