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Registrar

Important Information

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 33
Rule 16.32

Filed pursuant to Order of Thawley J dated 19 August 2026

Defence to Tenth Amended Statement of Claim

No. NSD 106 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

CREDIT SUISSE VIRTUOSO SICAV-SIF IN RESPECT OF THE SUB– FUND CREDIT SUISSE (LUX) SUPPLY CHAIN FINANCE FUND
Applicant

INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) and others set out in the Schedule
First Respondent

In response to the Tenth Amended Statement of Claim (**ASOC**) filed pursuant to leave granted on 19 August 2026 on behalf of the Applicant (Credit Suisse Virtuoso SICAV-SIF in respect of the Sub–Fund Credit Suisse (Lux) Supply Chain Finance Fund (**Credit Suisse Virtuoso**)), the Sixth Respondent, Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455) (**TMMA**), says as follows.

PRELIMINARY MATTERS

A. As pleaded further in the document titled "**Annexure A** to the Defences filed by the BCC/TM Parties" in these proceedings (**Annexure A to this Defence**), the Fourth Respondent, BCC Trade Credit Pty Ltd (**BCC**), was induced to execute the relevant insurance instruments by non-disclosures and misrepresentations by or on behalf of Greensill Bank AG (**Greensill Bank**), Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Ltd (**GCUK**) (together, the **Greensill Group**) as to the risks being presented to it by the Greensill Group for trade credit insurance throughout the relevant period.

B. Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or

Filed on behalf of (name & role of party) Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455), Sixth Respondent
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voidable. In particular, and without limiting the generality of the foregoing, all references in this pleading to the Policy and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses.

C. Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the ASOC where appropriate for convenience only.

A. NATURE OF THE DISPUTE

1. Paragraphs 1B and 1C of the ASOC broadly identify the nature of the dispute insofar as it concerns TMMA, save that TMMA denies or does not know and therefore cannot admit that all of the allegations of fact embedded within those paragraphs are true, as set out in further detail below.

B. ISSUES LIKELY TO ARISE

2. In addition to the issues identified at paragraphs 2C, 2DA and 2E, to the extent used, the following issues are likely to arise:

   a. whether execution of the 2019 Policy and their endorsements was within the ostensible authority of BCC and Brereton;

   b. whether the 2019 Policy and their endorsements are binding on Insurance Australia Limited (**IAL**) by operation of section 917B or 917C of the *Corporations Act 2001* (Cth) (**Corporations Act**) even if execution of those documents was not within the actual authority of BCC and Brereton;

   c. whether IAL is liable by operation of section 917B or 917C of the Corporations Act for breach by BCC and Brereton of a warranty of authority in relation to the Policies and their endorsements and thereby bound to pay the amount of any valid claims under those documents;

   d. whether there was a common law duty of care on the part of TMMA to take reasonable precautions to avoid Credit Suisse Virtuoso suffering economic loss and, if so, whether that duty was breached and whether Credit Suisse Virtuoso suffered loss as a result; and

   e. whether TMMA engaged in misleading or deceptive conduct by not disclosing to Credit Suisse Virtuoso any suspicions it had that Mr Brereton may have acted outside authority; and

   f. whether TMMA and TMNF were "involved" in the sense alleged in any misleading or deceptive conduct of BCC.

C. THE PARTIES

3. In response to paragraph 3 of the ASOC, TMMA:

a1. admits paragraph 3(a);

a. says that the Credit Suisse (Lux) Supply Chain Finance Fund was terminated by the Board of Directors of Credit Suisse Virtuoso SICAV-SIF as of 4 March 2021;

Particulars

Credit Suisse Notice to Shareholders styled, "Information to the Shareholders of Credit Suisse (Lux) Supply Chain Finance Fund" dated 5 March 2021

b. otherwise does not know and therefore cannot admit the paragraph; and

c. says that any reference to "the Applicant" or "Credit Suisse Virtuoso" in this Defence is without prejudice to the non-admission at paragraph 3(b).

4. TMMA does not know and therefore cannot admit paragraph 4 of the ASOC.

5. TMMA admits paragraph 5 of the ASOC.

6. TMMA admits paragraph 6 of the ASOC.

7. TMMA admits paragraph 7 of the ASOC.

8. TMMA admits paragraph 8 of the ASOC.

8A. TMMA admits paragraph 8A of the ASOC.

9. In response to paragraph 9 of the ASOC, TMMA:

a. says that on 28 July 2016, BCC entered into an Agency & Authorised Representative Agreement (**CGU AAR Agreement**) with CGU Insurance Limited (**CGU**), by virtue of which it became an authorised representative of CGU;

b. says that on 1 August 2017, the insurance business of CGU was transferred to the First Respondent IAL, pursuant to orders of the Federal Court of Australia under s 17F(1) of the *Insurance Act 1973* (Cth);

c. says that by virtue of that transfer, the CGU AAR Agreement was transferred from CGU to IAL, and BCC became an authorised representative of IAL;

d. says that BCC never became an authorised representative of IAG Agencies;

e. says that on 9 April 2019, BCC and IAL entered into a new Agency & Authorised Representative Agreement (**IAL AAR Agreement**), which by virtue of cl 20.9(a) thereof, superseded the Agency & Authorised Representative Agreement that had been transferred from CGU to IAL;

f. relies on the IAL AAR Agreement for its full force and effect; and

g. otherwise denies the paragraph.

10. In response to paragraph 10 of the ASOC, TMMA:

a. says that, on or around 9 April 2019, IAL, TMMA and Bond & Credit Company Pty Ltd (**Bond**) entered into an agreement styled the "Policy and Claims Administration Outsourcing Deed" (**PACAO**), and the PACAO described TMMA and Bond together as Administrator;

b. says that, for the purposes of the PACAO, "Services" were defined to mean (cl 1.1):

i. customer service (including service availability, customer contract and complaints management);

ii. Claims processing (including Claims processing, error management document retention, Claim lodgement and Claim authorisation and Claims payment);

iii. Policy administration (including modifications of Policies, extensions of Bonds and premium collection and remittance); and

iv. preparing management reports;

c. says further that the PACAO also included the following defined terms (cl 1.1):

i. **Agency Agreements** means: (a) the Bond Agency Agreement between BCC Surety and IAL dated 5 June 2013; (b) the Agency and Authorised Representative Agreement between BCC Trade Credit and CGU dated 28 July 2016 (namely, the CGU AAR Agreement); (c) the Agency & Authorised Representative Extension Agreement between IAL and BCC Trade Credit (namely, the IAL AAR Agreement); and (d) the Bond Agency Extension Agreement;

ii. **Claim** means a claim under a Policy, and each of the following is, without limitation, deemed to be a separate Claim: (a) a claim that is lodged but subsequently withdrawn after the end of the month in which it is lodged; (b) a claim that is lodged by a person even though details are incomplete; (c) a claim under statutory cover arising from section 58 of the *Insurance Contracts Act 1984* (Cth) relating to a Policy; (d) a claim that is purportedly lodged under a Policy even though it is subsequently found that no Policy exists or there was no entitlement to lodge a claim;

iii. **Policy** means: (a) a commercial surety bond arranged or extended by BCC Surety and issued by IAL; or (b) a trade credit insurance product arranged by BCC and issued by IAL, pursuant to an Agency Agreement;

d. says further that it was a term of the PACAO that, during the term of the PACAO, the Administrator must provide the Services, and do so in accordance with cl 5.1 (a)(i)-(v);

e. admits that on and from 1 July 2019, and pursuant to the PACAO, BCC acted as IAL's agent to administer the Policies issued by IAL and arranged by BCC pursuant to an Agency Agreement on or before 20 June 2019 (with defined terms in this subparagraph having the meaning given to them in the PACAO; and

f. otherwise admits the paragraph.

10A. In response to paragraph 10A of the ASOC, TMMA:

a. says that on 11 March 2016, the fifth respondent, Greg Brereton (**Mr Brereton**) entered into a contract of employment with Bond (**Contract of Employment**);

b. says that BCC was not a party to the Contract of Employment and that Mr Brereton was never an employee of BCC; and

c. otherwise admits the paragraph.

10AA. In response to paragraph 10AA of the ASOC, TMMA:

a. says that it is a wholly owned subsidiary of TMNF;

b. says that it has been a local agent of TMNF since 20 October 2004; and

c. otherwise admits the paragraph.

10AB. In response to paragraph 10AB of the ASOC, TMMA:

a. says that from 11 March 2004, TMNF has held Australian Financial Services Licence (**AFSL**) number 246548;

b. says that from 20 October 2004, TMNF has been registered in Australia as a foreign company (overseas);

c. says that TMNF is in the business of providing non-life insurance; and

d. otherwise admits the paragraph.

10AC. TMMA admits paragraph 10AC of the ASOC.

D. OTHER RELEVANT ENTITIES

D.1 [NOT USED]

D.2 Greensill Group of companies

11. TMMA admits paragraph 11 of the ASOC.

12. TMMA admits paragraph 12 of the ASOC.

13. TMMA admits paragraph 13 of the ASOC.

14. In response to paragraph 14 of the ASOC, TMMA:

a. admits that on 8 March 2021, GCUK applied under s 124 of the *Insolvency Act 1986* (UK) for GCUK to be wound up on the basis that GCUK was unable to pay its debts for the purposes of s 122(1)(f) of the *Insolvency Act 1986* (UK);

b. admits there exists a Notice of Administrator's Appointment form appointing Trevor P O'Sullivan of Grant Thornton UK LLP as administrator of GCUK and dated 10 March 2021; and

c. otherwise does not know and therefore cannot admit the paragraph.

15. In response to paragraph 15 of the ASOC, TMMA:

a. admits that at least part of business of the Greensill Group prior to 8 March 2021 answered the description given in paragraph 15 of the ASOC; and

b. otherwise does not know and therefore cannot admit the paragraph.

D.3 Hoffman

16. TMMA does not know and therefore cannot admit paragraph 16 of the ASOC.

D.4 Catfoss Renewables Ltd

17. TMMA admits paragraph 17 of the ASOC.

18. TMMA does not know and therefore cannot admit paragraph 18 of the ASOC.

E. THE INSTALMENT PAYMENT AGREEMENT, SIDE LETTER AND GROUP GUARANTEES

18A. In respect of paragraphs 19 to 29 of the ASOC, TMMA says generally that:

a. it was not, and is not alleged to be a party to the documents or transactions identified in paragraphs 19 to 29 of the ASOC;

b. Credit Suisse Virtuoso does not allege (and TMMA would not be in a position to admit, in any event) that paragraphs 19 to 29 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents; and

c. TMMA will seek disclosure in relation to the matters the subject of paragraphs 19 to 29 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon review of any documents produced.

19. In response to paragraph 19 of the ASOC, TMMA:

a. admits that GCUK entered into a written agreement styled “Instalment Payment Agreement” (**IPA**) with Catfoss Renewables Ltd (**Catfoss**) dated 29 June 2018 in accordance with page 1 of that agreement;

b. says that the signatures of the “Customer”, Andrew Foreman (Director and authorised signatory for Catfoss) and the “Funder”, Jonathan Lane (General Counsel and authorised signatory for GCUK) set out on the IPA are undated;

c. does not know what date the IPA was executed by the persons referred to in subparagraph 19.b above of this Defence; and

d. otherwise denies the paragraph.

20. In response to paragraph 20 of the ASOC, TMMA:

a. admits that the IPA had a "Facility Amount" of GBP 23,000,000;

b. admits that the IPA contained terms broadly to the effect set out in paragraphs 20(a) to (f) of the ASOC, save that the obligation on Catfoss to make the Repayment Amount pleaded in paragraph 20(d) was an obligation to make payment into the Designated Funder Account on the applicable Maturity Date, being an account notified in writing by an authorised representative of GCUK to Catfoss from time to time;

c. says that the IPA also contained other provisions, including terms to the following effect:

   i. "Payables" was defined to mean payments which Catfoss may wish to make from time to time in respect of certain of its business transactions;

   ii. Catfoss or GCUK could terminate the IPA at any time by giving 30 days written notice of an intention to terminate;

   iii. Catfoss agreed to provide GCUK with copies of its financial statements or such other financial information as GCUK may reasonably request (cl 4);

d. refers to the terms of the IPA for its full force and effect as if the terms were set out in their entirety in this Defence; and

e. otherwise denies the paragraph.

21. In response to paragraph 21 of the ASOC, TMMA:

a. admits that Catfoss and GCUK entered into a written side agreement styled "Instalment Payment Agreement between Catfoss Renewables Limited, as Customer, and Greensill Capital (UK) Limited, as Funder, dated 29 June 2018 (the IPA) – Side Letter" (**Side Letter**);

b. says that the signatures of the "Customer", Andrew Foreman (Director for and on behalf of Catfoss) and the "Funder", Jonathan Lane (General Counsel for and on behalf of GCUK) set out on the Side Letter are undated;

c. does not know and therefore cannot admit what date the Side Letter was executed by the persons referred to at subparagraph 21.b of this Defence; and

d. otherwise denies the paragraph.

22. In response to paragraph 22 of the ASOC, TMMA:

a. admits that the Side Letter contained terms broadly to the effect pleaded in paragraphs 22(a) to (e), save that:

   i. the Side Letter used the expression “PAUF” (as defined on p 1 of the IPA) rather than “offer” or “offers”; and

   ii. the “Period”, as defined in the Side Letter, was the period of three years commencing on the first date of Drawdown, not the three-year period after entry into the IPA;

b. says that the Side Letter also contained terms to the following effect:

   i. after the expiry of the three year “Period”, GCUK and Catfoss would endeavour to re-negotiate the terms of the IPA such that principal and interest under the IPA would amortise to zero over the subsequent 24-month period (cl 2.3);

   ii. Catfoss acknowledged and agreed that GCUK shall deduct from the first Drawdown Amount the Arrangement Fee and Structuring Fee (as those terms are defined in a Fee Letter between GCUK and Catfoss dated on or around the date of the Side Letter) (cl 4);

   iii. it was a condition precedent of GCUK’s entry into the Catfoss IPA that GCUK was granted an option to purchase 25% of the issued share capital of Catfoss for GBP 12,500,000 if such purchase occurred within five (5) years of the date of the IPA, or GBP 25,000,000 if the purchase occurred between the start of the sixth year of the term of the IPA and the tenth anniversary of the IPA (cl 5);

   iv. it was a condition subsequent to GCUK’s entry into the IPA, and its provision to Catfoss of the facility set out therein, that within 28 business days of the first drawdown (cl 6):

      1. new company officers shall be appointed for Catfoss and its subsidiaries, including Neil Hobday (an individual who as at 27 June 2018 had a @greensill.com email address); and

      2. the entire issued share capital of Catfoss be held as follows: Andrew Foreman (76%); Neil Hobday or nominee (10%); Paul Bentham (10%) and Ian Roundell (4%);

   v. Catfoss shall maintain separate accounts as follows (cl 7):

1. an “Interest Account” in which sufficient monies are deposited to enable it to pay interest;

2. a “Working Capital Capex Account” which shall be credited with the amount of GBP 1,500,000 to be used for approved working capital and capital expenses, with withdrawals to be only made following a written request to GCUK and approved by GCUK; and

3. a “Debt Service Reserve and Maintenance Account” which shall be created with the amount up to the sum of GBP 1,250,000 to be used by Catfoss for business needs, with withdrawals to be only made following a written request to GCUK and approved by GCUK;

vi. Catfoss will provide unaudited financial statements within 90 days after the end of each of its financial years, and management accounts within 30 days after the end of each quarter (cl 9);

c. refers to the terms of the Side Letter for their full force and effect as if the terms were set out in their entirety in this Defence;

d. says that the effect of the Side Letter was to convert the arrangement provided for in the IPA into an arrangement whereby:

i. GCUK provided Catfoss with an interest-only loan of GBP 23,000,000 with a three-year term; and

ii. after the expiry of the three-year term, Catfoss and GCUK would renegotiate the IPA so that principal and interest would be amortised over a 24 month period; and

e. otherwise denies the paragraph.

