NOTICE OF FILING

Details of Filing

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File Number:	NSD346/2022
File Title:	MATHESON PROPERTY GROUP PTY LTD ACN 107 163 253 AS TRUSTEE FOR THE MPG TRUST v VIRGIN AUSTRALIA HOLDINGS LIMITED ACN 100 686 226 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 17
Rule 8.05(1)(a)

Second Further Amended Statement of Claim

No. NSD346 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

MATHESON PROPERTY GROUP PTY LIMITED (ACN 107 163 253) AS TRUSTEE FOR THE MPG TRUST

Applicant

VIRGIN AUSTRALIA HOLDINGS LIMITED ACN 100 686 226 and others named in the Schedule

Respondents

A. THE PARTIES AND GROUP MEMBERS

1 This proceeding is commenced as a representative proceeding pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth) by the Applicant on its own behalf and on behalf of all persons who:

(a) purchased unsecured notes issued by the First Respondent, Virgin Australia Holdings Limited (VAH), and listed on the Australian Securities Exchange (ASX) (Notes):

(i) upon issue of the Notes on 26 November 2019 pursuant to the Prospectus dated 5 November 2019 (Notes Prospectus); and/or

(ii) on the ASX following issue of the Notes and prior to 20 April 2020; and/or

(b) purchased senior notes issued by VAH and offered and sold in the United States of America pursuant to Rule 144A of the U.S Securities Act of 1933 (as amended) (**US Securities Act**) and outside the United States of America pursuant to Regulation S of the US Securities Act (**US Notes**) in the period 7 November 2019 to 19 April 2020; and

Filed on behalf of (name & role of party) Matheson Property Group Pty Limited (ACN 107 163 253) as trustee for the MPG Trust, Applicant
Prepared by (name of person/lawyer) Michael Catchpoole and Cameron Cheetham
Law firm (if applicable) Corrs Chambers Westgarth
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(c) as at:

(i) 20 April 2020 and 4 September 2020, were holders of the Notes and/or US Notes; or

(ii) the date of this Further Amended Statement of Claim (**FASOC**), have disposed of the Notes and/or the US Notes at a value less than the price for which the Notes were acquired;

(d) were not, and are not:

(i) directors, officers or close associates (as defined in section 8 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of VAH; or

(ii) judges or judicial registrars of the Federal Court of Australia; and

(e) have suffered loss or damage by reason of the contravening conduct of the Respondents as pleaded in this FASOC,

(together, **Group Members**).

2 As at the date of the commencement of this proceeding, there are seven or more Group Members.

3 The Applicant, Matheson Property Group Pty Limited (ACN 107 163 253) (**MPG**), in its capacity as trustee for the MPG Trust:

(a) was, at all material times, a company duly incorporated in accordance with the Corporations Act and able to sue and be sued in its corporate name and style;

(b) had as its directors Dr Daniel Vandermere Fleming from 22 May 2020 and Kylie-Jane Matheson from 25 November 2003;

(c) was, at all material times, trustee for the MPG Trust, the beneficiaries of which are Dr Daniel Fleming, Kylie-Jane Fleming (nee Matheson), Oscar Vandermere Fleming, Justin Vandermere Fleming, Danmere Pty Ltd (ACN 090 948 664) as trustee for the Daniel V Fleming Trust and KDF Holdings Pty Ltd (ACN 107 163 075); and

(d) engaged, at all material times, in property and fixed income investment activities on behalf of the MPG Trust.

4 The First Respondent, VAH:

(a) at all material times was:

(i) a company duly incorporated in accordance with the Corporations Act and able to sue and be sued in its corporate name and style;

(ii) listed on the ASX (ASX:VAH);

(iii) the issuer of the Notes pursuant to the Notes Prospectus;

(iv) the ultimate parent company of the Virgin group of companies~~, which group operated~~ (**VAH Group**);

(v) operated through the **VAH Airline Group** (being the VAH Group excluding the Velocity Group as defined in paragraph 23 below), an airline business servicing the domestic Australian and international aviation markets; and

(vi) the issuer of the US Notes pursuant to the Offering Circular (as defined in paragraph 105 below);

(b) had at all material times:

(i) Elizabeth Bryan AM, the Second Respondent, as Chairman and Independent Non-Executive Director; and

(ii) Paul Scurrah, the Third Respondent, as Managing Director and Chief Executive Officer; and

(c) between 4 September 2020 and 17 November 2020, was subject to a deed of company arrangement.

