

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID1375/2017
File Title:	PAWEL KUTERBA & ANOR v SIRTEX MEDICAL LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 21/08/2018 10:11:00 AM AEST

A handwritten signature in blue ink, reading "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.

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Form 17

Rule 8.05(1)(a)

## **Third ~~Second~~ Further Amended Statement of claim**

(Amended pursuant to the order of Justice Murphy made on 16 August 2018)

No. VID1375 of 2017

Federal Court of Australia

District Registry: Victoria

Division: General

**PAWEL KUTERBA and another**

Applicants

**SIRTEX MEDICAL LIMITED (ACN 78 166 122)**

Respondent

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## **NOTE AS TO TERMINOLOGY**

In this ~~Third~~ Second Further Amended Statement of Claim (**Statement of Claim**):

- (a) *FY2012 and FY2013 (by way of example) refer to the financial years ended 30 June 2012 and 30 June 2013.*
- (b) *1H2014 and 2H2014 (by way of example) refer to the first and second half of FY2014 (i.e. the six month period ended 31 December 2013 and the six month period ended 30 June 2014, etc.).*
- (c) *“pcp” is an abbreviation of “prior corresponding period”.*
- (d) *JFY2012 (by way of example) refers to the financial year as determined in Japan, falling between 1 January 2012 and 31 December 2012.*
- (e) *The defined terms and document references in this pleading are set out in Schedule A.*
- (f) *The \$ symbol refers to Australian dollar currency.*
- (g) *References to subparagraphs include their chapeau and, unless otherwise indicated, references to paragraphs include all of their subparagraphs.*

## **A. INTRODUCTION**

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

#### **1. The First Applicant:**

- (a) obtained interests in ordinary shares (**SRX Securities**) in the Respondent (**SRX**):
  - (i) on 17 November 2016 by purchasing 100 SRX Securities on the financial market operated by the Australian Securities Exchange Limited (**ASX**); ~~and~~
  - (ii) on 8 December 2016 by purchasing 76 SRX Securities on the financial market operated by the ASX; and
  - (iii) on 9 December 2016 by purchasing 125 SRX Securities on the financial market operated by the ASX; and
- (b) sold all of his SRX Securities on 17 January 2017;

### **Particulars**

*Details of the First Applicant’s transactions in the Relevant Period are set out below.*

Date	Number of securities	Average price per security	Amount paid (\$) excluding GST and brokerage	Brokerage (\$)	GST (\$)	Amount paid (\$) (including brokerage)
17/11/2016	100	\$28.0500	\$2,805.00	\$18.14	\$1.81	\$2,824.95
08/12/2016	76	\$25.5992	\$1,945.54	\$18.14	\$1.81	\$1,965.49
09/12/2016	125	\$15.1952	\$1,899.40	\$18.14	\$1.81	\$1,919.35

1A. The Second Applicant:

- (a) obtained an interest in SRX Securities on 1 December 2016 by purchasing 340 SRX Securities on the financial market operated by the ASX; and
- (b) continues to hold his SRX Securities.

**Particulars**

*Details of the Second Applicant's transactions in the Relevant Period are set out below.*

Date	Number of securities	Average price per security	Amount paid (\$) excluding GST and brokerage	Brokerage (\$)	GST (\$)	Amount paid (\$) (including brokerage)
01/12/2016	340	\$27.79	\$ 9,448.60	\$18.14	\$1.81	\$ 9,468.55

1B. The First and Second Applicant commence this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) on behalf of themselves and all persons (**Group Members**) who or which:

- (a) acquired an interest in SRX Securities during the period from 24 August 2016 to 6.09 pm on 16 December 2016 (**Relevant Period**) by the purchase of those securities on the financial market operated by the ASX;

- (b) have suffered loss or damage by reason of the conduct of SRX pleaded in this Statement of Claim; and
  - (c) are not any of the following as at the date of commencement of this proceeding:
    - (i) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of SRX;
    - (ii) a related body corporate (as defined by section 50 of the *Corporations Act*) of SRX;
    - (iii) an associated entity (as defined by section 50AAA of the *Corporations Act*) of SRX; or
    - (iv) an officer or a close associate (as defined by section 9 of the *Corporations Act*) of SRX.
2. Immediately prior to the commencement of this proceeding, seven or more persons had claims against SRX within the meaning of section 33C of the FCAA.

## **A.2 SRX**

3. SRX is and at all material times was:
- (a) incorporated pursuant to the *Corporations Act* and capable of being sued;
  - (b) a corporation included in the official list of the financial market operated by ASX and whose Securities are ED securities for the purposes of section 111AE of the *Corporations Act*;
  - (c) subject to and bound by the ASX Listing Rules (**Listing Rules**);
  - (d) a listed disclosing entity within the meaning of section 111AL(1) of the *Corporations Act*;
  - (e) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (f) a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth); and
  - (g) conducted business in regions which included Victoria and New South Wales.

### **A.3 Application of section 674(2) of the Corporations Act to SRX**

4. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to SRX for the purposes of section 674(1) of the Corporations Act.
5. At all material times, Rule 3.1 of the Listing Rules applied to SRX.
6. At all material times Rule 3.1 of the Listing Rules provided that once an entity is, or becomes aware of, any information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in Listing Rule 3.1A apply, tell the ASX that information immediately.
7. At all times during the Relevant Period, Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if, and as soon as an officer of the entity has, or ought reasonably to have come into possession of the information in the course of the performance of their duties as an officer of that entity.
8. At all material times, section 674(2) of the Corporations Act applied to SRX by reason of:
  - (a) the matters alleged in paragraphs 4 to 6; and
  - (b) sections 111AP(1) and/or 674(1) of the Corporations Act.

### **A.4 SRX company background and relevant officers**

9. At all material times SRX:
  - (a) manufactured, marketed and sold an embolic radiation therapy device used primarily for salvage treatment (meaning last stage treatment) of inoperable liver cancer employing resin microspheres containing Yttrium-90 (**SIR-Spheres**);  
(aa) sold SIR-Spheres to treat both primary inoperable liver cancer (hepatocellular carcinoma (**HCC**)) and secondary inoperable liver cancer arising from (amongst other cancers) metastatic colorectal cancer (**mCRC**);
  - (b) had no other significant revenue generating activity other than the sale of doses of SIR-Spheres, which contributed more than 99% of its revenue in FY2016;

- (c) sold SIR-Spheres in three regional markets, being “Asia-Pacific” (including Australia), “EMEA”, (including Europe, the Middle East and Africa), and the “Americas” (including the United States and Canada);
- (d) generated the majority of its revenue in the Americas (79.7% FY2016) followed by EMEA (16.7% FY2016); and
- (e) operated manufacturing sites for SIR-Spheres in Boston, Singapore and in or after 1H2017, Frankfurt.

9A. At all material times:

- (a) Gilman Wong (**Mr Wong**) was:
  - (i) from May 2005 to 13 January 2017, Chief Executive Officer (CEO) of SRX;  
and
  - (ii) a director of SRX from June 2005 to 13 January 2017; and
  - (iii) an officer of SRX within the meaning of section 9 of the Corporations Act and the definition of ‘aware’ in Listing Rule 19.12
- (b) from 1 July 2016 to 18 May 2017, Kevin Richardson (**Mr Richardson**) was:
  - (i) ~~Chief Executive~~ Vice President, Sales and Marketing, Americas, United States; and
  - (ii) an officer of SRX within the meaning of section 9 of the Corporations Act and the definition of ‘aware’ in Listing Rule 19.12;
- (c) Darren Smith (**Mr Smith**) was:
  - (i) from February 2009, the Chief Financial Officer; ~~and~~
  - (ii) from July 2008, Company Secretary of SRX; and
  - (iii) an officer of SRX within the meaning of s 9 of the Corporations Act and Listing the definition of ‘aware’ in Rule 19.12;
- (d) Bernhard Kall (**Mr Kall**) was:
  - (i) from 2009 to 2017, Global Financial Controller of SRX; and



- (ii) an officer of SRX within the meaning of s 9 of the Corporations Act and the definition of 'aware' in Listing Rule 19.12.
- (e) Nigel Lange (Mr Lange) was:
  - (i) from September 2013, Chief Executive Officer, EMEA;
  - (ii) from 5 November 2015, Acting Chief Executive Officer, APAC and from January 2017 Chief Executive Officer, APAC; and
  - (iii) an officer of SRX within the meaning of s 9 of the Corporations Act and ASX the definition of 'aware' in Listing Rule 19.12;

## B. RELEVANT PERIOD ANNOUNCEMENTS

### B.1 24 August 2016 Announcements

10. On 24 August 2016, SRX lodged with the ASX and publicly released:
  - (a) the SRX "Appendix 4E and Annual Report 2016" (**2016 Annual Report**);
  - (b) the SRX "Appendix 4G Key to Disclosures Corporate Governance Council Principles and Recommendations" (**2016 Corporate Governance Statement**);
  - (c) a document entitled "ASX / Media Release, FY16 Net Profit After Tax Increases 32.8% to \$53.6 million" (**24 August 2016 Results Announcement**); and
  - (d) a document entitled "Sirtex Medical Limited, Results for the full year ended 30th June 2016" (**24 August 2016 Results Slideshow**),

(collectively, **24 August 2016 Announcements**).
11. In the 24 August 2016 Announcements, SRX announced:
  - (a) dose sales of SIR-Spheres of 11,931 units for FY2016, corresponding to growth of 16.4% on the FY2015 result;
  - (b) revenue of \$232.5 million for FY2016, corresponding to growth of 32% on the FY2015 result; and
  - (c) net profit after tax (**NPAT**) of \$53.6 million for FY2016, corresponding to growth of 32.8% on the FY2015 result.

12. In the:

- (a) 24 August 2016 Results Announcement, SRX stated: *“A large, under-penetrated market opportunity lies ahead; with approximately 2 per cent penetration implied by our FY16 dose sales. We anticipate double digit dose sales growth will continue in FY17 whilst we await the results of the three major clinical studies due to report findings in the first half of calendar year 2017”*;
- (b) 24 August 2016 Results Slideshow, SRX stated: *“Double digit dose sales growth to continue in FY17 – large, under- penetrated market remains (~2% to date)”*,  
  
(together, **FY2017 Expected Dose Sales Statements**).

13. The 2016 Annual Report and 2016 Corporate Governance Statement provided “further information” hyperlinks to SRX governance policies hosted on the SRX website <http://www.sirtex.com/au>, which stated at the material times:

(a) **“BUSINESS RISK MANAGEMENT POLICY AND PROCEDURE**

**1. PURPOSE**

*This procedure defines the policy and describes the responsibilities and processes applied for Business Risk Management activities at Sirtex Medical Limited and all affiliates, collectively known as Sirtex.*

...

**7. POLICY**

*Sirtex is committed to identifying, evaluating and dealing with all real and potential risks to the company at regular intervals for the purpose of protecting the interests of the company, its shareholders, employees and customers and to ensure that the objectives of the company can be met, to mitigate risk and to increase the company’s competitive advantage.*

*Risk Management is an integral part of all employee activities and is implemented throughout the organization. Management of risk is part of the company’s internal quality auditing process and staff training. Sirtex has implemented a regular internal review process for assessing and managing risk as part of the company’s commitment to quality management.*

<https://web.archive.org/web/20160306154036/http://sirtex.com/media/55759/cpol005-business-risk-management-policy-and-procedure.pdf>)(**Risk Management Statement**).

- (b) **“SIRTEX CORPORATE COMMUNICATIONS AND CONTINUOUS DISCLOSURE POLICY**

## 1 PURPOSE

*Sirtex Medical Limited (Sirtex) has securities that are publicly traded on the Australian Stock Exchange (ASX) national market. As a result, Sirtex is subject to certain legal and regulatory requirements regarding the public disclosure of information that could materially affect the company or its business ("Material Information").*

*This policy is designed to meet the Sirtex legal and regulatory obligations as a public company and to protect Sirtex and its directors, officers and employees by raising their awareness of the Sirtex approach to corporate communications, disclosure of Material Information and reporting.*

*The objectives of this policy are:*

- To ensure Sirtex complies with its disclosure obligations utilising consistent standards and procedures for all of its corporate communications of both Material and non-Material Information;*
- To ensure that corporate communications of Material Information to the investing public about Sirtex, whether positive or negative, are timely, factual and accurate, and broadly disseminated in a non-selective manner in accordance with all applicable legal and regulatory requirements; and*
- To ensure Sirtex and its employees manage both welcome and unwelcome news, events and associated market communications in the most appropriate and responsible manner. All directors, officers and employees have worked hard to establish a reputation for integrity and ethical conduct and cannot afford to have it damaged in any way*

*...*

*Unless, after consultation with the Sirtex Board of Directors, Chairman, CEO, CFO or Company Secretary, there is reason to believe otherwise, directors, officers and employees of Sirtex should assume that information regarding the following topics is always 'material':*

- Financial results*

*...*

- Pending FDA or other regulatory activities..."*

<https://web.archive.org/web/20160306154043/http://sirtex.com/media/55760/cpol004-corporate-communications-and-disclosure-policy.pdf> (Continuous Disclosure Statement).

## (c) "SECURITIES TRADING POLICY

### 1 PURPOSE

*Sirtex Medical Limited (Sirtex) is an Australian listed entity and is required by the listing rules to have a trading policy. A comprehensive Securities Trading Policy is an essential part of any good corporate governance framework. A*

*Securities Trading Policy also assists people connected with Sirtex comply with the laws against insider trading. Failure to do so can have serious ramifications for the individuals concerned and may cause extensive reputational damage to Sirtex.*

## 2 SCOPE

*This policy applies to all directors, officers and employees of Sirtex and all its subsidiaries, both local and international, their associates and any other individual authorised to speak on behalf of Sirtex (Sirtex Personnel).*

...

## 8 THE LAW – INSIDER TRADING

*This section provides a brief overview of what is “insider trading”. It does not purport to be a comprehensive explanation of the law relating to insider trading and accordingly should not be considered a substitute for obtaining legal advice. Complying with the law on insider trading is mandatory. All Sirtex Personnel must at all times comply with the Corporations Act, 2001 (Cth) (Act) prohibition against insider trading. Sirtex Personnel must not, at any time, directly or indirectly, buy or sell shares in Sirtex or other securities of any company, when in possession of unpublished price sensitive information which could materially affect the price or value of those securities. Accordingly, when a Sirtex Personnel decides to “deal” in securities, the overriding factor for consideration is whether or not they are in possession of inside information in relation to the relevant securities.*

....