23. In response to paragraph 23 of the ASOC, TMMA:

a. admits that representatives of GCUK and Catfoss signed a letter dated 20 November 2020 that purported to amend the definition of “Period” in the Side Letter to “the period commencing on the first date of Drawdown and ending on 28 February 2021”;

b. refers to the terms of the letter for its full force and effect as if the terms were set out in their entirety in this Defence; and

c. otherwise denies the paragraph.

24. In response to paragraph 24 of the ASOC, TMMA:

    a. admits that representatives of GCUK and Catfoss signed a letter dated 31 December 2020 styled "Instalment Payment Agreement between Catfoss Renewables Limited, as Customer, and Greensill Capital (UK) Limited, as Funder, dated 29 June 2018 (as amended and supplemented, the IPA) a side letter dated 29 June 2018 (together the IPA)", which purported to supplement the IPA with terms to the effect pleaded in paragraph 24;

    b. refers to the terms of the letter for its full force and effect as if the terms were set out in their entirety in this Defence; and

    c. otherwise denies the paragraph.

25. TMMA does not plead to paragraph 25 of the ASOC, which makes no allegations against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

F. CATFOSS NOTE PROGRAMME

26. In response to paragraph 26 of the ASOC, TMMA:

    a. admits that:

        i. representatives of Hoffman S.à r.l. (**Hoffman**) and Citibank N.A., London Branch (**Citibank**) signed a document styled "Lagoon Farm: Master Trust Deed" dated 13 October 2017 and signed documents described as being "supplemental to the master trust deed dated 13 October 2017" on 21 December 2017, 21 June 2018, 3 September 2018, 21 November 2018, 12 April 2019, 6 August 2019, 19 December 2019 and 5 May 2020 (**Master Trust Deed**); and

        ii. Hoffman issued a document styled "Series Supplement" and dated 4 July 2018 (**Series Supplement**), purporting to relate to notes in a compartment referred to as "Compartment Number: HY" and with security arising from a "Relevant Claim Originating Agreement" described as an agreement dated 29 June 2018 between GCUK and Catfoss (**Catfoss Notes**);

    b. says that the signatures on each of the documents which are alleged to constitute the Master Trust Deed and the Series Supplement are undated;

    c. does not know and therefore cannot admit that the Master Trust Deed, Series Supplement, or any supplementary deeds or documents were valid, that they were

properly executed or that they represented the entire agreement between the parties in relation to the matters they dealt with; and

d. otherwise does not know and therefore cannot admit the paragraph.

27. In response to paragraph 27 of the ASOC, TMMA:

a. admits that representatives of GCUK, Hoffman and Citibank signed a document styled "Master Assignment Agreement" dated 21 December 2017, with Hoffman as "Initial Purchaser" and Citibank as "Note Trustee" (**MAA**);

b. says that the signatures on the MAA are undated;

c. does not know and therefore cannot admit that the MAA was valid, that it was properly executed or that it represented the entire agreement between the parties in relation to the matters it dealt with;

d. subject to paragraph 27.c of this Defence, says that:

i. it was a term of the MAA that GCUK may from time to time offer to assign and sell with full title guarantee the whole, but not part, of any "Payment Obligation" and all of its "Additional Rights" in respect thereof to "Purchaser" and such "Purchaser" at its sole discretion may agree to purchase such "Payment Obligation" and the "Additional Rights" relating thereto from GCUK (cl 2.1);

ii. each offer of a Payment Obligation and its Additional Rights to Hoffman pursuant to clause 2.1 in respect of any Business Day shall be made by GCUK delivering an Offer File in respect of such Payment Obligation (and containing the relevant details thereof) to Hoffman attached to an e-mail from an Authorised User and password protected at any time before the relevant Cut-Off Offer Time on such Business Day (an "**Offer**") (cl 2.2);

iii. an Offer could be accepted by Hoffman at any time before the relevant Cut-Off Acceptance Time at which time, if not accepted, the Offer will lapse. Acceptance of an offer shall be effected by Hoffman (prior to the Offer lapsing) returning the Offer File to GCUK attached to an e-mail from an Authorised User and password protected, marked as "Accepted" (an **"Acceptance"**) (cl 2.3);

iv. "Offer File" was defined to mean, in respect of any Payment Obligation that GCUK proposes to assign to a Compartment of the Purchaser hereunder, an

electronic file or data feed identifying (i) the Compartment of the Purchaser to which the electronic file or data feed is to be delivered and subsequent Offer made, and (ii) such Payment Obligation, which shall include the following information in respect of such Payment Obligation:

1. Maturity Amount;
2. Currency;
3. Maturity Date;
4. Relevant Obligor;
5. Related party (if applicable);
6. Intermediary Party (if applicable);
7. Settlement Date;
8. Purchase Price;
9. Identifier;
10. Invoice ref; and
11. Product Code

in the form set out in Schedule 2 (cl 1.2, definition of "Offer File"); and

v. it was a term of the MAA that, on the terms and subject to the conditions set forth in the MAA, GCUK hereby sells, transfers, assigns, sets over and otherwise conveys absolutely with full title guarantee to the relevant "Purchaser", and the relevant "Purchaser" hereby purchases, all of GCUK's right, title and interest in, to and under each "Payment Obligation", and all of GCUK's "Additional Rights" relating thereto, which are the subject of an "Acceptance" provide to GCUK in accordance with clause 2.3, with effect as the date falling on or before the relevant Cut-Off Settlement Time on which GCUK receives the Purchase Price in respect of such "Payment Obligations" and "Additional Rights" (cl 3);

e. says further that:

i. "Payment Obligation" was defined to mean, in respect of any "Offer" or any "Assignment", a payment obligation owed by the "Relevant Obligor" and

having the details and being of the type specified in the relevant "Offer File"; and

ii. there was no "Payment Obligation" in existence unless there was in fact a payment obligation owed by the "Relevant Obligor"; and

f. otherwise does not know and therefore cannot admit the paragraph.

27A. TMMA does not plead to paragraph 27A of the ASOC, which makes no allegations against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

28. In response to paragraph 28 of the ASOC, TMMA:

a. refers to and repeats paragraphs 26 and 27 of this Defence;

b. otherwise denies the paragraph and says that the benefit of the Catfoss Payment Obligations was not validly assigned to Hoffman for the reasons given at subparagraphs c. to e. below;

c. does not know and therefore cannot admit that cl 2.1 to 2.3 of the Master Assignment Agreement were followed in respect of the assignment referred to in paragraph 28 of the ASOC, on the basis that:

i. there were prepared from time to time a number of Greensill-branded spreadsheets styled as "Notes Offer Reports";

ii. it does not appear that these Notes Offer Reports were emailed by GCUK in accordance with cl 2.2 of the Master Assignment Agreement by way of Offer; and

iii. it does not appear that the Notes Offer Reports were emailed from Hoffman back to GCUK in accordance with cl 2.3 of the Master Assignment Agreement by way of Acceptance;

d. alternatively, denies that cl 2.1 to 2.3 of the Master Assignment Agreement were followed, on the basis that:

i. the Notes Offer Reports do not identify the Compartment of Hoffman to which the electronic file or data feed was to be delivered and subsequent Offer made; and

ii. the Notes Offer Reports do not identify the "Invoice reference" as required;

e. says that the "Notes Offer Reports" failed to identify the underlying payment obligations to which they related in a manner consistent with the requirements of the Master Assignment Agreement, or at all; and

f. says further that, as a result, neither Credit Suisse Virtuoso nor Greensill Bank holds an interest in the Catfoss Payment Obligations, and accordingly cannot have suffered a Loss in respect of those obligations within the meaning of the Policy.

28A. In response to paragraph 28A of the ASOC, TMMA:

a. refers to and repeats paragraph 28 of this Defence;

b. says further that if Credit Suisse Virtuoso acquired the Catfoss Notes between 6 March 2020 and 25 February 2021 (which is not admitted) then the acquisition occurred in circumstances where:

i. the 2019 Policy expired on 22 February 2020;

ii. BCC and/or Tokio had disclosed concerns that Brereton had exceeded his delegated authority limits to Greensill and Marsh, on and from 2 July 2020;

Particulars

A. Voice message from Mark Callahan (Executive Vice President of TMHCC and Director of TMMA) to Angus Ward (Marsh) on around 2 July 2020;

B. Email from Mark Callahan to Angus Ward and others dated 2 July 2020 with subject line, "BCC on behalf of Tokio Marine" (CSA.0001.0015.0008);

C. Phone conversation between Toby Guy (CEO of TMMA and Director of TMMA/BCC) and Julian Macey-Dare (Marsh) on around 3 July 2020;

D. Letter from Toby Guy to GCPL, GCUK and GBAG, copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327);

E. Letter from Mark Callahan to GCPL, GBAG and GCUK dated 28 August 2020 (CSA.0001.0015.0006); and

F. Letter from Toby Guy (TMMA/BCC) on behalf of BCC to GCPL, GBAG and GCUK dated 1 September 2020 (MMC_GCUK08_00022720).

iii. Further or alternatively to (ii) above, in around July to September 2020, Greensill had been informed by BCC and/or TMMA that they would not be renewing the 2019 Policy, and were investigating the circumstances in which the 2019 Policy was written;

Particulars

i. Email from Mark Callahan (BCC on behalf of Tokio) to Ewan Berkemeier (Marsh), Flavia Pritchard (Marsh), Edward Smith (Marsh) and Angus Ward (Marsh) dated 2 July 2020.

ii. Letter from Toby Guy (BCC) to Lex Greensill (Greensill), Markus Nunnerich (Greensill) and GCUK dated 4 August 2020.

iii. Letter from Mark Callahan (Tokio) to Jason Green (GCPL and GCUK), Lex Greensill (GCPL), Markus Nunnerich (Greensill Bank) and GCUK dated 28 August 2020.

iv. Letter from Toby Guy (BCC) to Lex Greensill (GCPL), Markus Nunnerich (Greensill Bank) and GCUK dated 11 August 2020 sent by Toby Guy by email on 1 September 2020 at 5:28 pm.

iv. GCUK entered administration on 8 March 2021, five business days after the last tranche of the Catfoss Notes was acquired; and

c. otherwise does not know and therefore cannot admit the paragraph.

29. TMMA does not know and therefore cannot admit paragraph 29 of the ASOC.

FA. AGENT OF THE INSURER

FA.1 Agency arrangements between CGU and BCC and Brereton prior to the CGU Scheme

29A. TMMA admits paragraph 29A of the ASOC.

29B. TMMA admits paragraph 29B of the ASOC.

29C. In response to paragraph 29C of the ASOC, TMMA:

a. says in response to paragraph 29C(a) of the ASOC that BCC's actual authority to enter into trade credit insurance as CGU's agent was subject to the limitations on that authority contained in the CGU AAR Agreement, including the requirement in clause 2.1(c) that entry into any trade credit insurance be in accordance with the Underwriting Manual;

b. says that paragraph 29C(b) of the ASOC is a paraphrase of cl 2.1(a) of the CGU AAR Agreement;

c. says that paragraph 29C(c) is a paraphrase of clause 3.1(a) of the CGU AAR Agreement;

d. says that paragraph 29C(d) is a paraphrase of clause 8.1 of the CGU AAR Agreement and that the amounts that BCC was permitted to deduct from any payment of Premiums to CGU under clause 8.1 were any amounts due to it under clause 3.1, not only commissions;

e. says that paragraph 29C(e) is a paraphrase of clause 4.5(a) of the CGU AAR Agreement;

f. says that paragraph 29C(f) is a paraphrase of clause 4.5(b) of the CGU AAR Agreement;

g. says that paragraphs 29C(g)-(bb) are a paraphrase of the provisions of the CGU AAR Agreement to which they refer;

h. relies on and refers to the terms of the CGU AAR Agreement and the BCC Authorisation Notice (as defined in paragraph 29C(b) of the ASOC for their full terms and effect); and

i. otherwise admits the paragraph.

29D. TMMA admits paragraph 29D of the ASOC.

29E. In response to paragraph 29E of the ASOC, TMMA:

a. repeats paragraph 29B above;

b. says that pursuant to the BCC Authorisation Notice, CGU authorised BCC to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed BCC as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 28 July 2016);

c. relies on the terms of the CGU AAR Agreement and the BCC Authorisation Notice for their full force and effect; and

d. otherwise admits the paragraph.

29F. TMMA admits paragraph 29F of the ASOC.

29G. In response to paragraph 29G of the ASOC, TMMA:

a. says that BCC was an authorised representative of CGU for the purposes of Part 7.6 of the Corporations Act from 28 July 2016 onwards, not from 1 July 2016; and

b. otherwise admits the paragraph.

29H. TMMA admits paragraphs 29H of the ASOC.

29I. TMMA admits paragraph 29I of the ASOC.

29J. In response to paragraph 29J of the ASOC, TMMA:

a. says that pursuant to the Brereton Authorisation Notice (as defined at paragraph 29I of the ASOC), CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of CGU and for that purpose it appointed Mr Brereton as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

b. relies on the CGU AAR Agreement, Brereton Authorisation Agreement (as defined at ASOC paragraph 29H) and Brereton Authorisation Notice for their full force and effect; and

c. otherwise admits the paragraph.

29KA. In response to paragraph 29KA of the ASOC, TMMA:

a. says that (a) to (q) paraphrase the terms of the Underwriting Manual Version 1.0 and relies on the Underwriting Manual Version 1.0 for its full force and effect;

b. denies that the Underwriting Manual Version 1.0 fell within the definition of "Guidelines" for the purposes of the CGU AAR Agreement; and

c. otherwise admits the paragraph.

29KB. In response to paragraph 29KB of the ASOC, TMMA:

a. denies the allegation in (b) that BCC did not have authority to issue endorsements that were not Approved Endorsements and refers to and repeats paragraph 47A below; and

b. otherwise does not know and therefore cannot admit the paragraph.

29KC. TMMA admits paragraph 29KC.

29KD. TMMA admits paragraph 29KD.

29KE. In response to paragraph 29KE of the ASOC, TMMA:

a. says that (a) to (f) paraphrase the terms of the Underwriting Manual Version 2.0 and relies on the Underwriting Manual Version 2.0 for its full force and effect;

b. denies that the Underwriting Manual Version 2.0 fell within the definition of "Guidelines" for the purposes of the CGU AAR Agreement; and

c. otherwise admits the paragraph.

29K. TMMA admits paragraph 29K of the ASOC.

29L. In response to paragraph 29L of the ASOC, TMMA:

a. repeats paragraph 29J(a)-(b) above;

b. says that Mr Brereton was an authorised representative of CGU for the purposes of Part 7.6 of the Corporations Act from 8 July 2016 onwards, not 1 July 2016; and

c. otherwise admits the paragraph.

FA.2 The CGU Scheme

29M. In response to paragraph 29M of the ASOC, TMMA:

a. refers to the order of the Federal Court of Australia made on 20 July 2017, including Annexure A thereto, which contained the terms of the scheme for the transfer of the insurance business of CGU to IAL, for their full terms and effect; and

b. otherwise admits the paragraph.

29N. In response to paragraph 29N of the ASOC, TMMA:

a. refers to and repeats paragraph 29M of this Defence; and

b. otherwise admits the paragraph.

29O. TMMA admits paragraph 29O of the ASOC.

29P. In response to paragraph 29P of the ASOC, TMMA:

a. refers to and repeats paragraphs 29E and 29G of this Defence; and

b. otherwise admits the paragraph.

29Q. TMMA admits paragraph 29Q of the ASOC.

29R. TMMA admits paragraph 29R of the ASOC.

29S. TMMA admits paragraph 29S of the ASOC.

29T. In response to paragraph 29T of the ASOC, TMMA:

a. refers to and repeats paragraphs 29J and 29L of this Defence; and

b. otherwise admits the paragraph.

29U. TMMA admits paragraph 29U of the ASOC.

29V. TMMA admits paragraph 29V of the ASOC.

29W. [NOT USED]

29X. [NOT USED]

29Y. [NOT USED]

FA.3 IAL Agencies Agreements

29Z. In response to paragraph 29Z of the ASOC, TMMA:

a. says that on 29 January 2016, IAGA (which at that time was named Allied Global Underwriting Pty Ltd) became a wholly owned subsidiary of CGU;

b. says that at all material times until its deregistration on 15 April 2019, CGU was a subsidiary of Insurance Australia Group Ltd; and

c. otherwise admits the paragraph.

