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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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A handwritten signature in blue ink, which appears to read "Warwick Soden".

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.



Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

No. VID 406 of 2014

Federal Court of Australia
District Registry: Victoria

EARGLOW PTY LIMITED (ACN 055 664 769)
Applicant

NEWCREST MINING LTD (ACN 005 683 625)
Respondent

TABLE OF CONTENTS

This statement of claim is arranged as follows:

Description	Page
A. Parties	3
B. Newcrest's Operations	4
C. August 2012 ASX Announcements	4315
D. August 2012 Representations and Material Information	4721
E. August 2012 Contraventions	4924
F. ASX Announcements between September 2012 and January 2013	2226
G. Continuing Contraventions from 13 August 2012	3037
H. January 2013 Material Information	3341
I. January 2013 Contraventions	3745
J. February 2013 ASX Announcements	3946
K. February 2013 Representations and Material Information	4351
L. February 2013 Contraventions	4554
M. ASX Announcements and Other Events – March 2013 to May 2013	4857
N. Continuing Contraventions from 8 February 2013	5264
O. April 2013 Material Information	5466

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Description	Page
P. April 2013 Contraventions	<u>5668</u>
Q. Early June 2013 Analyst Meetings and Reports	<u>5769</u>
R. June 2013 Contraventions	<u>6476</u>
S. 7 June 2013 Corrective Disclosure	<u>6678</u>
T. Loss and Damage	<u>6779</u>
U. Common Questions of Fact or Law	<u>7084</u>
 Annexure A – Applicant's Trades in NCM Securities during the Period	 <u>7488</u>
Certificate of Lawyer	<u>7589</u>

NOTE

In this statement of claim:

- (a) "FY12", "FY13" and similar terms refer to the financial years ended 30 June 2012, 30 June 2013 and so on;
- (b) "1H", "2H" refer to the first and second half of the relevant financial year (such that, for example, "1H13" is the six month period from 1 July 2012 to 31 December 2012 and "2H13" is the six month period from 1 January 2013 to 30 June 2013);
- (c) "1Q", "2Q", "3Q" and "4Q" refer to the first, second, third and fourth quarters of the relevant financial year (such that, for example, "1Q13" is the three month period from 1 July 2012 to 30 September 2012, "2Q13" is the three month period from 1 October 2012 to 31 December 2012 and so on);
- (d) "Moz" and "koz" refer to, respectively, millions of troy ounces and thousands of troy ounces;
- (e) "Mtpa" refers to million tonnes per annum;
- (f) "g/T" means grams per tonne;
- (g) "gold price" means the intra-day spot price for gold, expressed in ~~USD~~US\$ or ~~AUD~~\$ per troy ounce; and
- (h) ~~"AUD" and "USD" refer to, respectively, Australian dollars and US dollars unless otherwise indicated.~~
"\$" refers to, respectively, Australian dollars and US dollars unless otherwise indicated.

A. PARTIES

1. The Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).
2. This proceeding is commenced by the Applicant on its own behalf and on behalf of those persons who:
 - (a) at any time during the period from 13 August 2012 until the close of trading on the Australian Securities Exchange (**ASX**) on 6 June 2013 (**Period**) acquired an interest in securities traded on the ASX under the designation "NCM" (**NCM Securities**); and
 - (b) suffered loss and damage by or resulting from the conduct of the Respondent pleaded below.
(**Group Members**).
3. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against the Respondent.
4. The Respondent (**Newcrest**) at all material times:
 - (a) was and is a corporation registered pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and capable of being sued;
 - (b) had on issue securities that:
 - (i) were traded on the ASX under the designation "NCM" (that is, NCM Securities);
 - (ii) were ED Securities within the meaning of section 111AE of the Corporations Act; and
 - (iii) accordingly, were quoted ED Securities within the meaning of section 111AM; and
 - (c) as the issuer of NCM Securities:
 - (i) was listed on the ASX;
 - (ii) was subject to and bound by the Listing Rules of ASX (**ASX Listing Rules**);
 - (iii) was a listed disclosing entity within the meaning of section 111AL of the Corporations Act;
 - (iv) was subject to the requirements of section 674 of the Corporations Act; and

- (v) was a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

B. NEWCREST'S OPERATIONS

5. Newcrest is and was at all relevant times:
- (a) engaged in the business of exploration, mining, production and sale of gold, silver and copper;
 - (b) the operator, or owner of the operator, of gold mining operations at:
 - (i) Cadia Valley, New South Wales (**Cadia Valley mine**);
 - (ii) Telfer, Western Australia (**Telfer mine**);
 - (iii) Lihir Island, Papua New Guinea (**Lihir mine**);
 - (c) the majority shareholder of the operator of gold mining operations at:
 - (i) Bonikro, Côte d'Ivoire (**Bonikro mine**);
 - (ii) Halmahera Island, Indonesia (**Gosowong mine**);
 - (d) a fifty percent stakeholder in the operator of gold mining operations at Hidden Valley, Papua New Guinea (**Hidden Valley mine**).
6. At all material times, Newcrest had, or ought reasonably have had, in place internal reporting systems designed to ensure adequate and timely dissemination within Newcrest of material or significant developments regarding Newcrest's operations, including the developments at each of the mines referred to in paragraph 5.

Particulars

The Applicant refers to:

- i. the statement in the FY12 Results Report (as defined below) on page 33 that "The Group's operating segments are based on the internal management reports that are reviewed and used by the Group's Executive Committee (the chief operating decision makers) in assessing performance";
- ii. the matters set out on p32 to p37 of the FY12 Annual Report (as defined below) under the heading "Corporate Governance", including the Newcrest committees and policies referred to therein;
- iii. the list of "Policies and materials" set out on p14 and p15 of the document titled "Independent Review Report to the Board of Directors of Newcrest Mining Limited" dated 4 September 2013 and released to the ASX by Newcrest on 5 September 2013 (**Newman Report**).

The Applicant refers also to the reference to Newcrest's "internal Company policies and procedures" on page 1 of the Newman Report.

To the extent that Newcrest ought to have had in place relevant internal reporting systems, the obligation existed by reason of sections 286 and 674 of the Corporations Act.

Further particulars may be provided following the completion of discovery and before trial.

7. On 26 September 2011, Newcrest published and lodged with the ASX a document titled "Newcrest Annual Report" (**FY11 Annual Report**) in which Newcrest made express statements to the effect that:
 - (a) Newcrest's "Board recognises the importance of keeping the market fully informed of [Newcrest's] activities and of stakeholder communication in a timely, balanced and transparent manner. In this respect [Newcrest] complies with the new Listing Rule requirements concerning analyst briefings, which came into effect from 1 January 2011";
 - (b) Newcrest's "Continuous Disclosure Policy ensures that [Newcrest] information considered to be material is announced immediately to the market through the ASX";
 - (c) Newcrest's "Board policy is to achieve effective communication with shareholders through compliance with ASX Listing Rules and the Corporations Act reporting requirements";
 - (d) Newcrest "maintains a record of meetings with analysts including the date, location and persons attending".

8. In the premises set out in paragraphs 5 to 7, at all relevant times Newcrest had, or ought to have had, detailed knowledge of the past, present and likely future performance of each of the mines that contributed to Newcrest's gold production and the conditions prevailing at each of those mines, including:
 - (a) the operating conditions present at each of those mines;
 - (b) the quality and grade of ore being produced by mining activities at each mine compared with the grade of ore contained in any stockpiles kept at that mine (**gold grade differential**);
 - (c) the quantity of ore being produced by mining activities at each mine;
 - (~~e~~)(d) the capacities and condition of the mining and processing infrastructure in place at each mine;
 - (~~d~~)(e) the level of gold recovery achieved in relation to the raw materials processed at each mine (**feed material**); and

(f) the progress and status of plant upgrades, site development and other projects being carried out at each mine; and

(e)(g) the operating and capital expenditure costs associated with each mine.

9. In 2011 and 2012, Newcrest issued a number of downgrades to its previous gold production guidance, namely:
 - (a) on 25 January 2011, when FY11 guidance of 2.85Moz to 3Moz was downgraded to 2.85Moz to 2.95Moz;
 - (b) on 19 April 2011, when FY11 guidance was further downgraded to 2.82Moz \pm 35koz;
 - (c) on 9 June 2011, when FY11 guidance was further downgraded to 2.7Moz;
 - (d) on 24 January 2012, when FY12 guidance of 2.775Moz to 2.925Moz was downgraded to 2.43Moz to 2.55Moz;
 - (e) on 24 April 2012, when FY12 guidance was further downgraded to 2.25Moz to 2.35Moz.

10. At all relevant times from 13 August 2012, the costs of operating each of the Telfer, Bonikro and Hidden Valley mines (measured on a dollars per ounce of gold basis) were higher than the average gold price at around the start of FY13, such that ongoing gold production at those mines was at risk of being or becoming uneconomic.

Particulars

So far as the Applicant can say prior to completion of discovery, the "All-in Sustaining Cash Cost" of gold production (as opposed to "cash costs") but excluding "Corporate" costs for the 12 months to 30 June 2013 at each of the Telfer, Bonikro and Hidden Valley mines was between AUD\$1,705 and AUD\$2,422 per ounce of gold sold, which cost range was higher than the gold price at around the start of FY13. The Applicant refers in this regard to the document Newcrest published and lodged with the ASX on 25 July 2013 titled "June 2013 Quarterly Results" (**4Q13 Results**).

The Applicant also refers to the report published by Joseph Kim, Lyndon Fagan, Mark Busuttil and Luke Neilson of JP Morgan on 7 June 2013 concerning Newcrest titled "Assessing the value approach to production" and the analysis therein of major gold companies' "all-in" costs for various gold mines, including the Telfer mine.

Further particulars may be provided following the completion of discovery and prior to trial.

11. Further or alternatively to paragraph 10, relative to Newcrest's other main sources of gold production (being the Lihir, Cadia and Gosowong mines), as at FY12 the Telfer mine had significantly higher "cash costs" and high "total production costs".

Particulars

The cash costs at Telfer for FY12 were \$783/oz, while the total production costs at Telfer for FY12 were \$1,116/oz, as set out in Newcrest's June 2012 Quarterly Report, released to the ASX on 26 July 2012.

The Applicant also refers to the information packets accompanying Newcrest's Toronto Stock Exchange Listings titled 'Telfer Technical Report', 'Gosowong Technical Report', 'Lihir Technical Report' and 'Cadia Valley Technical Report', each dated 2 March 2012 and lodged with the ASX on that day. Costs reported in these reports are "cash costs" and do not include accounting measures of capital expenditure such as depreciation and amortisation.

Lihir mine

44.12. In relation to the Lihir mine:

- (a) Newcrest acquired control of the Lihir mine in September 2010 through a merger with Lihir Gold Limited (**Lihir acquisition**);
- (b) the Lihir acquisition was the subject of only a limited due diligence exercise by Newcrest at the time;
- (c) at the time of the Lihir acquisition, the gold price was approximately ~~USD4~~US\$1,200 per ounce;
- (d) at the time of the Lihir acquisition, there was in progress at the Lihir mine an infrastructure project known as the "Million Ounce Plant Upgrade" (**MOPU project**) designed to increase the gold production capacity of the Lihir mine to over one million ounces per year.

42.13. By no later than 13 August 2012, there was in progress at the Lihir mine additional infrastructure projects, namely:

- (a) a programme to improve plant reliability at the Lihir mine (**Lihir reliability programme**);
- (b) a project to increase the flotation capacity at the Lihir mine (**Lihir flotation capacity upgrade**),

which projects were ongoing in nature and expected to extend into FY14.

43.14. Between early 2011 and 6 June 2013, there were a number of interruptions to gold production at the Lihir mine, namely:

- (a) the disruption reported to the ASX by Newcrest on 19 April 2011 arising from "unseasonably low rainfall" and consequential impacts on the availability of the

flotation circuit, the gold grade of feed material and leach recovery;

- (b) the disruption reported to the ASX by Newcrest on 9 June 2011 arising from a "high voltage switchgear failure in the power station";
- (c) the impairment to gold production reported to the ASX by Newcrest on 19 December 2011 arising from "the extended time required to complete the total plant shut down during August" and "the extreme rainfall during September";
- (d) the disruption reported to the ASX by Newcrest on 24 February 2012 (**24 February 2012 ASX Release**) arising from "a failure detected in the post autoclave final discharge deaeration tank and continued erratic processing plant performance";
- (e) the disruption reported to the ASX by Newcrest on 28 August 2012 arising from a dispute involving the Lihir Mining Area Landowners' Association;
- (f) the reduction of production to 25% of plant capacity reported to the ASX by Newcrest on 21 September 2012 arising from "an issue with the electrical system in the main oxygen plant";
- (g) the disruption referred to in the ASX announcement of 28 March 2013 described in paragraph ~~80~~108.

~~44~~15. In the 24 February 2012 ASX Release, Newcrest made express statements that:

- (a) Newcrest "believes the existing plant [at the Lihir mine] is suffering from long term underinvestment in fixed plant maintenance";
- (b) Newcrest was executing a plan to "progressively rectify vulnerable and unreliable parts of the older plant".

~~45~~16. At all relevant times from 13 August 2012:

- (a) the costs of operating the Lihir mine (measured on a dollars per ounce of gold basis) was sufficiently close to the average gold price at around the start of FY13 as to be at risk of making ongoing gold production at the mine uneconomic; and
- (b) the grade of gold available for processing at the Lihir mine was expected by Newcrest to decline in the five years to FY17.

Particulars

As to the matters set out in subparagraph (a):

- i. So far as the Applicant can say prior to completion of discovery, the "All-in Sustaining Cash Cost" of gold production (as opposed to "cash costs") but excluding "Corporate" costs for the 12 months to 30 June 2013 at the Lihir mine was ~~AUD~~\$1,177 per ounce of gold sold. The Applicant refers in this regard to the 4Q13 Results.

- ii. The Applicant also refers to the report published by Joseph Kim, Lyndon Fagan, Mark Busuttill and Luke Neilson of JP Morgan on 7 June 2013 concerning Newcrest titled "Assessing the value approach to production" and the analysis therein of major gold companies' "all-in" costs for various gold mines, including the Lihir mine.

As to the matters set out in subparagraph (b), so far as the Applicant can say prior to the completion of discovery, Newcrest expected that the gold grade of ore mined at the Lihir mine would reduce from around 3.3g/T, as at October 2012, by an amount of about 0.1g/T in each year thereafter. -The fact and nature of Newcrest's expectations is to be inferred from:

- i gold grade forecasts set out in the Lihir FY12 5YP referred to in paragraph ~~46B~~19 below;
- ii. statements to the effect alleged made by Newcrest management to attendees at the October 2012 site visit referred to in the particulars to paragraph ~~5470~~ and subsequent publication of statements to the effect alleged in reports by representatives from Morgan Stanley, Credit Suisse, Deutsche Bank, JP Morgan, Royal Bank of Scotland and Macquarie Bank.

Further particulars may be provided following the completion of discovery and prior to trial.

Cadia Valley mine

~~46.17.~~ In relation to the Cadia Valley mine:

- (a) around 2010, Newcrest commenced developing a new underground mine at Cadia Valley referred to as the "Cadia East" mine (Cadia East mine), and began transitioning away from its then main source of ore at Cadia Valley, the "Cadia Hill" mine (Cadia Hill);
- ~~(a)~~(b) on or around 16 August 2010, in a presentation given following the release of Newcrest's FY10 financial results, Newcrest forecast gold production of between 580koz and 600koz at the Cadia Valley mine for FY11;
- ~~(b)~~(c) the Cadia Valley mine produced 515.4koz of gold in FY11;
- ~~(e)~~(d) on or around 15 August 2011, in a presentation given following the release of Newcrest's FY11 financial results, Newcrest forecast gold production of between 550koz and 580koz at the Cadia Valley mine for FY12; and
- (e) the Cadia Valley mine produced 473.2koz of gold in FY12;
- (f) during the period in which the Cadia East mine was being "ramped up", low grade stockpiled ore was to be used as mill feed;
- (g) by June 2012, Newcrest had ceased mining activities at Cadia Hill;
- (h) by July 2012:
 - (i) delays had been experienced in the "ramp up" of the Cadia East mine into full

production, such that in FY12 8koz of gold was produced from the Cadia East mine compared with a budget of 67koz; and

(ii) the development of the Cadia East mine was running at least \$400m over budget;

(i) by no later than July 2012, Newcrest expected that:

(i) in FY14, approximately 26Mt of ore would be processed at Cadia Valley, of which between around 4.5Mt and 4.6Mt would be low grade stockpiled ore;

(d)(ii) from FY14 onwards a significant proportion (and no less than 50%) of gold produced at Cadia Valley was to come from the Cadia East mine.

Particulars

As to the matters set out in subparagraph (i), the Applicant refers to the Newcrest FY12 5YP (as defined below) and the document at NEW.606.015.3095.

Production forecasts for FY13

18. 16A.—By no later than 30 June 2012, Newcrest had finalised a five year plan for its overall operations (**Newcrest FY12 5YP**), which document:

(e)(a) forecast total future gold production for the coming five financial years as follows:

- (i) 2.604Moz in FY13;
- (ii) 2.982Moz in FY14;
- (iii) 3.268Moz in FY15;
- (iv) 3.571Moz in FY16;
- (v) 3.655Moz in FY17;

(b) estimated that between FY13 and FY17 a total of AUD\$8.26b in capital expenditure on Newcrest's operations would be required to achieve the forecast production set out above;

(c) estimated significantly higher "cash costs" for each of Newcrest's mines (apart from Bonikro in FY13) for the period FY12 to FY17, relative to the five year plan prepared in FY11.

Particulars

The Newcrest FY12 5YP is set out at document NEW.600.003.5040.

19. 16B.—By no later than 30 June 2012, Newcrest had ~~finalised~~prepared a five year plan for Lihir (**Lihir FY12 5YP**), which document:

(f)(a) forecast future gold production at Lihir for the coming five financial years as follows:

- (i) 901koz in FY13;
- (ii) 1.135Moz in FY14;
- (iii) 1.323Moz in FY15;
- (iv) 1.400Moz in FY16;
- (v) 1.450Moz in FY17;

(g)(b) forecast a significant decline in the quality and grade of ore available for processing at Lihir between FY13 and FY17;

(h)(c) estimated that a substantial increase in the tonnes of ore milled between FY13 and FY17, including a total level of throughput of 9.5Mtpa in FY13, 14.4Mtpa in FY14 increasing to 21.2Mtpa in FY17, would be required to achieve the forecast production;

(i)(d) estimated that between FY13 and FY17 a total of AUD2\$2.4b in capital expenditure on Lihir would be required to achieve the forecast production and increased grinding capacity, including AUD794m\$794m of capital expenditure in FY13 and AUD601m\$601m of capital expenditure in FY14;

(j)(e) identified that capital expenditure on increasing grinding capacity at Lihir was in addition to that required for the MOPU project;

(k)(f) formed the basis of the information concerning Lihir set out in the Newcrest FY12 5YP.

Particulars

The Lihir FY12 5YP is set out at documents NEW.600.010.4974 and NEW.600.010.4979.

20. 46C. —By no later than 30 June 2012, Newcrest had finalised-prepared a five year plan for Cadia (**Cadia FY12 5YP**), which document:

(l)(a) forecast future gold production at Cadia for the coming five financial years as follows:

- (i) 503koz in FY13;
- (ii) 585koz in FY14;
- (iii) 704koz in FY15;
- (iv) 899937koz in FY16;
- (v) 882958koz in FY17;

(b) forecast that the ore milled in FY14 at Cadia Valley would comprise 21.9Mt of

underground ore (from the Cadia East mine and the "Ridgeway" mine) and 4.6Mt of open pit ore (from Cadia Hill stockpiles);

(c) assumed that ore from the Cadia East mine would be the dominant ore source for the Cadia Valley mine for the period from FY14 to FY17;

(d) assumed that mill throughput would increase from a total of 26Mtpa to 30Mtpa through debottlenecking and minor capital improvements;

(m)(e) formed the basis of the information concerning Cadia set out in the Newcrest FY12 5YP.

Particulars

The Cadia FY12 5YP is set out at document NEW.606.008.5005324.003.0001. In respect of subparagraphs 20(b) and (d) the Applicant refers to the Newcrest FY12 5YP.