### 8.4 Examples of Inside Information at Sirtex

*The following are some examples of information that might constitute inside information to Sirtex*

- *Prior to the announcement of half and full year results, information that the relevant results will fall outside the boundaries of market expectations*
- *A significant change in the company’s debt, liquidity and or cash flow...*

*(Revision 1 dated 5 June 2013 as at 6 March 2016, retrieved via [https://web.archive.org/web/20160306154023/http://sirtex.com/media/55764/cpol011\\_-\\_securities\\_trading\\_policy.pdf](https://web.archive.org/web/20160306154023/http://sirtex.com/media/55764/cpol011_-_securities_trading_policy.pdf)) (Securities Trading Statement).*

## B.2 25 October 2016 AGM

14. On 25 October 2016, SRX:

- (a) held its annual general meeting; and

- (b) delivered and publicly released to the ASX a document entitled “Chief Executive Officer’s Address 2016 Annual General Meeting” (**25 October 2016 CEO’s Address**).
15. By the 25 October 2016 CEO’s Address, SRX repeated the FY2017 Expected Dose Sales Statements.
- C. CEO SALE OF SRX SECURITIES**
16. On 1 November 2016, SRX lodged with the ASX and publicly released “*Appendix 3Y Change of Director’s Interest Notice*” pursuant to Listing Rule 3.19A.2 (**1 November 2016 Change of Interest Notice**).
17. By the 1 November 2016 Change of Interest Notice, SRX stated that Mr Wong had, on 27 October 2016, disposed of 74,968 SRX Securities out of a prior holding of 254,968 SRX Securities.
18. On 2 November 2016, SRX lodged with the ASX and publicly released an Amended “*Appendix 3Y Change of Director’s Interest Notice*” pursuant to Listing Rule 3.19A.2 (**2 November 2016 Amended Change of Interest Notice**).
19. By the 2 November 2016 Amended Change of Interest Notice, SRX stated that Mr Wong had on 26 October 2016 disposed of 74,968 SRX Securities out of a prior holding of 254,968 SRX Securities for a total consideration of \$2,135,378.37 (**CEO Share Sale**).
20. On 7 November 2016, SRX lodged with the ASX and publicly released a document entitled “*ASX / Media Release, Statement by CEO on Sale of Shares*” (**7 November 2016 CEO Announcement**).
21. By the 7 November 2016 CEO Announcement, SRX stated via ~~its CEO Gilman Mr Wong~~, in relation to the CEO Share Sale, “*the reason for the sale of shares was to cover the tax incurred in relation to the recently vested tranche of rights. This was in line with my normal practice of the past three years. I informed the Chairman in July 2016 that it was my intention to sell these shares*” (**CEO Share Sale Statement**).
- D. 9 DECEMBER 2016 ANNOUNCEMENT – DOSE SALES DOWNGRADE**
22. On 9 December 2016, SRX lodged with the ASX and publicly released a document entitled “*ASX / Media Release – Trading Update*” (**9 December 2016 Announcement**).

23. The 9 December 2016 Announcement:

(a) included the following statements:

- (i) *“As a result of lower than anticipated dose sales recorded in the Americas and EMEA regions, worldwide first half dose sales growth is anticipated to be in the order of 4-6% compared to growth in the prior corresponding period (pcp) of 15.7%”;*
- (ii) *“As the company continues to invest ahead of the expected results of its major clinical studies next year, constant currency EBITDA for first half is anticipated to be in the range \$30-32 million, representing a decline of 16% to 9% versus the pcp”;*
- (iii) *“On a full year basis, worldwide dose sales growth is anticipated to be in the order of 5-11% compared to growth of 16.4% achieved in FY16. Constant currency EBITDA for the full year is anticipated to be in the range \$65-74 million, representing a decline of 12% to no growth versus the pcp”;*  
and

(b) included statements to the effect that its revised outlook primarily reflected:

- (i) increased competition for patients by other liver-directed transcatheter therapies (including drug-eluting beads, embolisation beads, and Yttrium-90 radioembolisation beads) available as alternatives to SIR-Spheres in the Americas;
- (ii) that any significant adoption of SIR-Spheres into lines of treatment more advanced than salvage would depend upon the results of the SIR-Spheres clinical studies later in FY2017, particularly in relation to Overall Survival data;
- (iii) a new oral therapeutic agent being approved for salvage metastatic colorectal cancer in the United States in direct competition with SIR-Spheres; and
- (iv) restrictions in health-care reimbursement for SIR-Spheres in SRX's European market.

**D1. 15 DECEMBER 2016 ANNOUNCEMENT - ASX QUERY**

23A. On 15 December 2016, SRX lodged with the ASX and publicly released a document entitled “SRX: Aware Query” (15 December 2016 ASX Response).

23B. The 15 December 2016 ASX Response annexed and responded to a letter from the ASX to SRX dated 12 December 2016 (12 December 2016 ASX Query) which included (inter alia) the following content:

“ASX Limited (“ASX”) refers to the following:

- A. SRX’s announcement entitled “CEO’s AGM Address and Presentation” lodged on the ASX Market Announcements Platform and released at 9:39am on 25 October 2016 (the “Original Announcement”), disclosing SRX’s anticipation that “double digit dose sales growth will continue in FY17 whilst we await the results of the three major clinical studies due to report findings in the first half of the calendar year 2017. These preparations are well advanced.”
- B. ASX’s discussions with SRX on 26 October 2016 regarding the use of imprecise terms, such as double digit, in the Original Announcement and SRX’s confirmation that:
  - a) it was awaiting the final results of three major clinical studies, the findings of which were expected to be reported in FY17;
  - b) as such, SRX could not accurately determine at this juncture the likely impact on its dose sales; but
  - c) SRX believed the commentary it made around dose sales for FY 17 was appropriate, noting a number of factors beyond SRX’s direct control.
- C. Following a tip-off, ASX’s discussion with SRX on 2 December 2016 querying whether double digit growth guidance for dose sales was still current and SRX’s confirmation that the guidance was current and that, upon conclusion of an internal planning process, SRX would take the appropriate action to ensure that the ASX continuous disclosure requirements were met.

...

**E. CEO INVESTIGATION AND DISMISSAL**

24. On 16 December 2016, SRX lodged with the ASX and publicly released a document entitled “ASX / Media Release – Investigation of Concerns around CEO Share Trading” (16 December 2016 CEO Investigation Announcement).

25. In the 16 December 2016 CEO Investigation Announcement, SRX stated (inter alia):

***Investigation of Concerns around CEO Share Trading***

*Sydney, Australia; 16<sup>th</sup> December 2016 – Sirtex Medical Limited (ASX:SRX) is committed to maintaining its reputation for integrity and for ensuring that serious concerns raised with the Company are appropriately investigated.*

*Consistent with that commitment, and as a result of recent shareholder and other enquiries, and media reports, the Board of Sirtex has today formally engaged its legal advisers, Watson Mangioni, to coordinate an investigation into the trading of shares in Sirtex in October 2016 by its CEO, Mr Gilman Wong.*

*The results of that investigation are expected to be available in January 2017.*

*Mr Wong denies any wrong-doing concerning his share trading, but, in the interests of due process, and in the best interests of the Company, he has volunteered to take temporary leave across the New Year period, until the investigation has been completed.*

*The Sirtex Board wishes to emphasise that its decision to commission this investigation has been made solely for the purpose of ensuring that the concerns raised with the Company are appropriately investigated, and in no way implies any wrongdoing on the part of Mr Wong.*

*The Board of Sirtex looks forward to the early conclusion of the investigation.*

26. On 13 January 2017, SRX lodged with the ASX and publicly released a document entitled “ASX / Media Release – Investigation of Concerns around CEO Share Trading & Action Taken by the Board” (**13 January 2017 CEO Termination Announcement**).
27. In the 13 January 2017 CEO Termination Announcement, SRX stated (inter alia):

***Investigation of Concerns around CEO Share Trading & Action Taken by the Board***

*Sydney, Australia: 13<sup>th</sup> January 2017 – Sirtex Medical Limited (ASX:SRX) previously announced on 16<sup>th</sup> December 2016 that the Board of Directors had engaged the company’s legal advisers, Watson Mangioni, to coordinate an investigation into the trading of shares in Sirtex in October 2016 by the Chief Executive Officer, Mr Gilman Wong. The announcement noted that the results of that investigation were expected to be available in January 2017.*

*That investigation has now been completed, and a report from Watson Mangioni has been provided to, and considered by, the Board. The contents of that report are privileged and confidential.*

*After due consideration, the Board of Sirtex has today terminated Mr Wong’s employment with Sirtex, with immediate effect. Mr Wong’s salary and statutory entitlements will be paid to the date of termination. All unvested performance rights previously issued to Mr Wong have been forfeited.*



## **F. DOSE SALES PROSPECTS: SRX'S ACTUAL AND CONSTRUCTIVE KNOWLEDGE AS AT 24 AUGUST 2016**

*(Note: In the following Section F, all references to SRX's awareness reference the meaning of "aware" within Listing Rule 19.12, and are particularised as to whether that state of mind was actual or constructive.)*

### **F.1 SIR-Spheres Sales Transparency Information**

28. By 24 August 2016, SRX was aware, and it was the fact, that it had no transparency on prospective dose sales beyond a very short period because SIR-Spheres had a very short sales cycle (**SIR-Spheres Sales Transparency Information**).

#### ***Particulars***

- (a) ~~On 15 December 2016, SRX published a response to an ASX inquiry (In the 15 December 2016 ASX Response), in which it SRX stated "SRX's business has a very short sales cycle, measured in days. As a result, there is no transparency on dose sales beyond a very short window".~~
- (b) *SRX was actually aware of this information because it published the ASX response referred to in the previous particular.*

### **F.2 SIRFLOX Information**

29. By 24 August 2016, SRX was aware, and it was the fact, that the majority of SRX's dose sales of SIR-Spheres were in salvage therapy, and access to the much larger first or second line therapy market required positive results from clinical trials of SIR-Spheres in those applications.

#### ***Particulars***

- (a) *On 20 August 2014, SRX published and lodged with the ASX a document entitled "Sirtex Medical Limited, Results for the full year ended 30th June 2014", in which it stated:*

*"Clinical studies program to generate Level 1 evidence – what impact will the results have?*

- Sirtex does not know nor have access to preliminary clinical study results*
- All of Sirtex's clinical studies are in '1<sup>st</sup> line' therapy, whereas the majority of Sirtex's current dose sales are in 'salvage' therapy*
- If results of the clinical studies were not positive, SIR-Spheres microspheres would remain a 'salvage' therapy and dose sales growth could be expected to continue in line with our historical annual growth*

*...*

- Positive Level 1 evidence should elevate SIR-Spheres microspheres up the treatment chain resulting in a much larger addressable market".*

- (b) *SRX was actually aware of this information because it published the ASX document referred to in the previous particular.*
  - (c) *This information was also referred to in the papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2785 - .2786) circulated on 19 August 2016 [SRX.001.002.2725].*
  - (d) *The Applicants repeat paragraph 9A above and say that Mr Wong and each member of the board of SRX (who it may be inferred read or ought to have read the 23 August 2016 board papers) were at all relevant times officers of SRX whose knowledge is to be imputed to SRX pursuant to ASX Listing Rule 19.12.*
30. By 24 August 2016, SRX was aware, and it was the fact, that the result of an important clinical trial of SIR-Spheres (**SIRFLOX**) published in the Journal of Clinical Oncology in May 2016 and first published electronically on 22 February 2016 at: <https://www.ncbi.nlm.nih.gov/pubmed/26903575> was that the addition of SIR-Spheres to first-line chemotherapy for patients with liver-dominant or liver-only metastatic colorectal cancer did not improve overall progression-free survival.

### **Particulars**

- (a) *Dr Guy A. van Hazel et al, "SIRFLOX: Randomized Phase III Trial Comparing First-Line mFOLFOX6 (Plus or Minus Bevacizumab) Versus mFOLFOX6 (Plus or Minus Bevacizumab) Plus Selective Internal Radiation Therapy in Patients With Metastatic Colorectal Cancer", Journal of Clinical Oncology 34, no. 15 (May 2016) 1723-1731.*
  - (b) *On 23 February 2016, SRX publicly released a document entitled "Sirtex: SIRFLOX Study Published in Journal of Clinical Oncology", in which it stated:*

*"Lead author and the study's co-principal investigator, Prof. Guy A van Hazel of the University of Western Australia, Perth, Australia, said "In the primary endpoint of the study, patients with non-resectable liver-dominant or liver-only colorectal cancer who received FOLFOX-based first-line chemotherapy alone had a median Progression-Free Survival (PFS) at any site of 10.2 versus 10.7 months in those that received chemotherapy plus SIR-Spheres, but this difference was not statistically significant. However, the addition of SIR-Spheres Y-90 resin microspheres to chemotherapy significantly prolonged PFS in the liver, from a median of 12.6 months in the chemotherapy control arm compared to 20.5 months in the SIR-Spheres arm, which translated to a 31 percent reduction in the risk of tumour progression in the liver...*

*... CEO Gilman Wong said that, "We remain hopeful that our pre-planned, combined analysis of the SIRFLOX data with the findings of the FOXFIRE and FOXFIRE Global studies, which will be available in 2017, will give us a clear indication of the survival benefit associated with adding SIR-Spheres Y-90 resin microspheres to a standard-of-care chemotherapy."*
  - (c) *SRX was actually aware of this information because it published the document referred to in the previous particular.*
31. By 24 August 2016, or in the alternative by 25 or 26 October 2016, SRX was aware, and it was the fact, that:

- (a) the conclusion of SIRFLOX in relation to overall progression-free survival data pleaded in paragraph 29 did not support any general expansion of the use of SIR-Spheres beyond salvage treatment; and
- (b) any general expansion of the use of SIR-Spheres beyond salvage treatment would depend upon the results of further clinical studies of SIR-Spheres not due until later in 2017 (**SIRFLOX Information**).

### **Particulars**

**(a)** *Because SRX:*

- i. in the 24 August 2016 Results Announcement, stated: “we await the results of the three major clinical studies due to report findings in the first half of calendar year 2017”;*
- ii. derived the entirety of its revenue from SIR-Spheres dose sales;*
- iii. was aware of the information pleaded in paragraph 29; and*
- iv. was aware of the information pleaded in paragraph 30,*

*officers at SRX with responsibility for overseeing the group’s budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

**(b)** *Further, information to the effect of that pleaded in paragraph 31 was contained in or may be inferred from, inter alia, the following documents (individually and together):*

- (i) “SIRTEX MEDICAL LIMITED ABN 35 078 166 122 BUDGET 2017” dated 23 May 2016 [SRX.009.001.0001] (FY17 Budget), which stated amongst other things: “The negative primary endpoint of overall PFS in SIRFLOX has stalled our ability to extend reimbursement for SIR-Spheres microspheres to the 1st-line mCRC setting in key markets, at least until survival data are presented.” (at .0023);*
- (ii) Papers for the SRX board meeting on 21 June 2016 [SRX.009.001.0165] (at .0224-.0229), which noted that overall survival was “the gold-standard endpoint” and that the lack of that data in SIRFLOX meant that SRX was emphasising in its marketing “depth of Response” as a “novel” secondary end point.*
- (iii) Papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (at .0825) (second paragraph) circulated 22 July 2016 [SRX.001.002.0799].*
- (iv) Memorandum from Mr Lange to the SRX Management Review Team entitled “Post-Market Surveillance, 6 Month Management Review” dated September 2016 [SRX.001.002.5039] (at .5039), in which Mr Lange stated amongst other things, that SIRFLOX was “Viewed as failed trial by*

oncologists” and “view from many oncologists is to adopt a wait and see approach as to the OS results due in late 2017”.

- (v) A further memorandum from Mr Lange to the SRX Management Review Team entitled “Post-Market Surveillance, 6 Month Management Review” dated 28 September 2016 [SRX.005.001.8275] (at .8276), in which Mr Lange stated: “Bottom line – overall survival is the only acceptable outcome that will lead to a stronger reimbursement position.”
- (vi) “CEO Report September 2016” dated 26 October 2016 [SRX.001.001.0759] (at .0772-.0773).
- (vii) Memorandum from Mr Richardson to Mr Kall and copied to Messrs Wong and Smith entitled “2017 Americas Budget Narrative” dated 12 May 2016 (12 May 2016 Memorandum) [SRX.009.001.0144] (at .0145) “Risks .... Sirflox results, both perception and reality of the meaning of secondary endpoints... Increased focus on DEB’s, possibly due to new data or perceived poor Sirflox data”
- (c) It may be inferred that each of the above documents were received by Mr Wong and each member of the board of SRX.
- (d) The Applicants repeat paragraph 9A above and say that Mr Wong and each member of the board of SRX were at all relevant times officers of SRX whose knowledge is to be imputed to SRX pursuant to ASX Listing Rule 19.12.
- (e) The Applicants refer to and repeat paragraphs 23 and 34 to 36 of the report of Thomas Hannaford which is exhibit TJH-3 to the affidavit of Mr Hannaford affirmed on 11 April 2018 (Hannaford Report).