5 The Second Respondent (**Ms Bryan**) was, at all material times:

(a) the Chairman and a Non-Executive Director of VAH; and

(b) a natural person able to sue and be sued.

6 The Third Respondent (**Mr Scurrah**) was, at all material times:

(a) the Managing Director and Chief Executive Officer of VAH; and

(b) a natural person able to sue and be sued.

7 The Fourth Respondent (**Liberty**) was, at all material times:

(a) the Australian branch of Liberty Mutual Holdings Company Inc, being a company incorporated in the State of Massachusetts in the United States of America; and

(b) the lead underlying insurer of the Directors & Officers Liability Insurance Policy issued to VAH as insured with policy number DO-BN-19-584549 (**Primary Policy**).

8 The Fifth Respondent (**HDI Global**) was, at all material times:

(a) a company duly incorporated in accordance with the Corporations Act and able to sue and be sued in its corporate name and style; and

(b) the lead underlying insurer of the First Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number 202001-4050 (**First Excess Policy**).

9 The Sixth Respondent (**Beazley**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Beazley Furlonge Ltd; and

(b) the lead underlying insurer of the Second Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number FSASA1901030 (**Second Excess Policy**).

10 The Seventh Respondent (**Endurance**) was, at all material times:

(a) a company incorporated pursuant to the laws of England and Wales and able to sue and be sued in its corporate name and style; and

(b) one of the underlying insurers of the Second Excess Policy.

11 The Eighth Respondent (**ACT Lloyd's Syndicate**) was, at all material times:

(a) a syndicate or consortium of underwriters associated with Lloyd's of London; and

(b) one of the underlying insurers of:

(i) the Second Excess Policy;

(ii) the Third Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number FSASA1901280 (**Third Excess Policy**); and

(iii) the Fifth Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number FSASA1901267 (**Fifth Excess Policy**).

12 The Ninth Respondent (**Hiscox**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Hiscox Syndicates Ltd; and

(b) the lead underlying insurer of the Third Excess Policy.

13 The Tenth Respondent (**Everest**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Asta Managing Agency Ltd; and

(b) the lead underlying insurer of the Fourth Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to

VAH as insured with policy number FSASA1901031 (**Fourth Excess Policy**).

14 The Eleventh Respondent (**CV Starr**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Starr Managing Agents Limited; and

(b) one of the underlying insurers of the Fourth Excess Policy.

15 The Twelfth Respondent (**HCC**) was, at all material times:

(a) a company incorporated pursuant to the laws of England and Wales and able to sue and be sued in its corporate name and style; and

(b) the lead underlying insurer of Fifth Excess Policy.

16 The Thirteenth Respondent (**Aspen**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Aspen Insurance Holdings Limited; and

(b) one of the underlying insurers of the Fifth Excess Policy.

17 The Fourteenth Respondent (**Assicurazioni**) was, at all material times:

(a) a company incorporated pursuant to the laws of Italy and able to sue and be sued in its corporate name and style; and

(b) the lead underlying insurer of the Sixth Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number FSASA1900787 (**Sixth Excess Policy**).

18 The Fifteenth Respondent (**Aviva**) was, at all material times:

(a) a company incorporated pursuant to the laws of England and Wales and able to sue and be sued in its corporate name and style; and

(b) one of the underlying insurers of the Sixth Excess Policy.

19 The Sixteenth Respondent (**Berkshire Hathaway**) was, at all material times:

(a) a foreign company within the meaning of s 9 of the Corporations Act with Australian Registered Business Number 600 643 034; and

(b) the lead underlying insurer of the Seventh Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number 47-ZEP-001004-05 (**Seventh Excess Policy**).