21. By no later than 30 June 2012, Newcrest had prepared a five year plan for Telfer (Telfer FY12 5YP), which document:

(a) forecast gold production for each of FY13 to FY17 of between 500 and 600koz;

(b) forecast the "cash costs" and "total production costs" (in \$ per ounce) for Telfer for the period from FY13 to FY17 to be as follows:

<u>Year</u>	<u>Cash costs</u>	<u>Total production costs</u>
<u>FY13</u>	<u>\$996</u>	<u>\$1,357</u>
<u>FY14</u>	<u>\$1,039</u>	<u>\$1,426</u>
<u>FY15</u>	<u>\$1,010</u>	<u>\$1,391</u>
<u>FY16</u>	<u>\$976</u>	<u>\$1,315</u>
<u>FY17</u>	<u>\$1,098</u>	<u>\$1,361</u>

(c) forecast capital expenditure for the period from FY13 to FY17 as follows:

(i) \$181m in FY13;

(ii) \$332m in FY14;

(iii) \$40m in FY15;

(iv) \$35m in FY16;

(v) \$35m in FY17.

(d) formed the basis of the information concerning Telfer set out in the Newcrest FY12 5YP.

Particulars

The Telfer FY12 5YP is set out at document NEW.342.001.0001.

22. By no later than 30 June 2012, Newcrest had prepared a five year plan for Gosowong (Gosowong FY12 5YP), which document:

- (a) forecast future gold production at Gosowong of 410koz for FY13 and 400koz for each of FY14 to FY17;
- (b) forecast capital expenditure for the period from FY13 to FY17 as follows:
 - (i) US\$123m in FY13;
 - (ii) US\$45m in FY14;
 - (iii) US\$36m in FY15;
 - (iv) US\$47m in FY16;
 - (v) US\$31m in FY17;
- (c) forecast that exploration success would be required by FY15 to meet the future gold production forecast referred to above;
- (d) formed the basis of the information concerning Gosowong set out in the Newcrest FY12 5YP.

Particulars

The Gosowong FY12 5YP is set out at document NEW.324.002.0001.

23. 46D. —By no later than 30 June 2012, Newcrest had finalised a budget for FY13 (FY13 Budget), which document:

- (a) forecast gold production for FY13 at 2.474Moz; and
- (b) provided for AUD\$1.888b in capital expenditure for FY13.

Particulars

The FY13 Budget is set out at document NEW.600.003.4918.

Impairment testing for FY12

24. 46E. —Around 30 June 2012, Newcrest conducted impairment assessments for each of its mines, in respect of which:

- (a) the gold production forecasts for FY13 to FY17 set out in the Lihir FY12 5YP formed the basis of gold production estimates used in respect of Lihir for the purposes of that assessment;
- (b) Newcrest applied the following gold price assumptions for the purposes of its "Mid-Price" plan:

	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20+
US\$D/oz	1,615	1,656	1,545	1,434	1,323	1,211	1,100	1,100

(#)(c) Newcrest concluded, among other things that:

- (i) in respect of Lihir, there was "headroom" of between AUD~~1~~\$1,743m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4~~US\$1,100 per ounce and with the application of gold multiples) and AUD~~3~~\$3,541m (under the "Spot Price" case, assuming a constant gold price of ~~USD4~~US\$1,575 per ounce and without the application of gold multiples);
- (ii) in respect of Telfer, there was "headroom" of between AUD~~38~~\$38m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4~~US\$1,100 per ounce and with the application of gold multiples) and AUD~~107~~\$107m (under the "Spot Price" case, assuming a constant gold price of ~~USD4~~US\$1,575 per ounce and without the application of gold multiples); and
- (iii) in respect of Hidden Valley, there was a shortfall of AUD~~400~~\$100m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4~~US\$1,100 per ounce and with the application of gold multiples) or "headroom" of AUD~~237~~\$237m (under the "Spot Price" case, assuming a constant gold price of ~~USD4~~US\$1,575 per ounce and without the application of gold multiples),

such that in Newcrest's opinion no impairment was required to be recognised in respect of those mines.

Particulars

The Applicant refers to documents NEW.528.011.0336, NEW.528.011.0337 and NEW.602.001.8330, and the E&Y Report referred to in paragraph 46F~~25~~ below.

Further particulars may be provided following the completion of discovery and prior to trial.

25. ~~46F.~~ Between 30 June 2012 and 1 August 2012, Ernst & Young conducted an audit of Newcrest for FY12, the report in respect of which (E&Y Report):

(s)(a) stated on page i that:

"Newcrest have performed impairment assessments for each operational mine site using a discounted cashflow approach as at 30 June 2012. Gold premium multiples are then applied to these cashflows and incremental value added for unmined resources and exploration potential.

The valuation scenarios modelled by management identify a range of outcomes. On the basis of the analysis performed, management have

concluded that sufficient headroom exists for all operating sites”

(b) stated on page 1 that, in respect of the impairment testing by Newcrest referred to above, there was a risk that:

“Carrying value of assets in each operational site (including goodwill) are stated in excess of their recoverable amount at 30 June 2012.”

(c) concluded on page 5 that:

“Our analysis indicates that the carrying value of each [of] the three assets identified falls within a feasible range of valuation outputs, and it can therefore be reasonably argued that these assets are not impaired at 30 June 2012.

This circumstance is indicative of the need for close monitoring of market conditions and asset performance relative to forecast.”

Particulars

The E&Y Report is set out at document NEW.600.003.8779.

C. AUGUST 2012 ASX ANNOUNCEMENTS

47.26. On 13 August 2012, Newcrest published and lodged with the ASX its preliminary final report for FY12, which consisted of:

- (a) a document titled “Financial Results – Newcrest Mining Limited – Twelve months ended 30 June 2012” (**FY12 Results Release**); and
- (b) a document titled “ASX Appendix 4E – Full Year Financial Results – 30 June 2012” (**FY12 Results Report**).

48.27. In the FY12 Results Release, Newcrest made express statements to the effect that:

- (a) FY13 was a “transition” year for Newcrest, with the major focus being on the implementation of two “major growth projects”, being:
 - (i) the first commercial gold production at the “Cadia East” mine located within the Cadia Valley mine (~~Cadia East mine~~); and
 - (ii) the completion of the MOPU project;
- (b) significant progress had been made in advancing those projects in FY12, such that:
 - (i) the Cadia East mine remained on schedule for the commencement of commercial production in the “December 2012 quarter”; and
 - (ii) the MOPU project remained on schedule for completion in the “December 2012 quarter”;

- (c) Newcrest's gold production in FY13 was planned to increase to between 2.3Moz and 2.5Moz;
- (d) Newcrest's profit margins remained "robust" despite a "difficult external environment".

19-28. In the FY12 Results Report, Newcrest made express statements to the effect that:

- (a) significant progress had been made in FY12 in advancing Newcrest's "two major growth projects" such that by 30 June 2012:
 - (i) the MOPU project was approximately 91% complete; and
 - (ii) the Cadia East mine project was approximately 80% complete;
- (b) in respect of those projects:
 - (i) the Cadia East mine remained on schedule for the commencement of commercial production in the "December 2012 quarter"; and
 - (ii) the MOPU project remained on schedule for completion in the "December 2012 quarter";
- (c) the successful delivery of those two projects underpinned Newcrest's future production growth profile;
- (d) FY12 represented a "peak level of total capital expenditure for Newcrest" due to the investment associated with those two projects;
- (e) lower capital expenditure was expected moving forward;
- (f) the MOPU project:
 - (i) was "approximately 91% complete at 30 June 2012, with commissioning activities approximately 54%;
 - (ii) was "expected to increase total annual gold production from Lihir by approximately 240,000 ounces per year";
 - (iii) was "on schedule for ramp-up of production in the December 2012 quarter";
- (g) the Cadia East mine had capital costs which up to the first commercial production milestone were "within 10% above the A\$1.9billion budget, with this increase in capital cost due to lower production from the block cave before commercial commissioning";
- (h) Newcrest was able to fund its sustaining capital growth projects and exploration activities.

20-29. On 13 August 2012, Newcrest published and lodged with the ASX a document titled

"Full Year Results 2011-2012" (**FY12 Results Presentation**) in which Newcrest made express statements to the effect that:

- (a) Newcrest had produced 2.29Moz of gold in FY12;
- (b) notwithstanding "cost pressure", Newcrest's profit margins remained "robust" and "strong";
- (c) the MOPU project was on track for completion in the "December quarter of 2012";
- (d) following the completion of the MOPU project the Lihir mine would "ramp up" its production by mid FY13;
- (e) the Cadia East mine and the Lihir mine were:
 - (i) "low cost" mines;
 - (ii) "lower cost operations"; and
 - (iii) "low cost assets";
- (f) Newcrest would produce between 2.3Moz and 2.5Moz of gold in FY13;
- (g) of the 2.3Moz and 2.5Moz of gold Newcrest would produce in FY13, ~~between 700koz and 900koz would be produced from the Lihir mine;~~
 - (i) between 700koz and 900koz would be produced from the Lihir mine; and
 - (ii) between 375koz and 425koz would be produced from the Gosowong mine;
- (h) Newcrest's gold production would grow between 5% and 10% per annum for the next five years off a base of 2.29Moz produced in FY12, such that FY17 production would be between 3.1Moz and 3.5Moz, being between 35% and 55% higher than FY12;
- (i) the majority of that growth would be "driven" by "past investments" at the Cadia East mine and Lihir mine such that:
 - (i) the Cadia East mine would contribute between 30% and 40%; and
 - (ii) the Lihir mine would contribute between 50% and 70%,
of Newcrest's five year growth in gold production;
- (j) the forecast production growth "only includes projects tollgated beyond pre-feasibility stage";
- (k) a programme to improve plant reliability at the Lihir mine would be conducted throughout FY13 and the first half of FY14 (that is the Lihir reliability programme);
- (l) the flotation capacity at the Lihir mine would be increased in the second half of FY14 (that is, the Lihir flotation capacity upgrade);
- (m) with the completion of the MOPU project, Lihir reliability programme and Lihir flotation capacity upgrade, gold production at the Lihir mine would increase to

- between 1.2Moz and 1.3Moz per year;
- (n) from FY16 there would be gold production of between 700koz and 800koz per year at the Cadia Valley mine;
- (o) throughout the period from FY13 to FY17 there would be:
- (i) "production growth" in excess of 60% at the Cadia Valley mine;
 - (ii) "consistent production" of around 400koz per annum at the Gosowong mine;
(Gosowong 5 Year Guidance);
 - (iii) "consistent production" of between 500koz and 600koz per annum at the Telfer mine; (Telfer 5 Year Guidance Range);
- (p) FY12 was Newcrest's "peak capex" year;
- (q) Newcrest's gearing would "peak" in FY13 at around 15%;
- (r) there would be a substantial reduction in Newcrest's capital expenditure between FY13 and FY17, with capital expenditure in each year as follows:
- (i) approximately \$1.9b in FY13, alternatively between \$1.8b and \$2.0b in FY13;
 - (ii) approximately \$1.35b in FY14;
 - (iii) approximately \$1.0b in FY15;
 - (iv) approximately \$750m in FY16;
 - (v) approximately \$600m in FY17.
- (August 2012 Capex Guidance);
- (s) the August 2012 Capex Guidance "excludes projects not included in the 5 year production outlook";
- (p)(t) there would be a significant reduction in Newcrest's capital expenditure on "growth" projects between FY13 and FY17 with the completion of projects at the Cadia Valley mine and the MOPU project;
- (q)(u) the reduction in Newcrest's capital expenditure and growth in production would result in Newcrest having surplus cash flow;
- (v) throughout the period from FY14 to FY17 there would be a decline in Newcrest's "relative cash costs" to below the then "industry average cash cost", decreasing to a level approximately equal to the then current "first quartile cash cost".

Particulars

As to item (p), the Applicant refers to the column graph contained in the slide titled "Capital expenditure declines" at page 30 of the FY12 Results Presentation, and to the spreadsheet at document NEW.600.003.1340.

24.30. As at 13 August 2012, Newcrest's forecasts for growth in its annual gold production over

the period between FY13 and FY17 set out in the FY12 Results Release and FY12 Results Presentation were based on the assumption that the majority of that growth would be driven by:

- (a) the Cadia East mine development;
 - (b) the MOPU project;
 - (c) the Lihir reliability programme; and
 - (d) the Lihir flotation capacity upgrade,
- such that:
- (e) the Cadia East mine would contribute between 30% and 40%; and
 - (f) the Lihir mine would contribute between 50% and 70%,
- of that growth in gold production.

Particulars

The fact and nature of Newcrest's assumption is to be inferred from:

- i. the statements made in the 1Q13 ASX Releases (as defined in paragraph 2233 below) and set out at paragraphs ~~18(27(a), 18(27(b), 19(28(a), 19(28(b), 19(28(c), and 20(29(c) to 20(29(o) above;~~
- ii. the content of the Newcrest FY12 5YP, Lihir FY12 5YP, Cadia FY12 5YP and FY13 Budget;
- iii. the contents of the slide headed "Key growth outcomes" in the August 2012 Presentation;
- iv. statements made during a conference call on 13 August 2012 with analysts following the 1Q13 ASX Releases (**13 August 2012 Analyst Call**) by Gerard Bond, Newcrest's Finance Director and CFO, namely:

"The Cadia East ramp-up will enable higher levels of production from Cadia Valley at a lower cash cost although we will not start to see the full effect of this until the financial year 2014. There are substantial lower grade stockpiles at Cadia Valley which, together with the Ridgeway production, will keep the mill operating at capacity in the 2013 financial year while Cadia East ramps up to full production.

The Lihir MOPU plant expansion also remains on track for completion in the December 2012 quarter. The increased autoclave capacity will enable processing of more of the large ore stockpiles on site and lift annual production to around one billion [sic] ounces. It also provides the platform for a further increase in the annual production from an upgrade in the flotation capacity on site..."
- v. statements made during the 13 August 2012 Analyst Call by Greg Robinson, Newcrest's then CEO, namely:

"Turning to page 27 [of the August 2012 Presentation] shows you the growth again on five-year [gold] going to 3.1 to 3.5 million ounces and the key product milestones Cadia East and MOPU obviously in this financial year. Then we have the Lihir reliability program which is a key for us over the next two years...

Then finally we get into Cadia East Lift 2 which the larger of our two panel caves and looking to bring that into production by the end of financial year 2014. The last one there is the flotation capacity add on

Lihir. We're looking to expand that flotation which should take us from around the million ounce mark at Lihir to 1.2 million ounces...

Turning to slide 28, again these should be confirmation of what we've announced in April. Production at Cadia Valley is planned to reach 700,000 to 800,000 ounces per year from financial year 2016. That represents a five-year growth of 60% off this year – sorry off 2012...

At Lihir, MOPU and an expansion of the flotation circuit are expected to increase production to around 1.2 million ounces to 1.3 million ounces per year. Lihir is the biggest driver of the Company's five year gold production growth..."

Further particulars may be provided following the completion of discovery and prior to trial.

31. ~~24A.~~—Further and in the alternative to paragraph ~~24~~30, Newcrest's forecasts for growth in its annual gold production over the period between FY13 and FY17 set out in the FY12 Results Release and FY12 Results Presentation:

- (g) were based on the production forecasts set out in the Newcrest FY12 5YP, the Lihir FY12 5YP, the Cadia FY12 5YP, the Gosowong FY12 5YP and (in relation to FY13) also the FY13 Budget;
- (h) in respect of FY13 ~~and FY14~~, included at the high end of the range of forecasts a figure that was greater than the forecast set out in the ~~Newcrest FY12 5YP~~ and FY13 Budget; and
- (i) in respect of FY15, FY16 and FY17, included at the high end of the range of forecasts a figure that was not significantly less than the forecast set out in the Newcrest FY12 5YP.

32. ~~24B.~~—As at 13 August 2012, Newcrest's ~~internal assumptions~~ as to capital expenditure (including those underpinning the August 2012 Capex Guidance) over the period between FY13 and FY17 were significantly less than the capital expenditure estimates set out in the Newcrest FY12 5YP and Lihir FY12 5YP, (so far as that capital expenditure related to Lihir.)

Particulars

Newcrest's ~~internal assumptions~~ as to capital expenditure (including those underpinning the August 2012 Capex Guidance) are recorded in documents NEW.516.006.7635 and NEW.600.003.1340, and in respect of Lihir document NEW.600.010.6328. The difference between Newcrest's ~~internal assumptions~~ as to capital expenditure and ~~the~~ estimates set out in the Newcrest FY12 5YP is approximately AUD2\$2.9b, including a difference of approximately AUD918m ~~\$918m~~ in relation to Lihir.

Further particulars may be provided following the completion of discovery and prior to trial.

D. AUGUST 2012 REPRESENTATIONS AND MATERIAL INFORMATION

August 2012 Representations

22-33. By reason of the matters set out in paragraphs ~~17 to 20~~26 to 29, on 13 August 2012,

Newcrest represented that:

- (a) its gold production in FY14 would or was forecast to be between 2.52Moz and 2.77Moz;
- (b) its gold production in FY14 would or was forecast to be significantly higher than in FY13;
- (c) its increased gold production in FY14 would follow the commencement of commercial production at the Cadia East mine and the completion of the MOPU project at the Lihir mine in late 2012 or early 2013;
- (d) the Lihir mine would produce over 1Moz of gold in FY14;
- (e) further and alternatively to (d), the Lihir mine would or was forecast to produce over 1.2Moz of gold in FY14;
- (f) its gold production in the years from FY15 to FY17 would or was forecast to continue to increase at a compound annual growth rate of 5 to 10% per annum;
- (g) its gold production in FY17 would be between 3.1Moz and 3.5Moz;
- (h) Newcrest's production outlook after FY13 would not be, or was forecast not to be, significantly affected by a decline in gold prices, because:
 - (i) there would be a significant reduction in Newcrest's capital expenditure between FY13 and FY17;
 - (ii) the Cadia East mine and the Lihir mine would be the main sources of Newcrest's increased gold production between FY13 and FY17;
 - (iii) the projects at those mines that would enable Newcrest to increase its gold production would be completed before the end of FY13; and
 - (iv) the Cadia East mine and the Lihir mine were low cost mines;
- (i) achieving Newcrest's production outlook between FY13 and FY17 would not or was not likely to require any significant capital expenditure on the part of Newcrest above that set out in the August 2012 Capex Guidance;
- (j) the information available to Newcrest as at 13 August 2012 was sufficiently reliable and complete to provide a reasonable basis to provide forecasts as to gold

production and capital expenditure in the terms conveyed on 13 August 2012,
(individually, collectively, or in any combination, **August 2012 Representations**).

Particulars

The August 2012 Representations were partly express and partly implied, save for the representation in paragraph 33(i), which was implied.

In so far as they were express, they were in writing in the FY12 Results Release, the FY12 Results Report and the FY12 Results Presentation (collectively, the **1Q13 ASX Releases**).

In so far as they were implied, they were to be implied ~~as a matter of law, including by implication~~ from:

- i. the substance of the statements set out at paragraphs 17 to 20; 26 to 29;
- ii. the matters set out in paragraph 4;
- iii. section 769C of the Corporations Act;
- iv. the fact that they arise from statements made in company documents released to the market by means of the ASX company announcements platform and Newcrest knew or ought to have known therefore that investors and potential investors in NCM Securities may rely upon the statements and forecasts in those documents in making decisions whether to acquire or retain NCM Securities (or an interest therein);
- v. in the case of the representation in paragraph 33(i), further by the combination of the statements set out at paragraphs 26 to 29 and the balance of the representations set out in paragraph 33.

Compliance Representation

23.34. Further or alternatively, by no later than 13 August 2012, Newcrest represented that:

- (a) it complied with Newcrest's obligations under the Corporations Act;
- (b) it complied with Newcrest's obligations under the ASX Listing Rules;
- (c) further or alternatively, it had told or given the ASX all the information it was required to tell or give under the ASX Listing Rules, which included Listing Rules 3.1, 4.3A and 15.7,

(the **Compliance Representation**).

Particulars

The Compliance Representation was partly express and partly implied.

In so far as it was express, it was in writing in the FY11 Annual Report in the form of the statements set out at paragraph 7.