### F.3 Market Competition Information

32. ~~By 24 August 2016, SRX was aware, and it was the fact, that SRX’s growth opportunity for dose sales of SIR-Spheres, except for any growth in first or second line therapy applications, was the international market for liver-directed transcatheter salvage therapies (Market) because that market was under-penetrated and contestable.~~

#### **Particulars**

~~(a) The information was contained in the FY2017 Expected Dose Sales Statements as made in the 24 August 2016 Results Announcement, the 24 August 2016 Results Presentation and the 25 October 2016 CEO’s Address.~~

~~(b) In the 15 December 2016 ASX Response, SRX stated that:~~

~~“The board and senior management of SRX take into account a number of factors as a means of estimating dose sales growth. Those factors include (without limitation):~~

~~...~~

~~vi) prevailing and anticipated market penetration, based on the addressable regional markets and the performance of the business as it relates to dose sales in those markets.”~~

~~(d) SRX was actually aware of this information because it published the ASX documents referred to in the previous particular.~~

33. By 24 August 2016, SRX was aware, and it was the fact, that BTG Plc (**BTG**)’s Yttrium-90 radioembolisation beads product, “TheraSphere” was a direct competitor to SIR-Spheres in the international market for liver-directed transcatheter salvage therapies (**Market**) ~~Market to SIR-Spheres in relation to its alternative Yttrium-90 radioembolisation beads product, “TheraSphere”.~~

### **Particulars**

a. In the 15 December 2016 ASX Response, SRX stated that:

*“The board and senior management of SRX take into account a number of factors as a means of estimating dose sales growth. These factors include (without limitation):*

*...*

*viii) the performance of SRX’s single direct competitor BTG Plc (LSE:BTG).”*

b. SRX was actually aware of this information because it published the ASX document referred to in the previous particular.

34. By 24 August 2016, SRX was aware, and it was the fact, that BTG was an indirect competitor in the Market to SIR-Spheres in relation to its drug-eluting beads “DC Beads” and embolisation beads, “LC Beads”, in that both were liver-directed transcatheter therapies that were clinical alternatives to SIR-Spheres for salvage treatment of inoperable liver cancer.

### **Particulars**

(a) The information pleaded in paragraph 34 was publicly available, including in a publicly available document entitled “BTG plc Annual Report and Accounts 2016” which was published prior to 24 August 2016 (**BTG Annual Report**).

(b) Because SRX:

(i) ~~was aware that its dose sales growth potential in the Market depended upon the extent to which it was penetrated, including by competitors (as pleaded in paragraph 32);~~

(ii) was aware that BTG was its only direct competitor in the Market (as pleaded in paragraph 33); and

(iii) had made the Risk Management Statement,

*officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

35. By 24 August 2016, SRX was aware, and it was the fact, that BTG had stated that it:
- (a) had secured in FY2016 revenue of approximately \$140m (£91.4m) in the Market, an increase over the pcg of 16% at constant currency (from £75.5m in FY2015);
  - (b) aimed to increase its revenues in the Market to \$300m-\$400m by FY2022;
  - (c) was itself facing increased competition in the Market in the European Union and the United States from newly released liver-directed transcatheter therapies (including from Terumo and AngioDynamics).

**Particulars**

- (a) *The information pleaded in paragraph 35 was publicly available, including in the BTG Annual Report.*
- (b) *Because SRX:*
  - (i) ~~was aware that its dose sales growth potential in the Market depended upon the extent to which the Market was penetrated, including by competitors (as pleaded in paragraph 32);~~*
  - (ii) was aware that BTG was a direct and indirect competitor in the Market (as pleaded in paragraphs 33 and 34); and*
  - (iii) had made the Risk Management Statement,*

*officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

36. By 24 August 2016, SRX was aware, and it was the fact, that the results of a clinical trial of the drug TAS-102 (tipiracil hydrochloride) published on 14 May 2015 indicated that patients who received TAS-102 to treat refractory mCRC ~~metastatic colorectal cancer~~ that had progressed following standard therapies lived longer than patients who received a placebo.

**Particulars**

- (a) *Robert J Mayer, MD, et al, "Randomized trial of TAS-102 for refractory metastatic colorectal cancer" New England Journal of Medicine 14;372(20) (14 May 2015) 1909-19.*
- (b) *The information pleaded in paragraph 36 was publicly available.*

(c) *Because SRX:*

*(i) ~~was aware that its dose sales growth potential in the Market depended upon the extent to which the Market was penetrated, including by competitors (as pleaded in paragraph 32); and~~*

*(ii) had made the Risk Management Statement,*

*officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

37. By 24 August 2016, SRX was aware, and it was the fact, that:

(a) on 22 September 2015, the United States Federal Drug Administration (**FDA**) had approved the use of TAS-102 (marketed as LONSURF) in the United States for treatment of patients with advanced colorectal cancer (i.e. mCRC) at the salvage therapy stage;

(b) on 25 April 2016, the European Commission approved LONSURF in the European Union for the same indication; and

(c) LONSURF was ultimately produced, marketed and sold by Taiho Pharmaceutical Co., Ltd., a Japanese company whose ultimate controlling entity was Otsuka Holdings Co., Ltd (**Otsuka**).

### ***Particulars***

(a) *The information pleaded in paragraph 37 was publicly available.*

(b) *Because SRX:*

*(i) ~~was aware that its dose sale growth potential in the Market depended upon the extent to which it was penetrated, including by competitors (as pleaded in paragraph 32); and~~*

*(ii) had made the Risk Management Statement,*

*officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

38. By 24 August 2016, SRX was aware, and it was the fact, that Otsuka was an indirect competitor in the Market to SIR-Spheres, in that LONSURF was a clinical alternative to SIR-Spheres for salvage treatment of inoperable liver cancer arising from mCRC.

### **Particulars**

(a) Because SRX:

~~(b) — was aware that its dose sale growth potential in the Market depended upon the extent to which it was penetrated, including by competitors (as pleaded in paragraph 32);~~

(i) was aware of the information pleaded in paragraphs 36 and 37; and

(ii) had made the Risk Management Statement,

officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.

(b) The fact that Lonsurf was a competitor product in the Americas was referred to in, inter alia, the following documents (individually and together):

(i) The FY17 Budget at SRX.009.001.0001 (at .0012).

(ii) Papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2747 and .2786-.2787) circulated on 19 August 2016 [SRX.001.002.2725].

(c) The fact that Lonsurf was increasing or was likely to increase market share was referred to, inter alia, in the following documents (individually and together):

(i) Papers for the SRX board meeting on 21 June 2016 [SRX.009.001.0165] (at .0189).

(ii) Papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2747 and .2786-.2787) circulated on 19 August 2016 [SRX.001.002.2725].

(d) The fact that the success of Lonsurf described in the preceding particular had the potential to impact on the current SIR-Spheres microsphere market was noted in the minutes of the SRX board meeting of 21 June 2016 (Board Papers 26th July 2016 [SRX.001.002.0800] (at .0803) circulated 22 July 2016 [SRX.001.002.0799]):

(e) The information pleaded in paragraph 38 was contained in, or ought to have been reasonably deduced by Messrs Wong and Smith (and each member of the board of SRX) in the course of their duties from, the documents referred to in particulars (b), (c), and (d) above considered individually and together.

(g) The Applicants repeat paragraph 9A above and say that each of Messrs Wong and Smith (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.

39. By 24 August 2016, SRX was aware, and it was the fact, that Otsuka had stated that it:



- (a) had experienced growth in sales of its oncological pharmaceuticals in JFY2015 of 16% over its JFY2014 results;
- (b) had experienced growth in sales of LONSURF in JFY2015;
- (c) expected further growth in sales of LONSURF in JFY2016; and
- (d) aimed to accelerate the expansion of its oncology business in the United States by strengthening its in-house marketing structure.

### **Particulars**

- (a) *The information pleaded in paragraph 39 was publicly available, including in Otsuka's Annual Report for JFY2015 and other financial information published on 12 February 2016 (<https://www.otsuka.com/en/ir/>).*
- (b) *Because SRX:*
  - (i) ~~*was aware that its dose sales growth potential in the Market depended upon the extent to which the Market was penetrated, including by competitors (as pleaded in paragraph 32);*~~
  - (ii) *was aware that LONSURF was an indirect competitor to SIR-Spheres in the Market (as pleaded in paragraph 38); and*
  - (iii) *had made the Risk Management Statement,*

*officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

- 39A. Further and in the alternative to the matters pleaded in paragraphs ~~32~~ 33 to 39, by 24 August 2016, SRX was aware, and it was the fact, that the Bayer AG (Bayer) drug Stivarga (regorafenib) was increasingly being used (and/or would increasingly be used in FY2017) as an oral treatment in the salvage market for ~~metastatic colorectal cancer~~ (mCRC) patients, in direct competition to SIR-Spheres.

### **Particulars**

- (a) *The Applicants refer to ~~and repeat~~ paragraph 30 of the ~~report of Thomas Hannaford Report which is exhibit TJH-2 to the affidavit of Mr Hannaford sworn on 11 April 2018.~~*
- (b) *The fact that regorafenib was or was likely to increase in prevalence as a second-line therapy market for HCC was stated in, inter alia, the following documents:*
  - (i) *Papers for the SRX board meeting on 21 June 2016 [SRX.009.001.0165] (at .0189); and*

- (ii) Papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (.0822-.0823 and .0857-.0862) circulated 22 July 2016 [SRX.001.002.0799] (and noted by the Board in the minutes of the 26 July 2016 board meeting contained in the 23 August 2016 Board Papers [SRX.001.002.2726] circulated on 19 August 2016 [SRX.001.002.2725]).
- (c) The fact that successful chemotherapy drug trials and launches in relation to first and second line treatment states had the potential to result in a flow-on impact on SIR-Spheres sales was referred to in the papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (at .0822):, “the market is very dynamic and is continuing to evolve. The oncology market (chemotherapy) continues to prolifically execute drug launches and drug trials. This pushes us back in line on each patient. This is for all our patient primaries, on and off label.”
- (d) The fact that regorafenib was being reconsidered for mCRC use as a result of a successful HCC was referred to in the papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2747).
- (e) The information pleaded in paragraph 38 was contained in, or ought to have been reasonably deduced by Messrs Wong, and Smith (and each member of the board of SRX) in the course of their duties from, the information in particulars (b), (c) and (d) considered individually and together.
- (f) The Applicants repeat paragraph 9A above and say that each of Messrs Wong, and Smith (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.
40. By reason of the matters pleaded in paragraphs 32–33 to 39A, by no later than 24 August 2016, SRX was aware that the Market in the United States and the European Union was experiencing increased competition that would continue into FY2017 **(Market Competition Information)**.

### **Particulars**

- (a) Because SRX:
- (i) was aware of the matters pleaded and particularised in paragraphs 32–33 to 39A; and
- (ii) had made the Risk Management Statement,
- officers at SRX with responsibility for overseeing the group’s budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.
- (b) Further, the existence of increased competition in the America and/or EMEA business regions as pleaded in paragraph 40 was stated in, inter alia, the following documents (individually and together):
- (i) the 12 May 2016 Memorandum [SRX.009.001.0144].
- (ii) The FY17 Budget [SRX.009.001.001] (at .0012, .0014 and .0024).

- (iii) Papers for the SRX board meeting on 21 June 2016 [SRX.009.001.0165] (at .0189).
  - (iv) Papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (.0822-.0823).
  - (v) Papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2747 and .2786-.2787).
  - (c) It may be inferred that each of the documents referred to in particulars (b)(ii)-(v) were received by Mr Wong and each member of the board of SRX.
  - (d) The Applicants repeat paragraph 9A above and say that each of Messrs Wong, Smith, Kall and Richardson (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.
  - (e) The Applicants refer to and repeat paragraphs 17 to 22 and 25 to 33 of the Hannaford Report.
41. Further to paragraph 40, by no later than 23 September 2016, alternatively 19, 25 or 26 October 2016, SRX was aware, and it was the fact, that the marketing and sale of directly and indirectly competing products ~~in the Market~~ by BTG, Otsuka and other competitors (including Bayer) was having an adverse effect on dose sales growth of SIR-Spheres (**Market Share Information**).

### **Particulars**

- (a) Because SRX:
  - (i) was aware of the matters pleaded and particularised in paragraphs ~~32~~33 to 39A;
  - (ii) was or ought to have been aware of its actual sales of SIR-Spheres at any point in time due to its short sales cycle (measured in days) and the half-life of the active component of SIR-Spheres (being approximately 90 hours); and
  - (iii) had made the Risk Management Statement,

officers at SRX with responsibility for overseeing the group's budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties by no later than 25 or 26 October 2016.
- (b) Further and in the alternative, it may be reasonably inferred from the 9 December 2016 Announcement and the 13 January 2017 CEO Termination Announcement that:
  - (i) SRX had, following an investigation, determined that the CEO Share Sale Statement was false;

- (ii) *at the time of the CEO Share Sale (26 October 2016), Mr Wong was in possession of information material to the price of SRX Securities;*
  - (iii) *the CEO Share Sale had occurred in violation of the Securities Trading Statement;*
  - (iv) *the information Mr Wong was in possession of at the time of the CEO Share Sale included the information the subject of the 9 December 2016 Announcement (being the first announcement immediately subsequent to Mr Wong's share sale which adversely affected the price of SRX Securities); and*
  - (v) *accordingly, Mr Wong (and accordingly, SRX), by no later than 25 or 26 October 2016 were in possession of information concerning dose sales in the year to date which (in combination with some or all of the information pleaded in paragraphs 28 to 39A above, which was available to Mr Wong and SRX by no later than 24 August 2016) contributed to Mr Wong's decision to sell shares on 26 October 2016. If there was an explanation for the 13 January 2017 CEO Termination Announcement that was consistent with Mr Wong not having had possession of information the subject of the 9 December 2016 Announcement, when the CEO Share Sale occurred, it is probable that such an explanation would have been provided, and it was not.*
- (c) *The existence of increased competition from alternative products, and the adverse effect of that increased competition on sales of SIR-Spheres is noted in, inter alia, the following documents (separately and in combination):*
- (i) *Memorandum from Mr Richardson to the SRX Quality Management Review Team entitled "Bi-Annual Management Review" dated 1 September 2016 [SRX.008.002.0007] (at .0008 and .0013).*
  - (ii) *"Americas Monthly Report August 2016" dated 13 September 2016 [SRX.007.004.8594].*
- (iii) *Email from Mr Wong to Mr Richardson entitled "Dose Sales" dated 22 September 2016 [SRX.001.002.4818 ].*
- (iv) *Email from Mr Richardson to Mr Wong entitled "RE: Dose Sales" dated 22 September 2016 [SRX.007.003.2713].*
  - (v) *Email from Mr Gary Donofrio to Mr Richardson entitled "Re:Dose Sales" dated 23 September 2016 [SRX.007.005.0905].*
  - (vi) *Memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated 28 September 2016 [SRX.001.002.5039].*
  - (vii) *"CEO Report September 2016" dated 26 October 2016 [SRX.001.001.0759] (at .0772-.0773).*
- (d) *The applicants repeat paragraph 9A above and say that each of Messrs Wong, Smith, Richardson and Lange were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.*

- (e) It may be reasonably inferred by the nature of the document identified at particular (c)(ii) (which was a high level report prepared by the Americas business unit as part of the SRX budget reporting process) that SRX officers with responsibility for SRX's budget setting and monitoring processes and/or Americas business (including Messrs Wong, Smith and Richardson) were aware or ought to have been aware of the contents of that document on the date it was prepared and/or distributed.
  - (f) The Applicants refer to and repeat paragraphs 37 to 47 of the Hannaford Report.
42. Further to paragraphs 40 and 41, by no later than 23 September 2016, or alternatively 19, 25 or 26 October 2016, SRX was aware, and it was the fact, that dose sales growth of SIR-Spheres in FY2017 was declining as against its budgeted expectations **(Declining Dose Sales Information)**.