29ZA. TMMA does not know and therefore cannot admit paragraph 29ZA of the ASOC.

29ZB. In response to paragraph 29ZB of the ASOC, TMMA:

a. says that between 29 August 2017 and 9 April 2019 IAGA owned 50% of BCC's issued shares; and

b. otherwise denies the paragraph.

29ZC. In response to paragraph 29ZC of the ASOC, TMMA:

a. refers to and repeats paragraph 9 of this Defence;

b. says further that:

i. on 31 July 2017, Mr Brereton signed a document styled "Individual Authorisation Agreement" (the **IAGA Individual Authorisation Notice);**

ii. the IAGA Individual Authorisation Notice referred to "BCC Trade Credit Pty Ltd [having] entered into an Authorised Representative Agreement with IAGA" (the **IAGA AAR Agreement**);

iii. it is not aware of the existence of an executed version of the IAGA AAR Agreement; and

c. otherwise denies the paragraph.

29ZD. In response to paragraph 29ZD of the ASOC, TMMA:

a. refers to and repeats paragraph 29ZC of this Defence; and

b. says that paragraphs (a) to (r) paraphrase the terms of the IAL AAR Agreement referred to in paragraph 9 of this Defence and relies on that agreement for its full force and effect; and

c. otherwise admits the paragraph.

29ZEA. In response to paragraph 29ZEA of the ASOC, TMMA:

a. admits that the Underwriting Manual Version 3.0 came into effect on or about 9 April 2019;

b. denies that the Underwriting Manual Version 3.0 fell within the definition of "Guidelines" for the purposes of the IAL AAR Agreement referred to in paragraph 9 of this Defence;

c. relies on the Underwriting Manual Version 3.0 for its full force and effect; and

d. otherwise denies the paragraph.

29ZEB. In response to paragraph 29ZEB of the ASOC, TMMA:

a. says that (a) to (l) paraphrase the terms of the Underwriting Manual Version 3.0 and relies on the Underwriting Manual Version 3.0 for its full force and effect; and

b. otherwise admits the paragraph.

29ZE. [NOT USED]

29ZF. TMMA admits paragraph 29ZF of the ASOC.

29ZG. TMMA admits paragraph 29ZG of the ASOC.

29ZH. In response to paragraph 29ZH of the ASOC, TMMA:

a. refers to and repeats paragraph 29ZC of this Defence;

b. says that BCC was an authorised representative of IAL for the purposes of Part 7.6 of the Corporations Act from 1 August 2017 to 30 June 2019; and

c. otherwise denies the paragraph.

29ZI. TMMA admits paragraph 29ZI of the ASOC.

29ZJ. TMMA admits paragraph 29ZJ of the ASOC.

29ZK. TMMA admits paragraph 29ZK of the ASOC.

29ZL. TMMA admits paragraph 29ZL of the ASOC.

29ZM. In response to paragraph 29ZM of the ASOC, TMMA:

a. says that Mr Brereton was the authorised representative of IAL for the purposes of Part 7.6 of the Corporations Act from 1 August 2017 to 30 June 2019; and

b. otherwise does not know and therefore cannot admit the paragraph.

FA.4 Administration of the policies

29ZN. TMMA admits paragraph 29ZN of the ASOC.

29ZO. In response to paragraph 29ZO of the ASOC, TMMA:

a. refers to and repeats paragraph 10 of this Defence;

b. refers to the PACAO for its full force and effect; and

c. otherwise, admits the paragraph.

29ZP. TMMA admits paragraph 29ZP of the ASOC.

29ZQ. In answer to paragraph 29ZQ of the ASOC, TMMA:

a. refers to and repeats paragraph 10 of this Defence;

b. admits that on and from 1 July 2019, and pursuant to the PACAO, BCC acted as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019; and

c. otherwise admits the paragraph.

FA.5 Conduct of the Insurer's trade credit insurance business

29ZR. [NOT USED]

29ZS. In response to paragraph 29ZS of the ASOC, TMMA:

a. admits that on and from 1 August 2017, BCC periodically provided IAL with Bordereaux in the form of an Excel spreadsheet providing details of trade credit insurance policies written on behalf of IAL (the **Bordereaux**); and

b. otherwise denies the paragraph.

29ZT. In response to paragraph 29ZT of the ASOC, TMMA:

a. admits that the Bordereaux from time to time:

i. referred to trade credit insurance policies issued to GCPL, but did not refer to GCUK or GBAG; and

ii. referred to TB-03691 and TS-03087, but did not refer to the 2019 Policy;

b. relies on the Bordereaux for their full force and effect;

c. otherwise denies the paragraph.

29ZU. [NOT USED]

29ZV. [NOT USED]

29ZW. [NOT USED]

29ZX. [NOT USED]

29ZZ. In response to paragraph 29ZZ of the ASOC, TMMA:

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, the LOS Policy was (subject to any valid avoidance) binding on IAL.

29ZZAA. [NOT USED]

29ZZAB. In answer to paragraph 29ZZAB of the ASOC, TMMA:

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, the 2018 Policy TS-03088 was (subject to any valid avoidance) binding on IAL.

29ZZAC. [NOT USED]

29ZZA. In answer to paragraph 29ZZA of the ASOC, TMMA:

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, Policy TS-03088 was (subject to any valid avoidance) binding on IAL.

29ZZB. [NOT USED]

29ZZC. In answer to paragraph 29ZZC of the ASOC, TMMA:

a. refers to and repeats paragraphs 29ZZ, 29ZZAB and 29ZZA of this Defence;

b. says that Mr Brereton's actual authority as Head of Trade Credit allowed him to execute policies on behalf of BCC (including the LOS Policy, the 2018 Policy TS-03088) and Policy TS-03088); and

c. otherwise does not know and therefore cannot admit the paragraph.

29ZZD. In answer to paragraph 29ZZD of the ASOC, TMMA:

a. refers to and repeats paragraph 29ZZC of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

29ZZE. In answer to paragraph 29ZZE of the ASOC, TMMA:

a. refers to and repeats paragraph 29ZZC of this Defence; and

b. otherwise denies the paragraph.

29ZZF. [NOT USED]

29ZZFA. [NOT USED]

29ZZFB. [NOT USED]

29ZZFC. [NOT USED]

29ZZG. [NOT USED]

29ZZH. [NOT USED]

29ZZI. [NOT USED]

29ZZJ. [NOT USED]

29ZZK. [NOT USED]

29ZZL. [NOT USED]

29ZZM. [NOT USED]

29ZZN. TMMA admits paragraph 29ZZN of the ASOC.

29ZZO. TMMA admits paragraph 29ZZO of the ASOC.

29ZZP. TMMA admits paragraph 29ZZP of the ASOC.

29ZZQ. TMMA admits paragraph 29ZZQ of the ASOC.

29ZZR. TMMA denies paragraph 29ZZR of the ASOC.

29ZZS. In response to paragraph 29ZZS of the ASOC, TMMA:

a. repeats paragraph 10AB of this Defence; and

b. otherwise admits the paragraph.

29ZZT. TMMA admits paragraph 29ZZT of the ASOC.

G. THE INSURANCE POLICIES

G.1 The 2018 Policy

30. In response to paragraph 30 of the ASOC, TMMA:

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, the 2018 Policy was (subject to any valid avoidance) binding on IAL.

31. In response to paragraph 31 of the ASOC, TMMA:

a. says that Schedule 5 to the 2018 Policy stated that the Premium for the policy was "$1 (which the Insurer hereby acknowledges receipt of)"; and

b. notes that at paragraph 31 of its Defence, IAL denies that any amount was paid by way of a premium in respect of the 2018 Policy; and

c. otherwise does not know and therefore cannot admit the paragraph.

32. In response to paragraph 32 of the ASOC, TMMA:

a. admits that on 11 September 2018, Miroslav Knezicky (Senior Credit Analyst, Greensill Group) sent an email to Mr Brereton;

b. admits that the email from Mr Knezicky included the statements and attached the documents pleaded in subparagraphs (a) to (c) of the ASOC;

c. as to subparagraph 32(d) of the ASOC:

i. admits that the email from Mr Knezicky attached a document titled "Catfoss Renewables Credit Analysis Pack" dated July 2018;

ii. denies that the document made the express statements pleaded; and

iii. says that the document instead stated that GBP 21,250,000 would be used to refinance "all company's debt: banking facilities, working capital facilities and trade creditors" and the remaining GBP 1,750,000 would be "transferred to [GCUK] controlled Debt Service Reserve account and will be used to cover cash needs in the first coming months after the production commences" (pp. 3 and 5);

d. says that the email from Mr Knezicky and the attachments did not fully or fairly present the risk for which the Greensill Group was seeking cover, and repeats paragraphs 75.1 to 75AB.70 of Annexure A to this Defence; and

e. otherwise denies the paragraph.

33. In response to paragraph 33 of the ASOC, TMMA:

a. admits that Mr Brereton sent an email to Alexander Greensill (Lex Greensill) on 13 September 2018 that stated "I would be prepared to offer $23 mill GBP"; and

b. otherwise denies the paragraph.

34. In response to paragraph 34 of the ASOC, TMMA:

a. admits that Lex Greensill sent an email to Mr Brereton on 14 September, which stated the following proposal in respect of Catfoss:

i. indemnity of 75%; and

ii. policy amount of GBP 23,000,000;

b. says that the email also indicated that the premium would be 150 basis points per annum; and

c. otherwise denies the paragraph.

35. In response to paragraph 35 of the ASOC, TMMA:

a. repeats paragraphs 30 to 34 of this Defence;

b. says that:

i. on 15 September 2018, at 4:42 pm, Lex Greensill sent an email to Mr Brereton stating "Thank you, Greg, for your confirmation that the below is in order";

ii. the email from Lex Greensill further stated that the Greensill Group would prepare the endorsements and send them through in the next few hours; and

iii. on 15 September 2018, at 4:47 pm, Mr Brereton sent an email to Lex Greensill stating "Lex as discussed I can confirm"; and

c. otherwise denies the paragraph.

36. In response to paragraph 36 of the ASOC, TMMA:

a. admits that on 17 September 2018 Brereton signed a document purportedly on behalf of BCC as authorised representative of IAL which was styled as a "Customer Endorsement" bearing the number 27, and which purported to endorse Catfoss as a Customer under the 2018 Policy (**Customer Endorsement 27**);

b. repeats paragraphs 30 and32 of this Defence;

c. further or alternatively, says that Customer Endorsement 27 was not a valid "Customer Endorsement" under the 2018 Policy because:

i. Appendix 2 of the 2018 Policy required a Customer Endorsement to express a percentage premium rate; and

ii. Customer Endorsement 27 specified an amount of $1, which is not a percentage premium rate;

d. further or alternatively, says that Customer Endorsement 27 was not a valid "Customer Endorsement" under the 2018 Policy because:

i. "Customer" was defined to mean any "Customer" endorsed to the 2018 Policy under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor;

ii. "Debt" was defined to mean, as the context requires, a debt of the type described in the relevant Debt Endorsement; and

iii. for the reasons given at paragraph 52 of this Defence, there was no relevant Debt Endorsement in respect of Catfoss' obligations under the IPA and Side Letter; and

e. otherwise admits the paragraph.

37. In response to paragraph 37 of the ASOC, TMMA:

a. admits that on or around 26 September 2018 Mr Brereton signed a document purportedly on behalf of BCC as authorised representative of IAL which was styled as an "Endorsement" bearing the number 1 and which purported to extend the Policy Period for the 2018 Policy to 1 March 2019 (**Endorsement 1**);

b. repeats paragraphs 30 and 32 of this Defence;

c. further, says that Endorsement 1 was not an "Endorsement" within the meaning of the 2018 Policy and did not vary the 2018 Policy validly as:

i. the 2018 Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the 2018 Policy provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and Endorsement 1 was not signed on behalf of GCPL or Greensill Bank;

d. says that, the 2018 Policy expired on 27 December 2018; and

e. otherwise denies the paragraph.

G.2 The 2019 Policy

38. In response to paragraph 38 of the ASOC, TMMA:

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, the 2019 Policy was (subject to any valid avoidance) binding on IAL.

39. In response to paragraph 39 of the ASOC, TMMA:

a. refers to and repeats paragraph 38 of this Defence;

b. says that on the proper construction of the 2019 Policy, IAL agreed, subject to the terms, conditions and limitations of the policy, to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by or resulting from the occurrence of an Insured Cause (cl 1.1);

c. says that paragraph 39 of the ASOC is otherwise a paraphrase of the clauses of the 2019 Policy to which it refers;

d. says, in response to paragraph 39(g):

i. '**Eligible Debt**' has the meaning given in Schedule 7 to the 2019 Policy, which provides that all Eligible Debts from which are derived Assets owned by the Insured must satisfy the criteria listed at paragraph 37(g)(i) to (v) of the ASOC at the time of acquisition of the relevant Asset by the Insured;

ii. '**Debt Endorsement**' was defined to mean an endorsement to the 2019 Policy that is substantially in the form of Appendix 2 or such other form as the Insured and Insurer may agree from time to time and that describes the nature of a debt that is after the date of such endorsement able to be a 'Debt' for the purpose of the policy, and which may contain amendments to the

terms of the Policy in so far as the policy relates to such 'Debts' and 'Assets' derived therefrom; and

iii. the Debt Endorsement appended to the 2019 Policy (and incorporated in debt endorsements including Debt Endorsement 1) further required that the Eligible Debt arises under a Customer Agreement that is in full force and effect and to the best of the Insured's knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation of the Customer enforceable against such Customer in accordance with its terms, subject to no offset, counterclaim, defence or other adverse claim;

e. says that the 2019 Policy also contained the following express written terms:

i. subject to cl 2, a Loss in respect of an Asset owned by the Insured and derived from an Eligible Debt owed by an Eligible Customer can be the subject of a Claim under the 2019 Policy in the event that, by reason of an Insured Cause, the Insured has failed to receive its Expected Allocation on its Due Date (cl 3.1);

ii. the Insurer's liability to indemnify the Insured for a Loss shall, subject to the terms, conditions and limitations of the policy, apply only in respect of Assets owned by the Insured (or a Loss Payee) during the Policy Period (cl 4.1);

iii. subject to the Insured not exceeding the limits from time to time in force pursuant to the preceding provisions of cl 5, any asset acquired by the Insured (or a Loss Payee) during a Policy Period shall to the extent the Insured wishes it to be insured under the policy automatically attach to the policy and be on risk under the policy from the time the Insured (or a Loss Payee) acquires the risk in the Asset pursuant to the Transaction Documents (cl 5.5);

iv. that the Insured acknowledges and agrees that it has a duty to IAL of fair presentation in respect of the 2019 Policy and the risks insured thereunder (cl 7.1);

v. that IAL was not liable to indemnify the Insured in respect of any Loss in respect of which the Insured has failed to comply with its obligations under the policy where such failure has a 'Material Policy Impact' (cl 9.7);

vi. that without prejudice to the other provisions of cl 10, the Insured shall ensure that, following the occurrence of an event that may reasonably be

expected to result in a Loss under the 2019 Policy, it shall by exercising the Insured's rights under the Transaction Documents, act reasonably and prudently to prevent, mitigate and minimise Losses at all times, and that in doing so, the Insured shall act as would a reasonable and prudent owner of the Eligible Debt(s) in question without assuming that any Loss may be covered under the Policy (cl 10.7(a));

vii. that in the event of an Insured's failure to mitigate Loss in accordance with cl 10.7, the Insurer shall remain obliged to indemnify the Insured in respect of such Loss but, to the extent the Insurer is able to prove that a Loss would reasonably be expected to have been lower but for the failure to mitigate, the Insurer shall only be obliged to indemnify the Insured to the extent of that lower amount (cl 10.7(d));

viii. that any variation of the 2019 Policy (except by way of Endorsement as provided in the 2019 Policy) may only be effected in writing signed by or on behalf of each party (cl 15.3(a)); and

ix. that if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, the policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (cl 15.4);

f. refers to the full terms of the 2019 Policy for their full force and effect; and

g. otherwise admits the paragraph.