In so far as it was implied, it was to be implied ~~as a matter of law, including by implication~~ from:

- i. the substance of the statements set out at paragraph 7;
- ii. the matters set out in paragraph 4;
- iii. section 769C of the Corporations Act;

- iv. Newcrest's practice of releasing company documents to the market, including the 1Q13 ASX Releases by means of the ASX company announcements platform;
- v. the fact that Newcrest made statements in company documents released to the market by means of the ASX company announcements platform and Newcrest knew or ought to have known therefore that investors and potential investors in NCM Securities may rely upon the statements and forecasts in those documents in making decisions whether to acquire or retain NCM Securities (or an interest therein).

August 2012 material information

24-35. Further or alternatively, by reason of the matters set out in paragraphs ~~8 to 16D~~, 21, 21A and ~~21B8 to 23 and 30 to 32~~, as at 13 August 2012 and at all material times thereafter until the end of the Period Newcrest was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) Newcrest's gold production guidance for each of the years from FY14 to FY17 was not reliable;
 - (b) there existed substantial risks that Newcrest's gold production guidance for FY14 through FY17 would not be met;-
 - (c) alternatively to (b), there existed substantial risks that Newcrest's gold production guidance for FY14 through FY17 could not be achieved without capital expenditure significantly above the August 2012 Capex Guidance;
 - ~~(e)~~(d) the Lihir mine was not a "low cost" mine,
- (individually, collectively, or in any combination, the **August 2012 Information**).

Particulars

Each of the items of August 2012 Information was information of which Newcrest was, or ought to have been, in possession and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, Newcrest's awareness of those matters is to be inferred from:

- A. the matters set out at paragraphs ~~4, 6 to 16D~~, 21, 21A and ~~21B4, 6 to 23, 30 to 32~~ and the particulars thereto;
- B. from no later than 21 December 2012, the further matters set out in paragraphs ~~42A to 42E~~53 to 59 and ~~69~~ and the particulars thereto;
- C. from no later than 1 January 2013, the further matters set out in paragraphs ~~54 and 52~~70 and ~~71~~ and the particulars thereto;
- D. from no later than 29 January 2013, the further matters set out in paragraph ~~59A~~79 and the particulars thereto;
- ~~GE~~. from no later than 31 January 2013, the further matters set out in paragraph ~~59B~~80 and the particulars thereto;
- ~~EE~~. from no later than 8 February 2013, the further matters set out in paragraph ~~59C~~81 and the particulars thereto;

- ~~F. from no later than 2~~G. from no later than 28 February 2013, the further matters set out in paragraphs 102 to 104 and the particulars thereto;
- ~~H. from no later than 1~~ March 2013, the further matters set out in paragraph 79A105 and the particulars thereto;
- ~~I. from no later than 24~~ March 2013, the further matters set out in paragraph 106 and the particulars thereto
- ~~J. from no later than 28~~ March 2013, the further matters set out in paragraph 107 and the particulars thereto.

Further particulars may be provided following the completion of discovery and prior to trial.

E. AUGUST 2012 CONTRAVENTIONS

August 2012 misleading and deceptive conduct

~~25.~~36. Each of the August 2012 Representations was:

- (a) made in relation to future matters, namely Newcrest's gold production for the period from FY14 to FY17;
- (b) made in relation to a financial product, namely NCM Securities;
- (c) a statement of opinion that was or could reasonably be regarded as being intended to influence potential investors in NCM Securities in making decisions in relation to the securities, within the meaning of:
 - (i) section 12BAB(5) of the ASIC Act; further or alternatively
 - (ii) section 766B(1) of the Corporations Act; and
- (d) made in trade or commerce.

~~26.~~37. In the premises, by making the August 2012 Representations Newcrest engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
 - (i) section 12BAB(1) of the ASIC Act; further or alternatively
 - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being NCM Securities, within the meaning of section 764A of the Corporations Act.

~~27.~~38. In so far as the August 2012 Representations were representations as to future matters, Newcrest did not have reasonable grounds for the representations within the meaning of:

- (a) section 12BB(1) of the ASIC Act; further or alternatively
- (b) section 769C of the Corporations Act.

Particulars

A lack of reasonable grounds is to be inferred from the matters set out in paragraphs ~~8 to 16D, 21, 21A and 21B~~ 8 to 23 and 30 to 32.

The Applicant also refers to and relies upon section 769C of the Corporations Act and section 12BB of the ASIC Act.

Further particulars may be provided following the completion of discovery and before trial.

~~28,39.~~ In the premises, by making the August 2012 Representations Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(August 2012 Production Misleading Conduct).

~~29,40.~~ Further or alternatively, in the premises set out in paragraphs ~~31 to 34~~ 42 to 45, the Compliance Representation was not true in that:

- (a) from 13 August 2012 until the end of the Period Newcrest failed to comply with section 674(2) of the Corporations Act and ASX Listing Rule 3.1; and
- (b) on 13 August 2012 failed to comply with ASX Listing Rule 4.3A.

~~30,41.~~ In the premises, by making the Compliance Representation on 13 August 2012 Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(August 2012 Compliance Misleading Conduct and together with the August 2012 Production Misleading Conduct, the August 2012 Misleading Conduct).

August 2012 disclosure contraventions

~~31.42.~~ The August 2012 Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
- (b) not generally available;
- (c) information needed by an investor to make an informed assessment of the entity's financial performance and financial position.

~~32.43.~~ By reason of the matters alleged in paragraphs 4 and ~~31.42.~~, Newcrest was:

- (a) obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to immediately notify the ASX of the August 2012 Information on and from at least 13 August 2012; and
- (b) obliged by Rule 4.3A of the ASX Listing Rules to include the August 2012 Information in the FY12 Results Report.

~~33.44.~~ Notwithstanding the matters alleged in paragraphs ~~31 and 32.42~~ and 43:

- (a) Newcrest did not notify the ASX of the August 2012 Information at any time during the Period; and
- (b) Newcrest did not include the August 2012 Information in the FY12 Results Report.

~~34.45.~~ By reason of the matters alleged in paragraphs ~~31 to 33.42~~ to 44, Newcrest contravened section 674(2) of the Corporations Act (**August 2012 Disclosure Contravention**).

~~35.46.~~ In the premises set out above, the August 2012 Disclosure Contravention commenced no later than 13 August 2012 and, so far as the August 2012 Disclosure Contravention arose from a failure to comply with Listing Rule 3.1, was a continuing contravention that continued until the end of the Period.

F. ASX ANNOUNCEMENTS AND OTHER EVENTS BETWEEN SEPTEMBER 2012 AND JANUARY 2013

September 2012 – FY12 Annual Report

36.47. On 20 September 2012, Newcrest published and lodged with the ASX its 2012 Annual Report (**FY12 Annual Report**) in which Newcrest made express statements to the effect that:

- (a) "Newcrest is entering an exciting period in its history, with major expansion projects at the Company's two most significant operations on track for delivery by the end of 2012";
- (b) two "major growth projects", namely the Cadia East mine project and the MOPU project, were "nearing completion";
- (c) "excellent" and "substantial" progress had been made on those projects, and they were due for completion "in the December 2012 quarter";
- (d) the MOPU project was "over 90 percent complete";
- (e) the Lihir reliability programme remained a priority for Newcrest in FY13;
- (f) the Cadia East mine was on schedule to achieve first commercial production in the "December 2012 quarter";
- (g) the Cadia East mine and the Lihir mine would "underpin" Newcrest's gold production for "future decades";
- (h) Newcrest's portfolio of mines had been "consolidated into a suite of predominantly long-life, low-cost mines";
- (i) Newcrest's "peak capital spend" would occur in FY12 and FY13;
- (j) Newcrest's "Board recognises the importance of keeping the markets in which it is listed fully informed of [Newcrest's] activities and of stakeholder communication in a timely, balanced and transparent manner. In this respect [Newcrest] complies with the ASX Listing Rule requirements concerning analyst briefings";
- (k) Newcrest's "Continuous Disclosure Policy establishes a system and procedures to ensure that [Newcrest] information considered to be material is announced immediately to the market through the [ASX]";
- (l) Newcrest's "Board policy is to achieve effective communication with its shareholders through compliance with ASX Listing Rules (and as required by the other exchanges on which Newcrest is listed) and the Corporations Act reporting requirements";
- (m) Newcrest "maintains a record of meetings with analysts including the date, location

and persons attending”.

~~September 2012 – USD1 billion corporate bond issue~~

~~37. [Not used.]~~

October 2012 – 1Q13 Results and FY12 AGM

~~38-48.~~ On 17 October 2012, Newcrest published and lodged with the ASX its quarterly report for 1Q13, which consisted of:

- (a) a document titled “Quarterly Report – Newcrest Mining Limited – For the three months ending 30 September 2012” (**1Q13 Results Release**); and
- (b) a document titled “September 2012 Quarterly Results” (**1Q13 Results Presentation**).

~~39-49.~~ In the 1Q13 Results Release and 1Q13 Results Presentation Newcrest made express statements to the effect that:

- (a) Newcrest’s guidance in relation to FY13 production, costs and capital expenditure remained “unchanged”;
- (b) the MOPU project was:
 - (i) nearing completion and on schedule;
 - (ii) 97% complete in relation to construction;
 - (iii) 75% complete in relation to commissioning;
 - (iv) on schedule for completion in “the December 2012 quarter”;
- (c) the Cadia East mine project was:
 - (i) nearing completion and on schedule;
 - (ii) on schedule for first commercial production in “the December 2012 quarter”.

~~40-50.~~ On 25 October 2012, Newcrest held its FY12 Annual General Meeting (**FY12 AGM**), in respect of which it published and lodged with the ASX:

- (a) a document titled “Chairman’s Speech to the Annual Meeting, 2012” (**FY12 AGM Speech**), being a speech to be given by Newcrest’s Chairman at the FY12 AGM; and
- (b) a document titled “Annual General Meeting – 25 October 2012” (**FY12 AGM**

Presentation), being slides to be shown as part of a presentation to be given by Newcrest's Managing Director and CEO at the FY12 AGM.

41-51. In the FY12 AGM Speech Newcrest made express statements to the effect that:

- (a) Newcrest had "consolidated its portfolio into a suite of predominantly long life, low cost mines supported by a pipeline of future growth options";
- (b) "significant progress" had been made on Newcrest's "major projects";
- (c) those major projects were "nearly finished";
- (d) those major projects would "underpin production for future decades";
- (e) most of the capital expenditure required for the MOPU project and the Cadia East mine project had been spent;
- (f) the Lihir mine was:
 - (i) an "exceptional asset with significant upside"; and
 - (ii) an asset that enhanced Newcrest's strategy of "being a gold company operating large, long life, low cost mines";
- (g) the MOPU project was "nearing completion" and with further "planned development" would take the Lihir's mine's annual gold production to around 1.2Moz;
- (h) the Cadia East mine project was "nearly complete".

42-52. In the FY12 AGM Presentation Newcrest made express statements to the effect that:

- (a) "key elements" of Newcrest's business were:
 - (i) its "long-life/low-cost assets";
 - (ii) "consistent growth of 5-10%pa";
- (b) Newcrest's profit margins remained "robust";
- (c) Newcrest had produced 2.29Moz of gold in FY12;
- (d) Newcrest would produce between 2.3Moz and 2.5 Moz of gold in FY13;
- (e) Newcrest would experience "5-year production growth" of between 35% and 50% in its gold production, representing:
 - (i) a compound annual growth rate of 5 to 10% per annum; and
 - (ii) expected gold production of between 3.1Moz and 3.5Moz in FY17;
- (f) the majority of that growth would be "driven" by "past investments" at the Cadia East mine and Lihir mine such that:
 - (i) the Cadia East mine would contribute between 30% and 40% of that 5 year growth; and

- (ii) the Lihir mine would contribute between 50% and 70% of that 5 year growth;
- (g) the MOPU project:
 - (i) was over 95% complete;
 - (ii) would increase annual gold production at the Lihir mine to over 1Moz;
- (h) the Lihir flotation expansion:
 - (i) would follow the MOPU project; and
 - (ii) would increase production at the Lihir mine to 1.2Moz per year;
- (i) the Cadia East mine project:
 - (i) would increase annual production of gold at the Cadia Valley mine to "700koz to 800koz (up from ~500koz)";
 - (ii) was over 80% complete as at 30 June 2012; and
 - (iii) was on schedule for first commercial production in the "December 2012 quarter";
- (j) Newcrest's capital expenditure would decline from FY13 onwards at least until FY17.

November 2012 – FY13 Life of Province Plans

53. ~~42A.~~ Between July 2012 and November 2012, Newcrest conducted a full strategic review of the operations at Lihir with a view to producing a long term resource development strategy for Lihir referred to as a "Life of Province Plan" (LoPP).

Particulars

The Applicant refers to documents NEW.600.011.5251, NEW.600.003.4552 and NEW.600.010.5513.

Further particulars may be provided following the completion of discovery and prior to trial.

54. ~~42B.~~ By no later than 14 November 2012, Newcrest had ~~completed~~ prepared the LoPP for Lihir for the years FY14 ~~3~~ onwards (**Lihir FY13 LoPP**), which document:

- ~~(k)~~(a) modelled a number of gold production profiles at Lihir, referred to as the "Low", "Mid 1", "Mid 2" and "High" cases;
- ~~(l)~~(b) for each case estimated that to achieve the level of gold production forecast under the "Mid 2" case at Lihir in excess of 1Moz per year from FY14 onwards, a greater level of capital expenditure on Lihir in the period from FY13 to FY17 would be required than that contemplated under the Lihir FY12 5YP;

- (m)(c) for the "Low" case, forecast gold production of 1.063Moz in FY14, declining to 1.038Moz in FY17;
- (n)(d) for the "Mid1" case, forecast gold production of 1.101Moz in FY14, declining to 1.046Moz in FY17;
- (o)(e) for the "Mid2" case, forecast gold production of 1.079Moz in FY14, declining to 964koz in FY15 before increasing to 1.155Moz in FY17;
- (f) for the "High" case, forecast gold production of 1.043Moz in FY14, increasing to 1.214Moz in FY17;
- (g) confirmed that an increased grinding capacity of approximately 15Mtpa needed to be achieved in FY14 for gold production at Lihir to exceed 1Moz from FY14, and that this was a "Key Driver" of the Lihir FY13 LoPP;
- (h) for each case forecast that gold production at Lihir between FY14 and FY17 would be below the gold production forecasts set out in:
- (i) the August 2012 Representations; and
 - (ii) the Lihir FY12 5YP;
- (p)(i) was incorporated into the Newcrest group LoPP for FY13 referred to in paragraph 42D58 below.

Particulars

The Lihir FY13 LoPP is set out at document NEW.600.006.0221.

55. 42C. — By no later than 15 November 2012, Newcrest had ~~completed~~ prepared the LoPP for Cadia for the years FY14 onwards (**Cadia FY13 LoPP**), which document:
- (q)(a) modelled a number of gold production profiles at Cadia, referred to as the "Low", "Mid" and "High" cases;
- (r)(b) forecast that: under the "Low" or "High" cases, gold production in FY14 would be 424koz; and under the "Mid" case would be 503koz; and under the "High" case would be 520koz;
- (s)(c) for each case forecast the gold production at Cadia between FY14 and FY17 would be below the gold production forecast set out in the Cadia FY12 5YP;
- (d) for the "Mid" case for FY14, was based on an estimate of approximately 26Mt of ore being processed at Cadia Valley, of which around 11Mt would be low grade stockpiled ore;
- (e) for the "Mid" case, was based on an estimated a level of capital expenditure at Cadia Valley of:
- (i) \$703m in FY14; and

(ii) \$308m in FY15;

(f) was incorporated into the Newcrest group LoPP for FY13 referred to in paragraph 58 below.

Particulars

The Cadia FY13 LoPP is set out at document NEW.544.002.0739NEW.606.001.8636.

56. By no later than 15 November 2012, Newcrest had prepared the LoPP for Telfer for the years FY14 onwards (Telfer FY13 LoPP), which document:

- (a) modelled a number of gold production profiles at Telfer, referred to as the "Low", "Mid" and "High" cases;
- (b) forecast that under the "Low" case, achieving gold production within (or in FY17, below) the Telfer 5 Year Guidance Range would require total production costs that from FY15 were close to or greater than the then prevailing gold price of around \$1600/oz;
- (c) for each case forecast a level of capital expenditure and gold production at Telfer in FY14 below the forecasts set out in the Newcrest FY12 5YP for Telfer for FY14 (but in the case of gold production still within the Telfer 5 Year Guidance Range);
- (d) was incorporated into the Newcrest group LoPP for FY13 referred to in paragraph 58 below.

Particulars

The Telfer FY13 LoPP is set out at document NEW.606.008.0331.

57. By no later than 20 November 2012, Newcrest had prepared the LoPP for Gosowong for the years FY14 onwards (Gosowong FY13 LoPP), which document:

- (a) modelled a number of gold production profiles at Gosowong, referred to as the "Low", "Mid" and "High" cases;
- (b) forecast that under the "Low" case, capital expenditure of US\$119m between FY14 and FY16 (compared with US\$159m forecast in the Newcrest F12 5YP for the period from FY14 to FY17) would result in gold production at Gosowong in FY16 and FY17 being below the Gosowong 5 Year Guidance, and closure of Gosowong in FY17;
- (c) forecast that under the "Mid" and "High" cases a level of capital expenditure greater than the forecasts set out in the Newcrest FY12 5YP for Gosowong would be

required to achieve the Gosowong 5 Year Guidance:

- (d) was incorporated into the Newcrest group LoPP for FY13 referred to in paragraph 58 below.

Particulars

The Gosowong FY13 LoPP is set out at document NEW.544.002.1923.

58. 42D.—By no later than 4 December 2012, Newcrest had completed the LoPP for FY13 for each of Newcrest's mines (**Newcrest FY13 LoPP**), which document:

(t)(a) forecast that Newcrest's gold production between FY14 and FY17 would be below the gold production forecasts set out in the Newcrest FY12 5YP; and

(u)(b) estimated that to achieve even that lower level of production, capital expenditure would be required in each of FY14 and FY15 that:

(i) was greater than the capital expenditure estimates in the Newcrest FY12 5YP for those years;

(ii) was greater than Newcrest's internal assumptions referred in paragraph 24B32 above for those years;

(iii) in relation to FY14, totalled over AUD2\$2.00b in the case of the "Mid" and "High" cases;

(c) indicated that under the "Low" case, capital investment in accordance with the August 2012 Capex Guidance would result in gold production between FY14 and FY17 being significantly lower than:

(i) the gold production forecasts set out in the Newcrest FY12 5YP for that period; and

(ii) the gold production forecasts set out in the 1Q13 ASX Releases;

(d) included a "Mid" case analysis under which Newcrest's anticipated capital expenditure for the period between FY14 and FY17 would be significantly greater than that set out in the August 2012 Capex Guidance, and in particular forecast capital expenditure of:

(i) \$2.003b in FY14;

(ii) \$1.691b in FY15;

(iii) \$1.151b in FY16;

(iv) \$1.205b in FY17.

Particulars

The Newcrest FY13 LoPP is set out at document NEW.600.001.9301.

59. ~~42E.~~ By no later than 21 December 2012:

~~(v)(a)~~ the Newcrest FY13 LoPP had been submitted to, and reviewed by, Newcrest's "Executive Committee" (ExCo);

~~(w)(b)~~ Newcrest's CEO, Managing Director and Executive Director Greg Robinson (**Mr Robinson**) had issued a memorandum to the other members of the ExCo in which:

- (i) he stated that Newcrest's gold production "in the first 5 months of FY13 has been lower than budget, consuming much of the range allowed for in our guidance to the market. Below budget production has a significant adverse impact on our unit cost position. In the remaining 7 months of the financial year, we need to deliver";
- (ii) he stated that the level of capital expenditure required under the Newcrest FY13 LoPP "is unacceptably high given past commitments to our Board and shareholders on the return from past investments";
- (iii) he stated that the gold production forecast under the Newcrest FY13 LoPP "for the next few years is too low relative to our past commitments to our Board and shareholders"; and
- (iv) he directed that in the coming five year plan (**Newcrest FY13 5YP**), "total capital investment in FY14 is not to exceed ~~AUD1.5b~~; \$1.5b" (or "\$1.3b when excluding the Wafi-Golpu spend"), being an amount "significantly lower" than that which had been indicated in the "Mid" case in the Newcrest FY13 LoPP and an amount similar to that which had been indicated in the "Low" case in the Newcrest FY13 LoPP;
- (v) he provided "5 Year Plan Guidance" that included "indicative" capital expenditure for FY14 and FY15 as follows:
 - A. in respect of Lihir, \$400m in FY14 and \$400m in FY15 (being between approximately 55% and 65% of the capital expenditure forecast under the "Mid2" case and approximately 45% to 60% of the capital expenditure forecast under the "High" case in the Lihir FY13 LoPP);
 - B. in respect of Cadia Valley, \$550m in FY14 and \$300m in FY15 (compared with the figures of \$703m and \$308m respectively forecast in the Cadia FY13 LoPP "Mid" case);
 - C. in respect of Telfer, \$180m in FY14 and \$140m in FY15 (being approximately half of the capital expenditure forecast in the Telfer FY13

LoPP under the "Mid" and "High" cases);

D. in respect of Gosowong, \$60m in each of FY14 and FY15 (being between approximately 65% to 75% of the capital expenditure forecast in the Telfer FY13 LoPP under the "Mid" and "High" cases required to achieve the Gosowong 5 Year Guidance);

~~(x)~~(c) elimination or deferral of a programme to increase the grinding capacity at Lihir was among the "two big items" and the "tough decisions" to be considered by Newcrest in the course of developing the Newcrest FY13 5YP;

~~(y)~~(d) the other "big item" to be considered by Newcrest in the course of developing the Newcrest FY13 5YP was the deferral of projects at the Cadia East mine.