### Particulars

- (a) *The Applicants repeat the particulars to paragraph 41 above.*
- (b) Further, the fact that dose sales growth of SIR-Spheres in FY2017 was declining as against budgeted expectations was stated in, inter alia, the following documents (separately and together):
  - (i) Papers for the SRX board meeting on 27 September 2016 [SRX.001.002.4910] (at .4917 and .4919) circulated on 23 September 2016 [SRX.001.002.4909].
  - (ii) Notes written by Mr Wong concerning the SRX board meeting on 27 September 2016 [SRX.008.004.0003] (at .0003) record "Dose sales for September currently 950, which is 129 below Budget".
  - (iii) Email from Mr Brett Thompson to Mr Richardson entitled "2017 forecast" dated 19 October 2016 [SRX.007.003.4246], which attached a spreadsheet containing, inter alia, actual and projected dose sales by pre-determination in the United States with a forecast variance to the FY17 Budget of 514 doses (8803 rather than 9317) equating to YOY growth of 5.5% [SRX.007.003.4247].
  - (iv) Papers for the SRX board meeting on 3 November 2016 dated 28 October 2016 [SRX.001.015.6269] including "September dose sales well short of Budget. At time of writing October dose sales will probably be 9% below Budget."
  - (v) Email from Mr Wong to Mr Richardson and Mr Lange entitled "Dose sales" dated 26 October 2016 [SRX.001.002.5243].
  - (vi) Email from Mr Kall to Mr Richardson and Mr Lange entitled "Business Forecast 1st Half FY17" dated 31 October 2016 [SRX.001.018.8403], including "YoY growth is 5.4%, and including your forecasts for November and December, YoY growth for the 1<sup>st</sup> half of FY17 will be 5.9%. This is significantly below our growth rate in previous years which the market (investors) will use as a benchmark for the current year."

- (c) The Applicants repeat paragraph 9A above and say that each of Messrs Wong, Smith, Richardson, Kall and Lange (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.

#### **F.4 EMEA Reimbursement Conditions Information**

43. By 24 August 2016, SRX was aware, and it was the fact, that the extent to which public health agencies or private health insurers would reimburse patients for the cost of treatment with SIR-Spheres was a key factor in achieving dose sales growth of SIR-Spheres.

##### **Particulars**

- (a) *In the 2016 Annual Report, SRX stated, “Despite reimbursement in some markets taking longer than anticipated, we made excellent progress on our strategy to ensure as many patients as possible are treated with our product. Reimbursement is a key factor in the execution of this strategy.”*
- (b) *SRX was actually aware of this information because it published the ASX document referred to in the previous particular.*
44. By 24 August 2016, SRX was aware, and it was the fact, that SRX had downgraded its FY2016 earnings guidance on 1 June 2016 because of, amongst other factors, reimbursement issues in its EMEA region, being:
- (a) delays in achieving product reimbursement in important EMEA countries; and
- (b) a tighter funding environment within several established European markets.

##### **Particulars**

- (a) *On 1 June 2016, SRX lodged with the ASX and publicly released a document entitled “ASX / Media Release: Market Update” in which the information was contained.*
- (b) *SRX was actually aware of this information because it published the ASX document referred to in the previous particular.*
- 44A. By 24 August 2016, SRX was aware, and it was the fact, that:
- (a) in Germany, statutory health insurance funds (krankenkassen) were increasing their challenges to claims for reimbursement for SIR-Spheres from hospitals;
- (b) in the UK, reimbursement for SIR-Spheres was at risk because NHS England was proposing to cease a funding program in April 2017;

- (c) in France, a potential reimbursement scheme was being negotiated with the Department of Health but its success would depend upon SRX securing a significant increase in the reimbursement amount offered by the Department;
- (d) in the Netherlands, reimbursement in respect of SIR-Spheres for chemo-refractory mCRC had not yet been officially approved.

### **Particulars**

- (a) The information pleaded at paragraph 44A(a), (b) and (c) was contained in, inter alia, the following documents (separately and in combination):
  - (i) Papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (at .0228-.0232).
  - (ii) Minutes of the SRX board meeting of 26 July 2016 (Board Papers 23 August 2016 [SRX.001.002.2726] (at .2727 - .2731).
  - (iii) Papers for the SRX board meeting on 23 August 2016 [SRX.001.002.2726] (at .2750 - .2753).
  - (iv) Minutes of the SRX board meeting of 23 August 2016 (Board Papers 27 September 2016 [SRX.001.002.4910] (at .4911 - .4915).
- (b) In relation to subparagraph 44A(d):
  - (i) The fact that the reimbursement scheme pleaded in subparagraph 44A(d) in relation to the Netherlands was not approved in FY2016 was referred to in the papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0800] (at .0825).
  - (ii) The reimbursement scheme pleaded in subparagraph 44A(d) in relation to the Netherlands had not been approved by 24 August 2016 as the scheme only received official approval on or about 28 September 2016 (memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated September 2016 [SRX.001.002.5039] (at .5040).
  - (iii) It may reasonably be inferred that at least Messrs Wong and/or Lange were aware, or ought to have become aware in the course of their duties, of the matters in particulars (iii)(A) and (B) on or before 24 August 2016. Members of the board were aware, or ought to have become aware in the course of their duties, of the matters in particulars (iii) (B) on or before 24 August 2016.
  - (iv) It may be reasonably be inferred that the information pleaded in paragraph 44A(d) was known by Messrs Wong and/or Lange and/or members of the board, or ought to have reasonably been known by such persons in the course of their duties, on or before 24 August 2016 because it was contained in, or ought reasonably have been deduced from, the information of which they were aware as identified in particular (iii)(C) considered individually and together.

(c) The Applicants repeat paragraph 9A above and say that each of Messrs Wong, Smith and Lange (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.

44B. By no later than 19, alternatively 25 or 26 October 2016, SRX was aware, and it was the fact, that:

(a) the reimbursement issues pleaded in subparagraphs 44A(a), (b) and (c) in relation to Germany, the UK, and France had not yet been resolved; and

(b) the reimbursement scheme pleaded in subparagraph 44A(d) in relation to the Netherlands had only received official approval on or about 28 September 2016 and would not result in improved sales of SIR-Spheres until at least 2017.

### **Particulars**

(a) The information pleaded at paragraph 44B(a) was contained in, inter alia, the following documents (separately and together):

(i) Papers for the SRX board meeting on 27 September 2016 [SRX.001.002.4910]] (at .4938 -.4939).

(ii) Memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated September 2016 [SRX.001.002.5039].

(iii) Further memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated September 2016 [SRX.005.001.8275].

(iv) "CEO Report September 2016" dated 26 October 2016 [SRX.001.001.0759] (at .0775).

(v) "CEO Report October 2016" dated 1 December 2016 at [SRX.001.001.0944] (at .0962).

(b) In relation to subparagraph 44B(b):

(i) The fact that the reimbursement scheme pleaded in subparagraph 44B(b) in relation to the Netherlands received official approval on or about 28 September 2016 and was contained in a memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated September 2016 [SRX.001.002.5039] (at .5040)..

(ii) Approval of the reimbursement scheme pleaded in subparagraph 44B(b) came at a time when hospital budgets were set therefore it would have no impact on sales until after 31 December 2016 (Memorandum from Mr Lange to the SRX Management Review Team entitled "Post-Market Surveillance, 6 Month Management Review" dated September 2016



[SRX.001.002.5039]; emails between Mr Lange to Mr Kall entitled “RE: FY17 Forecast” dated 4 December 2017 [SRX.001.027.5554].

(ci) The Applicants repeat paragraph 9A above and say that each of Messrs Wong, Smith, Kall and Lange (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.

45. By reason of the matters pleaded in paragraphs 43, 44, 44A and 44B, by no later than 24 August 2016, or alternatively 19, 25 or 26 October 2016, SRX was aware that reimbursement conditions in the European Union were subject to a tighter funding environment, which would continue in FY2017 (**EMEA Reimbursement Conditions Information**).

### **Particulars**

*Because SRX:*

(a) *was aware of the matters pleaded and particularised in paragraphs 43, 44, 44A and (from 25 or 26 October) 44A; and*

(b) *had made the Risk Management Statement,*

*officers at SRX with responsibility for overseeing the group’s budget and financial forecasts for FY2017 ought reasonably to have come into possession of that information in the course of their duties prior to 24 August 2016.*

(c) *The Applicants refer to and repeat paragraphs 13 to 15 of the Hannaford Report.*

### **F.5 US Off-Label Sales Information**

- 45A By 24 August 2016, or ~~in the~~ alternatively by 19, 25 or 26 October 2016, SRX was aware, and it was the fact, that in the United States:

(a) the FDA had only approved the use of SIR-Spheres for the treatment of salvage stage mCRC patients with adjuvant intra-hepatic artery chemotherapy of floxuridine;

(b) approximately 70% of sales of SIR-Spheres were for uses other than for the treatment of salvage stage mCRC patients, including for the treatment of HCC (Off-Label Sales);

(ca) Off-Label Sales for the treatment of HCC was a major growth driver for SRX’s SIR-Spheres dose sales in the US; and

- (c) SRX was not permitted to promote or market SIR-Spheres for Off-Label Sales;  
and
  - (d) the prevalence of Off-Label Sales presented a material risk SRX's sales growth strategy in the United States in FY 2017,
- (individually or together, **US Off-Label Sales Information**).

### Particulars

- (i) ~~In a memorandum from Mr Richardson to Mr Kall and copied to Mr Wong and Mr Smith entitled "2017 Americas Budget Narrative" dated 12 May 2016 ( In the 12 May 2016 Memorandum), Mr Richardson noted a number of "risks" to SRX's growth strategy in the United States, including the following [SRX.009.001.0144] (at .0145):~~
  - A. "Off label sales/compliance (70% of US sales are off-label)";
  - B. "Appeals in Pre-determination for off label patients – As of July 2016 we will no longer do appeals for hospitals from the advice of our legal counsel – over 200 appeals per year are successful";
  - C. "Individual Medicare MAC (Medicare Administrative Contractor) Audits ... [force] customers to payback payments for off label use";
  - D. "Medicare writes national policy for mCRC only".
- (ii) Further, and in the alternative to particular (i) above:
  - A. in the 12 May 2016 Memorandum [SRX.009.001.0144] (at .0145), Mr Richardson further noted that:
    - (aa) SRX's sales growth strategy of increasing sales by opening new accounts and training new treatment specialists to use its products (known as SRX's "Wide" sales strategy) was driving progressively fewer new sales; and
    - (bb) the majority of SRX's budgeted sales growth in the United States in FY2017 was to come from its "Deep" sales strategy, which involved promoting the increased use of SIR-Spheres within existing accounts.
  - B. SRX's increased reliance on its "Deep" strategy meant that it was increasingly reliant on sales relating to new treatment uses in existing centres (i.e. Off-Label Sales) to achieve its growth targets;
  - (iia) Further, as to SRX's awareness of the prevalence of Off-Label Sales pleaded in subparagraph 45(b) above, the Applicants rely on:
    - A. an email from Mr Brett Thompson to Mr Richardson entitled "2017 forecast" dated 19 October 2016 [SRX.007.003.4246] which attached a spreadsheet [SRX.007.003.4247] containing, inter alia, actual dose sales

in the United States broken down by disease type indicating that mCRC comprised approximately 34% of forecast sales.

B. an email from Mr Richardson to Mr Wong entitled “RE: Dose Sales” dated 22 September 2016 [SRX.007.003.2713], in which Mr Richardson said in relation to dose sales in the United States, “As you know, HCC has been our big growth drivers over the last few years”; and

C. the fact that officers of SRX responsible for directing and monitoring its financial performance ought to have come into possession of such information in the course of their duties.

(iii) Further, by 24 August 2016 SRX was or ought to have been aware of the matters referred to in subparagraphs 45A(a), 45A(aa) and 45A(c) above (**Regulatory Position**) as:

A. each of Messrs Richardson, Kall, Smith and Wong knew or ought to have known from the matters particularised in (i) above that Off-Label Sales and “compliance” issues presented a material risk to its sales strategy in the United States for FY 2017; ~~and~~

B. in the premises, a reasonable officer in the position of each of Messrs Richardson, Kall, Smith and Wong would have enquired as to the nature of the risks referred to in the 12 May 2016 Memorandum, and thereby would have become aware that SRX was not permitted to promote or market SIR-Spheres for uses other than for the treatment of salvage stage mCRC patients, as pleaded in subparagraph 45A(c).

(iia) Further and in the alternative to particular (iii), by 24 August 2016 each of Messrs Smith and Wong (and each member of the board of SRX) knew or ought to have known from the matters particularised in (ia) of the Regulatory Position as this information was noted in the papers for the SRX board meeting on 26 July 2016 [SRX.001.002.0825] (at .0823).

(iv) Further and in the alternative to particulars (i), (ii), (iia) ~~and~~ (iii) and (iia) above, officers within SRX responsible for ensuring its regulatory compliance within the United States (including Mr Richardson) ought reasonably to have come into possession of the Regulatory Position information in the ordinary course of their duties by 24 August 2016.