40. TMMA does not plead to paragraph 40 of the ASOC, which makes no allegations against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

41. In response to paragraph 41 of the ASOC, TMMA:

a. admits that on 13 March 2019 Mr Brereton signed a document which was styled as an "Endorsement" bearing the number 3 and which purported to endorse Catfoss as a Customer to the 2019 Policy (**Customer Endorsement 3**);

b. says that Customer Endorsement 3 stated:

i. in respect of "Customer Name", "Catfoss Renewables Ltd";

ii. in respect of "Country in which Customer is located", "United Kingdom";

iii. in respect of "Maximum Limit of Liability as at the date of the Endorsement", "GBP 23,000,000"; and

iv. in respect of "Maximum Tenor", "365 days from the date the Insured acquires the Debt";

c. says that Customer Endorsement 3 was submitted in draft by Marsh, acting on behalf of GCPL and Greensill Bank (and GCUK to the extent that a corresponding customer endorsement was being proposed for Comprehensive Trade Credit Insurance Policy TS-03691), to Mr Brereton;

Particulars

The relevant emails and draft endorsements include [TOK.001.00112253], [TOK.001.00108850] and [TOK.001.00108851];

d. repeats paragraph 38 of this Defence;

e. further, says that Customer Endorsement 3 was not a valid “Customer Endorsement” under the Policy because:

i. Appendix 2 of the 2019 Policy required a Customer Endorsement to express a percentage premium rate; and

ii. Customer Endorsement 3 specified an amount of $1, which is not a percentage premium rate;

f. further or alternatively, says that Customer Endorsement 3 was not a valid “Customer Endorsement” under the Policy because:

i. “Customer” was defined to mean any “Customer” endorsed to the Policy under a Customer Endorsement, being a debtor in respect of a Debt and including any successor in title or at law to such debtor;

ii. “Debt” was defined to mean, as the context requires, a debt of the type described in the relevant Debt Endorsement; and

iii. for the reasons given at paragraph 52 of this Defence, there was no relevant Debt Endorsement in respect of Catfoss’ obligations under the IPA and Side Letter;

f1. further or alternatively, says that Customer Endorsement 3 was valid only to the extent that it identified a Customer, and not to the extent that it purported to vary

the terms of the Policy or prescribe new terms inconsistent with those in the 2019 Policy;

f2. denies that Customer Endorsement 3, to the extent it was valid (if at all), had any effectiveness or operation prior to 13 March 2019; and

g. otherwise denies the paragraph.

42. In response to paragraph 42 of the ASOC, TMMA:

a. admits that on 13 March 2019 Mr Brereton signed a document which was styled as an “Endorsement” bearing the number 9 (**Endorsement 9**);

b. admits that Endorsement 9 included terms to the effect pleaded, save that it expressly applied to "Losses" suffered by Greensill Bank as the "Insured" and did not extend to any "Losses" arising from "Assets" held by any "Loss Payee";

c. repeats paragraph 38 of this Defence;

d. further , says that Endorsement 9 was not an “Endorsement” within the meaning of the 2019 Policy and did not vary the 2019 Policy validly as:

i. the 2019 Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the 2019 Policy provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and Endorsement 9 was not signed on behalf of GCPL or Greensill Bank; and

e. otherwise denies the paragraph.

43. In response to paragraph 43 of the ASOC, TMMA:

a. admits that on 27 June 2019, Mr Brereton signed a document which was styled as an “Endorsement” bearing the number 18 and which purported to extend the policy period (**Endorsement 18**);

b. repeats paragraph 38 of this Defence;

c. further and alternatively, says that Endorsement 18 was not an “Endorsement” within the meaning of the 2019 Policy and did not vary the 2019 Policy validly as:

i. the 2019 Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the 2019 Policy provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and Endorsement 18 was not signed on behalf of GCPL or Greensill Bank;

d. says that the 2019 Policy expired on 22 February 2020; and

e. otherwise denies the paragraph.

43A. In response to paragraph 43A of the ASOC, TMMA:

a. admits that on 13 March 2019, Mr Brereton signed a document which was styled as an "Endorsement" bearing the number 23 which purported to vary the definition of "Loss" or "Losses" in the 2019 Policy to the effect pleaded (**Endorsement 23**);

b. repeats paragraph 38 of this Defence;

c. further, says that Endorsement 23 was not an "Endorsement" within the meaning of the 2019 Policy and did not vary the 2019 Policy validly as:

i. the 2019 Policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement; and

ii. further and alternatively, cl 15.3(a) of the 2019 Policy provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party, and Endorsement 23 was not signed on behalf of GCPL or Greensill Bank; and

d. otherwise denies the paragraph.

43B. In response to paragraph 43B of the ASOC, TMMA:

a. admits that the paragraph is a paraphrase of some of the terms of Part C of Debt Endorsement 1 dated 13 March 2019;

b. says that Part C of Debt Endorsement 1 contained other terms, including that the "Debt":

i. related to goods and/or services supplied under a Contract (as defined in the 2019 Policy);

ii. was owing pursuant to a "Customer Agreement", meaning an agreement under which the Customer has an obligation to pay amounts to GCUK as a consequence of GCUK (or an Affiliate or a third party) settling or agreeing to settle "one of more accounts receivable relating to the supply of goods and/or services provided by a Supplier to the Customer or its Affiliate"; and

iii. was in an amount equal to the amount of any receivables which GCUK (or an Affiliate or a third party) has settled or agreed to settle in respect of goods and/or services provided a Supplier to the Customer or its Affiliate;

c. repeats paragraph 38 of this Defence;

d. further says that Debt Endorsement 1 was not a valid 'Debt Endorsement' under the 2019 Policy because, on the proper construction of that policy:

i. the 2019 Policy did not authorise the issue of a 'Debt Endorsement' that purported to operate retrospectively, and Debt Endorsement 1 did so; and

ii. the 2019 Policy, Appendix 2, required the Debt Endorsement to specify a premium rate in an associated Customer Endorsement, which in turn was required to express a percentage premium rate, and the relevant Customer Endorsement here, Customer Endorsement 3, specified an amount of $1 which is not a percentage premium rate; and

e. otherwise denies the paragraph.

44. [NOT USED]

G.3 Loss Payee Endorsement

45. In response to paragraph 45 of the ASOC, TMMA:

a. admits that "the Loss Payee Endorsement" endorsed Credit Suisse (Lux) Supply Chain Finance Fund as a Loss Payee under the 2019 Policy;

b. says the Loss Payee Endorsement is not valid:

i. to the extent that it purported to vary the terms of the 2019 Policy or prescribe new terms inconsistent with those in the 2019 Policy; and

ii. to the extent that it purported to operate retrospectively;

c. further or alternatively, in circumstances where the Loss Payee Endorsement named the Sub-Fund, and not Credit Suisse Virtuoso, it was ineffective to confer any rights on Credit Suisse Virtuoso to sue under the Policy for any Loss allegedly suffered; and

d. otherwise admits the paragraph.

46. In response to paragraph 46 of the ASOC, TMMA:

a. admits that the Loss Payee Endorsement included terms broadly to the effect pleaded in subparagraphs (a) and (b), save that the relevant obligation in subparagraph (a) was expressed as being an instruction by the Insured (Greensill Bank and GCPL) to the Insurer;

b. says that the Loss Payee Endorsement further provided that:

i. the Loss Payee declared that it is fully aware of the 2019 Policy terms, and that it was the Insured's obligation to communicate any relevant information and/or contractual amendments to the Loss Payee;

ii. it was understood that the Loss Payee Endorsement does not modify any rights and obligations defined in relation to the 2019 Policy other than as stated therein; and

iii. the Loss Payee acknowledges that it does not have any rights under the 2019 Policy except the payment by the Insurer of any Claim payment payable under the 2019 Policy in accordance with the Loss Payee Endorsement; and

c. otherwise admits the paragraph.

47. TMMA does not know and therefore cannot admit paragraph 47 of the ASOC.

47AA. TMMA admits paragraph 47AA of the ASOC.

47AB. TMMA admits paragraph 47AB of the ASOC.

47AC. TMMA admits paragraph 47AC of the ASOC.

G.3A Loss Payee Limit Endorsements

47AD. TMMA admits paragraph 47AD of the ASOC.

47AE. TMMA admits paragraph 47AE of the ASOC.

47AF. TMMA admits paragraph 47AF of the ASOC.

G.3B Other Endorsements

47AG. TMMA admits paragraph 47AG of the ASOC.

G.4 BCC as agent of the Insurer

47A. In response to paragraph 47A of the ASOC, TMMA:

a. admits the paragraph;

b. says that BCC and Brereton had actual authority to enter into the Loss Payee Endorsement for and on behalf of IAL to the extent it endorsed Credit Suisse Virtuoso as loss payee under the 2019 Policy (if issued within authority);

c. says that the conduct of BCC and Brereton in executing each of the documents referred to in paragraphs 47A and 86 of the ASOC was within the ostensible authority of BCC and Brereton;

Particulars

i. IAL held out BCC as its underwriting agent to write trade credit insurance, without any disclosure to intending insureds of any limitations on BCC's authority to write trade credit insurance on its behalf;

ii. IAL held out Brereton as the Head of Trade Credit at BCC to write trade credit insurance, without any disclosure to intending insureds of any limitations on Brereton's authority to write trade credit insurance on its behalf;

iii. IAL appointed BCC and Brereton as its authorised representatives to provide trade credit insurance on its behalf, with those authorisations recorded in the public register maintained by ASIC and which authorisations did not disclose any limitations on BCC's and Brereton's authority to write trade credit insurance on IAL's behalf;

iv. On 1 August 2017, IAL published a statement (**To Whom It May Concern Letter**) which represented to intending insureds or third parties that BCC was authorised to issue trade credit insurance as agent of IAL, which statement was forwarded to Marsh on 10 August 2017 (MAR.0004.0001.0597);

v. The To Whom It May Concern Letter did not qualify the representation of BCC's authority or otherwise disclose any limitation on BCC's authority to write trade credit insurance on IAL's behalf;

vi. The representation made by the To Whom It May Concern Letter was a continuing representation;

vii. Intending insureds could reasonably expect IAL to be aware, through bordereaux reporting, of trade credit insurance written by BCC and could reasonably assume such insurance was written with IAL's authority in the absence of any statement by IAL to the contrary;

viii. Intending insureds could reasonably expect BCC to remit premium to IAL for trade credit insurance written by BCC and could reasonably assume such insurance was written with IAL's authority in the absence of any statement by IAL to the contrary;

ix. On or about 3 June 2020, GBAG made a claim under Policy TS-03088 (**NMC Claim**). In accepting and part-paying the NMC Claim, IAL (through its solicitors) represented that Policy TS-03088 had been issued by BCC on behalf of IAL and that BCC was authorised on behalf of IAL to write trade credit insurance:

A. on the policy wording of Policy TS-03088, which was materially identical to the 2019 Policy;

B. insuring GBAG, being an insured domiciled outside Australia, in respect of customers domiciled outside Australia;

C. for a premium of $1;

D. with no excess payable by GBAG;

E. to which the Virtuoso Sub-Fund was endorsed as a loss payee;

F. with customer limits at least equal to the limits set out in the customer endorsements to Policy TS-03088.

d. says that, if GBAG relied in good faith on the conduct alleged at paragraph 86 of the ASOC, IAL would be bound (subject to any valid avoidance) by each of the documents referred to in paragraph 47A of the ASOC by operation of section 917B or 917C of the *Corporations Act* even if BCC and Brereton acted outside their actual authority in executing those documents;

e. says that if, which is not admitted, Credit Suisse relied in good faith on the conduct alleged at paragraph 47A of the ASOC, IAL would be bound, as between IAL and Credit Suisse Virtuoso (subject to any valid avoidance), by each of the documents referred to in paragraphs 47A and 86 of the ASOC, by operation of section 917B or 917C of the Corporations Act even if BCC and Brereton acted outside their actual authority in executing those documents;

f. says that BCC and Brereton, by executing each of the documents referred to in paragraphs 47A and 86 of the ASOC, represented and warranted to the insureds that they were authorised by IAL to execute those documents on IAL's behalf (**Warranty of Authority**);

g. says that, if GBAG relied in good faith on the conduct alleged at paragraph 86 of the ASOC, as between IAL and GBAG, IAL is responsible by operation of section 917B or 917C of the *Corporations Act* for any breach of BCC's and Brereton's Warranty of Authority given in respect of each of the documents referred to in paragraphs 47A and 86 of the ASOC even if BCC and Brereton acted outside their actual authority in executing those documents;

h. says that if, which is not admitted, Credit Suisse Virtuoso relied in good faith on the conduct alleged at paragraphs 47A and 86 of the ASOC, IAL is responsible by operation of section 917B or 917C of the *Corporations Act* for any breach of BCC's and Brereton's Warranty of Authority given in respect of each of the documents referred to in paragraphs 47A and 86 of the ASOC even if BCC and Brereton acted outside their actual authority in executing those documents;

i. says that, by reason of the matters referred to in paragraphs (b) to (h) above, IAL would be obliged (subject to any valid avoidance and policy coverage defences) to make payment for any Loss falling within the scope of cover provided by the 2019 Policy even if BCC and Brereton acted outside their actual authority in executing those documents; and

j. says that Credit Suisse admits that the 2019 Policy, even if issued within authority, does not respond to losses Credit Suisse Virtuoso claims in these proceedings.

Particulars

Letter dated 30 June 2026 from Gilbert +Tobin to Kennedys

47B. TMMA admits paragraph 47B of the ASOC.

47C. In response to paragraph 47C of the ASOC, TMMA:

a. does not know and therefore cannot admit the paragraph; and

b. repeats paragraph 47A above and says that the conduct of BCC and Brereton referred to at paragraphs 47A and 47B of the ASOC was within the ostensible authority of BCC and Brereton and, if relied upon by GBAG and/or Credit Suisse Virtuoso in good faith, was conduct for which, as between IAL and GBAG and/or Credit Suisse Virtuoso respectively, IAL was responsible under section 917B or 917C of the *Corporations Act* even if BCC and Brereton acted outside their actual authority.

47D. [NOT USED]

47E. [NOT USED]

48. [NOT USED]

49. [NOT USED]

50. [NOT USED]

51. [NOT USED]

G.5 [NOT USED]

52. [NOT USED]

53. [NOT USED]

54. [NOT USED]

55. [NOT USED]

56. [NOT USED]

57. [NOT USED]

58. [NOT USED]

59. [NOT USED]

60. [NOT USED]

61. [NOT USED]

62. [NOT USED]

63. [NOT USED]

H. POWER OF ATTORNEY

64. In response to paragraph 64 of the ASOC, TMMA:

    a. admits that on 31 January 2019 Greensill Bank executed a power of attorney in favour of Credit Suisse Virtuoso;

    b. says that the paragraph is a paraphrase of the provisions of the Power of Attorney to which it refers;

    c. refers to and relies on the terms of the Power of Attorney for their full force and effect; and

    d. says that this proceeding has been brought in the name of Credit Suisse Virtuoso purportedly in its own right, and not in the name of Greensill Bank;

    e. says that, in the premises, the Power of Attorney has no apparent application to the acts taken (or purportedly taken) by Credit Suisse Virtuoso in connection with this proceeding to date; and

    f. otherwise denies the paragraph.

I. CATFOSS' FAILURE TO PAY

65. In relation to paragraph 65:

    a. TMMA does not know and therefore cannot admit paragraph 65 of the ASOC; and

    b. says further that the debts set out in Annexure A to the ASOC were not covered by the 2019 Policy.

Particulars

Letter dated 30 June 2026 from Gilbert + Tobin to Kennedys

66. [NOT USED]

67. [NOT USED]

J. CLAIMS ON THE POLICY

68. TMMA admits paragraph 68 of the ASOC.

69. [NOT USED]

70. [NOT USED]

K. INSURER HAS FAILED TO PAY

71. [NOT USED]

72. [NOT USED]

73. TMMA admits paragraph 73 of the ASOC and says that IAL has no liability to indemnify or pay any amount to GBAG or Credit Suisse Virtuoso because the 2019 Policy does not respond to the claim referred to in paragraph 68 of the ASOC.