Particulars

As to subparagraph (a), the Newcrest FY13 LoPP was considered at a meeting of the ExCo held on 17 December 2012. The Applicant also refers to document NEW.600.010.5699 and the attachments thereto.

As to subparagraph (b), Mr Robinson's memorandum is set out at document NEW.600.002.2932.

As to subparagraph (c) and (d), the Applicant refers to the Newcrest internal correspondence set out set out in document NEW.606.004.2990.

Further particulars may be provided following the completion of discovery and prior to trial.

December 2012 impairment testing

60. 42F.—In or about December 2012, Newcrest conducted interim impairment assessments for each of its mines, in respect of which:

~~(z)~~(a) Newcrest applied the following gold price assumptions for the purposes of its "Mid-Price" plan:

	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20+
<u>US\$D/oz</u>	1,615	1,710	1,616	1,565	1,486	1,408	1,329	1,250

~~(aa)~~(b) Newcrest concluded, among other things, that:

- (i) in respect of Lihir there was "headroom" of between AUD139m\$139m (under the "Mid-Price" plan, assuming a long term gold price of USD1US\$1,250 per ounce and with the application of gold multiples) and AUD4\$1,855m (under the "Spot Price" case, assuming a constant gold price of USD4US\$1,693 per ounce and without the application of gold multiples);

- (ii) in respect of Telfer there was "headroom" of between ~~AUD411m~~\$411m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4US\$1,250~~ per ounce and with the application of gold multiples) and ~~AUD42m~~\$12m (under the "Spot Price" case, assuming a constant gold price of ~~USD4US\$1,693~~ per ounce and without the application of gold multiples);
- (iii) in respect of Hidden Valley there was "headroom" of between ~~AUD52m~~\$52m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4US\$1,250~~ per ounce and with the application of gold multiples) and ~~AUD343m~~\$343m (under the "Spot Price" case, assuming a constant gold price of ~~USD4US\$1,693~~ per ounce and without the application of gold multiples);
- (iv) in respect of Bonikro, there was a shortfall of ~~AUD44m~~\$41m (under the "Mid-Price" plan, assuming a long term gold price of ~~USD4US\$1,100~~ per ounce and with the application of gold multiples) or "headroom" of ~~AUD223m~~\$223m (under the "Spot Price" case, assuming a constant gold price of ~~USD4US\$1,575~~ per ounce and without the application of gold multiples).

Particulars

The Applicant refers to the internal Newcrest calculations set out at documents NEW.501.004.0348 and NEW.602.001.5585.

Further particulars may be provided following the completion of discovery and prior to trial.

January 2013 – 2Q13 Results

43.61. On 24 January 2013, Newcrest published and lodged with the ASX its quarterly report for 2Q13 (**2Q13 Results**), which consisted of:

- (a) a document titled "Quarterly Report – Newcrest Mining Limited – For the three months ending 31 December 2012" (**2Q13 Results Release**); and
- (b) a document titled "December 2012 Quarterly Results" (**2Q13 Results Presentation**).

44.62. In the 2Q13 Results Release and 2Q13 Results Presentation Newcrest made express statements to the effect that:

- (a) Newcrest's two major expansion projects, being the Cadia East mine development and the MOPU project, both achieved "major milestones" in 2Q13;

- (b) in relation to the Cadia East mine:
 - (i) production volumes continued to “ramp up”;
 - (ii) “commercial production milestones were achieved by the end of December 2012”;
 - (iii) “commercial production” had commenced from 1 January 2013;
- (c) in relation to the Lihir mine:
 - (i) the MOPU project was in the “final stages of commissioning” and was expected to be completed by the end of January 2013;
 - (ii) after January 2013, “production ramp up” at the Lihir mine would commence;
 - (iii) “careful ramp up” of the plant established through the MOPU project (**MOPU plant**) to full capacity would “continue through the March 2013 quarter”;
 - (iv) the completion of the MOPU project would increase processing capacity to achieve 1Moz gold production per annum at the Lihir mine;
 - (v) refurbishment projects to improve older sections of the plant were “progressing to plan”;
 - (vi) the Lihir flotation capacity upgrade was “proceeding on schedule to a July 2013 delivery”;
- (d) the completion of the Cadia East mine development and the MOPU project would enable delivery of “significant growth” in Newcrest’s gold production over the next five years;
- (e) Newcrest’s FY13 guidance was unchanged, although:
 - (i) gold production was expected to be at the low end of the 2.3Moz to 2.5Moz guidance range; and
 - (ii) the market could “expect stronger performance in 2nd half of FY13”.

G. CONTINUING CONTRAVENTIONS FROM 13 AUGUST 2012

45.63. From 13 August 2012 until the end of the Period, Newcrest:

- (a) repeated, further and alternatively confirmed, the substance of the August 2012 Representations in releases to the ASX;
- (b) did not amend, qualify or withdraw the substance of the August 2012 Representations;
- (c) did not release to the ASX any further information that would significantly supplement or modify the August 2012 Representations,

and accordingly, the August 2012 Representations were continuing representations that were maintained by Newcrest from 13 August 2012 until the end of the Period.

Particulars

The August 2012 Representations were repeated, further and alternatively confirmed, in the FY12 Annual Report, the 1Q13 Results Release, the 1Q13 Results Presentation, the FY12 AGM Speech, FY12 AGM Presentation and in the ASX announcements described in paragraphs ~~60 to 64, 80, 83 and 84~~82 to 86, 108, 113 and 114:

- i. expressly, through the making of the statements set out in paragraphs ~~36, 38, 47, 48 to 44, 60 to 64, 80, 83~~52, 61 and 84~~62, 82 to 86, 108, 113 and 114~~;
- ii. by implication, from:
 - A. the substance of the statements set out in paragraphs ~~36, 38, 47, 48 to 44, 60 to 64, 80, 83~~52, 61 and 84~~62, 82 to 86, 108, 113 and 114~~;
 - B. the matters set out in ~~paragraph 4 and 22~~paragraphs 4 and 33 and the particulars thereto;
 - C. the circumstance that between 13 August 2012 and 6 June 2013, Newcrest did not amend, qualify or withdraw the substance of the August 2012 Representations or the statements set out in paragraphs ~~47 to 20, 36, 38 to 44, 60 to 64, 80, 83 and 84~~26 to 29 in subsequent ASX releases;
 - D. the circumstance that between 13 August 2012 and 6 June 2013, Newcrest did not release to the ASX any further information that would significantly supplement or modify the substance of the August 2012 Representations or the statements set out in paragraphs ~~47 to 20, 36, 38 to 44, 60 to 64, 80, 83 and 84~~26 to 29, 47, 48 to 52, 61 and 62, 82 to 86, 108, 113 and 114;
 - E. the fact that throughout the period from 13 August 2012 to 6 June 2013, Newcrest would reasonably be expected to have been aware of the performance of each of the mines referred to in paragraph 5 and the status and progress of the Cadia East mine project, the MOPU project, the Lihir reliability programme and the Lihir flotation capacity upgrade.

~~46-64.~~ Further or alternatively, from 13 August 2012 until the end of the Period, Newcrest:

- (a) repeated, further and alternatively confirmed, the substance of the Compliance Representation in releases to the ASX;
- (b) did not amend, qualify or withdraw the substance of the Compliance Representation;
- (c) did not release to the ASX any further information that would significantly supplement or modify the Compliance Representation,

and accordingly, the Compliance Representation was a continuing representation that was maintained by Newcrest from 13 August 2012 until the end of the Period.

Particulars

The Compliance Representation was repeated, further and alternatively confirmed, in the FY12 Annual Report, the 1Q13 Results Release, the 1Q13 Results Presentation, the FY12 AGM Speech, FY12 AGM Presentation and in the ASX announcements described in paragraphs ~~60 to 64, 80, 83 and 84~~ 82 to 86, 108, 113 and 114:

- i. expressly, through the making of the statements set out in subparagraphs ~~36(47)(j) to 36(47)(m)~~;
- ii. by implication, from:
 - A. the substance of the statements set out in subparagraphs ~~36(47)(j) to 36(47)(m)~~;
 - B. the matters set out in paragraphs 4 and 6 and the particulars thereto;
 - C. the circumstance that between 13 August 2012 and 6 June 2013, Newcrest did not amend, qualify or withdraw the substance of the Compliance Representation or the statements set out in subparagraphs ~~36(j) to 36(47)(i) to 47(m)~~ in subsequent ASX releases;
 - D. the circumstance that between 13 August 2012 and 6 June 2013, Newcrest did not release to the ASX any further information that would significantly supplement or modify the substance of the Compliance Representation or the statements set out in subparagraphs ~~36(j) to 36(47)(j) to 47(m)~~.

~~47-65.~~ In the premises, by maintaining each of the August 2012 Representations and the Compliance Representation, Newcrest engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
 - (i) section 12BAB(1) of the ASIC Act; further or alternatively
 - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being NCM Securities, within the meaning of section 764A of the Corporations Act.

~~48-66.~~ In so far as the August 2012 Representations were representations as to future matters, Newcrest did not have reasonable grounds for the representations while they continued from 13 August 2012 until the end of the Period, within the meaning of:

- (a) section 12BB(1) of the ASIC Act; further or alternatively
- (b) section 769C of the Corporations Act.

Particulars

A lack of reasonable grounds from 13 August 2012 until the end of the Period is to be inferred from the following matters:

- i. the matters set out in paragraphs 8 to ~~16D, 21, 21A~~ 23 and 24B;

30 to 32;

- ii. the overall decline in the gold price between 13 August 2012 and the end of the Period, including the April 2013 Gold Price Fall (as defined below);
- iii. from no later than 21 December 2012, the further matters set out in paragraphs ~~42A to 42D~~53 to 59 and 69 and the particulars thereto;
- iv. from no later than 1 January 2013, the further matters set out in paragraphs ~~51 and 52~~70 and 71 and the particulars thereto;
- v. from no later than 29 January 2013, the further matters set out in paragraph ~~59A~~79 and the particulars thereto;
- vi. from no later than 31 January 2013, the further matters set out in paragraph ~~59B~~80 and the particulars thereto;
- vii. from no later than 8 February 2013, the further matters set out in paragraph ~~59C~~81 and the particulars thereto;
- viii. from no later than ~~22~~28 February 2013, the further matters set out in paragraphs 102 to 104 and the particulars thereto;
- ix. from no later than 1 March 2013, the further matters set out in paragraph
~~79A~~105 and the particulars thereto;
- x. from no later than 24 March 2013, the further matters set out in
paragraph 106 and the particulars thereto;
- xi. from no later than 28 March 2013, the further matters set out in
paragraph 107 and the particulars thereto.

The Applicant also refers to and relies upon section 769C of the Corporations Act and section 12BB of the ASIC Act.

Further particulars may be provided following the completion of discovery and before trial.

49.67. In the premises, by maintaining each of the August 2012 Representations and the Compliance Representation from 13 August 2012 until the end of the Period, Newcrest in trade or commerce continued to engage in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.

50.68. In the premises set out above, the August 2012 Misleading Conduct commenced on 13 August 2012 and was a continuing contravention that continued until the end of the Period.

H. JANUARY 2013 MATERIAL INFORMATION

~~69.~~ On the premises set out in paragraphs 6, 10 to 23, 30 to 32, and 53 to 59 by no later than 21 December 2013 Newcrest was aware that it was highly unlikely that Newcrest would commit to capital expenditure in FY14 and FY15 at a level reasonably expected to be required to achieve:

- (a) group gold production in FY14 of between 2.52Moz and 2.77Moz;
- (b) gold production at Lihir of over 1Moz per annum in the period from FY15 to FY17, alternatively compound annual growth in production at Lihir between 5% and 10%;
- (c) compound annual growth in group gold production in the period from FY15 to FY17 of between 5% and 10%;
- (d) group gold production of between 3.1Moz and 3.5Moz in FY17.

~~54-70.~~ Further, on a date presently unknown to the Applicant, but in any event by no later than 1 January 2013, Newcrest decided:

- (a) not to increase the grinding capacity at the Lihir mine to around 14.5Mtpa; and
- (b) to maintain the grinding capacity at the Lihir mine at around 11Mtpa.

Particulars

The fact and nature of the decision is to be inferred from the following matters:

- i. a Newcrest presentation regarding Lihir presented during a site visit of the Lihir Mine in October 2012 (the **October 2012 site visit**), which indicated that the grinding or milling capacity at the Lihir mine after the completion of the MOPU project in FY13 would be 14.5Mtpa, increasing to 16Mtpa in FY14 (the **MOPU grinding capacity guidance**);
- ii. the matters set out at paragraphs ~~42A53~~ to ~~42E;59~~ and ~~69~~;
- iii. the instructions issued on 4 January 2013 by Newcrest to its staff involved in preparing the FY13 five year plan for Lihir (**Lihir FY13 5YP**) to develop a "Low Capital" plan that did not include capital expenditure on (among other things) grinding upgrades at Lihir, as set out in NEW.606.004.3052;
- iv. the reference made on a conference call between Newcrest and certain analysts on 12 August 2013 (**12 August 2013 Analyst Call**) to Newcrest having provided the MOPU grinding capacity guidance at the October 2012 site visit;
- v. the subsequent statements made by Mr Robinson on the 12 August 2013 Analyst Call that:
 - A. Newcrest "really looked very carefully around what we thought the milling rates could get to on an organic basis, and then what we would need to do to invest, which was in the plan last year to build more milling capacity to take it to 14 million tonnes"; and

- B. Newcrest “made a decision that we would delay that capital and we would leave the milling rate at the 11.5 million, ultimately 12 million, perhaps better as we optimise it”;
- vi. the statements made on 24 January 2013 in the 2Q13 Results Release and 2Q13 Results Presentation concerning the status of the MOPU project, as set out in paragraphs ~~44~~62(a), (c) and (d);
- vii. the likelihood that Newcrest’s decision not to increase grinding capacity at Lihir mine above around 11.5Mtpa would have been made well in advance of the announcement of the imminent completion of the MOPU project on 24 January 2013.

Further particulars may be provided following the completion of discovery and before trial.

~~52.71.~~ Further or alternatively, at all times from 1 January 2013 until the end of the Period,

Newcrest was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) it was likely that the Lihir mine would not produce over 1Moz of gold in FY14;
- (b) it was likely that Newcrest’s gold production in FY14:
 - (i) would not be in the range of 2.52Moz to 2.77Moz;
 - (ii) would not be significantly higher than in FY13;
- (c) it was likely that Newcrest’s gold production for the period from FY13 through to FY17 would not increase at a compound annual growth rate of 5 to 10% per annum;
- (d) it was likely that Newcrest’s gold production in FY17 would not be in the range of 3.1Moz to 3.5Moz;
- (e) from the dates on which Newcrest made, confirmed or repeated the August 2012 Representations and February 2013 Representations (as defined below), Newcrest did not have a reasonable basis for making any of those representations;

(individually, collectively, or in any combination, the **FY14 Gold Production Information**).

Particulars

Each of the items of FY14 Gold Production Information was information of which Newcrest was, or ought to have been, in possession and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12. Further:

- i. Newcrest’s awareness of the matters alleged in paragraph ~~52.71~~71(a) is to be inferred from:
 - A. the matters set out at paragraphs 4, 6, 8, 9, ~~41~~12 to ~~45, 16A, 16B and 16D~~16, 18, 19 and the particulars thereto;
 - B. the matters set out at paragraph 32 and the particulars thereto;
 - C. the Newcrest presentation regarding Lihir during the October 2012 site visit which provided the MOPU grinding capacity guidance;
 - ~~C~~D. the matters set out at paragraph ~~42A, 42B~~53 to 59 and ~~42D~~69 and the particulars thereto;

- DE. the reference made in the 12 August 2013 Analyst Call to Newcrest having provided the MOPU grinding capacity guidance at the October 2012 site visit;
- EF. the matters set out in paragraph ~~54~~70 and the particulars thereto;
- FG. the fact that a grinding capacity of between 11.5Mtpa and 12Mtpa at the Lihir mine would be unlikely to be sufficient to allow gold production of over 1Moz at the Lihir mine in FY14;
- GH. the statement made by Mr Robinson on a conference call with certain analysts on 7 June 2013 (**7 June 2013 Analyst Call**) that the Lihir mine was expected to produce between 700koz and 800kz of gold in FY14 (and notwithstanding the statements by Newcrest to the effect that the MOPU project had by 1 February 2013 been completed on time, as more particularly set out in paragraphs ~~60 to 64~~82 to 86 below);
- HI. the statements made by Mr Robinson on the 7 June 2013 Analyst Call that the Lihir mine would be processing "over 80% of its ore feed from the stockpile" and that "stockpile was a big percentage already" that year;
- IJ. the identification by Newcrest in the 7 June 2013 Corrective Disclosure (as defined below) of "increasing stockpile utilisation at Lihir and reducing open pit material movements generally" as a "response to the change in market conditions" that Newcrest "has taken and will continue to progress";
- JK. the fact that a strategy of increasing stockpile utilisation at the Lihir mine was a strategy that shortly after the Lihir acquisition Newcrest had stated that it would pursue with respect to the Lihir mine, in a document published and lodged with the ASX by Newcrest on 21 October 2010 titled "September 2010 Quarterly Results" at page 11;
- KL. the knowledge that Newcrest would reasonably be expected to have at all relevant times concerning the gold grade differential at the Lihir mine;
- LM. the nature and extent of the decline in the gold grade of feed material at the Lihir mine from around October 2012;
- MN. the impact on expected gold production at the Lihir mine arising from the interaction between the gold grade differential, the degree to which stockpiles were being processed over mined materials, the likely rate of gold recovery expected from stockpiles compared with mined materials, and the gold grade of feed material at the Lihir mine;
- NO. from no later than 29 January 2013, the matters set out in paragraph 79 and the particulars thereto ~~59A and the particulars thereto~~;
- ~~O. from no later than 31 January 2013, the matters set out in paragraph 59B;~~
- P. from no later than 31 January 2013, the matters set out in paragraph 80 and the particulars thereto;
- ~~Q. from no later than 1 February 2013, the matters set out in paragraph 65~~87~~~~;
- QR. from no later than 8 February 2013, the matters set out in paragraph ~~59C~~81 and the particulars thereto;

~~R.~~ ~~from no later than 2S.~~ from no later than 28 February 2013, the further matters set out in paragraphs 102 to 104 and the particulars thereto;

~~T.~~ from no later than 1 March 2013, the further matters set out in paragraph 79A105 and the particulars thereto;

~~SU.~~ from no later than 24 March 2013, the further matters set out in paragraph 106 and the particulars thereto;

~~V.~~ from no later than 28 March 2013, the further matters set out in paragraph 107 and the particulars thereto;

~~W.~~ from 15 April 2013, the fact of the April 2013 Gold Price Fall (as defined below);

~~TX.~~ the "acceleration" of Newcrest's "business focus" on "free cash flow generation" since the April 2013 Gold Price Fall, referred to by Mr Robinson on the 7 June 2013 Analyst Call;