(v) Further and in the alternative, as a result of the matters particularised in (i), (ii), (iii), (iia) and (iv) above, Messrs Richardson, Kall, Smith and Wong knew or ought to have known that the prevalence of Off-Label Sales presented a material risk to SRX’s sales growth strategy in the United States in FY2017 by 24 August 2016 due to (inter alia):

A. the fact that SRX was increasingly reliant on its “Deep” strategy of increasing sales within existing accounts;

B. that strategy was likely to be materially impacted by its inability to market or promote Off-Label Sales; and/or

C. SRX was no longer participating in hospital reimbursement appeals after July 2016.

- (vi) *Further, and in the alternative to the matters identified in particular (v) above, by no later than 19, alternatively 25 or 26 October 2016, SRX knew or ought to have known that Off-Label Sales presented a material risk to SRX's sales growth strategy in the United States in FY2017 as, by no later than that time:*
- A. *it was aware of the Declining Dose Sales Information for the reasons pleaded and particularised in paragraphs 41 and 42 above; and*
  - B. *Kevin Richardson (CEO, United States) had, in a draft memorandum addressed to the "Quality Management Review Team" dated September 2016, noted that "Our business continues to be 70% off-label, despite all of our efforts and focus on mCRC. Eric and his team field on average 30-40 off-label requests for information per month" SRX had "recently become aware of some accounts 'clawing back Medicare patient claims because they were for off-label use'" and that "[this could be a trend that will increase...since we have not taken any action to remedy this situation" [SRX.008.002.0007] (at.0012, and .0013) (the Applicants rely upon the whole of the document identified in this particular, including those parts over which a claim for confidentiality is maintained which are not referred to in this pleading); and*
  - C. *that information was also contained in the "Americas Monthly Report August 2016" dated 13 September 2016 [SRX.007.004.8594] (at .8608), an email from Mr Wong to Mr Richardson entitled "Dose Sales" dated 21 September 2016 [SRX.007.003.2713], an email from Mr Richardson to Mr Wong entitled "RE: Dose Sales" dated 22 September 2016 [SRX.007.003.2713], and the "CEO Report September 2016" dated 26 October 2016 [SRX.001.001.0759] (at .0773).*
- (vii) *The Applicants repeat the matters pleaded in paragraph 9A above and say that each of Messrs Wong, Richardson, Kall, Smith and (and each member of the board of SRX) were officers of SRX within the meaning of section 9 of the Corporations Act and Listing Rule 3.1, whose knowledge may be attributed to the company.*
- (viii) *The Applicants refer to and repeat paragraphs 17 to 22 of the Hannaford Report.*

## **G. MATERIAL INFORMATION**

### **G.1 No Reasonable Basis Material Information (24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016)**

46. By no later than 24 August 2016, ~~or (alternatively)~~ 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, SRX was "aware" within the meaning of Listing Rule 19.12, and it was the fact, that it did not have a reasonable basis for making the FY2017 Expected Dose Sales Statements (**No Reasonable Basis Material Information**).

## Particulars

- (a) *By no later than 24 August 2016 or (alternatively) 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, by reason of the SIRFLOX Information, the Market Competition Information the EMEA Reimbursement Conditions Information and/or the US Off-Label Sales Information pleaded in paragraphs 29 to 40 and 43 to (b) 45A above (alone and in combination), and SRX's awareness of the SIR-Spheres Sales Transparency Information as pleaded and particularised in paragraph 28 above, officers at SRX with responsibility for overseeing its budget and forecasting processes ought to have known that SRX did not have a reasonable basis to forecast growth in dose sales of SIR-Spheres in 1H2017 commensurate with the pc.*
- (b) *Further, and in the alternative:*
- (i) *the only material reasons for the revised dose sales outlook downgrade on 9 December 2016 were those articulated in the 9 December 2016 Announcement and pleaded in paragraph 23(b);*
  - (ii) *by no later than 24 August 2016, SRX was aware of each of those matters by reason of its awareness of:*
    - 1. *the Market Competition Information;*
    - 2. *the SIRFLOX Information; and*
    - 3. *the EMEA Reimbursement Conditions Information;*
  - (iii) *during a presentation of the 24 August 2016 Results Slideshow, Mr Wong stated in response to a query for specific guidance that SRX "was not prepared to provide a range or else we would have done so in our release, it's just because as I made the comment to an earlier question, the vagaries outside our control make it very difficult for us to give a, if you like, guidance";*
  - (iv) *in the 15 December 2016 ASX Response, SRX stated that "SRX trades in a highly undeveloped medical market, which leads key metrics to be highly volatile";*
  - (v) *it may be inferred from sub-particulars (i)-(iv) above that, by no later than 24 August 2016, SRX did not have reasonable grounds for the FY2017 Expected Dose Sales Statements because SRX was aware of each of the matters in the 9 December 2016 Announcement at the time it made the FY2017 Expected Dose Sales Statements and was aware that it was operating in a volatile and unpredictable market. If there was an explanation for the downgrade that was consistent with there having been reasonable grounds for the FY2017 Expected Dose Sales Statements it is probable that such an explanation would have been provided, and it was not.*
- (c) *Further, and in the alternative, SRX was aware of the No Reasonable Basis Material Information from 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 as, by no later than one or the other of those dates it was aware of the SIRFLOX Information, the Market Competition Information, the EMEA Reimbursement Conditions Information, the US Off-Label Sales*

*Information, the Market Share Information and/or the Declining Dose Sales Information.*

- (d) *Further and in the alternative, it may be inferred from the 9 December 2016 Announcement and the 13 January 2017 CEO Termination Announcement that:*
- (i) *SRX had, following an investigation, determined that the CEO Share Sale Statement was false;*
  - (ii) *at the time of the CEO Share Sale (26 October 2016), Mr Wong was in possession of information material to the price of SRX Securities;*
  - (iii) *the CEO Share Sale had occurred in violation of the Securities Trading Statement;*
  - (iv) *the information Mr Wong was in possession of at the time of the CEO Share Sale related to the content of the 9 December 2016 Announcement (being the first announcement immediately subsequent to Mr Wong's share sale which materially adversely affected the price of SRX Securities); and*
  - (v) *by reason of particulars (i)-(iv), SRX was aware on or immediately before 26 October 2016 that there were no reasonable grounds for the FY2017 Expected Dose Sales Statements and that SRX did not have a reasonable basis to forecast growth in dose sales of SIR-Spheres in 1H2017 commensurate with the pcp. If there was an explanation for the 13 January 2017 CEO Termination Announcement that was consistent with Mr Wong not having possession of information relating to the 9 December 2016 Announcement when the CEO Share Sale occurred it is probable that such an explanation would have been provided, and it was not.*
- (e) *The Applicants refer to and repeat paragraphs 51 to 74 of the Hannaford Report.*

**G.1A Forecast Sales Material Information (24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016)**

46A. Further and in the alternative to the matters pleaded and particularised in paragraphs 46 above, by no later than 24 August 2016, alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, SRX was "aware" within the meaning of Listing Rule 19.12, and it was the fact, that its dose sales growth would or would likely decrease by a material amount in FY2017 in comparison to the pcp (Forecast Sales Material Information).

**Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraphs 40, 41, 42, 43, 45, 45A and 46 above and say that by no later than 24 August 2016 or, alternatively, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, by reason of the SIRFLOX Information, the Market Competition Information, the Market Share Information, the EMEA Reimbursement Conditions Information, the US Off-Label Sales Information and/or the*

Declining Dose Sales Information (alone and in combination), officers at SRX with responsibility for overseeing its budget and forecasting processes ought to have known that SRX was unlikely to continue its historical dose sales growth in FY2017 and that dose sales growth would reduce by a material amount in that year over the pcp.

**G.1B No Double Digit Growth Material Information (24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016)**

46B. Further and in the alternative to the matters pleaded and particularised in paragraphs 46 and 46A above, by no later than 24 August 2016, alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, SRX was “aware” within the meaning of Listing Rule 19.12, and it was the fact, that it was unlikely to achieve “double digit” growth in dose sales of SIR-Spheres in FY17 (**No Double Digit Growth Material Information**).

**Particulars**

The Applicants repeat the matters pleaded and particularised in paragraphs 40, 41, 42, 43, 45, 45A and 46 above and say that by no later than 24 August 2016 or, alternatively, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, by reason of the SIRFLOX Information, the Market Competition Information, the Market Share Information, the EMEA Reimbursement Conditions Information, the US Off-Label Sales Information and/or the Declining Dose Sales Information (alone and in combination), officers at SRX with responsibility for overseeing its budget and forecasting processes ought to have known that SRX would not achieve “double digit” growth in dose sales of SIR-Spheres in FY17.

**G.2 Declining Performance Sales Material Information and Market Competition Effect Material Information (19 October 2016, 25 October 2016 or 26 October 2016)**

47. Further and in the alternative to the matters pleaded and particularised in paragraph 46 above, by no later than 23 September 2016, alternatively 19 October 2016, 25 October 2016 or 26 October 2016, SRX was “aware” within the meaning of Listing Rule 19.12, and it was the fact, that:

- (a) dose sales growth of SIR-Spheres in FY2017 was declining materially as against SRX’s budgeted expectations for the financial year (**Declining Sales Material Information**);

### Particulars

*The Applicants repeat the matters pleaded and particularised in paragraph 42 above.*

- (b) further and in the alternative, the marketing and sale of directly and indirectly competing products ~~in the Market by BTG, Otsuka and other competitors~~ had had a materially adverse effect on its budgeted dose sales growth in FY2017 for the year to date (**Market Competition Effect Material Information**);

### Particulars

*The Applicants repeat the particulars subjoined to paragraphs ~~32~~ 33 to 42 above.*

- ~~c. further and in the alternative, its dose sales growth would or would likely decrease by a material amount in FY2017 in comparison to the pep~~ (**Forecast Sales Material Information**);

### Particulars (47(a) and 47(b))

*The Applicants repeat the matters pleaded and particularised in paragraphs 40, 41, 42, 45, ~~and 46, 47(a) and 47(b)~~ above and say that by no later than 23 September 2016 19 October 2016, 25 October 2016 or 26 October 2016, by reason of the SIRFLOX Information, the Market Competition Information, the Market Share Information, the EMEA Reimbursement Conditions Information, the US Off-Label Sales Information and/or the Declining Dose Sales Information (alone and in combination), officers at SRX with responsibility for overseeing its budget and forecasting processes ought to have known that dose sales growth was materially affected by competition and/or materially declining for that reason or otherwise ~~SRX was unlikely to continue its historical dose sales growth in FY2017 and that dose sales growth would reduce by a material amount in that year over the pep.~~*

~~(The information described in subparagraphs 47(a), 47(b) and (d)c above, individually and in any combination, will be referred to as the **Declining Performance Material Information**.)~~

### G.3 CEO Share Trade Material Information (19 October 2016, 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016)

48. By no later than 26 October 2016, alternatively 1 November 2016, 2 November 2016 or 7 November 2016, SRX was “aware” within the meaning of Listing Rule 19.12, and it was the fact that the share trading of its CEO carried out on 26 October 2016 was in breach or potential breach of its securities trading policy (as referred to in the Securities



Trading Statement) (**Securities Trading Policy**) (**CEO Share Trade Material Information**).

### Particulars

- (a) *The Applicants repeat the matters pleaded and particularised in paragraphs 40, 41, 42, 45, 46, and 47 above and say that, by no later than 26 October 2016:*
- (i) *Mr Wong (whose knowledge may be attributed to SRX) and/or officers at SRX with responsibility for overseeing its budget and forecasting processes knew or ought to have known of:*
  - (ii) *the Market Share Information, the Declining Dose Sales Information, the Market Competition Effect Material Information and the No Reasonable Basis Information; and*
  - (iii) *that such information was or was potentially “Inside Information” within the meaning of SRX’s Securities Trading Policy; and*
  - (iv) *Mr Wong:*
    - I. *knew that, on that day, he had sold 74,968 ordinary SRX Shares;*
    - II. *knew or, as CEO of SRX, ought to have known of the terms of SRX’s Securities Trading Policy and of the fact that his sale of shares on that day was in breach or potential breach of that policy.*
- (b) *Further and in the alternative, by no later than 1 November 2016, SRX had lodged with the ASX and publicly released the 1 November 2016 Change of Interest Notice such that officers of SRX knew of or ought to have come into possession of information concerning the CEO Share Sale in the course of the performance of their duties by that date.*
- (c) *Further and in the alternative, by no later than 2 November 2016, SRX had lodged with the ASX and publicly released the 2 November 2016 Amended Change of Interest Notice such that officers of SRX knew of, or ought to have come into possession of, information concerning the CEO Share Sale in the course of the performance of their duties by that date.*
- (d) *Further and in the alternative, by no later than 7 November 2016, on which day SRX lodged with the ASX and publicly released the 7 November 2016 CEO Announcement, the board of SRX knew or ought to have known:*
- (i) *(from the content of the announcement, if not otherwise) of the CEO Share Sale; and*
  - (ii) *of the Market Share Information, the Declining Dose Sales information, the Market Competition Effect Material Information and the No Reasonable Basis Information;*
  - (iii) *that such information was or was potentially “Inside Information” within the meaning of the Securities Trading Policy; and*

- (iv) *of the terms of the Securities Trading Policy and of the fact that Mr Wong's sale of shares on that day was in breach or potential breach of that policy.*

### **G.3A ASX Inquiry Material Information (2 December 2016)**

48A. By no later 2 December 2016, SRX was "aware" within the meaning of Listing Rule 19.12, and it was the fact, that as a result of a tipoff, the ASX had asked SRX whether its sales growth guidance of "double digit growth" was still current (ASX Inquiry Material Information).

#### **Particulars**

- (a) The Applicants repeat the matters pleaded and particularised in paragraphs 23A and 23B above.
- (b) It may be reasonably inferred that SRX's officers with responsibility for overseeing its compliance and risk functions (including Messrs Wong, Smith and Kall) knew or ought to have known that SRX had received the 2 December 2016 ASX Inquiry and the contents of that communication by reason of it being an official communication from the ASX relating to a disclosure of internal information of SRX to the ASX in relation to its sales guidance.

### **G.4 Material Information Contravening Conduct**

49. The No Reasonable Basis Material Information, Forecast Sales Material Information and/or the No Double Digit Growth Material Information (alone or in combination) was, by no later than 24 August 2016, alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 until the end of the Relevant Period, information concerning SRX:

- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
- (b) that a reasonable person would expect to have a material effect on the price or value of SRX Securities within the meaning of Listing Rule 3.1 and section 674 of the Corporations Act;
- (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRX Securities within the meaning of section 677 of the Corporations Act;
- (d) which affected the assessment of the performance of SRX and the likely future performance of SRX; and

- (e) that was material to the assessment of the value of SRX and the appropriate price for SRX Securities.
50. Further and in the alternative to the matters pleaded in paragraph 49 above, the Declining Performance Sales Material Information and/or the Market Competition Effect Material Information (separately or together), was, by no later than 23 September 2016, alternatively 19 October 2016, 25 October 2016 or 26 October 2016 and at all remaining times during the Relevant Period, information concerning SRX:
- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
  - (b) that a reasonable person would expect to have a material effect on the price or value of SRX Securities within the meaning of Listing Rule 3.1 and section 674 of the Corporations Act;
  - (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRX Securities within the meaning of section 677 of the Corporations Act;
  - (d) which affected the assessment of the performance of SRX and the likely future performance of SRX; and
  - (e) that was material to the assessment of the value of SRX and the appropriate price for SRX Securities.
51. Further and in the alternative to the matters pleaded in paragraphs 49 and 50 above, the CEO Share Trade Material Information was, by no later than 26 October 2016, alternatively 1 November 2016, 2 November 2016 or 7 November 2016, and at all remaining times during the Relevant Period information concerning SRX:
- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
  - (b) that a reasonable person would expect to have a material effect on the price or value of SRX Securities within the meaning of Listing Rule 3.1 and section 674 of the Corporations Act;

- (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRX Securities within the meaning of section 677 of the Corporations Act;
- (d) which affected the assessment of the performance of SRX and the likely future performance of SRX; and
- (e) that was material to the assessment of the value of SRX and the appropriate price for SRX Securities.

51A. Further and in the alternative to the matters pleaded in paragraphs 49, 50 and 51 above, the ASX Inquiry Material Information was, by no later 2 December 2016, and at all remaining times during the Relevant Period information concerning SRX:

- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
- (b) that a reasonable person would expect to have a material effect on the price or value of SRX Securities within the meaning of Listing Rule 3.1 and section 674 of the Corporations Act;
- (c) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of SRX Securities within the meaning of section 677 of the Corporations Act;
- (d) which affected the assessment of the performance of SRX and the likely future performance of SRX; and
- (e) that was material to the assessment of the value of SRX and the appropriate price for SRX Securities.