74. TMMA admits paragraph 74 of the ASOC.

75. [NOT USED]

76. [NOT USED]

77. [NOT USED]

L. CLAIMS AGAINST BCC AND MR BRERETON

78. [NOT USED]

79. [NOT USED]

80. [NOT USED]

L.1 Knowledge of BCC and Mr Brereton

81. In response to paragraph 81 of the ASOC, TMMA:

    a. repeats paragraph 81 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

82. In response to paragraph 82 of the ASOC, TMMA:

a. repeats paragraph 82 of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

83. In response to paragraph 83 of the ASOC, TMMA:

a. repeats paragraph 83 of BCC's Defence in these proceedings; and

b. otherwise admits this paragraph.

84. In response to paragraph 84 of the ASOC, TMMA:

a. repeats paragraph 84 of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

85. In response to paragraph 85 of the ASOC, TMMA:

a. repeats paragraph 85 of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

85A. In response to paragraph 85A of the ASOC, TMMA:

a. repeats paragraph 85A of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

85B. In response to paragraph 85B of the ASOC, TMMA:

a. repeats paragraph 85B of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

85C. In response to paragraph 85C of the ASOC, TMMA:

a. repeats paragraph 85C of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

L.2 BCC/Brereton Conduct

86. In response to paragraph 86 of the ASOC, TMMA:

a. repeats paragraph 86 of BCC's Defence in these proceedings; and

b. otherwise admits the paragraph.

87. [NOT USED]

88. [NOT USED]

89. [NOT USED]

90. [NOT USED]

91. [NOT USED]

92. [NOT USED]

92A. [NOT USED]

92B. [NOT USED]

L.3 Misleading or Deceptive Conduct

93. In response to paragraph 93 of the ASOC, TMMA:

a. repeats paragraph 93 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

94. In answer to paragraph 94 of the ASOC, TMMA:

a. repeats paragraph 94 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

95. In response to paragraph 95 of the ASOC, TMMA:

a. repeats paragraph 95 of BCC's Defence in these proceedings; and

b. otherwise does not plead to the paragraph, there being no allegation against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

96. In response to paragraph 96 of the ASOC, TMMA:

a. repeats paragraph 96 of BCC's Defence in these proceedings; and

b. otherwise does not plead to the paragraph, there being no allegation against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

97. In response to paragraph 97 of the ASOC, TMMA:

a. repeats paragraph 97 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

98. In response to paragraph 98 of the ASOC, TMMA:

a. repeats paragraph 98 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

99. In response to paragraph 99 of the ASOC, TMMA:

a. repeats paragraph 99 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

100. In response to paragraph 100 of the ASOC, TMMA:

a. repeats paragraph 100 of BCC's Defence in these proceedings; and

b. otherwise does not plead to the paragraph, there being no allegation against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

101. In response to paragraph 101 of the ASOC, TMMA:

a. repeats paragraph 101 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

Particulars

BCC refers to and relies on the matters set out in the document titled "Annexure C to the BCC/TM.

102. In response to paragraph 102 of the ASOC, TMMA:

a. repeats paragraph 102 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

102A. In response to paragraph 102A of the ASOC, TMMA:

a. admits that the conduct alleged at paragraphs 93 to 100 of the ASOC related to the provision of a financial service within the meaning of s 917A of the Corporations Act;

b. does not know and therefore cannot admit sub-paragraphs 102A(b) to (d);

c. in response to paragraph 102A(e), denies the paragraph and:

i. says that the alleged conduct of BCC and Brereton referred to in paragraphs 93 to 100 of the ASOC occurred prior to 1 July 2019 and in BCC's capacity as the corporate authorised representative of IAL, not TMNF; and

ii. says that BCC and/or Brereton made a disclosure for the purposes of ss 917D(b) and (c) of the Corporation Act when executing the relevant policies and endorsements, by disclosing that BCC was acting not on behalf of TMNF but on behalf of another Licensee, being IAL;

iii. denies that Credit Suisse Virtuoso could reasonably be expected to rely on that conduct on or after 2 July 2020 by reason of BCC's notifications to Greensill and its broker, Marsh, of concerns regarding Brereton's authority

Particulars

A. Voice message from Mark Callahan (Executive Vice President of TMHCC and Director of TMMA) to Angus Ward (Marsh) on around 2 July 2020.

B. Email from Mark Callahan to Angus Ward and others dated 2 July 2020 with subject line, "BCC on behalf of Tokio Marine" (CSA.0001.0015.0008);

C. Phone conversation between Toby Guy (CEO of TMMA and Director of TMMA/BCC) and Julian Macey-Dare (Marsh) on around 3 July 2020.

D. Letter from Toby Guy to GCPL, GCUK and GBAG, copied to Marsh dated 4 August 2020 (CSA.0001.0008.0327).

E. Letter from Mark Callahan to GCPL, GBAG and GCUK dated 28 August 2020 (CSA.0001.0015.0006).

F. Letter from Toby Guy (TMMA/BCC) on behalf of BCC to GCPL, GBAG and GCUK dated 1 September 2020 (MMC_GCUK08_00022720).

102B. TMMA denies paragraph 102B of the ASOC.

Contributory negligence

102AA. The loss or damage the subject of Credit Suisse Virtuoso's claim (if any) was at least partly a result of Credit Suisse Virtuoso's own failure to take reasonable care, with the result that, pursuant to s 1041I(1B) of the Corporations Act, s 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 137B of the Competition and Consumer Act, Part 1A, Division 8 of the *Civil Liability Act 2002* (NSW) (**Civil Liability Act**) and at common law, the damages payable by TMMA (if any) should be reduced to the extent to which the court thinks just and equitable having regard to Credit Suisse Virtuoso's share in the responsibility for the alleged loss and damage, on the following grounds:

0a. At all material times, Credit Suisse Asset Management (**CSAM**) and Credit Suisse Fund Management S.A. (**CSFM**) were the agents of Credit Suisse Virtuoso;

Particulars

i. CSAM was the portfolio manager for Credit Suisse Virtuoso (now UBS Asset Management (Europe) SA).

ii. CSFM was the fund manager for Credit Suisse Virtuoso.

iii. Credit Suisse Virtuoso accepts, for the purposes of these proceedings, that the conduct of CSAM and CSFM and their employees in relation to the Catfoss Notes was the conduct of CSAM and CSFM as agents for Credit Suisse Virtuoso: letter from Credit Suisse Virtuoso's solicitors dated 30 January 2025.

0b. At all material times, Credit Suisse Fund Services (Luxembourg) SA (**CSFS**) was the agent of CSFM;

Particulars

i. TMMA refers to and relies on the service level agreement between CSFS and CSFM referred to in the Affidavit of Guy Reiter sworn on 25 October 2024 (paragraph 30(c)), headed "Intragroup Service Order" (CSA.5000.0003. 3393) (**Service Level Agreement**).

ii. Under the Service Level Agreement:

A. the "Service Provider" is CSFS and the "Service Receiver" is CSFM (Service Level Agreement, pp 1 and 5 of 47); and

B. the "Service Provider [CSFS] will perform on behalf of the Service Receiver [CSFM] 'Fund Administration Services' as further detailed below with respect to all investment funds and equivalent structures managed by the Service Receiver [CSFM]" (Service Level Agreement, "Scope", p 5 of 47).

a. at the time at which Credit Suisse Virtuoso acquired each of the Catfoss Notes, Credit Suisse Virtuoso (acting by or through CSAM, CSFM, and CSFS) failed to undertake any or adequate investigations and/or due diligence into:

i. the transactions pursuant to which the Catfoss Notes were acquired;

ii. the purported insurance arrangements (including the 2018 Policy, the Policy (as applicable) and their purported endorsements);

iii. BCC/Brereton's authority on behalf of IAL as referred to in the ASOC; and

iv. the risk of default as between the account debtor/borrower and GCUK (or any assignee from GCUK of the account debtor's payment obligations), including because of the risk that there were no genuine actual or expected accounts receivable and transactions between an underlying supplier and an underlying purchaser.

Particulars

i. In or about late February 2023, the Swiss regulator FINMA concluded its enforcement proceedings against Credit Suisse "in connection with its business relationship with financier Lex Greensill and his companies" and found that Credit Suisse (which included entities to whom Credit Suisse Virtuoso had delegated responsibility for its investment in the Catfoss Notes and acted with or through, as alleged in this paragraph 102AA) "seriously breached" their supervisory duties as asset manager imposed by Swiss banking law as identified in the FINMA Ruling (see below) to adequately identify, limit and monitor risks in the context of their business relationships with Lex Greensill and his companies (including Greensill Bank and GCPL) over a period of years.

TMMA refers to and relies upon the investigations and findings as to the conduct of the CSAM, CSFM, and CSFS recorded in:

A. the press release issued by FINMA on 28 February 2023 titled "FINMA concludes "Greensill" proceedings against Credit Suisse" (**FINMA Press Release**) [MAR.0008.2000.0013];

B. the report commissioned by FINMA and prepared by the Swiss firm, Wenger Plattner Attorneys at Law titled "Credit Suisse Group AG, Credit Suisse AG, Credit Suisse Asset Management (Switzerland) Ltd | FINMA Provisional Ruling of 1 April 2021 Investigation Report" in two parts (Part 1 dated 30 July 2022 and Part 2 dated 21 September 2022) (**Wenger Plattner Report**) [CSA.0001.0011.7751; CSA.0001.0011.7752] (noting that, at the time of preparing this amended pleading, TMMA has been provided with incomplete translations of these documents which are the subject of redactions for claims for privilege and confidentiality); and

C. the ruling issued by FINMA titled "In matters [of] Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Asset Management (Schweiz) AG concerning Greensill Supply Chain Finance Funds; breach of conduct and organisational requirements" dated 9 December 2022 (**FINMA Ruling**) [CSA.0001.0011.7753].

ii. Wall Street Journal, "Long Before Greensill Imploded, Credit Suisse Saw Danger" (4 March 2021).

iii. ABC7 News, "Credit Suisse Missed Many Warnings before Greensill Collapsed" (5 March 2021).

iv. Financial Times, "Credit Suisse Executives 'Overruled' Risk Managers on $160m Loan to Greensill" (11 March 2021).

v. Insurance Business, "Credit Suisse Looking at Fallout from Greensill Debacle" (5 April 2021).

vi. Financial Times, “How Credit Suisse Rolled the Dice on Risk Management – and Lost” (20 April 2021).

vii. Credit Suisse, “Annual General Meeting to Credit Suisse AG: Response to a Request for Information” (4 April 2022).

viii. Wall Street Journal, “Credit Suisse Details More Failings from Greensill Collapse” (4 April 2022).

ix. Archit Bhattacharya and R R Reddy, “Credit Suisse – Greensill Saga: A Case of Risk Management Failure” (Sage Journals, 27 August 2022).

x. Financial Times, “Credit Suisse Accepted Suspicious Invoices for $140mn Greensill Loan” (12 December 2022).

xi. Reuters, “What Happened at Credit Suisse and How Did it Reach Crisis Point?” (18 March 2023).

xii. Law.com, “Japanese Law Firm Files Greensill-Linked Bond Lawsuit Against Credit Suisse” (9 July 2023).

LA. Publication of administrative sanction by the Luxembourg regulator CSSF on CSFM dated 20 December 2024 titled “*Administrative sanction of 5 December 2024 for non-compliance with professional obligations related to general requirements, organisational requirements, oversight of delegates, disclosure to investors, risk and liquidity management systems, conflicts of interests and valuation.*” (**CSSF Sanction)**

LB. TMMA repeats the matters described in paragraphs 10A.38 to 10A.40 of Annexure A to this Defence and notes, further, that Michael Degen (the author of the email referred to in paragraph 10A.38) was then head of Credit Suisse Asset Management (Schweiz) AG (**CSAM**).

LC. On or about 11 July 2020, Cahill Gordon & Reindell LLP issued a report commissioned by Credit Suisse in respect of an internal review of CSAM supply chain finance funds including the Fund (**CG&R Report**, [CSA.5000.0004.8697]), which identified multiple conflicts of interest between CSAM and Greensill Group as well

as other employee conduct which might draw attention from regulators.

LD. On or about 9 November 2020, FINMA issued a response to *inter alia* CSAM in respect of the CG&R Report which noted that the material provided to FINMA revealed that CSAM had violated obligations to disclose conflicts of interest, ensure appropriate administrative organisation, and provide information under applicable Swiss Law (**FINMA CG&R Response**) [CSA.5000.0004.1328].

LE. TMMA relies *inter alia* upon the admission made by CS Group Chairman Audit Committee and Board of Directors (Richard Meddings) by email to CS Group General Counsel and others on 12 July 2020 that "[t]he behaviour of the executives is, I am sorry to say, either negligent or worse" (as reported in the FINMA Ruling at [79]).

xiii. TMMA will seek discovery of the communications between Credit Suisse Virtuoso and the representatives of the Greensill Group in relation to the circumstances in which Credit Suisse Virtuoso acquired notes referrable to the transactions pleaded in the ASOC, related due diligence (if any) undertaken by Credit Suisse Virtuoso and Credit Suisse Virtuoso's internal controls in relation to the notes they acquired, including documents relating to FINMA's and CSSF's respective investigations relating to the Credit Suisse Entities.

MA1. Whether conduct (including omissions) was engaged in by Credit Suisse Virtuoso, CSAM, CSFM, or CSFS separately from, or together with, another, or whether one relied on or delegated to another to engage in particular conduct in order to discharge its duties, is a matter necessarily within the knowledge of Credit Suisse Virtuoso and CSAM, CSFM, and CSFS. Further, the conduct (including omissions) that TMMA alleges is attributable to CSAM, CSFM, and CSFS is based on evidence served and documents discovered by Credit Suisse Virtuoso. That material at times fails to distinguish between the acts and omissions of each of CSAM, CSFM, and CSFS. The material also indicates that there was or may have been an intermeshing of conduct and

responsibility and indeed conflicts of interest between CSAM, CSFM, and CSFS.

MB. The conduct of CSAM and CSFM and their employees in relation to the Catfoss Notes was the conduct of CSAM and CSFM as agents for Credit Suisse Virtuoso.

MC. Credit Suisse Virtuoso, by letter from its solicitors dated 30 January 2025, has undertaken not to contend to the contrary of the position described in paragraph MB above as it relates to CSAM and CSFM. Further, and for the reasons identified above in [102AA(0b)] above and in particulars A to D of [102AA(a1)] below, TMMA contends that the undertaking extends to CSFM's delegation to CSFS.

MD. TMMA further and otherwise relies upon and repeats the matters set out in the particulars to paragraphs 102C(m) of IAL's defence in these proceedings.

xiv. Further particulars may be provided following discovery.

a1. In addition to the matters alleged in subparagraph 102AA(0b) above, and without limiting the allegations in that subparagraph, Credit Suisse Virtuoso also relied on, or delegated responsibilities and functions to, CSFS through CSFM (for whom, at all material times, CSFS acted as agent as pleaded in paragraph 0b above) with respect to its investment in the Catfoss notes, namely:

i. the function of fund administrator;

ii. the function of central administrator;

iii. responsibility for monitoring:

A. investment policy limits and restrictions;

B. regulatory investment compliance;

C. risk profiles, internal risk limits, and counterparty concentration risk;

D. compliance with internal investment guidelines;

iv. responsibility for internal auditing;

v. from around 1 July 2019 onwards, post-trade controls and independent cross-checking and confirmation on insurance coverage of notes as required by updates to internal investment guidelines issued by Credit Suisse Virtuoso;

vi. fund administration core services, including:

A. valuation (NAV) and validation related services; and

B. ensuring that securities and cash positions are reconciled against the position held by the custodian of securities (especially for positions not held in custody of Credit Suisse Luxembourg).

Particulars

"Rely" means to depend on or put trust in, and "delegate" means to commit powers or functions to others including agents by way of a formal contractual delegation. In the present case, they include the matters identified in these particulars and those to [102AA](0b) above.