20 The Seventeenth Respondent (**Travelers**) was, at all material times:

(a) a syndicate of underwriters associated with Lloyd's of London, the managing agent of which is Travelers Syndicate Management Limited; and

(b) the lead underlying insurer of the Eighth Excess Directors' and Officers' Liability, Company Reimbursement and Company Securities Insurance Policy issued to VAH as insured with policy number FSASA1901268 (**Eighth Excess Policy**).

21 The Eighteenth Respondent (**Ryan**) was, at all material times:

(a) a company incorporated pursuant to the laws of England and Wales and able to sue and be sued in its corporate name and style; and

(b) one of the insurers of the Eighth Excess Policy.

22 The Nineteenth Respondent (**VRPL**):

(a) is and was, at all material times, a company duly incorporated in accordance with the Corporations Act and able to sue and be sued in its corporate name and style;

(b) is and was, at all material times, a member of the Velocity Group (as defined in paragraph 23 below);

(c) is and was, at all material times, the trustee of the Loyalty Trust;

(d) had as its company secretary Sharyn Page, in the period from 1 February 2016 to 31 August 2020; and

(e) had as its sole director Jonathan Sweeney, at all material times.

B. BACKGROUND

B.1. The Velocity Group of Companies

23 At all material times ~~prior to 5 December 2019~~, the Velocity Group (**Velocity Group**):

(a) consisted of the following entities:

(i) Velocity Frequent Flyer Holdco Pty Limited (**Velocity Holdco**);

(ii) Velocity Frequent Flyer 1 Pty Limited (**VFF 1**);

(iii) Velocity Frequent Flyer 2 Pty Limited (**VFF 2**);

(iv) Velocity Frequent Flyer Pty Limited (**VFFPL**);

(v) VRPL;

(vi) The Loyalty Trust; and

(vii) Torque Solutions (Australia) Pty Limited;

(b) owned and operated the Velocity Loyalty Program, being the exclusive frequent

flyer and loyalty program of VAH;

(c) was part of the VAH Group; ~~[Not used]~~

(d) had its own separate syndicated debt obligations to the VAH Group and had granted security over its assets and undertaking to its own financier;

PARTICULARS

A. Explanatory Statement – Virgin Australia Holdings Ltd ACN 100 686 226 (Subject to A Deed of Company Arrangement) dated 21 October 2020, pg 52.

B. Syndicated Facility Agreement dated 26 May 2015 (as amended) (VAH.002.040.5060).

(e) was not a member of either of the VAH Group's Deeds of Cross-Guarantee; and

PARTICULARS

Explanatory Statement – Virgin Australia Holdings Ltd ACN 100 686 226 (Subject to A Deed of Company Arrangement) dated 21 October 2020, pg 52.

(f) was not a guarantor of the obligations of VAH and in the premises of paragraphs (a) to (e) above, its financial resources were not necessarily available to assist in meeting the obligations of the VAH Group to its creditors.

Acquisition of stake in Velocity Holdco by Affinity Equity Partners

24 On or around 29 August 2014, Affinity Equity Partners (**Affinity**) purchased a minority interest of 34.82% in Velocity Holdco.

PARTICULARS

A. Affinity's investment in Velocity Holdco was held through the company known as Connectivity Pte Ltd.

B. ASX Release entitled "Virgin Australia announces major transaction to accelerate growth of Velocity Frequent Flyer" dated 29 August 2014 (MPG.005.002.0001).

25 As part of, or shortly after, Affinity's acquisition of its interest in Velocity Holdco:

(a) a separate Velocity Frequent Flyer Board was established to work with the existing Velocity management team; and

(b) a separate Chief Executive Officer of the Velocity Group was appointed, who reported to the Chief Executive Officer of the VAH Group.

PARTICULARS

A. ASX Release entitled "Virgin Australia announces major transaction to accelerate growth of Velocity Frequent Flyer" dated 29 August 2014 (MPG.005.002.0001).