52. By reason of the matters pleaded in paragraphs 49, 50, and/or 51 above:

- (a) by no later than 24 August 2016, alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, SRX became obliged pursuant to Listing Rule 3.1 to tell the ASX of the No Reasonable Basis Information, Forecast Sales Material Information and/or the No Double Digit Growth Material Information;
- (b) further and in the alternative, by no later than 23 September 2016, alternatively 19 October 2016, 25 October 2016 or 26 October 2016, SRX became obliged

pursuant to Listing Rule 3.1 to tell the ASX of (individually or in any combination) the Declining ~~Performance~~ Sales Material Information and/or the Market Competition Effect Material Information; ~~and~~

(c) further and in the alternative, by no later than 26 October 2016, alternatively 1 November 2016, 2 November 2016 or 7 November 2016, SRX became obliged pursuant to Listing Rule 3.1 to tell the ASX of the CEO Share Trade Material Information~~;~~;

(d) further and in the alternative, by no later than 2 December 2016, SRX became obliged pursuant to Listing Rule 3.1 to tell the ASX of the ASX Inquiry Material Information.

53. SRX did not tell the ASX:

(a) the No Reasonable Basis Material Information on 24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 or at any time thereafter during the Relevant Period; or

(a1) the Forecast Sales Basis Material Information on 24 August 2016, 23 September 2016, 19, 25 or 26 October 2016 or at any time thereafter during the Relevant Period; or

(a2) the No Double Digit Growth Material Information on 24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 or at any time thereafter during the Relevant Period;

(b) the ~~Performance~~ Declining Sales Material Information on 23 September 2016, 19 October 2016, 25 October 2016 or (alternatively) 26 October 2016 or at any time thereafter during the Relevant Period; ~~or~~

(b1) the Market Competition Effect Material Information on 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 or at any time thereafter during the Relevant Period;

(c) the CEO Share Trade Material Information on 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016 or at any time thereafter during the Relevant Period~~;~~ or

(d) the ASX Inquiry Material Information on 2 December 2016 or at any time thereafter during the Relevant Period.

54. Further and in the alternative, by reason of the matters pleaded in paragraphs 46 to 53 above, SRX contravened section 674(2) of the Corporations Act by not informing the ASX:

(a) by no later than 24 August 2016, ~~or (alternatively) by no later than~~ alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, of:

(i) the No Reasonable Basis Material Information (**First Disclosure Contravention**);

(ii) the Forecast Sales Material Information (**Second Disclosure Contravention**);

(iii) the No Double Digit Growth Material Information (**Third Disclosure Contravention**);

(b) by no later than 23 September 2016, alternatively 19 October 2016, 25 October 2016 or ~~(alternatively) 26 October 2016~~, of (separately or in combination):

(i) the Declining Sales Material Information (~~Second~~ **Fourth Disclosure Contravention**); and/or

(ii) the Market Competition Effect Material Information (~~Third~~ **Fifth Disclosure Contravention**); and/or

(iii) ~~the Forecast Sales Material Information~~ (~~Fourth~~ **Disclosure Contravention**);

(c) by no later than 26 October 2016, alternatively 1 November 2016, 2 November 2016 or 7 November 2016 of the CEO Share Trade Material Information (~~Fifth~~ **Sixth Disclosure Contravention**);

(d) by no later than 2 December 2016, of the ASX Inquiry Material Information (**Seventh Disclosure Contravention**).

55. The contraventions pleaded in paragraph 54 were continuing contraventions from:

- (a) in the case of the First, Second and Third Disclosure Contraventions, no later than 24 August 2016, alternatively 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016 to the end of the Relevant Period;
- (b) in the case of the ~~Second~~ Fourth Disclosure Contravention, ~~and/or Third Fifth~~ Disclosure Contravention ~~and/or Fourth Disclosure Contravention~~, no later than 23 September 2016, alternatively 19 October 2016, 25 October 2016 or 26 October 2016, to the end of the Relevant Period; ~~and~~
- (c) in the case of the ~~Fifth-Sixth~~ Disclosure Contravention, no later than 26 October 2016, alternatively 7 November 2016, to the end of the Relevant Period;
- (d) in the case of the Seventh Disclosure Contravention, no later than 2 December 2016 to the end of the Relevant Period.

## H. MISLEADING OR DECEPTIVE CONDUCT

### H.1 FY2017 Expected Dose Sales Representation Contravention

56. On 24 August 2016 and 25 October 2016, by making and repeating the FY2017 Expected Dose Sales Statements, SRX represented to its intended audience, which relevantly included investors and potential investors in SRX Securities (**Affected Market**), that:

- (a) it expected to achieve FY2017 SIR-Spheres dose sales growth commensurate with the pcg; and

#### Particulars

- (a) *The representation was partly express to the extent it was contained in the express terms of the FY2017 Expected Dose Sales Statements as made in the 24 August 2016 Results Announcement, the 24 August 2016 Results Slideshow and the 25 October 2016 CEO's Address.*
- (b) *The representation was partly implied or to be inferred from the expression "continue" used in conjunction with the expression "double digit" dose sales growth in the FY2017 Expected Dose Sales Statements. In the context of:*
  - (i) *SRX's FY2016 financial results at paragraph 11 above;*
  - (ii) *SRX's FY2016 SIR-Spheres sales growth guidance in its document lodged with the ASX on 13 August 2015 entitled "ASX / Media Release: Dose sales growth to continue in-line with historic trends" that "Dose sales growth will continue in-line with historic trends",*

- (iii) *SRX's FY2016 SIR-Spheres sales growth guidance in the Chief Executive Officer's Address lodged with the ASX on 27 October 2015 to the 2015 AGM that "At this juncture our expectation is that dose sales in the 2016 financial year will grow at least in-line with historic trends, which over the last five years has shown a compound annual growth rate or CAGR of 19.7 per cent",*

*this language conveyed by implication that SRX expected to achieve SIR-Spheres dose sales growth in FY2017 commensurate with the pcg.*

- (b) that it had reasonable grounds to expect that it would achieve FY2017 SIR-Spheres dose sales growth commensurate with the pcg.

(individually and together, the **"FY2017 Expected Dose Sales Representation"**).

### Particulars

*The representation was implied by reason of the fact that SRX:*

- (a) *stated by the 24 August 2016 Results Announcement, "A large, under-penetrated market opportunity lies ahead; with approximately 2 per cent penetration implied by our FY16 dose sales;"*
- (b) *did not make any statement that contradicted the growth opportunity available to SIR-Spheres in the Market having regard to its inferred penetration;*
- (c) *did not make any statement that contradicted the FY2017 Expected Dose Sales Statements; and*
- (d) *published its expected dose sales result in company documents released to the market by means of the ASX company announcements platform and SRX knew or ought to have known that investors and potential investors in SRX Securities may rely upon the statements and forecasts in those documents in making decisions about whether to acquire or retain SRX Securities.*

57. The FY2017 Expected Dose Sales Representation was a continuing representation throughout the Relevant Period.

58. By making the FY2017 Expected Dose Sales Representation SRX engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.



59. In so far as the FY2017 Expected Dose Sales Representation was a representation as to a future matter or future matters, the Applicants rely on:
- (a) section 12BB(1) of the ASIC Act;
  - (b) section 769C of the Corporations Act; and/or
  - (c) section 4 of:
    - (i) the *Australian Consumer Law* (Victoria) set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic); and/or
    - (ii) the *Australian Consumer Law* (NSW) set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 28 of the *Fair Trading Act 1987* (NSW),(individually or together the **Australian Consumer Law**).
60. The FY2017 Expected Dose Sales Representation, throughout the Relevant Period, or alternatively, in the period from 23 September 2016, 19 or 25 October 2016 to the end of the Relevant Period (inclusive):
- (a) in so far as it was a representation as to a present matter or present matters, was misleading or deceptive, or likely to mislead or deceive;
  - (b) in so far as it was a representation as to future matters, was made without a reasonable basis.

### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraph 46 above.*

61. In the premises, by making the FY2017 Expected Dose Sales Representation SRX engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;
  - (b) section 12DA(1) of the ASIC Act; and/or
  - (c) section 18 of the Australian Consumer Law,
- (FY2017 Expected Dose Sales Representation Contravention).

## **H.2 FY2017 Expected Dose Sales Statement Contravention**

62. Further and in the alternative to the matters pleaded and particularised in paragraphs 56 to 61 above, by making the FY2017 Expected Dose Sales Statement on each of 24 August 2016 and 25 October 2016, SRX engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;
- (d) that, from 24 August 2016 and/or from 23 September 2016 or 25 October 2016 to the end of the Relevant Period was misleading or deceptive, or likely to mislead or deceive, in contravention of:
  - (i) section 1041H(1) of the Corporations Act;
  - (ii) section 12DA(1) of the ASIC Act; and/or
  - (iii) section 18 of the Australian Consumer Law,

**(FY2017 Expected Dose Sales Statement Contravention).**

### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraphs 46, 47 and 48A above.*

## **H.3 Year to Date Dose Sales Representation Contravention**

63. On 25 October 2016, SRX represented to the Affected Market that its year to date growth in dose sales had not fallen materially short of its budgeted expectations (**Year to Date Dose Sales Representation**).

### **Particulars**

*The representation was made by silence in circumstances in which: (i) the CEO of SRX, Mr Wong had repeated the FY2017 Expected Dose Sales Statements in the 25*

*October 2016 CEO's Address; (ii) SRX knew or ought to have known that members of the Affected Market would rely on the FY2017 Expected Dose Sales Statements in making decisions as to whether to acquire or retain SRX Securities; and (iii) a reasonable member of the Affected Market would have expected SRX to have disclosed at that time any information which might affect the reliability of the information conveyed by the FY2017 Expected Dose Sales Statements, including if SRX's year to date dose sales had fallen materially short of its budgeted expectations.*

64. The Year to Date Dose Sales Representation was a continuing representation from 25 or 26 October 2016 to the end of the Relevant Period.
65. By making the Year to Date Dose Sales Representation SRX engaged in conduct:
  - (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
66. The Year to Date Dose Sales Representation was, from 25 or 26 October 2016 to the end of the Relevant Period, misleading or deceptive or likely to mislead or deceive.

### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraphs 32 to 42, and 47(b), and 48A above.*

67. In the premises, by making the Year to Date Dose Sales Representation SRX engaged in conduct in contravention of:
  - (a) section 1041H(1) of the Corporations Act;
  - (b) section 12DA(1) of the ASIC Act; and/or
  - (c) section 18 of the Australian Consumer Law,

**(Year to Date Dose Sales Representation Contravention).**

### **H.4 No Adverse Competition Effects Representation Contravention**

68. Further and in the alternative, on 25 October 2016, SRX represented to the Affected Market that new competitors in the Market had not had a materially adverse effect on

its budgeted dose sales growth in the year to date (**No Adverse Competition Effects Representation**).

### Particulars

*The representation was made by silence in circumstances in which: (i) the CEO of SRX, Mr Wong had repeated the FY2017 Expected Dose Sales Statements in the 25 October 2016 CEO's Address; (ii) SRX knew or ought to have known that members of the Affected Market would rely on the FY2017 Expected Dose Sales Statements in making decisions as to whether to acquire, hold or dispose of SRX Securities; and (iii) a reasonable member of the Affected Market would have expected SRX to have disclosed at that time any information which might affect the reliability of the information conveyed by the FY2017 Expected Dose Sales Statements, including if new competitors in the Market had had a materially adverse effect on its budgeted dose sales growth in the year to date.*

69. The No Adverse Competition Effects Representation was a continuing representation from 25 October 2016 to the end of the Relevant Period.
70. By making the No Adverse Competition Effects Representation SRX engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
71. The No Adverse Competition Effects Representation was, from 25 ~~or 26~~ October 2016 to the end of the Relevant Period, misleading or deceptive or likely to mislead or deceive.

### Particulars

*The Applicants repeat the matters pleaded and particularised paragraphs ~~32-33~~ to 42, and 47(b) and above.*

72. In the premises, by making the No Adverse Competition Effects Representation SRX engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;

- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

**(No Adverse Competition Effects Representation Contravention).**

## **H.5 CEO Share Trade Representation Contravention**

73. On 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016, SRX represented to the Affected Market that it was not aware within the meaning of Listing Rule 19.12 that the share trading of its CEO carried out on 26 October 2016 was carried out in potential breach of the Securities Trading Policy (**CEO Share Trade Representation**).

### **Particulars**

- (a) *The CEO Share Trade Representation was conveyed to the market on 26 October 2016 by silence in circumstances in which:*
  - (i) *SRX had made the Continuous Disclosure Statement and the Share Trading Statement and had not corrected or qualified those statements prior to 26 October 2016;*
  - (ii) *by reason of those statements, members of the Affected Market could reasonably expect to have been informed during the Relevant Period of any information which may have adversely affected SRX's share price, including any information concerning a breach of the Securities Trading Policy, which SRX had acknowledged by the Securities Trading Statement could cause extensive reputational damage to SRX.*
- (b) *Further and in the alternative, the CEO Share Trade Representation was conveyed to the market on 1 November 2016 or 2 November 2016 by reason of the fact that:*
  - (i) *SRX had made the Continuous Disclosure Statement and the Share Trading Statement and had not corrected or qualified those statements prior to 2 November 2016;*
  - (ii) *by reason of those statements, members of the Affected Market could reasonably have expected to be informed of any information which may have adversely affected SRX's share price, including any information concerning a breach of the Securities Trading Policy, which SRX had acknowledged by the Securities Trading Statement could cause extensive reputational damage to SRX;*
  - (iii) *on 1 November 2016 SRX lodged the 1 November 2016 Change of Interest Notice such that members of the Affected Market could reasonably have expected SRX to have revealed at that time the existence of any material information concerning the CEO Share Sale;*

- (iv) *on 2 November 2016 SRX lodged the 2 November 2016 Amended Change of Interest Notice such that members of the Affected Market could reasonably have expected SRX to have revealed at that time the existence of any material information concerning the CEO Share Sale.*
  - (c) *Further and in the alternative, the CEO Share Trade Representation was conveyed to the market on 7 November 2016 by reason of the fact that:*
    - (i) *SRX had made the Continuous Disclosure Statement and the Share Trading Statement and had not corrected or qualified those statements prior to 7 November 2016;*
    - (ii) *by reason of those statements, members of the Affected Market could reasonably have expected to be informed of any information which may have adversely affected SRX's share price, including any information concerning a breach of the Securities Trading Policy, which SRX had acknowledged by the Securities Trading Statement could cause extensive reputational damage to SRX;*
    - (iii) *on 7 November 2016, SRX lodged with the ASX and publicly released the 7 November 2016 CEO Announcement by which it:*
      - I. made statements to the effect that: (i) the reason for Mr Wong's share sale was to "cover the tax incurred in relation to the recently vested tranche of rights"; and (ii) that the share sale was "in line with [Mr Wong's] normal practice" over the previous three years; and (iii) that Mr Wong had informed the Chairman in July 2016 that it had been his intention to sell the shares; and*
      - II. did not make any statements in that document to suggest that the relevant share sales were or may have been made in contravention of the Securities Trading Policy in circumstances in which a reasonable member of the Affected Market could have expected such information to be revealed if it was the case.*
74. The CEO Share Trade Representation was a continuing representation from, 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016 to the end of the Relevant Period.
75. By making the CEO Share Trade Representation SRX engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.

76. The CEO Share Trade Representation was misleading or deceptive, or likely to mislead and deceive from 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016 to the end of the Relevant Period.

### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraph 48 above.*

77. In the premises, by making the CEO Share Trade Representation, SRX engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

**(CEO Share Trade Representation Contravention).**

### **H.6 Listing Rule Compliance Representation Contravention**

78. By publicly releasing each of the:

- (a) 2016 Annual Report;
- (b) 2016 Corporate Governance Statement;
- (c) 24 August 2016 Results Announcement;
- (d) 24 August 2016 Results Slideshow;
- (e) 25 October 2016 CEO's Address;
- (f) 1 November 2016 Change of Interest Notice;
- (g) 2 November 2016 Amended Change of Interest Notice; and/or
- (h) 7 November 2016 CEO Announcement,

(separately and together, the “**Relevant Period Announcements**”), SRX represented to the Affected Market that:

- (i) it had told or *given* the ASX all the *information* it was required to tell or give under the Listing Rules, which included Listing Rule 3.1 (**Disclosure Representation**);
- (ii) it had undertaken all necessary and reasonable investigations before making representations as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that its public statements were substantially accurate and not misleading or deceptive in any respect (**Reasonable Enquiry Representation**),

(individually and together, the “**Listing Rule Compliance Representations**”).

### Particulars

- (a) *Each of the Disclosure Representation and the Reasonable Enquiry Representation were conveyed expressly by the Risk Management Statement and/or the Continuous Disclosure Statement.*
  - (b) *Further and in the alternative, each of the Disclosure Representation and the Reasonable Enquiry Representation were to be implied from SRX’s obligations pursuant to Listing Rule 3.1 and section 674(2) of the Corporations Act and the absence of any statement by SRX in the Relevant Period to the effect that it had not complied with those obligations.*
79. The Listing Rule Compliance Representations were continuing representations throughout the Relevant Period.
80. By making the Listing Rule Compliance Representation SRX engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
81. The Listing Rule Compliance Representations were misleading or deceptive, or likely to mislead and deceive from 24 August 2016, 23 September 2016, 19 October 2016, 25 October 2016, 26 October 2016, 1 November 2016, 2 November 2016, or 7 November 2016 or 2 December 2016 to the end of the Relevant Period.



## Particulars

*The Applicants repeat the matters pleaded and particularised in paragraphs 46 to 55 above and say that:*

- (a) *the Listing Rule Compliance Representations were misleading or deceptive, or likely to mislead or deceive because, during the Relevant Period, SRX did not publicly disclose all information that a reasonable person would expect to have had a material effect on the price or value of its securities immediately as it was, or ought reasonably to have been aware of such information;*
- (b) *SRX was aware, or ought reasonably to have been aware:*
  - (i) *from 24 August 2016, or (alternatively) 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, of the No Reasonable Basis Material Information,*
  - (ii) *from 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, of the Declining Sales Material Information, and/or the Market Competition Effect Material Information ~~and/or the Forecast Sales Material Information~~;*
  - (iia) *from 24 August 2016, or (alternatively) 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, of the Forecast Sales Material Information;*
  - (iii) *from 19 October 2016, 25 October 2016, 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016 of the CEO Share Trade Material Information<sub>7</sub>;*
  - (iv) *from 24 August 2016, or (alternatively) 23 September 2016, 19 October 2016, 25 October 2016 or 26 October 2016, of the No Double Digit Growth Material Information;*
  - (v) *from 2 December 2016, of the ASX Inquiry Material Information,*

*and did not disclose that information to the ASX as soon as it became aware of it as required by Listing Rule 3.1 and section 674(2) of the Corporations Act.*

82. In the premises, by making the Listing Rule Compliance Representations, SRX engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

**(Listing Rule Compliance Representation Contravention).**

## H.7 Risk Management Representation Contravention

83. By making the Risk Management Statement, SRX represented to the Affected Market that it had effective management and internal control systems to identify, assess and manage the Group's material financial and non-financial business risks and report to those risks to the board (**Risk Management Representation**).

#### **Particulars**

*The Risk Management Representation was expressly conveyed by the Risk Management Statement.*

84. The Risk Management Representation was a continuing representation throughout the Relevant Period.
85. By making the Risk Management Representation SRX engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
  - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
86. The Risk Management Representation was misleading or deceptive, or likely to mislead or deceive from 24 August 2016 or (alternatively) 23 September 2016, 25 or 26 October 2016 to the end of the Relevant Period.

#### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraph 23(b) above and say, further and in the alternative to the matters pleaded and particularised in paragraph 46, 47, and 47 48A above, that if those matters were true, had SRX had effective management and internal control systems to identify, assess and report its material financial business risks:*

- (a) *its employees would have been actually aware of:*
- (i) *the SIRFLOX Information;*
  - (ii) *the Market Competition Information;*
  - (iii) *the Market Share Information;*
  - (iv) *the Declining Dose Sales Information;*
  - (v) *the EMEA Reimbursement Conditions Information; and/or*

(vi) *the US Off-Label Sales Information.*

- (b) *Further and in the alternative to the matters pleaded and particularised in paragraph 48 above, had SRX had effective management and internal control systems to identify, assess and report its material financial business risks, by no later than 25 October 2016, 26 October 2016, 1 November 2016, 2 November 2016 or 7 November 2016, its employees would have been actually aware of the CEO Share Trade Material Information.*
- (c) *The information referred to in (a) and (b) would have been made available to officers with responsibility for managing and approving SRX's budget and the public announcements. If that had occurred, SRX would not have made the FY2017 Expected Dose Sales Statements or the CEO Share Sale Statement and/or would not have failed to disclose the No Reasonable Basis Material Information, the Declining ~~Performance~~ Sales Material Information, the Market Competition Effects Material Information, ~~and/or~~ the CEO Share Trade Material Information and/or the ASX Inquiry Material Information.*

87. In the premises, by making the Risk Management Representation SRX engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

**(Risk Management Representation Contravention).**

## **H.8 Risk Management Statement Contravention**

88. Further and in the alternative to the matters pleaded and particularised in paragraphs 83 to 87 above, by making the Risk Management Statement, SRX engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;
- (d) that, from 24 August 2016 to the end of the Relevant Period was misleading or deceptive, or likely to mislead or deceive, in contravention of:

- (i) section 1041H(1) of the Corporations Act;
- (ii) section 12DA(1) of the ASIC Act; and/or
- (iii) section 18 of the Australian Consumer Law,

**(Risk Management Statement Contravention).**

### **Particulars**

*The Applicants repeat the matters pleaded and particularised in paragraph 85 above.*

## **I. CAUSATION, LOSS AND DAMAGE**

### **I.1 SRX Securities' price reaction to the 9 December 2016 Announcement**

- 89. On 8 December 2016 (the last ASX trading day before the 9 December 2016 Announcement), the closing price of SRX shares was \$25.49.
- 90. At 8.27 am on 9 December 2016 (prior to the commencement of trading on the ASX), SRX released its 9 December 2016 Announcement.
- 91. On 9 December 2016, the SRX Securities price declined significantly.

### **Particulars**

(a) *The SRX Securities price:*

- (i) *on 8 December 2016, closed at \$25.49;*
- (ii) *on 9 December 2016, fell to a low of \$12.20 and closed at \$16.00;*
- (iii) *on 12 December 2016, fell to a low of \$16.19 and closed at \$16.60;*
- (iv) *on 13 December 2016, fell to a low of \$16.51 and closed at \$16.61.*

(b) *The price history of SRX Securities from 23 August 2016 to 22 December 2016 is set out in Schedule B to this Statement of Claim.*

- 92. On 16 December 2016, immediately following the 16 December 2016 CEO Investigation Announcement, SRX Securities price again declined significantly.

### **Particulars**

(a) *The SRX Securities price:*

- (i) on 15 December 2016, closed at \$16.40;
  - (ii) on 16 December 2016, fell to a low of \$15.52 and closed at \$15.57;
  - (iii) on 19 December 2016, fell to a low of \$14.31 and closed at \$14.94
  - (iv) on 20 December 2016, fell to a low of \$14.70 and closed at \$14.76.
- (b) *SRX Securities price history from 23 August 2016 to 22 December 2016 is set out in Schedule B to this Statement of Claim.*

## **I.2 Contraventions caused loss to the Applicants and the Group Members**

93. During the Relevant Period, the Applicants and Group Members acquired an interest in SRX Securities:
- (a) in a market regulated by, inter alia, sections 674(2) and 1041H of the Corporations Act, Rule 3.1 of the Listing Rules, section 12DA of the ASIC Act, and section 18 of the Australian Consumer Law;
  - (b) where the price or value of SRX Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) and 1041H of the Corporations Act, Rule 3.1 of the Listing Rules, and by the conduct by SRX alleged in this Statement of Claim to be in contravention of section 12DA of the ASIC Act and section 18 of the Australian Consumer Law;
  - (c) in a market to which the representations alleged in this Statement of Claim had been made where a reasonable person would expect those representations to have a material effect on the price of SRX Securities;
  - (d) further or alternatively to paragraph (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 SRX Securities; and
  - (e) in which falls in the price of SRX Securities on and after 9 December 2016 and 16 December 2016 were a result of release of information to the market which had not been previously revealed because of the Relevant Subsisting Contraventions (as defined in Schedule A) (or any of them).
94. During the Relevant Period the Relevant Subsisting Contraventions (or any of them) caused the market price for SRX Securities to be substantially greater than:

- (a) their true value; and/or
  - (b) the market price that would have prevailed but for the Relevant Subsisting Contraventions (or any of them).
95. Further or in the alternative to paragraphs 93 and 94, in the decision to acquire an interest in SRX Securities:
- (a) each of the Applicants relied directly on the FY2017 Expected Dose Sales Statements, the FY2017 Expected Dose Sales Representation, the Year to Date Dose Sales Representation, the No Adverse Competition Effects Representation and the Listing Rule Compliance Representation (and each of them);
  - (b) some Group Members relied directly on one or more of the FY2017 Expected Dose Sales Statements, the FY2017 Expected Dose Sales Representation, the Year to Date Dose Sales Representation, the No Adverse Competition Effects Representation the Listing Rule Compliance Representation, the CEO Share Trade Representation, the Risk Management Representation and the Risk Management Statement (collectively, the **Contravening Representations and Statements**).

#### **Particulars**

*The identity of all those Group Members which or who relied directly on any or all of the Contravening Representations and Statements are not known with the current state of the Applicants' knowledge and cannot be ascertained unless and until those advising the Applicants take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicants' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

96. Further or in the alternative, one or more of the Contravening Representations and Statements materially contributed to the decision of some Group Members to purchase SRX Securities at the prevailing market price during the Relevant Period.

#### **Particulars**

*The Applicants repeat the particulars to paragraph 95(b) above.*

### **I.3 Loss or damage suffered by the Applicants and Group Members**

97. The Applicants have suffered loss and damage in relation to their interests in SRX Securities by and resulting from the Relevant Subsisting Contraventions pleaded above (or any one or combination of those contraventions).

#### **Particulars**

- (a) *The loss suffered by the Applicants will be calculated by reference to:*
- (i) *the difference between the price at which they acquired their interests in SRX Securities during the Relevant Period and the true value of those interests; or*
  - (ii) *the difference between the prices at which they acquired their interests in SRX Securities and the market prices that would have prevailed at each of the times that they acquired those interests had the Relevant Subsisting Contraventions not occurred; or*
  - (iii) *alternatively, on the days during the Relevant Period where the traded price of SRX Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions, the quantum of that fall; or*
  - (iv) *alternatively, on the days after the Relevant Period when the traded price of SRX Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions, the quantum of that fall.*
- (b) ~~*Further particulars in relation to the Applicants' losses will be provided after the service of opinion evidence in chief. The Applicants' refer to the report of Gregory John Houston which is exhibit "GJH1" to the affidavit of Mr Houston affirmed 24 July 2018.*~~

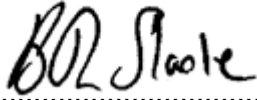
98. Group Members have suffered loss and damage in relation to their interest in SRX Securities by and resulting from the Relevant Subsisting Contraventions pleaded above (or any one or combination of those contraventions).

#### **Particulars**

*The loss suffered by Group Members will also be calculated in accordance with the particular (i) subjoined to paragraph 97 above but are not particularised in this Statement of Claim; particulars in relation to Group Members' losses will be obtained (and particulars will be provided) following opt out, the determination of the Applicants' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

This ~~second~~ third further amended pleading was prepared by Guy Donnellan and settled by and Norman O'Bryan SC.

Dated: 21 August 2018



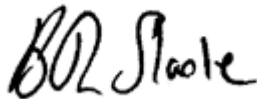
.....  
Ben Slade

Solicitor for the Applicants

### **Certificate of lawyer**

I, Ben Slade, certify to the Court that, in relation to the Third Further Amended Statement of Claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 21 August 2018



.....  
Signed by Ben Slade

Lawyer for the Applicants



## SCHEDULE A – GLOSSARY

### I Date-specific terms (listed in chronological order)

**BTG Annual Report** means the BTG Annual Report as particularised at subparagraph 34(a) of this Statement of Claim.

**12 May 2016 Memorandum** means the document as particularised in ~~subparagraph 45A(i)~~ paragraph 31 of this Statement of Claim.

**2016 Annual Report** means the document that SRX lodged with the ASX on 24 August 2016 as defined in subparagraph 10(a) of this Statement of Claim.

**2016 Corporate Governance Statement** means the document that SRX lodged with the ASX on 24 August 2016 as defined in subparagraph 10(b) of this Statement of Claim.

**24 August 2016 Results Announcement** means the announcement that SRX lodged with the ASX on 24 August 2016 as defined in subparagraph 10(c) of this Statement of Claim.

**24 August 2016 Results Slideshow** means the document that SRX lodged with the ASX on 24 August 2016 as defined in subparagraph 10(d) of this Statement of Claim.

**24 August 2016 Announcements** means the 2016 Annual Report, the 2016 Corporate Governance Statement, the 24 August 2016 Results Announcement and the 24 August 2016 Results Slideshow.

**FY2017 Expected Dose Sales Representation** means the representations individually and together pleaded at paragraph 56 of this Statement of Claim.

**FY2017 Expected Dose Sales Statements** means the statements made by SRX on 24 August 2016 pleaded in paragraph 12 of this Statement of Claim.

**25 October 2016 CEO's Address** means the Chief Executive Officer's address as defined in subparagraph 14(b) of this Statement of Claim.

**Year to Date Dose Sales Representation** means the representation made by SRX on 25 October 2016 pleaded at paragraph 63 of this Statement of Claim.

**No Adverse Competition Effects Representation** means the representation made by SRX on 25 October 2016 pleaded at paragraph 68 of this Statement of Claim.

**1 November 2016 Change of Interest Notice** means the announcement that SRX lodged with the ASX on 1 November 2016 as defined in paragraph 16 of this Statement of Claim.

**2 November 2016 Amended Change of Interest Notice** means the announcement that SRX lodged with the ASX on 2 November 2016 as defined in paragraph 18 of this Statement of Claim

**CEO Share Sale** means the information defined in paragraph 19 of this Statement of Claim.

**7 November 2016 CEO Announcement** means the announcement that SRX lodged with the ASX on 7 November 2016 as defined in paragraph 20 of this Statement of Claim.

**CEO Share Sale Statement** means the statement made by SRX on 7 November 2016 identified in paragraph 21 of this Statement of Claim.

**ASX Inquiry Material Information** means the information pleaded in paragraph 48B of this Statement of Claim.

**9 December 2016 Announcement** means the announcement that SRX lodged with the ASX on 9 December 2016 as defined in paragraph 22 of this Statement of Claim.