~~UY.~~ the fact that after the April 2013 Gold Price Fall, analyses by some analysts suggested that cash flow savings from adopting an increased stockpiling strategy would be more than offset by the loss in revenue due to decreased production, and the Applicant refers by way of example to:

- i. the report of Morgan Stanley dated 31 May 2013, titled "Newcrest Mining – Dissecting the Risk Factors", at page 8;
- ii. the report of Credit Suisse dated 2 July 2013, titled "Newcrest Mining – Lower gold price assumption drives another CS downgrade", at page 9;

ii. Newcrest's awareness of the matters alleged in paragraph 52~~(71)~~(b) is to be inferred from:

- A. the matters referred to in sub-paragraph i. above;
- B. the matters set out in paragraphs 46, ~~16C~~ and ~~21~~17, 20 and 30 and the particulars thereto;
- C. the description by Newcrest of the Lihir mine as its "largest operation" and "largest resource base" in the 1H13 Results Release and 1H13 Results Report;
- D. the statement made by Mr Robinson on the 7 June 2013 Analyst Call that the Cadia Valley mine would "reach the original forecast of [700koz] to [800koz] by 2016";
- E. the fact that Newcrest was reliant on the Lihir mine and the Cadia Valley mine as its main sources of gold production in FY14;
- F. a Newcrest presentation regarding Cadia presented during the Newcrest Investor Day on 2 October 2012, which indicated that Newcrest expected Cadia to produce approximately 600koz of gold in FY14;
- G. the matters set out at paragraph 42~~G~~55 to 59 and 69 and the particulars thereto;
- H. the "fair degree of attention" given to Newcrest's FY14 budget following the April 2013 Gold Price Fall, referred to by Mr Robinson on the 7 June 2013 Analyst Call;
- I. references in the 7 June 2013 Corrective Disclosure to:
 - i. the "review of the Company's business plan and 2014 financial year budget";

- ii. the 2014 budget having been “developed in the context of the current market environment and outlook, including a recent sharp deterioration in the gold price (the largest in 30 years), the ongoing strength of Newcrest’s operating currencies relative to the USD,US\$, and an elevated operating cost environment”;
- J. the identification by Newcrest in the 7 June 2013 Corrective Disclosure of “suspending production of higher cost ounces across all operations” as a “response to the change in market conditions” that Newcrest “has taken and will continue to progress”;
- K. the statement by Newcrest in the 7 June 2013 Corrective Disclosure that its revised FY14 guidance “reflects the removal of high cost ounces from the production profile, particularly at Telfer, Lihir and Cadia Valley”;
- L. the express lack of any change in guidance as to production, costs and capital expenditure for FY13 in the 7 June 2013 ASX Release;
- M. similar statements to those referred to above made in the Newcrest media release dated 7 June 2013 (**7 June 2013 Media Release**);
- N. the reference in the 7 June 2013 Media Release to the “significant change in the price of gold, gold equities and other market factors since the start of this calendar year”;
- iii. Newcrest’s awareness of the matters alleged in ~~paragraph 52(c), 52(d) and 52~~(paragraphs 71(c), 71(d) and 71(e)) is to be inferred from:
 - A. the matters referred to in sub-paragraph i. and ii. above;
 - B. the matters set out in ~~paragraphs 48 and 87-66 and 117.~~

Further particulars may be provided following the completion of discovery and before trial.

I. JANUARY 2013 CONTRAVENTIONS

January 2013 Disclosure Contravention

~~53.72.~~ The FY14 Gold Production Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and
- (b) not generally available.

~~54.73.~~ By reason of the matters alleged in paragraphs 4 and ~~5372.~~ Newcrest was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to immediately notify the ASX of the FY14 Gold Production Information on and from at least

1 January 2013.

~~55.74.~~ Notwithstanding the matters alleged in paragraphs ~~53 and 54.72~~ and ~~73~~ Newcrest did not notify the ASX of the FY14 Gold Production Information at any time during the Period.

~~56.75.~~ By reason of the matters alleged in paragraphs ~~53 to 55.72~~ to ~~74~~, Newcrest contravened section 674(2) of the Corporations Act (**January 2013 Disclosure Contravention**).

~~57.76.~~ In the premises set out above, the January 2013 Disclosure Contravention commenced no later than 1 January 2013 and was a continuing contravention that continued until the end of the Period.

January 2013 misleading and deceptive conduct

~~58.77.~~ Further or alternatively, in the premises set out above, from no later than 1 January 2013 until the end of the Period, the Compliance Representation was not true in that throughout that period Newcrest failed to comply with section 674(2) of the Corporations Act and ASX Listing Rule 3.1.

~~59.78.~~ In the premises, by maintaining the Compliance Representation from 1 January 2013 until the end of the Period Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(**January 2013 Misleading Conduct**).

J. FEBRUARY 2013 ASX ANNOUNCEMENTS

~~79.~~ ~~59A.~~—By no later than 29 January 2013:

- (a) Newcrest's FY13 gold production was 18% behind budget;
- (b) the MOPU project was approximately two months behind schedule, which had resulted in lost production at Lihir;

- (c) Cadia was at risk of not meeting budgeted gold production for FY13;
- (d) it was likely that Newcrest's FY13 gold production would be below the lower end of the FY13 production guidance set out in the 1Q13 ASX Releases;
- (e) Newcrest had established an "ExCo Crisis Team" to discuss the likelihood that Newcrest would not achieve that level of production.

Particulars

As to subparagraph (a), the Applicant refers to the draft Executive Committee Report for December 2012 set out in document NEW.600.002.0066.

As to subparagraph (b), the Applicant refers to the Newcrest internal report titled, "Operation – Lihir(MOPU) Audit – Operational Readiness" dated 16 January 2013 and set out in document NEW.600.007.0582.

As to subparagraph (c), the Applicant refers to the Newcrest internal correspondence set out in documents NEW.606.004.3208 and NEW.600.002.3151.

As to subparagraph (d), the Applicant refers to the documents referred to in the particulars above and Newcrest's internal correspondence set out in documents NEW.606.001.5401, NEW.600.001.9150, NEW.606.002.9638 and the document referred to in the particulars below.

As to subparagraph (e), the Applicant refers to the "ExCo Crisis Team" presentation set out at document NEW.606.002.9640.

Further particulars may be provided following the completion of discovery and prior to trial.

80. ~~59B.~~—By no later than 31 January 2013 Newcrest had confirmed that the Lihir FY13 5YP would not make provision for an upgrade to Lihir's grinding capacity.:

- ~~(f) Newcrest had confirmed that the Lihir FY13 5YP would not make provision for an upgrade to Lihir's grinding capacity;~~
- ~~(g) Newcrest had confirmed that Cadia's FY14 gold production was likely to be approximately 500koz (with approximately 40koz "at risk").~~

Particulars

~~As to subparagraph (a),~~ The Applicant refers to the Newcrest internal correspondence set out at NEW.606.005.9305 and the presentation titled "FY14-18 5YP Physicals" dated January 2013 and set out at document NEW.606.005.4957.

~~As to subparagraph (b), the Applicant refers to the Newcrest internal correspondence set out in documents NEW.606.004.3208 and NEW.600.002.3151.~~

Further particulars may be provided following the completion of discovery and prior to trial.

81. ~~59C.~~—By no later than 8 February 2013:

- (a) Newcrest had failed to achieve gold production in line with the FY13 Budget for

each month between August 2012 and January 2013;

(h)(b) Newcrest had confirmed that Cadia's FY14 gold production was likely to be approximately 500koz (with approximately 40koz "at risk");

(i)(c) Newcrest's overall FY13 gold production remained 259koz behind budget;

(j)(d) Lihir was continuing to experience a shortfall in budgeted gold production for FY13;

(k)(e) Newcrest had identified a series of "deep dive" initiatives to be undertaken in FY13 with a view to lifting FY13 gold production;

(l)(f) the "deep dive" initiatives included:

- (i) mining and processing higher grade ores in areas that previously had been intended to be developed after FY13;
- (ii) further and alternatively, initiatives that would otherwise impact on gold production in FY14 to FY17.

Particulars

As to subparagraph (a), the Applicant refers to the correspondence set out in documents:

- i. NEW.606.001.2674, NEW.606.001.8210 and NEW.600.004.5249 in respect of August 2012;
- ii. NEW.606.001.3887, NEW.606.001.3888 in respect of September 2012;
- iii. NEW.602.001.2921, NEW.602.001.2922, NEW.602.001.5157 and NEW.606.007.8361 in respect of October 2012;
- iv. NEW.606.002.8484 and NEW.606.002.8485 in respect of November 2012;
- v. NEW.542.006.6306 in respect of December 2012; and
- vi. NEW.614.001.0731 in respect of January 2013.

As to subparagraph (b), the Applicant refers to the correspondence set out at document NEW.606.005.6273.

As to subparagraph (c), the Applicant refers to the draft Executive Committee Report for January 2013 set out in document NEW.614.001.0731.

As to subparagraph (bd), the Applicant refers to the Newcrest internal correspondence set out in documents NEW.600.007.0964 and NEW.600.007.7058.

As to subparagraphs (ee) and (df), the Applicant refers to Newcrest's internal correspondence set out in documents NEW.606.004.6991, NEW.606.004.6992, NEW.606.004.7347, NEW.606.004.7348, NEW.606.004.7350, NEW.606.016.0292 and NEW.606.004.7612.

Further particulars may be provided following the completion of discovery and prior to trial.

60.82. On 8 February 2013, Newcrest published and lodged with the ASX:

- (a) documents setting out Newcrest's 1H13 results, which consisted of:
 - (i) a document titled "Financial Results – Newcrest Mining Limited – Six months

ended 31 December 2012" (**1H13 Results Release**);

(ii) a document titled "ASX Appendix 4D – Half-Year Financial Report – 31 December 2012" (**1H13 Results Report**);

(iii) a document titled "2012-2013 Half Year Financial Results" (**1H13 Results Presentation**); and

(b) a document titled "December 2012 Resources and Reserves Statement" (**2012 Resources & Reserves Statement**),

(collectively, February 2013 ASX Releases).

~~61-83.~~ In the 1H13 Results Release Newcrest made express statements to the effect that:

- (a) FY13 was a:
 - (i) "significant year" for Newcrest with the completion of two major projects "establishing a platform" for increased gold production, earnings and cashflow;
 - (ii) "transitional year" for Newcrest;
 - (iii) year in which Newcrest was undergoing an "operational transition";
- (b) in relation to the Cadia East mine development:
 - (i) that project had achieved commercial milestones in December 2012;
 - (ii) that mine was "ramping up" production;
- (c) in relation to the Lihir mine:
 - (i) the MOPU project was commissioned in January 2013 and handed to operations on 1 February 2013;
 - (ii) planned increases in mill throughput rates had commenced as a result;
 - (iii) production capacity had been "significantly" increased at the Lihir mine, which was Newcrest's "largest operation";
- (d) an interim dividend of 12.0 cents per NCM Security would be paid on 16 April 2013;
- (e) save as expressly set out in the 1H13 Results Release, there were no "matters or circumstances" that had arisen since 31 December 2013 that had "significantly affected" or might significantly affect the operations of Newcrest, the results of those operations or the state of affairs of Newcrest in subsequent years.

~~62-84.~~ In the 1H13 Results Report Newcrest made express statements to the effect that:

- (a) FY13 was a:
 - (i) "significant year" for Newcrest with the completion of two major projects

“establishing a platform” for increased gold production, earnings and cashflow
“over the next five years”;

- (ii) “transitional” year for Newcrest;
- (b) the completion of Newcrest’s two “major growth projects” underpinned a “positive production outlook for the company for the remainder of the financial year and beyond”;
- (c) a “ramp up” in production rates had “commenced” at both the Cadia East mine and the Lihir mine following the MOPU project, which together would “increase production from lower cost ore sources”;
- (d) Newcrest had an “attractive portfolio of assets with production growth coming from lower cost operations in the years ahead”, including during the “five year plan period”;
- (e) in relation to the Cadia East mine development:
 - (i) that project had achieved commercial production milestones in December 2012;
 - (ii) ore production from the Cadia East mine was continuing to “ramp up” and would progressively displace lower grade stockpiled ore as the primary feed at the Cadia Valley mine;
- (f) in relation to the Lihir mine:
 - (i) the MOPU plant was commissioned in January 2013 and handed to operations on 1 February 2013;
 - (ii) production capacity had been “significantly” increased at the Lihir mine, which was Newcrest’s “largest operation and largest resource base”;
- (g) an interim dividend of 12.0 cents per NCM Security would be paid on 16 April 2013.

63-85. In the 1H13 Results Presentation Newcrest made express statements to the effect that:

- (a) Newcrest’s “major projects” had achieved “key milestones” in that:
 - (i) the Cadia East mine was in commercial production and “ramping up”; and
 - (ii) the MOPU plant had been completed in January 2013 and was “ramping up”;
- (b) Newcrest’s FY13 production guidance was maintained at its “low end”;
- (c) in relation to the MOPU project and the MOPU plant:
 - (i) system commissioning had been completed;
 - (ii) “total system ramp up” had been initiated;
 - (iii) that system had been handed to operations on 1 February 2013;

- (iv) autoclaves at the Lihir mine had achieved a processing rate of 1,100 tonnes per hour;
- (v) all systems were operating;
- (vi) "full plant utilisation" was "on track" for delivery by the end of 2013;
- (vii) "production capacity" of 1Moz per annum had been achieved;
- (d) capital expenditure was decreasing with the completion of Newcrest's "major projects", namely the Cadia East mine development and the MOPU project.

~~64-86.~~ In the 2012 Resources & Reserves Statement Newcrest made express statements to the effect that:

- (a) a gold price of ~~USD4~~US\$1,400 per ounce was used by Newcrest to estimate Mineral Resources and Ore Reserves at the Gosowong mine;
- (b) a gold price of ~~USD4~~US\$1,350 per ounce was used by Newcrest to estimate Mineral Resources at the other mines in which Newcrest had an interest (that is, the Cadia Valley mine, the Telfer mine, the Lihir mine, the Bonikro mine and the Hidden Valley mine);
- (c) a gold price of ~~USD4~~US\$1,250 per ounce was used by Newcrest to estimate Ore Reserves at those other mines;
- (d) at the Telfer mine there was an estimated 11.6Moz of gold Ore Reserve, where the terms "Mineral Resources" and "Ore Reserves" have the meaning set out in the Australian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves 2004 Edition.

~~65-87.~~ By no later than 1 February 2013:

- (a) the Cadia East mine was in commercial production and "ramping up"; and
- (b) the MOPU plant had been completed and was "ramping up".

K. FEBRUARY 2013 REPRESENTATIONS AND MATERIAL INFORMATION

February 2013 representations

~~66-88.~~ By reason of the matters set out in paragraphs ~~17 to 22, 36, 38 to 44, and 60 to 64, 26 to 33, 47, 48 to 51, 61 to 62, and 82 to 86,~~ on 8 February 2013, Newcrest represented that:

- (a) its gold production in FY14 would or was forecast to be between 2.52Moz and

2.77Moz;

- (b) its gold production in FY14 would or was forecast to be significantly higher than in FY13;
- (c) its expectations for gold production in FY14 were not affected by interruptions to production that occurred in FY13;
- (d) the Lihir mine would produce over 1Moz of gold in FY14;
- (e) alternatively to (d), the Lihir mine would or was forecast to produce over 1.2Moz of gold in FY14;
- (f) Newcrest's gold production in the years from FY15 to FY17 would or was forecast to continue to increase at a compound annual growth rate of 5 to 10% per annum;
- (g) its gold production in FY17 would or was forecast to be between 3.1Moz and 3.5Moz; and
- (h) its production outlook after FY13 would not be, or was forecast not to be, significantly affected by a decline in gold prices, because:
 - (i) there would be a significant reduction in Newcrest's capital expenditure between FY13 and FY17;
 - (ii) the Cadia East mine and the Lihir mine would be the main sources of Newcrest's increased gold production between FY13 and FY17;
 - (iii) the projects at those mines that would enable Newcrest to increase its gold production had been, or before the end of FY13 would be, completed; and
 - (iv) the Cadia East mine and the Lihir mine were low cost mines,
- (i) achieving Newcrest's production outlook between FY13 and FY17 would not or was not likely to require any significant capital expenditure on the part of Newcrest above that set out in the August 2012 Capex Guidance;
- (j) the information available to Newcrest as at 8 February 2013 was sufficiently reliable and complete to provide a reasonable basis to provide forecasts as to gold production and capital expenditure in the terms conveyed on 13 August 2012 and 8 February 2013.

(individually, collectively, or in any combination, the **February 2013 Representations**).

Particulars

The February 2013 Representations were partly express and partly implied, save for the representation in paragraph 88(j), which was implied.

In so far as they were express, they were in writing in the 2Q13 Results Release and 2Q13 Results Presentation.

In so far as they were implied, they were to be implied ~~as a matter of law, including by implication from:~~

- i. each of the matters set out in paragraphs ~~47~~26 to ~~22, 36, 38~~31, ~~47, 48~~ to ~~44, 52, 61~~ to ~~62~~, and ~~60 to 64~~82 to 86 and the particulars thereto;
- ii. the circumstance that between 13 August 2012 and 8 February 2013, Newcrest:
 - A. made the statements set out in the 1Q13 ASX Releases, the FY12 Annual Report, the 1Q13 Results Release, the 1Q13 Results Presentation, the FY12 AGM Speech, FY12 AGM Presentation, the 2Q13 Results Release and the 2Q13 Results Presentation (together the **1H13 ASX Releases**) and referred to in paragraphs ~~17 to 22, 36, 38~~ to ~~44~~, and ~~60 to 64~~26 to 31, ~~47, 48~~ to 51, ~~61~~ to 62, and ~~82~~ to 86;
 - B. did not amend, qualify or withdraw the substance of the statements made in any of the 1H13 ASX Releases; and
 - C. did not release to the ASX any further information that would significantly supplement or modify the substance of the statements made in the 1H13 ASX Releases;
- iii. the matters set out in paragraphs 4 and 6;
- iv. section 769C of the Corporations Act;
- v. the fact that they arise from statements made in company documents released to the market by means of the ASX company announcements platform and Newcrest knew or ought to have known therefore that investors and potential investors in NCM Securities may rely upon the statements and forecasts in those documents in making decisions whether to acquire or retain NCM Securities (or an interest therein);
- vi. in the case of the representation in paragraph 88(j), further by the combination of the statements set out in the 1H13 ASX Releases and the February 2013 ASX Releases referred to above and the balance of the representations set out in paragraph 88.

February 2013 material information

~~67-89.~~ Further or alternatively, by reason of the matters set out in paragraphs 4, 6, 8 to ~~16, 24, 51, 52~~ and ~~65, 17, 30~~ 70, 71 and 87, as at 8 February 2013 and until the end of the Period Newcrest was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) Newcrest's gold production guidance for the years from FY14 to FY17 was not reliable;
- (b) there existed substantial risks that Newcrest's gold production guidance for the years from FY14 to FY17 would not be met;-
- (c) alternatively to (b), there existed substantial risks that Newcrest's gold production guidance for FY14 through FY17 could not be achieved without capital expenditure significantly above the August 2012 Capex Guidance;

~~(e)~~(d) the Lihir mine was not a "low cost" mine,

(individually, collectively, or in any combination, the **February 2013 Information**).

Particulars

Each of the items of February 2013 Information was information of which Newcrest was, or ought to have been, in possession and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, Newcrest's awareness of those matters is to be inferred from the matters set out at paragraphs 4, 6, 8, 11 to 16, 51, 52 and ~~65~~12 to 17, 35, 70, 71 and 87 and the particulars thereto.

Further particulars may be provided following the completion of discovery and prior to trial.

L. FEBRUARY 2013 CONTRAVENTIONS

February 2013 misleading and deceptive conduct

~~68-90.~~ Each of the February 2013 Representations was:

- (a) made in relation to future matters, namely Newcrest's gold production for FY14;
- (b) made in relation to a financial product, namely NCM Securities;
- (c) a statement of opinion that was or could reasonably be regarded as being intended to influence potential investors in NCM Securities in making decisions in relation to the securities, within the meaning of:
 - (i) section 12BAB(5) of the ASIC Act; further or alternatively
 - (ii) section 766B(1) of the Corporations Act; and
- (d) made in trade or commerce.

~~69-91.~~ In the premises, by making the February 2013 Representations Newcrest engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
 - (i) section 12BAB(1) of the ASIC Act; further or alternatively
 - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being NCM Securities, within the meaning of section 764A of the Corporations Act.