The extent and nature of Credit Suisse Virtuoso's reliance upon or delegation to CSFS (including the particular acts or omissions of CSFS within that delegation) are matters peculiarly within the knowledge of Credit Suisse Virtuoso (including through CSFM and CSAM). The following particulars, however, arise from evidence served, and documents discovered, by Credit Suisse Virtuoso (and further particulars may be provided following further discovery by Credit Suisse Virtuoso):

A. The affidavit of Guy Reiter sworn 25 October 2024 describes CSFS as having the responsibilities and functions pleaded in a1 (i) to (v), including as delegated by CSFM pursuant to the Virtuoso SICAV-SIF Management Agreement between CSFM and Credit Suisse Virtuoso [CSA.5000.0006.082].

B. The Service Level Agreement describes CSFS as having the responsibilities and functions pleaded in a1 (vi) as part of the framework relationship between CSFM and CSFS.

C. Clause IX of the SIF Management Agreement between CSFM and Credit Suisse Virtuoso [CSA.5000.0006.0829] provided that CSFM could only delegate responsibilities with the consent of Credit Suisse Virtuoso. It should be inferred that, consistently with that clause, Credit Suisse Virtuoso consented to CSFM's delegations to CSFS and so those delegations are attributable to Credit Suisse Virtuoso.

D. Further, the affidavit of Crispian Paul Lynch sworn 17 April 2025 states (at [8] and Exhibit CPL-6 page 1, being a letter from Gilbert and Tobin dated 30 January 2025 on behalf of Credit Suisse Virtuoso) that the conduct of CSFM (the fund manager for Credit Suisse Virtuoso) and CSAM (the portfolio manager for Credit Suisse Virtuoso) and their employees in relation to the relevant notes in these proceedings "was the conduct of CSAM and CSFM as agents for, and thus the conduct of, Credit Suisse Virtuoso" (which statement is repeated in Credit Suisse Virtuoso's written submissions to this court filed on 22 April 2025). Consistently with that position, CSFM's delegation to CSFS is attributable to Credit Suisse Virtuoso.

E. The Wenger Plattner Report identified *inter alia* CSFS as a legal entity the focus of analysis (see Part 1 at [7]) in the course of its reporting on the conduct of CSFM, which included findings concerning CSFM's conduct in respect of matters falling within the scope of delegation to CSFS as described in a1.

F. The FINMA Ruling similarly identified *inter alia* CSFS as a "division" of the Credit Suisse Group "involved" in the matters the subject of its ruling (see at [8]) and further identified it (based upon Credit Suisse Group's "own information") as providing services in favour of CSFM in respect of investments in supply chain finance funds (see at [126]).

G. TMMA further and otherwise relies upon and repeats the matters set out in the particulars to paragraph 102C(m) and (ma) of IAL's defence in these proceedings.

b. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to identify, limit and monitor risks in the context of their business relationships with Lex Greensill and his companies (including Greensill Bank and GCPL) over a period of years by:

i. failing to perform adequate due diligence on portfolio management setup of the Credit Suisse (Lux) Supply Chain Finance Fund (**Fund**), which involved a specific investment process with Greensill;

ii. failing to consider critical aspects and risks in relation to portfolio management of the Fund;

iii. failing to put in place a formalised reporting structure for ongoing service quality monitoring of the delegated portfolio manager;

iv. failing to ensure and verify on a periodic basis that the investment policy, investment strategies and risk diversification limits of the Fund were complied with;

v. failing to verify the existence and nature of the receivables underlying the notes acquired by the Fund;

vi. failing to verify that the notes acquired by the Fund corresponded to the types of investment permitted by the Fund's investment policy and disclosed in the Fund's offering documents;

vii. failing to comply with Fund's investment policy as set out in the Fund's offering documents;

viii. failing to assess the exposure of the Fund to all relevant risks to which the Fund was exposed by reason of investment in Greensill sourced notes;

ix. failing to address all relevant risks to which the Fund was exposed by reason of investment in Greensill sourced notes;

x. failing adequately to address the credit risk of the notes sourced from Greensill, in particular notes backed by future account receivables;

xi. failing adequately to address the risks relating to insurance coverage of the notes;

xii. failing adequately to address the concentration risks arising from exposure of the notes to groups of companies or businesses linked to a common beneficial owner;

xiii. failing adequately to address liquidity risk of notes sourced from Greensill;

xiv. making multiple investments, upon proposal by Greensill, where there was a conflict or potential conflict of interest between the interests of Greensill and the Fund, thereby exposing investors in the Fund to a material risk of damage;

xv. exposing the Fund to the risk that Greensill would not be objective in the sourcing of notes acquired by the Fund;

xvi. failing to put in place any controls for the ongoing valuation of the Fund's investments in Greensill sourced notes;

xvii. failing to conduct regular and comprehensive impairment tests of Greensill sourced notes acquired by the Fund, adapted to the credit risk profile of the notes;

xviii. failing to ensure and verify on a periodic basis that the Fund's investment policy, investment strategies and risk limits were properly and effectively implemented and complied with; and

xix. inadequately handling conflicts of interest arising from special agreements with investors (including by not having adequate processes in place to identify, limit, and monitor such matters).

Particulars

TMMA repeats the particulars to paragraph 102AA(a) of this Defence, including the investigations and findings recorded in the FINMA Press Release, the FINMA Ruling, the Wenger Plattner Report (both in its own right and in support of the matters in the FINMA Ruling), the CG&R Report, the FINMA CG&R Response, and the CSSF Sanction with respect to each of the above matters.

b1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to have in place a system for the periodic review at the executive board level of the most important business relationships of the group, in particular for counterparty risks;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon the specific findings recorded in the FINMA Ruling at section 5.1.4.

c. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to have in place adequate organisation structures for the identification, review and management of investment risks;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon:

A. the specific findings recorded in the FINMA Ruling at section 5.1; and

B. the specific findings recorded in the FINMA CG&R Response at section 2.

c1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to have adequate systems for the identification and recording of the responsibilities of its highest-ranking employees;

Particulars

TMMA repeats the particulars to paragraph 102AA(a) of this Defence including the findings recorded in the FINMA Press Release, the FINMA Ruling, the Wenger Plattner Report, the CG&R Report, the FINMA CG&R Response, and the CSSF Sanction.

c2. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, did not:

i. adequately identify, limit and monitor risks in the context of their business relationships with Lex Greensill and the Greensill Group; or

ii. otherwise sufficiently perform as asset managers or fund managers, by reason of failing to obtain and review valuation reports for the underlying

claims in cases where the transaction documentation provided for such reports to be prepared as a precondition to the purchase of a receivable;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon:

A. the specific finding in the FINMA Press Release that "Credit Suisse seriously breached its supervisory obligations … with regard to risk management and appropriate organisational structures"; and

B. the specific findings recorded in the FINMA Ruling at [261]-[262];

iii. TMMA relies upon the breach of supervisory duties articulated in the first paragraph of the particulars to paragraph 102C(m)(i) of IAL's defence in these proceedings; and

iv. the content and breach of the Credit Suisse Virtuoso's (either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS) supervisory duties are otherwise matters for, and to be informed by, expert evidence and so further particulars will be provided by way of that evidence.

c3. Credit Suisse Virtuoso delegated the matters described in paragraph 102AA(c2) above to an asset management company, namely CSAM, where:

i. CSAM had little knowledge and control over the specific claims that had been securitised and transferred to Credit Suisse Virtuoso; and

ii. Credit Suisse Virtuoso did not adequately monitor CSAM in the performance of its delegated asset management role;

Particulars

A. TMMA repeats the particulars to paragraph 102AA(a) and (b) above.

B. TMMA further relies upon the specific findings recorded in the FINMA Ruling at [207], Section 5.1.2, and [277].

c4. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS did not themselves select or review the specific investments entered into with the Greensill Group, but allowed the Greensill Group to select and review these on their behalf;

Particulars

A. TMNF repeats the particulars to paragraph 102AA(a) and (b) above.

B. TMNF further relies upon the specific findings recorded in the FINMA Ruling at section 5.2.1.1 and [255].

c5. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS delegated all (or all material) decisions related to their investments in the Catfoss Notes to the Greensill Group itself;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(h) above.

ii. TMMA further relies upon the FINMA Press Release (under the heading “Structure of the funds”) that “[i]n fact, it was not Credit Suisse as asset manager of the funds that selected and reviewed [securitised claims], but Greensill itself. Credit Suisse also left it to the latter to arrange the insurance cover in its own name”; and

iii. Duncan Mavin, “The Pyramid of Lies: Lex Greensill and The Billion-Dollar Scandal” (MacMillan, 2022) p 148.

d. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, did not arrange their own insurance cover, but left it to the Greensill Group to arrange insurance cover in their name;

Particulars

TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

d1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, engaged in conduct or omissions amounting to breaches of Swiss supervisory law;

Particulars

i. The breaches of which TMMA is presently aware are those recorded in the FINMA Ruling and FINMA Press Release (and as supported by the investigations comprised in the Wenger Plattner Report) and the FINMA CG&R Response;

ii. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

iii. The findings against CSAM in the FINMA Ruling and FINMA Press Release included that it repeatedly failed in its duties of loyalty, due diligence, and duty to provide information as recorded in the FINMA Ruling at section 5.

iv. Further particulars will be provided following expert evidence on questions of foreign law.

d2. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, or alternatively CSFM, engaged in conduct or omissions amounting to breaches of Luxembourg supervisory law;

Particulars

i. The breaches of which TMMA is presently aware are those recorded in the CSSF Sanction and recorded in the CG&R Report.

ii. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

iii. Further particulars will be provided following expert evidence on questions of foreign law.

e. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to realise, and failed to have adequate systems to enable it to realise, that the Greensill Group was financing companies whose creditworthiness was doubtful;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon the specific findings recorded in the FINMA Ruling at sections 5.1.1.6, [211], and section 5.1.2.5.

e1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to obtain any knowledge of, or to exercise any control over, how many accounts receivable in which they were investing were actually contractually owed;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon the specific findings recorded in the FINMA Ruling at sections 5.1.1.6, [211], and section 5.1.2.5.

e2. Despite receiving critical questions and warnings by media representatives concerning its business relationship with the Greensill Group and the associated risks, Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to act to reduce their exposure to the Greensill Group and to those risks;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon the findings recorded in the FINMA Press Release (under the heading “Many critical observations, too few appropriate reactions”) that:

A. “[t]he closure of a fund at another fund provider that had also worked with Greensill led to enquiries at Credit Suisse in 2018 about the funds associated with Greensill”;

B. “media representatives repeatedly approached the Credit Suisse executive board with critical questions and information”;

C. “FINMA also repeatedly asked critical questions of the banking group’s governing bodies about its business relationship with Greensill and the associated risks”;

D. “the bank used employees who were themselves responsible for the business relationship with Greensill and were therefore not independent to deal with critical questions or warnings”; and

E. “Credit Suisse even repeatedly asked Lex Greensill himself and relied on his answers for its own statements”,

iii. TMMA further relies upon the findings recorded in the FINMA Ruling at Section Fb.

iv. Actions which Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, could have taken to reduce their exposure were:

A. taking the actions which it is alleged in this paragraph 102AA they failed to do, and in the case of actions which it is alleged they did do but should not have done, not doing so;

B. not purchasing any Catfoss Notes, or purchasing fewer Catfoss Notes (so that, as distributions on the notes were paid overtime, the overall exposure would have decreased);

C. investing in non-Greensill investments;

D. not entering into a side-letter that bargained away its ability to buy notes from sources other than Greensill (see sub-paragraph (r2) below).

v. Further particulars may be provided following discovery and evidence.

e3. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, overruled, or otherwise failed to give effect to, the assessment of their own risk manager responsible for assessing the risk involved in the investments with the Greensill Group, which was to the effect that there were a number of risks in the Greensill business model and that Credit Suisse Virtuoso should not invest further in the Greensill Group;

Particulars

i. TMNF repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMNF further relies upon:

A. the specific finding recorded in the FINMA Press Release (under the heading "Many critical observations, too few appropriate reactions") that, when Greensill sought a bridging loan from Credit Suisse, "[t]he Credit Suisse risk manager responsible for the loan identified a number of risks in Greensill's business model. He therefore recommended internally at the bank not to grant the loan. A senior manager overruled this recommendation"; and

B. the findings recorded in the FINMA Ruling at [209].

e4. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, delegated decision-making authority in relation to the management of the risks identified above to employees who were themselves responsible for the business relationship with the Greensill Group and were not sufficiently independent to be able to respond appropriately to critical questions or warnings;

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) of this Defence.

ii. TMMA further relies upon:

A. the findings recorded in the FINMA Press Release (under the heading "Many critical observations, too few appropriate reactions") that "the bank used employees who were themselves responsible for the business relationship with Greensill and were therefore not independent to deal with critical questions or warnings";

B. the findings recorded in the FINMA Ruling at [208] and section 5.1.4.

e5. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, deferred to Lex Greensill himself, and relied on his answers, in making statements to regulators and to the public; and

Particulars

i. TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

ii. TMMA further relies upon the findings recorded in the FINMA Press Release (under the heading "Many critical observations, too few appropriate reactions") that, when responding to questions and warnings by making statements to FINMA, "Credit Suisse even repeatedly asked Lex Greensill himself and relied on his answers for its own statements".

e6. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to ensure that there was regular, consistent engagement with the risks associated with the Greensill Group at the highest level within their organisation; and

Particulars

TMMA repeats the particulars to paragraph 102AA(a) and (b) of this Defence.

e7. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM:

i. knew or suspected that a major customer of Greensill Group was engaged in fraudulent practices; and

ii. therefore knew (or ought to have reasonably known that) there was a risk that that major customer would not repay its debts and, further, that trade credit insurance placed by Greensill Group would not be valid if those fraudulent practices were not disclosed to the insurer,

but despite those matters did not address the risks arising by stopping Credit Suisse Virtuoso's investments in Greensill Group.

Particulars

TMMA repeats the particulars to paragraph 102AA(a) above, and specifically particular LB.

e8. CSAM:

i. entered into a side letter through which it bargained away its ability to buy notes from sources other than Greensill Group; and

ii. knew that Greensill Group was incentivised to act in a manner that may not have been in the best interests of investors;

Particulars

TMMA relies upon the findings in the CG&R Report, including (but not limited to) those in sections IV(B).

f. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to enforce their rights to enforce the debts owed by Catfoss and Guarantor (as pleaded to at paragraphs 102D and 102E below) to recover the amounts due from each of Catfoss and the Guarantors.

Particulars

i. The rights arose as described in paragraph 102D (a) to (d) and 102E (a) to (c) below.

ii. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, could have taken the steps described in paragraph 102D (c) and 102E (b) below (that is, enforcing payment of the debts their described in an action for debt) but have not done so (whether by Credit Suisse Virtuoso itself, or by steps taken by each of CFAM, CSFM, or CSFS acting for Credit Suisse Virtuoso).

iii. Publicly available CSAM disclosures to investors dated 18 July 2022, 22 February 2023, and 27 April 2023 do not refer to any steps of the kind described in B above being taken.

g. further or alternatively, if one or more of the grounds alleged by IAL at paragraph 102C(m)(i) of its defence in these proceedings is established with respect to Credit Suisse Virtuoso (either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS) the Credit Suisse Virtuoso was contributorily negligent for the reasons alleged by IAL in that paragraph.

h. Further or alternatively, TMMA refers to and relies on the matters set out in BCC/TM's Annexure C.

Proportionate liability defences

102AB. In further response to paragraphs 93 to 102B and 106H to 106AA of the ASOC, TMMA says that to the extent that Credit Suisse Virtuoso has suffered loss by reason of any

alleged contravening conduct (which is denied), the claims are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the Competition and Consumer Act or s 34 of the Civil Liability Act.

102C. Without admission and for the purposes only of this Defence, TMMA refers to and repeats the matters pleaded in paragraphs 19 to 29 and 65 of the ASOC.