**12 December 2016 ASX Query** means an ASX inquiry to SRX on 12 December 2016 defined at paragraph 23B of this Statement of Claim.

**15 December 2016 ASX Response** means a response published by SRX to an ASX inquiry ~~particularised at subparagraph 28(a)~~ defined at paragraph 23A of this Statement of Claim.

**16 December 2016 CEO Investigation Announcement** means the announcement that SRX lodged with the ASX on 16 December 2016 as defined in paragraph 24 of this Statement of Claim.

**13 January 2017 CEO Termination Announcement** means the announcement that SRX lodged with the ASX on 13 January 2017 as defined in paragraph 26 of this Statement of Claim.

## **II Non-date specific terms**

**Affected Market** means the market as defined in paragraph 56 of this Statement of Claim.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**ASX** means the financial market operated by the Australian Securities Exchange Limited.

**Australian Consumer Law** means:

- (a) the *Australian Consumer Law* (Victoria) set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic); and/or
- (b) the *Australian Consumer Law* (NSW) set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 28 of the *Fair Trading Act 1987* (NSW).

**Bayer** means Bayer AG.

**BTG** means BTG Plc.

**CEO Share Trade Material Information** means the information pleaded in paragraph 48 of this Statement of Claim.

**CEO Share Trade Representation** means the representation of SRX to the Affected Market pleaded at paragraph 73 of this Statement of Claim.

**CEO Share Trade Representation Contravention** means the contravention pleaded at paragraph 77 of this Statement of Claim.

**Continuous Disclosure Statement** means the statement pleaded in subparagraph 13(b) of this Statement of Claim.

**Contravening Representations and Statements** means (individually or in any combination) the representations and statements of SRX made in contravention of statutory norms as identified in subparagraph 95(a) of this Statement of Claim.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Declining Dose Sales Information** means the information pleaded in paragraph 42 of this Statement of Claim.

~~**Declining Performance Material Information** means (individually or in any combination) the information pleaded in paragraph 47 of this Statement of Claim.~~

**Declining Sales Material Information** means the information pleaded in subparagraph 47(a) of this Statement of Claim.

**Disclosure Representation** means the representation of SRX to the Affected Market pleaded at subparagraph 78(i) of this Statement of Claim.

**EMEA Reimbursement Conditions Information** means the information pleaded at paragraph 45 of this Statement of Claim.

**FCAA** means the *Federal Court of Australia Act 1976* (Cth).

**FDA** means the United States Federal Drug Administration.

**Fifth Disclosure Contravention** means the contravention pleaded at subparagraph 54(e)(b)(ii) of this Statement of Claim.

**First Disclosure Contravention** means the contravention pleaded at subparagraph 54(a)(i) of this Statement of Claim.

**Forecast Sales Material Information** means the information pleaded in subparagraph ~~e~~ paragraph 46A of this Statement of Claim.

**Fourth Disclosure Contravention** means the contravention pleaded at subparagraph 54(b)(iii) ~~(i)~~ of this Statement of Claim.

**FY2017 Expected Dose Sales Representation Contravention** means the contravention pleaded at paragraph 61 of this Statement of Claim.

**FY2017 Expected Dose Sales Statement Contravention** means the contravention pleaded at paragraph 62 of this Statement of Claim.

**FY17 Budget** means the document particularised at subparagraph 31(b)(i).

**Group Members** means the persons on whose behalf the action is brought by the Applicants as identified in subparagraph 4(c) 1B of this Statement of Claim.

**Hannaford Report** means the report of Thomas Hannaford which is exhibit TJH-3 to the affidavit of Mr Hannaford affirmed on 11 April 2018.

**Listing Rules** means the Listing Rules of the ASX.

**Listing Rule Compliance Representations** means individually and together the representations pleaded at subparagraphs 1(a)(i) and 1(a)(ii) of this Statement of Claim.

**Listing Rule Compliance Representation Contravention** means the contravention pleaded at paragraph 82 of this Statement of Claim.

**Market** means the international market for liver-directed transcatheter salvage therapies ~~SIR-Spheres~~.

**Market Competition Effect Material Information** means the information pleaded at subparagraph 47(b) of this Statement of Claim.

**Market Competition Information** means the information pleaded at paragraph 40 of this Statement of Claim.

**Market Share Information** means the information pleaded at paragraph 41 of this Statement of Claim.

**mCRC** means metastatic colorectal cancer.

**No Adverse Competition Effects Representation Contravention** means the contravention pleaded at paragraph 72 of this Statement of Claim.

**No Double Digit Growth Material Information** means the information pleaded at paragraph 46B of this Statement of Claim

**No Reasonable Basis Material Information** means the information pleaded at paragraph 46 of this Statement of Claim.

**NPAT** means net profit after tax.

**Off-Label Sales** means the information pleaded at paragraph 45A(b) ~~45A(b)~~ of this Statement of Claim.

**Otsuka** means Otsuka Holding Co., Ltd.

**Reasonable Enquiry Representation** means the representation of SRX to the Affected Market pleaded at subparagraph 1(a)(ii) of this Statement of Claim.

**Regulatory position** means the information particularised at 45A(iii).

**Relevant Period** means the period from 24 August 2016 to 6.09 pm on 16 December 2016 (inclusive).

**Relevant Period Announcements** means separately and together the announcements pleaded at paragraph 78 of this Statement of Claim.

**Relevant Subsisting Contraventions** means (separately and in any combination):

- (a) the First Disclosure Contravention;
- (b) the Second Disclosure Contravention;
- (c) the Third Disclosure Contravention;
- (d) the Fourth Disclosure Contravention;
- (e) the Fifth Disclosure Contravention;
- (ea) the Sixth Disclosure Contravention;
- (eb) the Seventh Disclosure Contravention;
- (f) the FY2017 Expected Dose Sales Representation Contravention;
- (g) the FY2017 Expected Dose Sales Statement Contravention;
- (h) the Year to Date Dose Sales Representation Contravention;
- (i) the No Adverse Competition Effects Representation Contravention;
- (j) the CEO Share Trade Representation Contravention;
- (k) the Listing Rule Compliance Representation Contravention;
- (l) the Risk Management Representation Contravention; and/or
- (m) the Risk Management Statement Contravention.

**Risk Management Representation** means the representation made by SRX to the Affected Market pleaded at paragraph 83 of this Statement of Claim.

**Risk Management Representation Contravention** means the contravention pleaded at paragraph 87 of this Statement of Claim.

**Risk Management Statement** means the statement pleaded in subparagraph 13(a) of this Statement of Claim.

**Risk Management Statement Contravention** means the contravention pleaded at paragraph 88 of this Statement of Claim.

**Second Disclosure Contravention** means the contravention pleaded at subparagraph 54(b)(i) of this Statement of Claim.

**Securities Trading Policy** means the policy pleaded in paragraph 48 of this Statement of Claim.

**Securities Trading Statement** means the statement pleaded in subparagraph 13(c) of this Statement of Claim.

**Seventh Disclosure Contravention** means the contravention pleaded at subparagraph 54(d) of this Statement of Claim.

**SIRFLOX** means the clinical trial of SIR-Spheres pleaded at paragraph 30 of this Statement of Claim.

**SIRFLOX Information** means information pleaded in subparagraph 31(b) of this Statement of Claim.

**SIR-Spheres** means resin microspheres containing Yttrium-90.

**SIR-Spheres Sales Transparency Information** means the information pleaded in paragraph 28 of this Statement of Claim.

**Sixth Disclosure Contravention** means the contravention pleaded at subparagraph 54(c) of this Statement of Claim.

**SRX** means Sirtex Medical Limited (ACN 78 166 122).

**SRX Securities** means ordinary shares in SRX.

**Third Disclosure Contravention** means the contravention pleaded at subparagraph ~~54(b)(ii)~~ 54(a)(iii) of this Statement of Claim.

**US Off-Label Sales Information** means the information pleaded at paragraph 45A of this Statement of Claim.

**Year to Date Dose Sales Representation Contravention** means the contravention pleaded at paragraph 67 of this Statement of Claim.



**SCHEDULE B – SRX SECURITIES – ASX PRICE MOVEMENTS 23 AUGUST 2016  
TO 22 DECEMBER 2016**

ASX Code	Date	Close	Open	Low	High	Volume
SRX	23-Aug-2016	31.080	30.990	30.505	31.740	457,117
SRX	24-Aug-2016	34.800	32.750	32.680	35.045	841,880
SRX	25-Aug-2016	33.250	32.960	32.870	34.950	705,562
SRX	26-Aug-2016	33.400	33.000	32.650	33.710	337,002
SRX	29-Aug-2016	33.570	33.500	33.420	33.980	382,754
SRX	30-Aug-2016	33.390	34.000	33.260	34.180	499,693
SRX	31-Aug-2016	33.530	33.600	32.820	33.600	293,360
SRX	01-Sep-2016	32.500	33.460	32.150	33.650	401,029
SRX	02-Sep-2016	32.200	32.340	32.010	32.440	305,857
SRX	05-Sep-2016	31.920	32.430	31.780	32.620	179,423
SRX	06-Sep-2016	31.910	31.950	31.340	32.310	226,806
SRX	07-Sep-2016	31.550	32.020	31.370	32.290	217,156
SRX	08-Sep-2016	31.520	31.380	31.090	31.800	260,279
SRX	09-Sep-2016	30.670	31.190	30.300	31.320	317,342
SRX	12-Sep-2016	30.130	30.100	29.810	30.590	334,723
SRX	13-Sep-2016	30.470	30.440	30.190	30.770	281,648
SRX	14-Sep-2016	29.900	30.200	29.770	30.460	307,511
SRX	15-Sep-2016	30.180	29.830	29.770	30.240	227,916
SRX	16-Sep-2016	31.240	30.380	30.330	31.250	235,498
SRX	19-Sep-2016	30.670	31.050	30.500	31.120	53,160
SRX	20-Sep-2016	31.100	30.720	30.680	31.250	153,488
SRX	21-Sep-2016	30.950	31.100	30.450	31.100	196,276
SRX	22-Sep-2016	31.340	31.160	30.960	31.460	147,404
SRX	23-Sep-2016	31.960	31.400	31.030	32.160	216,273
SRX	26-Sep-2016	31.640	32.000	31.070	32.000	216,634
SRX	27-Sep-2016	31.730	31.440	30.900	31.740	248,812
SRX	28-Sep-2016	31.930	31.740	31.380	32.050	137,250
SRX	29-Sep-2016	32.110	32.150	31.840	32.155	210,560
SRX	30-Sep-2016	31.550	31.670	31.120	31.920	163,694
SRX	03-Oct-2016	31.650	31.850	31.250	31.880	109,167
SRX	04-Oct-2016	31.810	31.600	31.500	31.950	148,310
SRX	05-Oct-2016	31.590	31.330	31.330	31.800	112,945
SRX	06-Oct-2016	31.480	31.710	31.220	31.750	146,970
SRX	07-Oct-2016	31.110	31.500	31.070	31.650	121,152
SRX	10-Oct-2016	30.490	31.200	30.450	31.750	231,760
SRX	11-Oct-2016	29.970	30.450	28.610	30.490	888,805
SRX	12-Oct-2016	29.880	29.850	29.420	29.950	239,707
SRX	13-Oct-2016	29.620	29.800	29.400	29.920	231,327
SRX	14-Oct-2016	29.600	29.490	29.240	29.750	181,256

ASX Code	Date	Close	Open	Low	High	Volume
SRX	17-Oct-2016	29.490	29.600	29.300	29.860	298,704
SRX	18-Oct-2016	29.500	29.460	29.150	29.610	257,114
SRX	19-Oct-2016	29.380	29.730	29.280	29.760	151,115
SRX	20-Oct-2016	29.130	29.380	28.960	29.380	169,069
SRX	21-Oct-2016	29.110	29.000	28.800	29.250	178,122
SRX	24-Oct-2016	29.200	29.000	28.610	29.200	269,337
SRX	25-Oct-2016	29.740	29.470	29.410	30.220	180,401
SRX	26-Oct-2016	28.610	29.130	28.070	29.300	422,895
SRX	27-Oct-2016	28.200	28.610	27.730	28.610	254,781
SRX	28-Oct-2016	28.170	28.250	27.900	28.570	158,821
SRX	31-Oct-2016	27.910	28.290	27.800	28.290	130,277
SRX	01-Nov-2016	27.630	27.770	27.300	27.960	153,905
SRX	02-Nov-2016	27.200	27.240	27.120	27.430	341,438
SRX	03-Nov-2016	27.090	27.110	26.940	27.370	295,431
SRX	04-Nov-2016	26.950	26.990	26.760	27.130	266,850
SRX	07-Nov-2016	27.110	26.900	26.900	27.360	189,458
SRX	08-Nov-2016	27.000	27.460	26.920	27.480	160,212
SRX	09-Nov-2016	26.410	27.490	25.750	27.580	374,173
SRX	10-Nov-2016	28.040	27.580	27.500	28.250	323,250
SRX	11-Nov-2016	28.180	28.320	27.640	28.320	234,215
SRX	14-Nov-2016	28.000	28.680	27.960	28.700	207,252
SRX	15-Nov-2016	28.140	28.010	27.880	28.450	136,938
SRX	16-Nov-2016	28.280	28.470	28.280	28.860	218,003
SRX	17-Nov-2016	27.660	28.050	27.580	28.060	191,634
SRX	18-Nov-2016	27.770	27.700	27.280	27.840	246,515
SRX	21-Nov-2016	27.450	27.770	27.220	27.770	126,091
SRX	22-Nov-2016	27.990	27.350	27.350	28.240	121,049
SRX	23-Nov-2016	27.970	28.050	27.660	28.220	274,353
SRX	24-Nov-2016	28.090	28.170	27.750	28.250	179,813
SRX	25-Nov-2016	28.370	28.290	27.910	28.395	225,637
SRX	28-Nov-2016	28.590	28.520	28.410	28.820	188,135
SRX	29-Nov-2016	28.320	28.590	28.290	28.830	224,868
SRX	30-Nov-2016	27.620	28.160	27.340	28.510	289,780
SRX	01-Dec-2016	27.840	27.690	27.300	28.050	196,859
SRX	02-Dec-2016	27.150	28.040	26.980	28.100	245,566
SRX	05-Dec-2016	26.190	26.940	26.140	26.950	229,929
SRX	06-Dec-2016	26.040	26.290	25.890	26.430	665,931
SRX	07-Dec-2016	25.920	26.150	25.920	26.230	200,044
SRX	08-Dec-2016	25.490	26.000	25.400	26.120	369,609
SRX	09-Dec-2016	16.000	13.010	12.200	17.500	10,876,704
SRX	12-Dec-2016	16.600	16.800	16.190	17.330	2,576,548
SRX	13-Dec-2016	16.610	16.850	16.510	17.090	1,202,895
SRX	14-Dec-2016	16.8200	16.9800	16.7750	17.0800	938,357
SRX	15-Dec-2016	16.4000	16.8200	16.3450	16.9300	793,282

ASX Code	Date	Close	Open	Low	High	Volume
SRX	16-Dec-2016	15.5700	16.4100	15.5200	16.5000	1,133,960
SRX	19-Dec-2016	14.9400	15.3700	14.3100	15.4000	1,548,071
SRX	20-Dec-2016	14.7600	14.9500	14.7000	15.0500	837,841
SRX	21-Dec-2016	14.5000	14.7600	14.1600	14.8500	935,095
SRX	22-Dec-2016	14.2800	14.5000	14.1600	14.5600	812,466