~~70-92.~~ In so far as the February 2013 Representations were representations as to future matters, Newcrest did not have reasonable grounds for the representations within the meaning of:

- (a) section 12BB(1) of the ASIC Act; further or alternatively

- (b) section 769C of the Corporations Act.

Particulars

A lack of reasonable grounds is to be inferred from the following matters:

- i. the matters set out in paragraphs 8 to 16;
- ii. the overall decline in the gold price between 13 August 2012 and the end of the Period, including the April 2013 Gold Price Fall (as defined below);
- iii. each of the matters set out in paragraphs ~~51, 52, 59A, 59B~~ 70, 71, 101, 80 and ~~59C~~ 81 and the particulars thereto.

The Applicant also refers to and relies upon section 769C of the Corporations Act and section 12BB of the ASIC Act.

Further particulars may be provided following the completion of discovery and before trial.

~~71-93.~~ Further or alternatively, the February 2013 Representations were not true in that, by no later than 8 February 2013 and at all material times thereafter until the end of the Period it was likely that:

- (a) Newcrest's gold production in FY14 would not be between 2.52Moz and 2.77Moz;
- (b) Newcrest's gold production in FY14 would not be significantly higher than in FY13;
- (c) Newcrest's expectations for gold production in FY14 would be affected by the level of production achieved in FY13;
- (d) the Lihir mine would not produce over 1Moz of gold in FY14;
- (e) Newcrest's gold production for the period from FY13 through to FY17 would not increase at a compound annual growth rate of 5 to 10% per annum; and
- (f) Newcrest's gold production in FY17 would not be in the range of 3.1Moz to 3.5Moz.

Particulars

The Applicant refers:

- i. to the matters set out at paragraphs ~~51, 52, 59A, 59B and 59C~~ 70, 71, 101, 80, 81 and paragraph ~~98(128)(d)~~ and the particulars thereto;
- ii. from no later than ~~228~~ February 2013, the further matters set out in paragraphs 102 to 104 and the particulars thereto;
- iii. from no later than 1 March 2013, the further matters set out at paragraph ~~79A~~ 105 and the particulars thereto;
- iv. from no later than 24 March 2013, the further matters set out in paragraph 106 and the particulars thereto;
- v. from no later than 28 March 2013, the further matters set out in paragraph 107 and the particulars thereto.

Further particulars may be provided following the completion of discovery and before trial.

~~72-94.~~ In the premises, by making the February 2013 Representations Newcrest in trade or

commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act;

(February 2013 Production Misleading Conduct).

~~73.95.~~ Further or alternatively, in the premises set out in paragraphs ~~75.97~~ to ~~79.101~~, the Compliance Representation was not true in that from 8 February 2013 until the end of the Period Newcrest failed to comply with section 674(2) of the Corporations Act and ASX Listing Rules 3.1.

~~74.96.~~ In the premises, by maintaining the Compliance Representation from 8 February 2013 until the end of the Period Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(February 2013 Compliance Misleading Conduct and together with the February 2013 Production Misleading Conduct, the February 2013 Misleading Conduct).

February 2013 disclosure contravention

~~75.97.~~ The February 2013 Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
- (b) not generally available.

~~76.98.~~ By reason of the matters alleged in paragraphs 4 and ~~75.97~~, Newcrest was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to immediately notify the ASX of the February 2013 Information on and from at least 8 February 2013.

~~77-99.~~ Notwithstanding the matters alleged in paragraphs ~~75 and 76~~⁹⁷ and ~~98~~, Newcrest did not notify the ASX of the February 2013 Information at any time between 8 February 2013 and the end of the Period.

~~78-100.~~ By reason of the matters alleged in paragraphs ~~75 and 77~~⁹⁷ and ~~99~~, Newcrest contravened section 674(2) of the Corporations Act (**February 2013 Disclosure Contravention**).

~~79-101.~~ In the premises set out above, the February 2013 Disclosure Contravention commenced no later than 8 February 2013 and was a continuing contravention that continued until the end of the Period.

M. ASX ANNOUNCEMENTS AND OTHER EVENTS - ~~MARCH~~^{FEBRUARY} 2013 TO MAY 2013

Events preceding the 28 March 2013 FY13 Production Forecast Downgrade

~~102. 79A.~~ By no later than ~~2 March~~^{28 February} 2013: ~~(a)~~, Newcrest's estimated gold production for FY13 was between 2.01Moz and 2.23Moz;
~~(b)~~ the Lihir FY13 5YP had been submitted to Newcrest's ExCo;
~~(c)~~ the Lihir FY13 5YP provided for total capital expenditure on Lihir that was approximately AUD900m less than that contemplated by the Lihir FY13 LoPP;
~~(d)~~ the Lihir FY13 5YP forecast that gold production at Lihir between FY14 and FY17 would be below the gold production forecasts set out in:
~~— (i) the August 2012 Representations;~~
~~— (ii) the Lihir FY12 5YP;~~
~~— (iii) the Lihir FY13 LoPP;~~
~~— and in particular forecast that gold production at Lihir would be approximately 900koz in FY14, 950koz in FY15 and 1Moz in each of FY16 and FY17.~~

Particulars

As to subparagraph (a), the Applicant refers to the following estimated gold production ranges prepared by Newcrest:

- i. the range of between 2.06Moz (described as the "realistic case") and 2.20Moz (described as the "optimistic" case) set out in document NEW.542.005.4098;
- ii. the range of between 2.09Moz and 2.23Moz set out in documents NEW.606.007.9196, NEW.606.007.9197 and NEW.606.015.4801.
- iii. the range of between 2.01Moz and 2.15Moz set out in documents NEW.606.015.4800 and NEW.606.015.4801.

As to subparagraphs (b), (c) and (d), the

103. Between 4 March 2013 and 5 March 2013, Newcrest began drafting an ASX release with a view to:

- (a) communicating to the ASX a production downgrade based on a revised range of 2.0Moz to 2.1Moz of gold in FY13;
- (b) framing the ASX release as "much of a project update as a production downgrade".

Particulars

The Applicant refers to the draft release set out in document NEW.502.003.6647 and the correspondence set out in document NEW.542.005.4106.

104. Around 5 March 2013, Mr Robinson determined that:

- (a) Newcrest would not issue a production downgrade in advance of Newcrest's March quarterly report;
- (b) Newcrest would instead "make very clear" to analysts "as part of regular discussions" and "every chance we get" that there is "risk to guidance".

Particulars

The fact and nature of Mr Robinson's determination are to be inferred from the matters set out in document NEW.542.004.6658.

Newcrest FY13 5YP

105. By no later than 1 March 2013:

- (a) the Lihir FY13 5YP and a first draft of the Newcrest FY13 5YP had been submitted to Newcrest's ExCo;
- (b) the Lihir FY13 5YP provided for total capital expenditure on Lihir that was approximately \$900m less than that contemplated by the Lihir FY13 LoPP;
- (c) the Lihir FY13 5YP forecast that gold production at Lihir between FY14 and FY17

would be below the gold production forecasts set out in:

(i) the August 2012 Representations;

(ii) the Lihir FY12 5YP;

(iii) the Lihir FY13 LoPP.

and in particular forecast that gold production at Lihir would be approximately 900koz in FY14, 950koz in FY15 and 1Moz in each of FY16 and FY17;

(d) the Newcrest FY13 5YP forecast in respect of Telfer that:

(i) gold production across the period FY14 to FY17 would be effectively in line within the Telfer 5 Year Guidance Range; but

(ii) capital expenditure across that period was higher than that which had been forecast for the same period in the Newcrest FY12 5YP; and

(iii) total production costs across that period were higher than those which had been forecast for the same period in the Newcrest FY12 5YP, and in respect of each year in that period were higher than the then prevailing gold price of \$1,550/oz;

(e) the Newcrest FY13 5YP forecast in respect of Gosowong that:

(i) gold production across the period FY14 to FY17 would be approximately 375koz in FY14, and 350koz thereafter in each of FY15 to FY17;

(ii) capital expenditure across that period would be greater than that which had been forecast for the same period in the Gosowong FY12 5YP;

(f) the Newcrest FY13 5YP forecast that gold production at Cadia in FY14 would be 514koz.

Particulars

The Applicant refers to the Newcrest FY12 5YP, the Newcrest FY13 5YP and the document titled, "Newcrest – Lihir FY13 Five Year Plan" set out at document NEW.600.005.3753.

Further particulars may be provided following the completion of discovery and prior to trial.

106. Between around 1 March 2013 and 24 March 2013, Newcrest determined that:

(a) the Newcrest FY13 5YP was not acceptable and should be revised;

(b) the revisions to the FY13 5YP should not focus on production growth;

(c) for Newcrest's "marginal businesses", production "should fall when times do not warrant reinvestment".

Particulars

The Applicant refers to the correspondence between members of Newcrest's Exco and other Newcrest staff set out at documents NEW.600.007.4599, NEW.606.008.3715 and NEW.501.002.8189.

107. By no later than 28 March 2013:

- (a) a revised version of the Newcrest FY13 5YP (Revised Newcrest FY13 5YP) had been submitted to Newcrest's ExCo;
- (b) the Revised Newcrest FY13 5YP forecast that, among other things:
 - (i) Newcrest would produce 2.794Moz of gold in FY17 (and 2.859Moz in FY18);
 - (ii) Lihir would produce 812koz of gold in FY14, and would not produce over 1Moz in gold until FY17;
 - (iii) Cadia Valley would produce 514koz of gold in FY14;
 - (iv) Telfer would produce 320koz of gold in FY17;
- (c) in relation to Telfer, the Revised Newcrest FY13 5YP forecast that, among other things, the "cash costs" and "total production costs" (in \$ per ounce) for Telfer for the period from FY14 to FY17 to be as follows:

<u>FY14</u>	<u>\$1,152</u>	<u>\$1,564</u>
<u>FY15</u>	<u>\$1,293</u>	<u>\$1,687</u>
<u>FY16</u>	<u>\$1,172</u>	<u>\$1,615</u>
<u>FY17</u>	<u>\$1,497</u>	<u>\$1,897</u>

Particulars

The Revised Newcrest FY13 5YP is set out at document NEW.501.002.8851.

28 March 2013 FY13 Production Forecast Downgrade

80-108. On 28 March 2013, Newcrest published and lodged with the ASX a document titled "Production Update and Executive Changes" (**March 2013 FY13 Production Forecast Downgrade**) in which Newcrest made express statements to the effect that:

- (a) the production "ramp up" at the Cadia East mine and the Lihir mine following the MOPU project was "progressing in line with expectations";
- (b) at the Lihir mine:
 - (i) the MOPU plant was handed over to operations in February 2013;

- (ii) all aspects of the planned “ramp up” had “met or exceeded expectations”;
- (iii) “all other major systems – including crushing, conveying and grinding circuits – are also in full operation”;
- (c) notwithstanding the “pleasing performance” of the MOPU plant, the Lihir mine was running at “reduced production capacity” following a shutdown of one of the autoclaves at the mine;
- (d) it was anticipated that repair works to that autoclave would take between 5 and 7 weeks to complete;
- (e) “poor ground conditions” continued to be experienced at the Gosowong mine;
- (f) “primarily as a result” of the matters set out in paragraphs (c), (d) and (e), Newcrest had “determined” that the original guidance for FY13 gold production was no longer achievable;
- (g) instead, Newcrest had reduced FY13 gold production guidance to 2.00Moz to 2.15Moz.

April 2013 interim impairment testing

109. 80A.—On or about 5 April 2013, Newcrest conducted interim impairment assessments for each of its mines, in respect of which Newcrest concluded, among other things, that:

- (a) in respect of Lihir there was a shortfall of ~~AUD3.098b~~ (under the “Mid-Price” plan, applying a gold multiple of 1.2);
- (b) in respect of Telfer there was a shortfall of ~~AUD867m~~ \$867m (under the “Mid-Price” plan, applying a gold multiple of 1.0);
- (c) in respect of Hidden Valley there was a shortfall of ~~AUD364m~~ \$364m (under the “Mid-Price” plan, applying a gold multiple of 0.9); and
- (d) in respect of Bonikro, there was a shortfall of ~~AUD421m~~ \$121m (under the “Mid-Price” plan, applying a gold multiple of 0.9),

such that in the case of each of those mines its carrying value exceeded its NPV.

Particulars

The Applicant refers to the internal Newcrest calculations set out at documents NEW.501.003.0035, NEW.501.003.0038 and NEW.501.004.0348.

Further particulars may be provided following the completion of discovery and prior to trial.

April 2013 - Gold Price fall and 3Q13 Results

~~81.110.~~ On 15 April 2013, the gold price fell from ~~USD4~~US\$1,535 per ounce to ~~USD4~~US\$1,395 per ounce (**April 2013 Gold Price Fall**).

~~111.~~ On or about 16 April 2013, Newcrest conducted an initial assessment of the impact of the April 2013 Gold Price Fall on Newcrest's then current FY14 budget, which assessment indicated that if a gold price of \$1,340/oz was assumed for FY14 rather than a gold price of \$1670/oz in the FY13 5YP, then:

- (a) a "conservative" estimate of the impact on Newcrest's FY14 revenue was \$1bn;
- (b) Newcrest's forecast gold production in FY14 would decline from 2.451Moz to 2.3Moz;
- (c) the forecast free cash flow in FY14 at each of Newcrest's mines would decline significantly, and would be negative in the case of Cadia Valley, Telfer, Hidden Valley and Bonikro;
- (d) Newcrest's overall forecast free cash flow in FY14 would decline from \$316m to negative \$690m.

Particulars

The assessment was conducted by Kim Kerr and sent to Gerard Bond on 16 April 2013, and is set out in the documents at NEW.502.002.5451 and NEW.502.002.5452.

~~82.112.~~ Between 16 April 2013 and 7 June 2013:

- (a) the gold price in ~~USD~~US\$ did not change significantly;
- (b) the gold price in ~~AUD~~\$ as at 7 June 2013 significantly improved relative to the gold price on 16 April 2013.

Particulars

On 16 April 2013 the gold price in ~~USD~~US\$ was approximately ~~USD4~~US\$1,380 per ounce and on 7 June 2013 the gold price in ~~USD~~US\$ was approximately ~~USD4~~US\$1,386 per ounce.

On 16 April 2013 the gold price in ~~AUD~~\$ was approximately ~~AUD4~~\$1,333 per ounce and on 7 June 2013 the gold price in ~~AUD~~\$ was approximately ~~AUD4~~\$1,461 per ounce.

~~83.113.~~ On 23 April 2013, Newcrest published and lodged with the ASX its quarterly report for

3Q13 (**3Q13 Results**), which consisted of:

- (a) a document titled "Quarterly Report – Newcrest Mining Limited – For the three months ending 31 March 2013" (**3Q13 Results Release**); and
- (b) a document titled "March 2013 Quarterly Results" (**3Q13 Results Presentation**).

84.114. In the 3Q13 Results Release and 3Q13 Results Presentation, Newcrest made express statements to the effect that:

- (a) the "new and expanded operations" at the Cadia East mine and the Lihir mine "performed to plan in the March 2013 quarter" and were "ramping up in line with expectations";
- (b) in relation to the Cadia East mine, the mine "operated as expected" and during the quarter "the second phase primary crusher was commissioned on time";
- (c) in relation to the Lihir mine:
 - (i) the MOPU plant progress and performed "as expected" and "importantly, the new autoclave performance achieved nameplate capacity";
 - (ii) the new autoclave was operating "at or above its design capacity of 450 tonnes per hour for the month of March 2013";
 - (iii) the repair of the autoclave referred to in the March 2013 FY13 Production Forecast Downgrade was complete;
 - (iv) the Lihir flotation capacity upgrade was "progressing in line with plan", remained "on schedule for completion in the first quarter" of FY14 and "remained on track for July 2013 delivery";
 - (v) Newcrest's "refurbishment projects in the older sections of the Lihir plant" were "progressing to plan";
- (d) as part of Newcrest's "Lihir operating strategy", at some point in the future Newcrest:
 - (i) needed to "rebase" its cost structure by, among other things, "simplifying" the operation, processing "more stockpiled ore" and improving return on investment;
 - (ii) would complete the Lihir flotation capacity upgrade and the Lihir reliability programme;
 - (iii) would "operate" the Lihir "process plant to full capacity";
- (e) access to higher grade ore zones at the Gosowong mine had been re-established;
- (f) "operating and capital costs continued to be high in the global mining industry";

- (g) "the recent decline in commodity prices" had "not been accompanied by a reduction in the strength of the Australian Dollar and Papua New Guinean Kina";
- (h) with Newcrest's "major projects ramping up and the more challenging external environment", Newcrest was continuing to "review all of its business activities";
- (i) the actions taken by Newcrest "in response to performance and external environment" were:
 - (i) "organisational changes to reduce and simplify off-site activity";
 - (ii) "paused studies on some projects with a longer term payback";
 - (iii) "assessing all capital investment in higher cost production ounces";
 - (iv) "continuing to renegotiate costs and activity with key suppliers";
- (j) Newcrest's FY13 gold production guidance had not changed from that set out in the March 2013 FY13 Production Forecast Downgrade, namely between 2Moz and 2.15Moz in FY13.

N. CONTINUING CONTRAVENTIONS FROM 8 FEBRUARY 2013

~~85-115.~~ From 8 February 2013 until the end of the Period, Newcrest:

- (a) repeated, further and alternatively confirmed, the substance of the February 2013 Representations in releases to the ASX;
- (b) did not amend, qualify or withdraw the substance of the February 2013 Representations;
- (c) did not release to the ASX any further information that would significantly supplement or modify the February 2013 Representations,

and accordingly the February 2013 Representations were continuing representations that were maintained by Newcrest from 8 February 2012 until the end of the Period.

Particulars

The February 2013 Representations were repeated, further and alternatively confirmed, in the March 2013 FY13 Production Forecast Downgrade, 3Q13 Results Release and 3Q13 Results Presentation:

- i. expressly, through the making of the statements set out in paragraphs ~~80, 83 and 84;~~ 108, 113 and 114;
- ii. by implication, from:
 - A. the substance of the statements set out in paragraphs ~~80, 83;~~ 108, 113 and 84; 114;
 - B. the matters set out in paragraphs 44 and 66 and the particulars thereto;

- C. the circumstance that between 8 February 2013 and 6 June 2013, Newcrest did not amend, qualify or withdraw the substance of the February 2013 Representations or the statements set out in paragraphs ~~80, 83 and 84~~108, 113 and 114 in subsequent ASX releases;
- D. the circumstance that between 8 February 2013 and 6 June 2013, Newcrest did not release to the ASX any further information that would significantly supplement or modify the substance of the February 2013 Representations or the statements set out in paragraphs ~~80, 83 and 84~~108, 113 and 114;
- E. the fact that throughout the period from 8 February 2013 and 6 June 2013, Newcrest would reasonably be expected to have been aware of the performance of each of the mines referred to in paragraph ~~55~~ and the status and progress of the Cadia East mine project, the MOPU project, the Lihir reliability programme and the Lihir flotation capacity upgrade.
- F. Newcrest's failure to make any express statement ~~that to the~~ effect that the March 2013 FY13 Production Forecast Downgrade had any impact on its forecasts for subsequent years.

~~86-116.~~ In the premises, by maintaining the February 2013 Representations Newcrest engaged in conduct:

- (a) in trade or commerce within the meaning of section 12BA of the ASIC Act;
- (b) in relation to a financial service within the meaning of:
 - (i) section 12BAB(1) of the ASIC Act; further or alternatively
 - (ii) section 766A(1)(a) of the Corporations Act;
- (c) in relation to a financial product, being NCM Securities, within the meaning of section 764A of the Corporations Act.

~~87-117.~~ In so far as the February 2013 Representations were representations as to future matters, Newcrest did not have reasonable grounds for the representations while they continued between 8 February 2013 and 6 June 2013 within the meaning of:

- (a) section 12BB(1) of the ASIC Act; further or alternatively
- (b) section 769C of the Corporations Act.