102D. By virtue of the matters pleaded in paragraph 102C of this Defence, Catfoss is a concurrent wrongdoer, as its acts or omissions in failing to repay the debts owed by it to GCUK caused the damage or loss the subject of the claim:

a. Catfoss failed to pay a debt that was owed to, or had been assigned to, GCUK or Hoffman;

b. Credit Suisse Virtuoso was a beneficiary of the trust over the rights to enforce each such debt constituted by the Master Trust Deed;

c. by virtue of its status as a beneficiary of each such trust, Credit Suisse Virtuoso was and is entitled to enforce payment of those debts in an action for debt against Catfoss;

d. Catfoss is liable to Credit Suisse Virtuoso in an action for debt in respect of each unpaid debt owed by Catfoss as pleaded in the ASOC.

102E. By virtue of the matters pleaded in paragraph 102C above, each of Andrew Foreman, Neil Hobday, Graphite Enterprises (DEP) Limited and Graphite Resources (DEP) Limited as guarantor of Catfoss' obligations under the IPA (**Guarantors**) is a concurrent wrongdoer, as its acts or omissions in failing to make payment of the debts owed by Catfoss to GCUK caused the damage or loss the subject of the claim:

a. each Guarantor was and is liable, upon non-payment by Catfoss, to make payment of the debt that was owed to, or had been assigned to, GCUK or Hoffman;

b. by virtue of its status as a beneficiary of the trusts constituted by Master Trust Deed, Credit Suisse Virtuoso was and is entitled to enforce payment of those debts in an action for debt against the relevant Guarantor; and

c. each Guarantor is liable to Credit Suisse Virtuoso in an action for debt in respect of each unpaid debt owed by Catfoss as pleaded in the ASOC.

102F. GCUK is a concurrent wrongdoer as its acts or omissions in failing to recover amounts due from each of Catfoss and the Guarantors caused the damage or loss the subject of the claim:

a. by the purchase of each Catfoss Note, Credit Suisse Virtuoso entered into a contract with, among other parties, GCUK, of which the terms were to be found in the "General Conditions of Notes" section of the Base Memorandum, which in turn incorporated the Cash Collection and Allocation Annex applicable to each tranche of Notes;

b. under the Cash Collection and Allocation Annex applicable to each tranche of Notes, GCUK undertook to perform collection functions in connection with the Purchased Accounts Receivable the subject of the Annex, including collection of the accounts receivable, billing, maintaining records, allocating amounts received to the Noteholders, and "taking such actions and executing and delivering such documents as [GCUK] … deems necessary or advisable to realise the benefits of any Purchased Accounts Receivable";

c. in breach of its obligations pleaded above, GCUK failed to perform its collection functions under the Cash Collection and Allocation Annex, including taking such actions as were necessary to recover the amounts payable, such as demanding repayment and where necessary bringing enforcement proceedings, in respect of the Purchased Accounts Receivable underlying each Note;

d. had GCUK performed the functions and taken the steps pleaded in the preceding subparagraph, it would have obtained a recovery in respect of the Purchased Accounts Receivable underlying each Catfoss Note; and

e. in the premises, GCUK is liable to Credit Suisse Virtuoso for breach of contract.

102G. Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they breached a duty of care owed to Credit Suisse Virtuoso to exercise reasonable skill and care to ensure that Credit Suisse Virtuoso was not misled into believing that the notes which Credit Suisse Virtuoso acquired as pleaded in the ASOC were supported by insurance cover for the debts underlying the notes:

a. TMMA refers to and repeats allegations in Annexure A to this Defence;

b. Lex Greensill, Greensill Bank, GCPL and GCUK knew that Credit Suisse Virtuoso would reasonably rely on representations made by Lex Greensill, Greensill Bank, GCPL and GCUK in relation to the transactions the subject of these proceedings in deciding whether to acquire the Catfoss Notes;

c. by reason of their role in procuring, encouraging, promoting and facilitating the abovementioned investments by Credit Suisse Virtuoso in the Catfoss Notes, Lex

Greensill, Greensill Bank, GCPL and GCUK owed a duty to take reasonable care to ensure that the information they provided to Credit Suisse Virtuoso in connection with those investments was accurate and complete;

d. Lex Greensill, Greensill Bank, GCPL and GCUK breached the duty of care owed by them to Credit Suisse Virtuoso in failing to inform Credit Suisse Virtuoso that Lex Greensill, Greensill Bank, GCPL and GCUK had made the misrepresentations and non-disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance obtained in support of the Catfoss Notes acquired by Credit Suisse Virtuoso was liable to be avoided;

e. Credit Suisse Virtuoso relied on the accuracy and completeness of the representations and information provided to it by Lex Greensill, Greensill Bank, GCPL and GCUK in deciding whether to acquire the Notes; and

f. in the premises, Lex Greensill, Greensill Bank, GCPL and GCUK are liable Credit Suisse Virtuoso in the tort of negligence.

Particulars

i. FINMA's press release issued on 28 February 2023 titled "FINMA concludes "Greensill" proceedings against Credit Suisse" states that Credit Suisse Virtuoso left it to Lex Greensill and his related companies to arrange insurance cover.

ii. TMMA was not privy to the communications between Credit Suisse Virtuoso and the representatives of the Greensill Group in relation to insurance cover allegedly obtained for the benefit of Credit Suisse Virtuoso. TMMA will seek discovery of those communications and may provide further particulars thereafter.

iii. Further particulars may be provided following discovery.

102H. Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they misled Credit Suisse Virtuoso (in contravention of s 1041H of the *Corporations Act*, s 18 of the *Australian Consumer Law* and/or s 12DA of the *ASIC Act*) and breached a duty of care to Credit Suisse Virtuoso to exercise reasonable care and skill by failing to disclose to Credit Suisse Virtuoso that:

a. they had made the misrepresentations and non-disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance obtained in support of the notes acquired by Credit Suisse Virtuoso was liable to be avoided accordingly; and

Particulars

i. TMMA refers to and repeats the allegations in Annexure A to this Defence.

ii. Lex Greensill, Greensill Bank, GCPL and GCUK misled Credit Suisse Virtuoso by failing to disclose to Credit Suisse Virtuoso that they had made the Prior misrepresentations and non-disclosures pleaded in Annexure A to this Defence and that it was likely that the insurance obtained in support of the notes acquired by Credit Suisse Virtuoso was liable to be avoided accordingly.

b. they had received (either directly or through their agent, Marsh) the correspondence from BCC, TMMA and/or TMNF pleaded or particularised at paragraphs 106D to 106GA of the ASOC and had not disclosed that correspondence to Credit Suisse Virtuoso, in circumstances where Credit Suisse Virtuoso alleges that it had a reasonable expectation that the matters addressed in that correspondence would be disclosed, that the failure to disclose those matters was misleading or deceptive or likely to mislead and that, but for the non-disclosure of those matters, it would not have purchased the Catfoss Notes.

Particulars

TMMA refers to and repeats paragraphs 106C to 106O of the ASOC.

102HA. If the matters alleged by Credit Suisse Virtuoso at paragraphs 106DD to 106MMMM of the ASOC are established, then Marsh Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs.

102HB. Further or alternatively, if the matters alleged by IAL at paragraph [102C(u)] of its Defence are established, then Marsh Ltd and/or Marsh Pty Ltd is a concurrent wrongdoer for the reasons alleged in that paragraph.

102I. IAL is a concurrent wrongdoer, on the basis that if (which is not admitted) BCC and Brereton were not authorised by IAL to enter into the policies and endorsements the subject of this proceeding, at all material times up to 30 June 2019:

a. BCC and Brereton were representatives of IAL for the purposes of Division 6 of Part 7.6 of the Corporations Act;

b. IAL was responsible for the conduct of BCC and Brereton for the purposes of s 917B of the Corporations Act;

c. IAL engaged in acts or omissions, including (inter alia):

i. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of the authority granted to them;

ii. failing to ensure that BCC and Brereton did not purport to enter into the policies and endorsements the subject of this proceeding; and

iii. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of the policy and endorsements the subject of this proceeding;

d. the contravening conduct of BCC and Brereton alleged in Part L of the ASOC which occurred up to 30 June 2019 was conduct for which IAL was responsible for the purposes of s 917B of the Corporations Act;

e. the acts and omissions pleaded in subparagraphs (c) and (d) above caused the loss the subject of the claim; and

f. in the premises, IAL is liable to Credit Suisse Virtuoso for the loss suffered by them by reason of the contravening conduct of its representatives.

102IA Each of CSAM, CSFM and CSFS is a concurrent wrongdoer, on the basis that:

a. in the case of CSAM and CSFM, it voluntarily assumed a responsibility to Credit Suisse Virtuoso to manage the investment in the Catfoss Notes and, in the case of CSFS, it assumed the responsibilities delegated to it as pleaded and particularised in paragraph 102AA(a1) above;

Particulars

TMMA relies upon and repeats the matters set out in the particulars to paragraphs 102C(ma)(i)(A) of IAL's defence in these proceedings.

b. it knew, or ought to have known, that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the Catfoss Notes, or, in the case of CSFS, if it did not take reasonable precautions in relation to the responsibilities delegated to it as pleaded and particularised in paragraph 102AA(a1) above Credit Suisse Virtuoso would suffer loss or damage;

Particulars

i. With respect to CSFS:

A. its actual knowledge may be reasonably inferred on the basis that an entity assuming or exercising responsibilities of the kind in paragraph 102AA(a1) above would be aware that that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the Catfoss Notes, Credit Suisse Virtuoso would suffer loss or damage; and

B. its constructive knowledge arises because a reasonable entity delegated responsibilities of the kind in paragraph 102AA(a1) above would be aware that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the Catfoss Notes, Credit Suisse Virtuoso would suffer loss or damage.

ii. TMMA repeats what is said at particular MA1 to paragraph 102AA(a) above, as well as the fifth paragraph of the particulars to paragraph 102C(m)(i)(C) and in paragraph (ma)(D)-(H) of IAL's defence in these proceedings, and says subject to that qualification, that the precautions that a reasonable person or entity in the position of each of the CSAM, CSFM, and CSFS would have taken includes:

A. undertaking adequate investigations and/or due diligence of the kind pleaded in paragraph 102AA(a) of this Defence and paragraph 102C(m)(i) of IAL's defence (as referred to in paragraph 102AA(t) of this Defence);

B. identifying, limiting, and monitoring risks of the kind pleaded in paragraph 102AA(b) of this Defence, by doing things including the things which it is alleged CSAM, CSFM, and CSFS failed to do in (i) to (xiii) and (xvi) to (xviii), and not doing the things which it is alleged they did do in (xiv) and (xv);

C. having in place a system for the periodic review at the executive board level of the most important business relationships of the group, in particular for counterparty risks (which it is alleged in paragraph 102AA(c) of this Defence they did not do);

D. having in place adequate organisation structures for the identification, review and management of investment risks

(which it is alleged in paragraph 102AA (d) of this Defence they did not do);

E. having in place adequate systems for the identification and recording of the responsibilities of its highest-ranking employees (which it is alleged in paragraph 102AA(e) of this Defence they did not do);

F. obtaining and reviewing valuation reports for the underlying claims in cases where the transaction documentation provided for such reports to be prepared as a precondition to the purchase of a receivable (which it is alleged in paragraph 102AA(f) of this Defence they did not do in the sufficient performance of their role as asset managers or fund managers);

G. not accepting responsibility for delegate supervisory duties as an asset manager without (a) having sufficient knowledge about and control over the specific claims that had been securitised and transferred to Credit Suisse Virtuoso or (b) being subject to adequate monitoring (as is alleged in paragraph 102AA(g) of this Defence was the case in respect of CSAM);

H. selecting or reviewing themselves the specific investments entered into with the Greensill Group (which it is alleged in paragraph 102AA(h) of this Defence they did not do) rather than allowing the Greensill Group to do so on their behalf (as is alleged in the same that they did);

I. not delegating all (or all material) decisions related to their investments in the Catfoss Notes to the Greensill Group itself (as is alleged in paragraph 102AA(i) of this Defence they did);

J. arrange their own insurance cover (which it is alleged in paragraph 102AA(j) of this Defence they did not do), rather than leave it to the Greensill Group to do so for their benefit (as is alleged in the same that they did);

K. not engage in breaches of Swiss supervisory law (as is alleged in paragraph 102AA(k) of this Defence they did);

L. not engage in breaches of Luxembourg supervisory law (as is alleged in paragraph 102AA(k1) of this Defence they did);

M. realising (including by having in place adequate systems to enable them to realise) that the Greensill Group was financing companies whose creditworthiness was doubtful (which it is alleged in paragraph 102AA(l) of this Defence they did not do);

N. obtaining knowledge of, and exercising control over, how many accounts receivable in which they were investing were actually contractually owed (which it is alleged in paragraph 102AA(m) of this Defence they did not do);

O. acting to reduce exposure to the Greensill Group related risks after being questioned and warned about those matters (which it is alleged in paragraph 102AA(n) of this Defence they did not do);

P. giving effect to the assessment of their own risk manager (which it is alleged in paragraph 102AA(o) of this Defence they did not do);

Q. not delegating decision-making authority in relation to the management of relevant risks to employees who were themselves responsible for the business relationship with the Greensill Group and were not sufficiently independent to be able to respond appropriately to critical questions or warnings (was is alleged in paragraph 102AA(p) of this Defence they did);

R. not deferring to Lex Greensill (as is alleged in paragraph 102AA(q) of this Defence they did);

S. ensuring that there was regular, consistent engagement with the risks associated with the Greensill Group at the highest level within their organisation (which it is alleged in paragraph 102AA(r) of this Defence they did not do);

T. not stopping investments in the Greensill Group in light of the risks identified in paragraph 102AA(r1) of this Defence; and

U. enforcing their rights to enforce the debts owed by Catfoss and Guarantor to recover the amounts due from each of Catfoss and the Guarantors (which it is alleged in paragraph 102AA(s) of this Defence they did not do).

iii. Further particulars may be provided following discovery and evidence.

iv. TMMA further and otherwise relies upon and repeats the matters set out in the particulars to paragraphs 102C(m)(i)(B) of IAL's defence in these proceedings.

b1. Further or alternatively, TMMA refers to and relies on the matters set out in BCC/TM's Annexure C.

c. In the premises, it owed a duty to Credit Suisse Virtuoso to exercise reasonable care in relation to the management of Credit Suisse Virtuoso's investment in the Catfoss Notes or, in the case of CSFS, in relation to the responsibilities delegated to it as pleaded and particularised in paragraph 102AA(a1) above;

Particulars

i. With respect to CSFS, the premises include those set out in paragraphs 102AA(a1) and 102IA of this Defence.

ii. TMMA repeats paragraphs 102AA(k) and 102AA(k1) of this Defence.

d. By reason of the acts and omissions pleaded in paragraphs 102AA(a) to (s) of this Defence, it breached that duty to Credit Suisse Virtuoso;

Particulars

The acts and omissions pleaded in paragraphs 102AA(a) to (s) constituted a failure to take the reasonable precautions described in the particulars to paragraph 104HA(b) of this Defence.

d1. Further or alternatively, if one or more of the grounds alleged by IAL in the following paragraphs of its defence in these proceedings is established, then CSAM, CSFM, and CSFS breached their duty to Credit Suisse Virtuoso for the reasons so alleged by IAL:

i. with respect to CSAM, CSFM, and CSFS in paragraph 102C(ma)(i)(I) of IAL's defence (including as subject to the qualifications stated at paragraph 102C(ma)(i)(D)-(H) of the same);

ii. with respect to CSAM, in paragraph 102C(mb)-(mf) of IAL's defence;

iii. with respect to CSFM (including CSFS acting as its agent), in paragraph 102C(mg)-(mk) of IAL's defence;

iv. with respect to CSFS, in paragraph 102C(ml) of IAL's defence.

e. Those acts and omissions caused the loss the subject of the claim because 'but for' those matters, Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS; and

i. in respect of paragraphs 102AA(a) to (r2) and (t), would not have purchased the Catfoss Notes either at all or to the same extent that it did; and

ii. in respect of paragraph 102AA (s), would have avoided or reduced the loss by enforcing the debts owed by Catfoss and Guarantor;

f. In the premises, it is liable to Credit Suisse Virtuoso for the loss claimed in this proceeding.

102J. In the premises, the liability of TMMA to Credit Suisse Virtuoso in relation to its claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of TMMA's responsibility for the damage or loss, and the court may give judgment against TMMA for not more than that amount, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act, s 87CD of the Competition and Consumer Act and/or s 35 of the Civil Liability Act.

L.4 Section 1041E Claim

103. In response to paragraph 103 of the ASOC, TMMA:

a. repeats paragraph 103 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

104. In response to paragraph 104 of the ASOC, TMMA:

a. repeats paragraph 104 of BCC's Defence in these proceedings; and

b. otherwise does not plead to the paragraph, there being no allegation against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

105A. TMMA denies paragraph 105A of the ASOC.

105B. In response to paragraph 105B, TMMA:

a. repeats paragraph 105A of this Defence; and

b. otherwise does not admit the paragraph, there being no allegation against it.

105. In response to paragraph 105 of the ASOC, TMMA:

a. repeats paragraph 105 of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106. In response to paragraph 106 of the ASOC:

a. repeats paragraph 106 of BCC's Defence in these proceedings; and

b. otherwise denies the paragraph.

106A. In response to paragraph 106A of the ASOC, TMMA:

a. admits that the conduct alleged at paragraphs 93, 95 and 103 to 105B of the ASOC related to the provision of a financial service within the meaning of s 917A of the Corporations Act;

b. does not admit sub-paragraphs 106A(b) to (e), there being no allegation against it;

c. in further response to subparagraph 106A(e), denies the paragraph and:

i. says that the alleged conduct of BCC and Brereton referred to in paragraphs 93, 95 and 103 to 105B of the ASOC (which arises from the execution of the documents pleaded at paragraph 86 of the ASOC) occurred prior to 1 July 2019 and in BCC's capacity as the corporate authorised representative of IAL, not TMNF; and

ii. repeats paragraph 102AA(c)(ii)-(iv) above which apply mutatis mutandis to the conduct.

106B. TMMA denies paragraph 106B of the ASOC.

L.5 Deceit

106ZA. In response to paragraph 106ZA of the ASOC, TMMA:

a. repeats paragraph 106ZA of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZB. In response to paragraph 106ZB of the ASOC, TMMA:

a. repeats paragraph 106ZB of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZC. In response to paragraph 106ZC of the ASOC, TMMA:

a. repeats paragraph 106ZC of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZD. In response to paragraph 106ZD of the ASOC, TMMA:

a. repeats paragraph 106ZD of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZE. In response to paragraph 106ZE of the ASOC, TMMA:

a. repeats paragraph 106ZE of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZF. In response to paragraph 106ZF of the ASOC, TMMA:

a. repeats paragraph 106ZF of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZG. In response to paragraph 106ZG of the ASOC, TMMA:

a. repeats paragraph 106ZG of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZH. In response to paragraph 106ZH of the ASOC, TMMA:

a. repeats paragraph 106ZH of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZI. In response to paragraph 106ZI of the ASOC, TMMA:

a. repeats paragraph 106ZI of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZJ. In response to paragraph 106ZJ of the ASOC, TMMA:

a. repeats paragraph 106ZJ of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

106ZK. In response to paragraph 106ZK of the ASOC, TMMA:

a. repeats paragraph 106ZK of BCC's Defence in these proceedings; and

b. otherwise does not know and therefore cannot admit the paragraph.

L.6 [NOT USED]

106ZL. [NOT USED]

106ZM. [NOT USED]

106ZN. [NOT USED]

106ZO. [NOT USED]

M. CLAIMS RELATING TO TOKIO MARINE AND BCC

M.1 Knowledge of BCC, TMMA, TMNF and the Insurer

106C. In response to paragraph 106C of the ASOC, TMMA:

a. repeats paragraph 10AA of this Defence; and

b. otherwise admits the paragraph.

106D. In response to paragraph 106D of the ASOC, TMMA:

a. insofar as the paragraph makes allegations as to what BCC, TMNF and IAL knew, does not know and therefore cannot admit the paragraph;

b. admits that, as at 3 June 2020, TMMA were concerned that, in respect of certain risks purportedly written on behalf of TMNF there may have been a failure to comply with TMNF's requirement that, from 1 July 2019, any exposures above $15 million were to be approved by the Credit Committee;

c. says that, as at 3 June 2020, TMMA was not aware of the existence of the 2019 Policy or its endorsements; and

d. otherwise denies the paragraph.

106E. In response to paragraph 106E of the ASOC, TMMA:

a. insofar as the paragraph makes allegations as to what BCC, TMNF and IAL knew, does not admit the paragraph;

b. repeats paragraph 106D of this Defence; and

c. otherwise denies the paragraph.

106F. In response to paragraph 106F of the ASOC, TMMA:

a. insofar as the paragraph makes allegations as to what BCC, TMNF and IAL knew, does not admit the paragraph;

b. repeats paragraphs 106D-106E of this Defence;

c. admits that, on 4 August 2020, BCC had informed GCPL, GCUK, GBAG and Marsh that it had become aware that Mr Brereton had sought to bind BCC to limits in relation to customers of Greensill Capital in circumstances where the customer limit sought to be approved was in excess of Mr Brereton's delegated authority, and that BCC had commenced an investigation in relation to inter alia endorsements issued in relation to TS-03088, TS-03087, the 2019 Policy and TB-03690;

d. admits subparagraph (a); and

e. otherwise denies the paragraph.

106G. In response to paragraph 106G of the ASOC, TMMA:

a. insofar as the paragraph makes allegations as to what BCC, TMNF and IAL knew, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it; and

b. otherwise denies the paragraph.

106GA. TMMA does not plead to paragraph 106GA of the ASOC, there being no allegations made against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

M.2 Misleading or deceptive conduct

106H. In response to paragraph 106H of the ASOC, TMMA:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

b. repeats paragraphs 106D to 106G of this Defence;

c. says that BCC notified GCPL, GBAG and GCUK through their broker, Marsh, of concerns regarding Mr Brereton's authority;

Particulars

TMMA repeats the particulars to paragraph 102A(c)(iii) above

d. admits that it did not disclose directly to Credit Suisse Virtuoso the matters pleaded in sub-paragraphs 106H(a) and(b) of the ASOC; and

e. otherwise denies the paragraph.

106I. In response to paragraph 106I of the ASOC, TMMA:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

b. otherwise denies the paragraph;

c. repeats paragraph 106H of this Defence; and

d. says that it did not enter into any relationship or have any direct interactions with Credit Suisse Virtuoso.

106J. In response to paragraph 106J of the ASOC, TMMA:

a. repeats paragraph 106H of this Defence; and

b. otherwise denies the paragraph.

106K. In response to paragraph 106K of the ASOC, TMMA:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

b. repeats paragraphs 106H to 106J of this Defence; and

c. otherwise denies the paragraph;

106L. In response to paragraph 106L of the ASOC, TMMA:

a. repeats paragraphs 106H to 106K of this Defence; and

b. otherwise does not know and therefore cannot admit the paragraph.

106M. In response to paragraph 106M of the ASOC, TMMA:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

b. repeats paragraphs 106H to 106L of this Defence; and

c. otherwise denies the paragraph.

106MA. TMMA admits paragraph 106MA of the ASOC.

106MB. In answer to paragraph 106MB of the ASOC, TMMA:

a. admits that from 2 July 2020 Williams received reports from BCC and TMMA concerning apparent exceedance of limits; and

b. otherwise denies the paragraph.

106MC. TMMA denies paragraph 106MC of the ASOC.

106MD. In response to paragraph 106MD of the ASOC, TMMA:

a. admits that Chris Williams conducted negotiations with Lex Greensill in the period from about August 2020 to February 2021 regarding, amongst other things, the risks the subject of the Policies; and

b. otherwise denies the paragraph.

106ME. In response to paragraph 106ME of the ASOC, TMMA:

a. says that Lex Greensill did, with Williams' knowledge, communicate with third parties, including Credit Suisse, in relation to matters which had been the subject of communications between Williams and Lex Greensill; and

b. otherwise denies the paragraph.

106MF. TMMA denies paragraph 106MF of the ASOC.

106MG. In response to paragraph 106MG of the ASOC, TMMA:

a. refers to and repeats paragraph 106H of this Defence;

b. says that Williams was under no obligation to himself disclose or cause BCC, TMMA or TMNF to disclose the substance of the 2020 Omissions case to the Applicants; and

c. otherwise denies the paragraph.

106MH. TMMA denies paragraph 106MH of the ASOC.

106N. In response to paragraph 106N of the ASOC, TMMA:

a. repeats paragraphs 106H to 106M of this Defence;

b. does not plead to subparagraph (a), which makes no allegations against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

c. denies subparagraph (b);

d. in response to subparagraphs (c)-(d):

i. denies that the alleged failures by BCC to disclose the 2020 Omissions to Credit Suisse Virtuoso were conduct that related to the provision of a financial service within the meaning of s 917A of the Corporations Act;

i. denies subparagraph(c)(ii); and

ii. otherwise, does not know and therefore cannot admit the paragraphs;

e. does not plead to subparagraph (e), which makes no allegation against it and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it; and

f. denies subparagraph (f).

106O. In response to paragraph 106O of the ASOC, TMMA:

a. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

b. repeats paragraphs 106H to 106N of this Defence; and

c. otherwise denies the paragraph.

M.2A [NOT USED]

106OA-106OD. [NOT USED]

M.3 Negligence

Risk of harm

106P. In response to paragraph 106P of the ASOC, TMMA:

a. repeats paragraph 106D to 106G and 106S(d) of this Defence;

b. says that Credit Suisse Virtuoso and Credit Suisse Nova admits that any loss or damage that they may have suffered by acquiring Notes is not loss to which the 2019 Policy responds;

Particulars

Letter from Gilbert + Tobin to Kennedys of 30 June 2026

c. says therefore that Credit Suisse Virtuoso could not suffer any loss or damage from non-payment or delayed payment of any insurance proceeds under the 2019 Policy; and

d. otherwise denies the paragraph.

106Q. In response to paragraph 106Q of the ASOC, TMMA:

a. repeats paragraph 106P of this Defence;

b. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and

otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it; and

c. otherwise denies the paragraph.

106R. In response to paragraph 106R of the ASOC, TMMA:

a. repeats paragraphs 106P and 106Q of this Defence; and

b. otherwise denies the paragraph.

Duty of Care

106S. In response to paragraph 106S of the ASOC, TMMA:

a. repeats paragraphs 106P to 106R of this Defence;

b. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph to the extent that the paragraph makes no allegations against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it;

c. otherwise denies the paragraph; and

d. says further that:

i. it did not enter into any agreements with Credit Suisse Virtuoso and did not have any direct dealings with it;

ii. Credit Suisse Virtuoso could have arranged its own insurance in respect of its investment in the Assets but instead elected to rely on GBAG's insurance;

iii. Credit Suisse Virtuoso could have, but did not, seek, as a condition of its purchase of the Catfoss Notes, contractual protections or warranties regarding BCC's authority to enter the Policy and its endorsements; and

iv. Credit Suisse Virtuoso could have, but did not, seek confirmation or other information from BCC or IAL as to BCC's authority to enter the Policy and its endorsements.

Reasonable precautions

106T. In response to paragraph 106T of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S of this Defence; and

b. otherwise denies the paragraph.

106U. In response to paragraph 106U of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S of this Defence; and

b. otherwise denies the paragraph.

106V. In response to paragraph 106V of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S of this Defence; and

b. otherwise denies the paragraph.

106W. TMMA does not plead to paragraph 106W of the ASOC, as no allegation is made against it in the paragraph, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

106X. In response to paragraph 106X of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S and 106T of this Defence; and

b. otherwise denies the paragraph.

106Y. In response to paragraph 106Y of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S and 106U of this Defence; and

b. otherwise denies the paragraph.

106Z. In response to paragraph 106Z of the ASOC, TMMA:

a. repeats paragraphs 106P to 106S and 106V of this Defence; and

b. otherwise denies the paragraph.

106AA. TMMA does not plead to paragraph 106AA of the ASOC, there being no allegations made against it, and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it.

Loss and Damage

106BB. In response to paragraph 106BB of the ASOC, TMMA:

a. repeats paragraphs 106P to 106Z of this Defence;

b. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it; and

c. otherwise, does not know and therefore cannot admit the paragraph.

106CC. In response to paragraph 106CC of the ASOC, TMMA:

a. repeats paragraphs 106P to 106BB of this Defence;

b. insofar as the paragraph makes allegations against IAL, does not plead to the paragraph and otherwise does not admit that paragraph insofar as it alleges any matter relevant to the claim against it; and

c. otherwise denies the paragraph.

106DDA. In response to paragraph 106DDA of the ASOC, TMMA:

a. does not admit subparagraph (a), there being no allegation against it;

b. denies subparagraph (b);

c. in response to subparagraph (c):

i. repeats paragraph 106N(d)(i) of this Defence;

ii. denies subparagraphs (c)(ii) – (iii);

iii. does not admit subparagraph (iv), there being no allegation against it;

iv. denies subparagraph (v).

N. CLAIMS AGAINST MARSH

106DD-106MMMM.TMMA does not plead to paragraphs 106DD to 106MMMM of the ASOC, there being no allegations against it, and otherwise does not admit those paragraphs insofar as they allege any matter relevant to the claim against it.

O. THE RELIEF SOUGHT

107. In response to paragraph 107 of the ASOC, TMMA admits that Credit Suisse Virtuoso seeks the relief referred to but denies that it is entitled to that relief.

Date: 16 September 2026

Signed by Matt James Andrews
Lawyer for the Sixth Respondent

This pleading was prepared by Peter Braham SC, Justin Williams SC, James Hutton SC, Julie Granger, Jerome Entwisle, Daniel Reynolds and Stephen Thomson of counsel.

Certificate of lawyer

I, Matt James Andrews, certify to the Court that, in relation to the defence filed on behalf of the Sixth Respondent, the factual and legal material available to me at present provides a proper basis for:

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

Date: 16 September 2026

Signed by Matt James Andrews
Lawyer for the Sixth Respondent

Schedule

No. NSD 106 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Respondents

Greensill Bank AG
Second Respondent

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Third Respondent

BCC Trade Credit Pty Ltd
Fourth Respondent

Greg Brereton
Fifth Respondent

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Sixth Respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Seventh Respondent

Marsh Limited
Eighth Respondent

GREENSILL CROSS-CLAIM

Greensill Bank AG
First Cross-Claimant

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Cross-Claimant

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

BCC CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

Greensill Capital (UK) Ltd
First Cross-Respondent

Greensill Bank AG
Second Cross-Respondent

Greensill Capital Pty Ltd (in liquidation)
Third Cross-Respondent

BCC/TMMA/TMNF FIRST CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

Marsh Limited
First Cross-Respondent

Marsh Pty Ltd (ACN 004 651 512)
Second Cross-respondent

BCC/TMMA/TMNF SECOND CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

BCC/TMMA/TMNF THIRD CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

UBS Asset Management (Europe) S.A.
First Cross-Respondent

UBS Asset Management Switzerland AG
Second Cross-Respondent

UBS Fund Administration Services Luxembourg S.A.
Third Cross-Respondent

MARSH LIMITED'S FIRST CROSS-CLAIM

Marsh Limited
Cross-claimant
UBS Asset Management (Europe) S.A
First Cross-respondent

UBS Asset Management Switzerland AG
Second Cross-respondent

MARSH LIMITED'S SECOND CROSS-CLAIM

Marsh Limited
Cross-claimant

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent

Greg Brereton
Second Cross-respondent

Insurance Australia Limited (ACN 000 016 722)
Third Cross-respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fourth Cross-respondent

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Fifth Cross-respondent

IAL CROSS-CLAIM

Insurance Australia Limited (ACN 000 016 722)
Cross-claimant

Marsh Limited
First Cross-respondent

Marsh Pty Ltd
Second Cross-respondent

UBS Asset Management (Europe) S.A.
Third Cross-respondent

UBS Asset Management Switzerland AG
Fourth Cross-respondent

UBS Fund Administration Services Luxembourg S.A.
Fifth Cross-respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ACN 000 438 291)
Sixth Cross-respondent