Particulars

A lack of reasonable grounds is to be inferred from the following matters:

- i. the matters set out in paragraphs 8 to ~~46C, 42A~~23, 53 to 42E~~59, 69~~ and the particulars thereto;
- ii. the matters the subject of the March 2013 FY13 Production Forecast Downgrade;
- iii. the overall decline in the gold price between 13 August 2012 and the end of the Period, including the April 2013 Gold Price Fall;

- iv. each of the matters set out in paragraphs ~~51, 52, 59A, 59B and 59C~~70, 71, 79, 80, 81 and the particulars thereto;
- v. from ~~21~~ March 2013, the matters set out in paragraph ~~79A~~105 and the particulars thereto.

The Applicant also refers to and relies upon section 769C of the Corporations Act and section 12BB of the ASIC Act.

Further particulars may be provided following the completion of discovery and before trial.

~~88, 118.~~ In the premises, by maintaining the February 2013 Representations Newcrest in trade or commerce continued to engage in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act.

~~89, 119.~~ In the premises set out above, the February 2013 Misleading Conduct commenced on 8 February 2013 and was a continuing contravention that continued until the end of the Period.

O. APRIL 2013 MATERIAL INFORMATION

~~90, 120.~~ Further or alternatively, at all times from at least ~~155~~ April 2013 to 6 June 2013, Newcrest was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) it was likely that Newcrest would need to recognise a substantial impairment in respect of the carrying value of one or more of its assets;
- (b) it was unlikely that Newcrest would pay a final dividend in respect of NCM Securities for FY13,

(individually or collectively, the **Impairment Information**).

Particulars

Each of the items of Impairment Information was information of which Newcrest was, or ought to have been, in possession and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12. Further:

- i. Newcrest's awareness of the matters alleged in paragraph ~~90(120)~~120(a) is to be inferred from:
 - A. the matters set out at paragraphs 4, 6, 8, 10, and 11 to ~~16~~17 and the particulars thereto;

- B. the matters set out at paragraphs ~~51, 52, 67, 70 and 71~~70, 71, 89, 92, 93 and the particulars thereto;
- C. the content of the 2012 Resources & Reserves Statement;
- D. the matters set out at paragraphs ~~16E, 16F, 42F and 80A~~24, 25, 60, 109, 111 and the particulars thereto;
- E. the successive reductions in gold production forecasts set out in the Newcrest FY12 5YP, the Newcrest FY13 LoPP and the Newcrest FY13 5YP;
- F. references in the 7 June 2013 Corrective Disclosure to:
 - i. the "review of the Company's business plan and 2014 financial year budget";
 - ii. the 2014 budget having been "developed in the context of the current market environment and outlook, including a recent sharp deterioration in the gold price (the largest in 30 years), the ongoing strength of Newcrest's operating currencies relative to the ~~USD, US\$~~, and an elevated operating cost environment";
- G. the statement in the 7 June 2013 Corrective Disclosure that Newcrest was "reviewing the carrying values of its assets having regard to materially lower gold prices, the compression of earnings multiples in the gold industry (the latter being a market proxy for gold price forecasting and resource conversion) and other market factors";
- H. the compression of gold multiples, further and alternatively the removal of gold multiples, for the purposes of valuation of gold producers by investors in the period from the start of 2012 through to the end of the Period;
- I. the fact that the gold price had been trending downwards since around October 2012;
- J. the matters set out in paragraphs ~~82~~112 and the particulars thereto;
- ~~K~~K. from 15 April 2013, the fact of the April 2013 Gold Price Fall;
- ~~L~~L. the fact that notwithstanding the April 2013 Gold Price Fall, the gold price at all times from 15 April 2013 until the end of the Period was substantially higher than the gold price of approximately ~~USD4~~US\$1,200 per ounce as at the date of the Lihir acquisition;
- ~~M~~M. the fact that notwithstanding the April 2013 Gold Price Fall, the gold price at all times from 15 April 2013 until the end of the Period was substantially higher than the gold price of ~~USD4~~US\$1,250 per ounce used by Newcrest in the 2012 Resources & Reserves Statement to estimate Ore Reserves at its mines (other than the Gosowong mine);
- ~~N~~N. statements in the 7 June 2013 Corrective Disclosure and 7 June 2013 Media Release that Newcrest believed an impairment of the carrying value of assets in the range of "\$5 to \$6 billion" was "likely" and "expected";
- ~~O~~O. the reference in the 7 June 2013 Media Release to the "significant change in the price of gold, gold equities and other market factors since the start of this calendar year";

- OP. the statement in the 7 June 2013 Corrective Disclosure that approximately AUD\$3.6 billion of that impairment was associated with a write down of all goodwill on the Newcrest balance sheet in relation to the Lihir mine;
 - PQ. the assumption made by Newcrest for the purposes of impairment testing as at the end of FY12, referred to on page 60 of Newcrest's Financial Report for FY13 announced to the ASX on 9 September 2013, that the gold price in 2013 would be USD4US\$1,615 (declining to USD4US\$1,100 by 2018);
 - QR. in light of that assumption, the fact that interim impairment testing was, alternatively ought to have been, conducted by Newcrest following the April 2013 Gold Price Fall.
- ii. Newcrest's awareness of the matters alleged in paragraph 90(120)(b) is to be inferred from:
- A. the matters referred to in sub-paragraph i. above;
 - B. ~~the matters set out at paragraph 37;~~
 - B. the statements in the 7 June 2013 Corrective Disclosure that:
 - i. the "decline in prices the current financial year has the effect of increasing the likely gearing of the Company at 30 June 2013 to around 21%"; and
 - ii. an "asset write-down of \$5 to \$6 billion would result in the gearing of the Company being in the order of 28-30% at 30 June 2013";
 - C. the statement in the 7 June 2013 Corrective Disclosure that in the "context of the reduction in 2013 financial year profitability following the sharp decline in prices, the elevation of gearing at 30 June 2013 associated with the estimated write-down of carrying values and the application of cash flow to completion of the Panel Cave 2 at Cadia East, the Board expects that there will not be a final dividend in relation to the 2013 financial year".

Further particulars may be provided following the completion of discovery and prior to trial.

P. APRIL 2013 CONTRAVENTIONS

April 2013 Disclosure Contravention

91,121. The Impairment Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and
- (b) not generally available.

92,122. By reason of the matters alleged in paragraphs 4 and 91, 121, Newcrest was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to

immediately notify the ASX of the Impairment Information on and from ~~45~~5 April 2013.

~~93-123.~~ Notwithstanding the matters alleged in paragraphs ~~91 and 92~~, 121 and 122, Newcrest did not notify the ASX of the Impairment Information at any time during the Period.

~~94-124.~~ By reason of the matters alleged in paragraphs ~~91 to 93~~, 121 to 123, Newcrest contravened section 674(2) of the Corporations Act throughout the Period (**April 2013 Disclosure Contravention**).

~~95-125.~~ In the premises set out above, the April 2013 Disclosure Contravention commenced no later than ~~45-5~~5 April 2013 and was a continuing contravention that continued until the end of the Period.

April 2013 misleading and deceptive conduct

~~96-126.~~ Further or alternatively, in the premises set out in paragraphs ~~94-124~~ to ~~95-125~~, the Compliance Representation was not true in that from ~~45-5~~5 April 2013 until the end of the Period Newcrest failed to comply with section 674(2) of the Corporations Act and ASX Listing Rules 3.1.

~~97-127.~~ In the premises, by maintaining the Compliance Representation from ~~45-5~~5 April 2013 until the end of the Period Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(**April 2013 Misleading Conduct**).

Q. EARLY JUNE 2013 ANALYST MEETINGS AND REPORTS

~~98-128.~~ Between around 28 May 2013 and 4 June 2013, Newcrest held one or more meetings with analysts (**Analyst Meetings**) at which Newcrest disclosed one or more of the following matters:

- (a) some or all of the FY14 Gold Production Information;
- (b) the fact that the Lihir mine was unlikely to produce over 1Moz of gold in FY14;
- (c) the fact that Newcrest's gold production in FY14:
 - (i) would not be in the range of 2.52Moz to 2.77Moz;
 - (ii) would not be significantly higher than in FY13;
- (d) notwithstanding:
 - (i) the one-off nature of interruptions to Newcrest's operations in FY13;
 - (ii) the completion of the MOPU project and the Cadia Mine development in early 2013; and
 - (iii) the likely completion of the Lihir flotation capacity upgrade in July 2013,
 any forecast growth in FY14 gold production should be based off the result in FY13, (individually, collectively, or in any combination, the **Advance Information**).

Particulars

The fact of the Analyst Meetings and the matters discussed at them are to be inferred from the following:

- i. the fact that the Advance Information was contrary to the August 2012 Representations and February 2013 Representations;
- ii. the matters set out in paragraph 99, ~~130~~, including the inclusion of Advance Information in the analyst reports identified therein;
- iii. the matters set out in the Newcrest "Market Release" dated 18 June 2014 published by Newcrest and lodged with the ASX on 18 June 2014, including the "Agreed Statement of Facts and Admissions" (**ASOFA**) attached thereto at [43]-[57].

The Applicant also refers to the matters set out in paragraphs 51, ~~57, 67 and 75~~ 70, 76, 89, 97 to 99 101 and the particulars thereto.

Further particulars may be provided following the completion of discovery and before trial.

129. ~~98A.~~—Further and alternatively to paragraph 98, ~~128~~, the Analyst Meetings and Advance Information included the following:

- (a) a conversation on 28 May 2013 between Newcrest's Manager Investor Relations, Spencer Cole (**Mr Cole**) and representatives of Bank of America Merrill Lynch (**BAML**), during which Mr Cole said words to the effect that BAML's estimates of Newcrest's FY14 gold production were too high;
- (b) a conversation on 28 May 2013 between Mr Cole and Michael Slifirski and Sam Webb of Credit Suisse Equity Research (**Credit Suisse**), during which Mr Cole said words to the effect that:

- (i) Credit Suisse's estimates of Newcrest's FY14 gold production were too high; and
 - (ii) Newcrest expected just below 10% growth in its gold production in FY14 relative to a total gold production of 2.1Moz or less in FY13;
- (c) an email exchange on 28 May 2013 between Mr Cole and the representatives from Credit Suisse referred to above (NEW.503.001.1443) and its contents;
- (d) a meeting on 29 May 2013 between Mr Cole and Jo Battershill of UBS Investment Research (**UBS**) during which Mr Cole said words to the effect that Newcrest expected between 5% and 10% growth in its gold production in FY14 relative to Newcrest's total gold production for FY13;
- (e) a meeting on 29 May 2013 between Mr Cole and David Thompson, Andrew Driscoll and Sandy Isherwood of Credit Lyonnais Securities Asia (**CSLACLSA**) during which Mr Cole said words to the effect that:
 - (i) Newcrest expected between 5% and 10% growth in its gold production in FY14 relative to Newcrest's total gold production for FY13;
 - (ii) an estimate of 2.6Moz gold production for FY14 would be too high;
- (f) a meeting on 30 May 2013 between Mr Cole and Brett McKay and Mat Hocking of Deutsche Bank Markets Research (**Deutsche Bank**) during which Mr Cole said words to the effect that Newcrest expected around 5% annual growth in its gold production in the next few years relative to Newcrest's total gold production for FY13;
- (g) a meeting on 30 May 2013 between Mr Cole and Daniel Seeney, Matthew Schembri and Sam Heithersay of Citibank (**Citi**) during which Mr Cole said words to the effect that Newcrest expected around 5% annual growth in its gold production in the next few years relative to Newcrest's total gold production for FY13, with 5% to 10% growth in gold production for FY14;
- (h) a meeting on 30 May 2013 between Mr Cole and Michael Orphanides of Royal Bank of Canada (**RBC**) during which Mr Cole said words to the effect that:
 - (i) Newcrest expected around 5% growth in its gold production in FY14 relative to Newcrest's total gold production for FY13;
 - (ii) Newcrest's expected gold production for FY13 was between 2.0Moz and 2.15Moz;
- (i) a meeting on 30 May 2013 between Mr Cole and Mitchell Ryan of Macquarie Bank during which Mr Cole said words to the effect that Newcrest's expected gold

production for FY14 to be between 2.2Moz and 2.3Moz;

- (j) a conversation on 31 May 2013 between Mr Cole and David Walsh of Colonial First State Asset Management during which Mr Cole said words to the effect that:
 - (i) Newcrest expected between 5% to 10% annual growth in its gold production relative to Newcrest's total gold production for FY13;
 - (ii) Newcrest's expected gold production for FY14 to be between 2.2Moz and 2.3Moz;
- (k) a conversation on 31 May 2013 between Mr Cole and Marc Hester of Greencape Capital during which Mr Cole said words to the effect that Newcrest expected between 5% and 10% annual growth in its gold production in the next few years relative to Newcrest's total gold production for FY13;
- (l) a conversation on 31 May 2013 between Mr Cole and Michael Orphanides and Geoff Breen of RBC during which Mr Cole said words to the effect that Newcrest's expected gold production in FY14 was around 2.3Moz.

Particulars

The Applicant refers to the ASOFA at [43]-[57].

Further particulars may be provided following the completion of discovery and before trial.

99.130. Between 3 June 2013 and 5 June 2013, a number of analysts covering Newcrest and NCM Securities published reports that contained one or more items of the Advance Information (**June 2013 Analyst Reports**) as follows:

- (a) On 3 June 2013, Stephen Gorenstein and Anthony Kuo of BAML published a report concerning Newcrest titled "Austerity on horizon: Cashflow to be prioritised over prod'n" in which the authors:

- (i) stated that:

"Maximising cashflow not production the way forward

In essence this may result in NCM shelving its production growth aspirations which could result in FY14 production ~10% lower than our forecast, BUT importantly it may improve FCF by ~\$600-900m in that year. We see a number of levers to maximise cashflow in place of production including: **Lihir**: bring forward stockpile processing (reducing production but increasing cash flow). **Telfer** no further cutbacks (shortening life but reducing capex) and deferring high cost ounces (lower mining cost and throughput but higher grade)."

- (ii) stated that:

"We have not at this stage materially altered our forecasts. However our 'cost out' modelling suggests FY14 production could be 2.3-2.4moz

(BofAMLe: 2.6moz) and sees similar changes to FY15 –FY17 forecasts.”

- (b) On 4 June 2013, Jo Battershill, Glyn Lawcock and James Brennan-Chong of UBS published a report concerning Newcrest titled “Lihir – MOPU loses its MO” in which the authors:

- (i) stated that:

“Newcrest has recently re-iterated to investors that production growth in FY14 will be 5-10% over FY13. With FY13 expected to come in at 2.05Moz, 5-10% growth would imply an FY14 range of 2.2-2.3Moz, equating to a downgrade of 15% over the prior consensus forecast of 2.6Moz (prior UBS-e 2.6Moz)”

- (ii) stated that they had “subsequently lowered FY14e to 2.3Moz – with the bulk of the cut at Lihir, which now appears unlikely to hit an annualised rate of 1Moz in the foreseeable future”;

- (iii) stated that:

“During the Newcrest investor day hosted in early October 2012, management stated a growth target of 5-10% per annum over the 5-year plan. The starting point for growth was the 2.29Moz of production reported in FY12, which subsequently implied a range of 2.4-2.5Moz for FY14.

At recent investor presentations, including the BoAML conference in Barcelona, Newcrest management has re-iterated its forecast growth at 5-10% over the next few years. However, it now appears as if the starting point is the FY13 production number, likely to come in around 2.05Moz. Therefore, the growth forecast of 5-10% would now imply an FY14 production profile of 2.2-2.3Moz. Consensus production forecasts for FY14, provided by the company, are for 2.6Moz. Subsequently, a production range of 2.2-2.3Moz would imply downgrades of up to 15% relative to consensus.

Our previous forecast of 2.6Moz, in-line with consensus, has subsequently been downgraded to 2.3Moz.”

- (iv) stated that the “MOPU project, highly promoted by management, now appears unlikely to actually reach 1Moz for some time”;

- (v) downgraded their recommendation in respect of NCM Securities from “Neutral” to “Sell”;

- (vi) lowered their 12 month target price for NCM Securities from ~~AUD18~~\$18.00 to ~~AUD12~~\$12.00;

- (c) On 5 June 2013, Michael Slifirski and Sam Webb of Credit Suisse published a report concerning Newcrest titled “Lihir today, gone tomorrow – Kapit Kaput” in which the authors:

- (i) stated that:

“The precipitous gold price decline will initially drive consensus downgrades to price assumptions, earnings and valuations. This will be

followed by secondary downgrades to production as producers adjust their plans to be more cash sustainable in the event of an even more punitive gold price environment. Producers' challenge is what gold price, of many possible scenarios, to use to define medium term operating plans. At current margins, Lihir and Telfer can't support their book values or justify additional capital."

(ii) stated that:

"Newcrest's challenge has moved from achieving a satisfactory return from Lihir by growing production, to shrinking production to ensure net free cash generation..."

(iii) stated that, in respect of the Lihir mine:

"Dramatic change probable with few options other than now running the operation for cash, not production aspirations. Production projections must drop materially and Kapit deferred until stockpiles and non-Kapit reserves are depleted in 10 years under our revised operating scenario. We no longer expect achievement of 1moz+ per annum production."

(iv) downgraded their rating of NCM Securities from "Outperform" to "UNDERPERFORM";

(v) lowered their 12 month target price for NCM Securities from AUD24\$24.20 to AUD14\$14.55;

(d) On 5 June 2013, Brett McKay, Mat Hocking and Chris Terry of Deutsche Bank published a report concerning Newcrest titled "Shifting into harvest mode" in which the authors:

(i) stated that:

"Strategy shifts towards high-margin oz's, lower short-med term prod'n outlook. With recent completion of a number of large capital projects, and in response to lower Au prices, we believe NCM will aim to harvest as many low-cost ounces as possible over the coming years. Apart from ongoing dev't at Cadia East, few new projects are likely to be pursued. In our view, the focus on low-cost ounces, limited capex & lower corporate costs can generate better cash flow relative to the original strategy. However, we believe this initiative will lower Au prod'n with 2.45Moz now forecast for FY14 (prev. 2.7Moz). Balancing this, we can demonstrate up to \$155m/yr in additional FCF can be generated. Maintain HOLD, pending further clarification on the updated strategy."

(ii) stated that:

"Following a number of recent presentations and comments, we now believe NCM are moving toward the implementation of a strategy to focus on production of high margin ounces and minimising capex. Combined with potential to reduce corporate overheads and exploration spend, this strategy should improve free cash flow. This comes as a number of major capital projects come to an end and NCM has the opportunity to 'harvest' ounces without the associated capex. We believe they can pursue this strategy for up to 5 years, spending capital at Lihir (minimal) and Cadia East (Panel Cave 2) only. Gold production will be lower, although this will be balanced by up to \$155m in additional free cash flow per year relative to their original strategy."

- (iii) stated that, in respect of the Lihir mine:

"We believe NCM are moving toward the implementation of a stockpile strategy at Lihir, whereby they replace a large part of the mill feed with ore from stockpiles. Operating cost advantages are tangible, given reclamation costs for stockpiled ore are \$2/t whilst mining costs are around \$7.50/t of material. With lower open pit material required to feed the mill, it's likely open pit mining can be more selective and operate to a lower strip ratio. However, stockpile grades and recoveries are lower than ex-pit ore, resulting in lower gold production."

- (iv) maintained their "Hold" rating in respect of NCM Securities;

- (v) lowered their 12 month target price for NCM Securities from AUD19\$19.10 to AUD15\$15.70;

- (e) On 5 June 2013, Brendan Fitzpatrick, Stefan Hansen and Rachel Bentvelzen of Morgan Stanley Research Asia/Pacific published a report in concerning Newcrest titled "Downgrade to EW, Revised production carried forward" in which the authors:

- (i) stated that:

"Newcrest to EW on revised forward production assumptions. Previously we had assumed that after one off events were dealt with production would rebound in FY14. However it now seems likely growth will be off the FY13 base. Upside and earnings profile remains, but now less compelling."

- (ii) stated that:

"Same reference, new base line: Our group production reflects a 5-10% pa growth rate as per company commentary, but as NCM moves to optimise for cashflow we base it off the FY13, 2.12Moz, level. We now allow for Lihir stockpiles to be actively reduced but find revenue loss is greater than cost savings. There is capex saving (\$500mn) and deferral (15yrs), but as we were under-estimating the capex the valuation benefit on our numbers is muted. We have also modified production and cost assumptions at most other assets."

- (iii) downgraded their rating of NCM Securities from "Overweight" to "Equal-weight";

- (iv) stated that "We have downgraded NCM to EW. This is largely due to our rebased production outlook of 5-10%pa in the forward years";

- (v) lowered their target price for NCM Securities from AUD20\$20.00 to AUD16\$16.60.

- (f) On 5 June 2013, Daniel Seeney, Clarke Wilkins, Matthew Schembri and Sam Heithersay of Citi published a report in concerning Newcrest titled "Shifting Strategy: Chasing Cash Not Growth, Downgrade to Sell" in which the authors:

- (i) stated that:

"Responding to the Market — Recent presentations have outlined a major change in strategy underway at NCM, with the focus shifting to

returns & cash generation at the expense of production growth. This has come in response to investor demand, but also the more benign outlook for gold prices which calls into question further discretionary capex. We welcome this revised strategy and see it as indicative of what investors will be looking for from the broader sector in order to regain confidence in gold mining equities. However we lower production, earnings and NPV materially as a result. NCM is downgraded to Sell with a lowered \$13.00 target price."

(ii) stated that:

"Production & Earnings Changes — Material downgrades to earnings and valuation given the more modest production growth profile. We lower our FY14 production estimate to ~2.4moz - primarily driven by more modest ramp up at Lihir and Cadia. We see risk to NCM's FY17 production guidance which is unlikely to be delivered under the new strategy in our view."

(iii) downgraded their rating of NCM Securities from "Neutral" to "Sell";

(iv) lowered their target price for NCM Securities from ~~AUD18~~\$18.30 to ~~AUD13~~\$13.00.

R. JUNE 2013 CONTRAVENTIONS

June 2013 disclosure contravention

~~400-131.~~ Further or alternatively, at all times from around 4 June 2013 to 6 June 2013,

Newcrest was aware, for the purposes of ASX Listing Rule 19.12, of the fact of:

- (a) the Advance Information;
 - (b) the Analyst Meetings;
 - (c) the matters discussed in the Analyst Meetings,
- (individually, collectively, or in any combination, the **Analyst Briefing Information**).

Particulars

Each of the items of Analyst Briefing Information was information of which Newcrest was, or ought to have been, in possession and therefore was information of which it was aware within the meaning of ASX Listing Rule 19.12. Further:

- i. Newcrest's awareness of the matters alleged in paragraph ~~400(131)~~(a) is to be inferred from:
 - A. the matters set out at paragraphs 4 and 6 and the particulars thereto;
 - B. the matters set out in paragraphs ~~54~~70 and ~~52~~71 and the particulars thereto;
 - C. the matters set out in paragraph ~~98~~128 and the particulars thereto;

ii. Newcrest's awareness of the matters alleged in paragraph ~~400~~131(b) is to be inferred from:

- A. the matters referred to in sub-paragraph i.;
- B. Newcrest's participation in the Analyst Meetings.

The Applicant also refers to the ASOFA at [43]-[58].

Further particulars may be provided following the completion of discovery and before trial.

~~401,132.~~ Further or alternatively, the Analyst Briefing Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and
- (b) not generally available.

~~402,133.~~ ~~401A.~~ Further and alternatively to paragraph ~~401,132~~, the Advance Information disclosed at the Analyst Meetings set out in paragraph ~~98A~~129 above was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and
- (b) not generally available.

Particulars

The Applicant refers to the ASOFA at [31] and [43]-[58].

~~403,134.~~ By reason of the matters alleged in paragraphs 4, ~~401 and 401A, 132 and 133~~, Newcrest was obliged by Rule 3.1 of the ASX Listing Rules and section 674(2) of the Corporations Act to immediately notify the ASX of the Analyst Briefing Information on and from around 4 June 2013.

~~404,135.~~ Further or alternatively, by reason of the matters alleged in paragraphs 4 and ~~401, 132~~, Newcrest was obliged by Rule 15.7 of the ASX Listing Rules and section 674(2) of the Corporations Act to not provide the Advance Information to any person until Newcrest had given that information to the ASX and received from the ASX an acknowledgement that the ASX had released the information to the market.

~~405,136.~~ Notwithstanding the matters alleged in paragraphs ~~401, 402 and 403, 132, 134 and 135~~, Newcrest did not notify the ASX of the Analyst Briefing Information or the Advance Information at any time during the Period.

~~406,137.~~ By reason of the matters alleged in paragraphs ~~401 to 404,132~~ to 136, Newcrest contravened section 674(2) of the Corporations Act throughout the Period (**June 2013 Disclosure Contravention**).

~~407,138.~~ In the premises set out above, the June 2013 Disclosure Contravention commenced no later than 4 June 2013 and was a continuing contravention that continued until the end of the Period.

June 2013 misleading and deceptive conduct

~~408,139.~~ Further or alternatively, in the premises set out in paragraphs ~~400~~131 to ~~406,138.~~ the Compliance Representation was not true in that from around 4 June 2013 Newcrest:

- (a) failed to comply with section 674(2) of the Corporations Act;
- (b) failed to comply with ASX Listing Rules 3.1;
- (c) further or alternatively, failed to comply with ASX Listing Rule 15.7.

~~409,140.~~ In the premises, by maintaining the Compliance Representation from around 4 June 2013 until the end of the Period Newcrest in trade or commerce engaged in conduct:

- (a) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA of the ASIC Act; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act,

(**June 2013 Misleading Conduct**).

S. 7 JUNE 2013 CORRECTIVE DISCLOSURE

~~410,141.~~ On 7 June 2013, Newcrest published and lodged with the ASX a document titled "Newcrest Completes Business Review – Update on Outcomes, Impacts and Outlook" (**7 June 2013 Corrective Disclosure**) in which Newcrest made express statements to the effect that:

- (a) Newcrest's gold production was expected to be between 2.0Moz and 2.3Moz in

FY14;

- (b) it was likely that after 30 June 2013 Newcrest would record an impairment to the carrying value of its assets of between ~~AUD5b~~\$5b and ~~AUD6b~~\$6b, consisting of:
 - (i) a write down of approximately ~~AUD3~~\$3.6b representing all goodwill on Newcrest's balance sheet in relation to the Lihir mine;
 - (ii) impairments totalling approximately ~~AUD2~~\$2.2b in relation to Newcrest's "higher cost assets", namely the Telfer mine, the Hidden Valley mine and the Bonikro mine;
- (c) Newcrest did not expect that there would be paid a final dividend on NCM securities for FY13.

T. LOSS AND DAMAGE

~~441,142.~~ During the Period, the Applicant and each of the Group Members acquired an interest in NCM Securities:

- (a) in a market regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act;
- (b) in a market where the price or value of NCM Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act;
- (c) in a market to which the representations alleged in this statement of claim had been made that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and/or
- ~~(a)~~(d) further or alternatively to subparagraph 440~~(142)~~(c), in a market to which the material information alleged in this statement of claim had not been disclosed and which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of NCM Securities.

Particulars

The "market" during the Period was comprised of all then current investors and potential investors in NCM Securities (market for NCM Securities).

Particulars of the Applicant's transactions involving NCM Securities during the Period are set in Annexure A to this statement of claim.

Particulars of the shareholdings of the Group Members will be provided following the trial of the common questions.

In respect of the June 2013 Disclosure Contravention and the June 2013 Misleading Conduct, the Applicant also refers to the ASOFA at [76]-[77].

~~112. Further to paragraph 110:~~

143. Further to paragraph 142, throughout the Period the market for NCM Securities was a market for listed securities that was "semi-strong efficient", in that at all relevant times:

- (a) the traded price for NCM Securities on the ASX reflected all publicly available information; and
- (b) the traded price for NCM Securities quickly adjusted to reflect any additional information that became publicly available.

144. Further to paragraphs 142 and 143:

- (a) on 4 June 2013, the closing price of NCM Securities was ~~AUD15~~\$15.15 per share;
- (b) on 5 June 2013, the price of NCM Securities fell to a low of ~~AUD14~~\$14.25 and closed at ~~AUD14~~\$14.35 per share;
- (c) on 6 June 2013, the price of NCM Securities fell to a low of ~~AUD13~~\$13.36 and closed at ~~AUD13~~\$13.36 per share;
- (d) on 7 June 2013, the price of NCM Securities fell to a low of ~~AUD14~~\$11.40 and closed at ~~AUD12~~\$12.35 per share;
- (e) on 11 June 2013, the price of NCM Securities fell to a low of ~~AUD14~~\$11.84 and closed at ~~AUD12~~\$12.03 per share;
- (f) on 12 June 2013, the price of NCM Securities fell to a low of ~~AUD14~~\$11.81 and closed at ~~AUD11~~\$11.93 per share;
- (g) on 13 June 2013, the price of NCM Securities fell to a low of ~~AUD14~~\$11.40 and closed at ~~AUD11~~\$11.41 per share;

~~143-145.~~ By reason of the matters alleged in paragraphs ~~110 and 111~~:142, 143 and 144:

- (a) the August 2012 Production Misleading Conduct;
- (b) the August 2012 Compliance Misleading Conduct;
- (c) the August 2012 Disclosure Contravention;
- (d) the January 2013 Disclosure Contravention;
- (e) the January 2013 Misleading Conduct;
- (f) the February 2013 Production Misleading Conduct;
- (g) the February 2013 Compliance Misleading Conduct;
- (h) the February 2013 Disclosure Contravention;
- (i) the April 2013 Disclosure Contravention;
- (j) the April 2013 Misleading Conduct;

- (k) the June 2013 Disclosure Contravention;
 - (l) the June 2013 Misleading Conduct,
- (individually, collectively or in any combination, the **Contravening Conduct**) separately or together or in any combination caused the market price for NCM Securities to be materially higher during the Period than:
- (m) their true price; and/or
 - (n) alternatively, the price that would have prevailed if that Contravening Conduct had not occurred.

Particulars

That the Contravening Conduct caused the price of NCM Securities to be higher during the Period than it would have been had it not occurred is to be inferred from the ~~matters alleged in paragraphs 98, 99, 109, 110 and 111 following~~ matters:

- ~~Thei.~~ the matters alleged in paragraphs 128 to 130;
- ii. the characteristics of the market for NCM Securities set out in paragraphs 142 and 143;
- iii. the changes to the price for NCM Securities on the ASX from the date on which the June 2013 Disclosure Contravention and June 2013 Misleading Conduct occurred, as set out in paragraph 144;
- iv. the changes to the price for NCM Securities on the ASX from the date on which the 7 June 2013 Corrective Disclosure was made, as set out in paragraph 144;
- v. the fact that each of the August 2012 Information, FY14 Gold Production Information, February 2013 Information, Impairment Information and Analyst Briefing Information was information that, if disclosed, would reasonably be expected to have a negative impact on the price of NCM Securities;
- vi. further and alternatively to v., the fact that each of the Representations was a representation that would reasonably be expected to have a positive impact, alternatively a sustaining effect, on the price of NCM Securities.

146. Further or alternatively, the Applicant and eachsome or all of the Group Members acquired an interest in NCM Securities during the Period on the as a result of holding and acting upon the assumption (being also an assumption generally made by all participants in the market and on which they were entitled to actfor NCM Securities) that;
- 144.(a) the price at which they acquired that interest represented the market price in a market that had been informed of all material information relating to Newcrest; and
 - (b) all such material information had been incorporated into the price of those NCM Securities as at the date of acquisition.

(Price Integrity Assumption).**Particulars**

Investors and potential investors in shares on the ASX, including NCM Securities, are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.

If the Contravening Conduct had not occurred, the Applicant and the Group Members would either have acquired an interest in NCM Securities at a price which had not been artificially inflated or they would have acquired an interest in shares in another listed entity instead.

The Applicant also refers to and relies upon the matters set out in paragraphs 142 to 145 and the particulars thereto.

Particulars of the Applicant holding and relying upon the Price Integrity Assumption are set out in the affidavit of Michael Boorne dated 27 November 2014. Particulars for each of the Group Members who also held and relied upon the Price Integrity Assumption will be provided following resolution of the common questions.

~~145-147.~~ Further or alternatively, the Applicant and some of the Group Members acquired an interest in NCM Securities during the Period in reliance upon one or more of:

- (a) the Compliance Representation;
- (b) the August 2012 Representations;
- (c) the February 2013 Representations;

(individually, collectively or in any combination, the **Representations**).

Particulars

Particulars of the Applicant's reliance on any of the Representations will be provided prior to trial.

Particulars of reliance for the remaining Group Members who relied directly on any of the Representations will be provided following the resolution of the common questions.

~~146-148.~~ If Newcrest had not engaged in the August 2012 Compliance Misleading Conduct, the January 2013 Misleading Conduct, the February 2013 Compliance Misleading Conduct, the April 2013 Misleading Conduct or the June 2013 Misleading Conduct (Compliance Representation Contraventions)~~Contravening Conduct,~~ the Applicant and the Group Members would either have:

- (a) not acquired an interest in NCM Securities from the date of that conduct~~at a lower price; and~~
- (b) further, in the case of the Applicant and some Group Members, retained or acquired

an interest in ~~shares in another listed entity~~ an alternative investment instead.

Particulars

In respect of the Applicant, particulars of the alternative investments referred to in ~~subparagraph 145~~(148(b)) will be provided prior to trial.

Particulars relating to individual Group Members who would have retained or acquired alternative investments will be provided following the resolution of the common questions.

149. If Newcrest had not engaged in the Contravening Conduct other than the Compliance Representation Contraventions, the Applicant and some of the Group Members would have:

- (a) not acquired an interest in NCM Securities from the date of that conduct;
- (b) alternatively to (a) acquired an interest in NCM Securities at a lower price; and
- (c) further or alternatively, retained or acquired an interest in an alternative investment instead.

Particulars

In respect of the Applicant, particulars of the alternative investments referred to in subparagraph 148(b) will be provided prior to trial.

Particulars relating to individual Group Members who would have retained or acquired alternative investments will be provided following the resolution of the common questions.

147, 150. By reason of Newcrest's Contravening Conduct, the Applicant and each of the Group Members have suffered loss and damage.

Particulars

The loss suffered by the Applicant and Group Members is the greater of:

- i. the difference between the price at which they acquired an interest in NCM Securities during the Period and the price at which that interest would have been acquired at that time had the Contravening Conduct not occurred (**Price Inflation**). Particulars of the Price Inflation in relation to NCM Securities at the relevant times will be provided following the provision of expert evidence; or
- ii. alternatively, the difference between the price at which they acquired an interest in NCM Securities during the Period and whatever is "left in hand" or was realised upon a sale of those shares following the 7 June 2013 Corrective Disclosure, modified to take into account so much, if any, of the movement in the traded price of NCM Securities which did not result from the Contravening Conduct;
- iii. alternatively, for days during the Period and thereafter where the traded price of NCM Securities fell as a result of the disclosure of information (whether by Newcrest or one of the authors of the June 2013 Analyst Reports) which had not previously been disclosed because of the

Contravening Conduct, the quantum of that fall;

- iv. alternatively, for the Applicant and those Group Members who would have, but for the Contravening Conduct, not acquired an interest in NCM Securities and further or alternatively retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired an interest in NCM Securities during the Period and the position in which they would have been had they not acquired that interest and further or alternatively made that alternative investment instead.

~~418,151.~~ By reason of the matters alleged in paragraphs ~~440 to 446,142 to 150,~~ the Applicant and each of the Group Members may recover the amount of the loss and damage suffered by them from Newcrest pursuant to section 1041I of the Corporations Act and section 12GF of the ASIC Act.

~~419,152.~~ Further or alternatively, by reason of the matters alleged in paragraphs ~~440 to 446,142 to 150,~~ Newcrest is obliged pursuant to section 1317HA of the Corporations Act to compensate the Applicant and the Group Members for the damage that resulted from its contravention of section 674(2).

U. COMMON QUESTIONS OF FACT OR LAW

~~420,153.~~ The questions of law or fact common to the claims of the Group Members are:

- (a) whether the Respondent made the Representations;
- (b) whether the Compliance Representation was a continuing representation that was maintained by the Respondent throughout the period from 13 August 2012 to 6 June 2013;
- (c) whether the August 2012 Representations were continuing representations that were maintained by the Respondent throughout the period from 13 August 2012 to 6 June 2013;
- (d) whether the February 2013 Representations were continuing representations that were maintained by the Respondent throughout the period from 8 February 2013 to 6 June 2013;
- (e) whether any and if so which of the Representations were:
 - (i) representations as to future matters;
 - (ii) statements of opinion that was or could reasonably be regarded as being intended to influence potential investors in NCM Securities in making

decisions in relation to the securities, within the meaning of section 12BAB(5) of the ASIC Act and/or section 766B(1) of the Corporations Act;

- (f) whether the making and subsequent maintenance of any or all the Representations constituted conduct:
 - (i) in relation to a financial product for the purposes of section 1041H of the Corporations Act;
 - (ii) in relation to a financial service within the meaning of section 12BAB(1) of the ASIC Act and/or section 766A(1)(a) of the Corporations Act;
 - (iii) in trade or commerce for the purposes of section 12DA of the ASIC Act;
- (g) whether the Respondent had reasonable grounds for making each of the Representations;
- (h) whether any or all of the Representations were misleading or deceptive or likely to mislead or deceive in contravention of section 1041H of the Corporations Act or section 12DA of the ASIC Act;
- (i) whether, if so, it is necessary for the Applicant and Group Members to have relied, directly or indirectly, on any of the Representations in order to have suffered loss or damage by the Respondent's contravention of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act;
- (j) whether the Respondent was or ought to have been aware of the August 2012 Information between 13 August 2012 and 6 June 2013 and, if so, when;
- (k) whether between 13 August 2012 and 6 June 2013 the August 2012 Information was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
 - (ii) not generally available;
- (l) whether the Respondent was or ought to have been aware of the FY14 Gold Production Information between 1 January 2013 and 6 June 2013 and, if so, when;
- (m) whether between 1 January 2013 and 6 June 2013 the FY14 Gold Production Information was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
 - (ii) not generally available;
- (n) whether the Respondent was or ought to have been aware of the February 2013 Information between 8 February 2013 and 6 June 2013 and, if so, when;

- (o) whether between 8 February 2013 and 6 June 2013 the February 2013 Information was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
 - (ii) not generally available;
- (p) whether the Respondent was or ought to have been aware of the Impairment Information between ~~15~~5 April 2013 and 6 June 2013 and, if so, when;
- (q) whether between ~~15~~5 April 2013 and 6 June 2013 the Impairment Information was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
 - (ii) not generally available;
- (r) whether the Analyst Meetings were held as alleged;
- (s) whether the Advance Information was provided at the Analyst Meetings as alleged;
- (t) whether the Respondent was or ought to have been aware of the Analyst Briefing Information between around 4 June 2013 and 6 June 2013 and, if so, when;
- (u) whether between around 4 June 2013 and 6 June 2013 the Analyst Briefing Information was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of NCM Securities;
 - (ii) not generally available;
- (v) whether the Respondent contravened section 674(2) of the Corporations Act by failing to disclose the August 2012 Information, the FY14 Gold Production Information, the February 2013 Information, the Impairment Information, the Advance Information and/or the Analyst Briefing Information as soon it was or ought to have been aware of that information;
- (w) whether any of the Contravening Conduct caused the Respondent's share price to be higher during the Period than it would have been had they not been made and, if so, to what extent or by what amount;
- (x) the principles for assessing the losses caused to the Applicant and Group Members by the Contravening Conduct;
- (y) the correct measure of damages which are recoverable under the Corporations Act and ASIC Act in respect of losses caused by the Contravening Conduct.

AND THE APPLICANT CLAIMS, for itself and on behalf of the Group Members, the relief set out in the Application filed herein.

DATE: 5 June 2015~~8 October 2014~~



.....
Signed by Benjamin James Yang Phi
Lawyer for the Applicant

This amended pleading was prepared by Alan Nash, and settled by M B J Lee SC of Counsel.

ANNEXURE A

Applicant's Trades in NCM Securities during the Period

Date	Trade type	Volume	Price per security	Transaction value
29 May 2013	BUY	2000	\$14.40	\$28,800.00
29 May 2013	BUY	1000	\$14.31	\$14,310.00
30 May 2013	BUY	1000	\$14.88	\$14,880.00

On 25 June 2013, the Applicant sold 4000 NCM Securities at a price per security of \$9.30, or a total of \$37,200.00.

CERTIFICATE OF LAWYER

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

Date: 5 June 2015

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line and a small flourish.

Signed by Benjamin James Yang Phi
Lawyer for the Applicant