B. VAH Minutes of Board Meeting dated 28~~9~~ May 2019 (VAH.002.001.0743).

26 At all material times prior to 26 November 2019, Velocity Holdco was owned by:

(a) VAH, which held a controlling interest of 64.66%;

(b) Affinity; and

(c) Velocity Holdco's management, which held a minority interest of 0.52%.

PARTICULARS

Velocity Holdco's management comprised the following directors:

A. *The Third Respondent;*

B. *Keith Anthony Neate;*

C. *Kenneth Alfred Dean;*

D. *Brett Sutton;*

E. *Kok Yew Tang;*

F. *Geoffrey Kevin Smith;*

G. *Massimo John Borghetti;*

H. *David Andrew Baxby;*

I. *Sankar Narayan; and*

J. *Neil Thompson.*

The Loyalty Trust

27 At all material times, the Loyalty Trust held member contracts, members' frequent flyer points balances and assets of the Velocity Loyalty Program, which assets were held primarily to fulfil obligations to partners of the Velocity Loyalty Program when members redeemed their points.

PARTICULARS

Slidedeck prepared by Ernst & Young entitled "Velocity Frequent Flyer – Valuation Services in relation to Velocity frequent flyer program as at 30 June 2019" dated 29 July 2019 at pg 13 (VAH.001.002.3084).

28 Pursuant to the terms of the Loyalty Trust Deed:

(a) the beneficiaries of the Loyalty Trust included each of VAH, Virgin Australia Airlines Pty Ltd (**VAA**) and VFF as a "Primary Beneficiary" and members of the Velocity Loyalty Program as "Tertiary Beneficiaries";

PARTICULARS

A. Loyalty Trust Deed, cll 2(a)~~(i)~~ and 2(c) (~~MPG.009.001.0072~~VAH.003.001.0198_CONF).

B. The Loyalty Trust Deed also had beneficiaries described as "Secondary Beneficiaries", being a Primary Beneficiary which has been subject to an "Insolvency Event" (as defined in cl 30(u) of the Loyalty Trust Deed). ~~the definition of which and identity of whom is not presently known to the Applicant.~~

(b) the Loyalty Trust was required to hold a certain amount of net assets, the key purpose of which was to ensure that the net assets of the Loyalty Trust were always positive such that the Loyalty Trust always had sufficient assets to meet its future redemption obligations;

PARTICULARS

A. Slidedeck prepared by Ernst & Young entitled "Velocity Frequent Flyer – Valuation Services in relation to Velocity frequent flyer program as at 30 June 2019" dated 29 July 2019 at pg 13 (VAH.001.002.3084).

B. Clause 29(f) of the Loyalty Trust Deed (VAH.003.001.0198_CONF).

(c) the trustee of the Loyalty Trust was prohibited from making investments out of the Loyalty Trust unless:

(i) the investment was an "Authorised Investment"; and

(ii) the investment was ~~not in contravention of~~consistent and in compliance with the Loyalty Trust Investment Policy; and

PARTICULARS

A. "Authorised Investment" was defined in the Loyalty Trust Deed at cl 30(j) (~~MPG.009.001.0072~~VAH.003.001.0198_CONF).

B. The Investment Policy was defined in cl 30(w) of the

Loyalty Trust Deed (~~MPG.009.001.0072~~VAH.003.001.0198_CONF) to mean the investment policy to be adopted and maintained by VRPL from time to time consistently with the policies in Schedule 2 to the Loyalty Trust Deed.

C. *As to sub-paragraph 28(c)(i), the Applicant refers to the definition of Authorised Investment at cl 30(j) of the Loyalty Trust Deed (~~MPG.009.001.0072~~VAH.003.001.0198_CONF).*

D. *As to sub-paragraph 28(c)(ii), the Applicant refers to Clause 29(j) of the Loyalty Trust Deed (VAH.003.001.0198_CONF).*

(d) an "Authorised Investment" included, relevantly, a loan made in accordance with the Loyalty Trust Investment Policy to a Primary Beneficiary ~~to purchase assets~~ upon arms-length terms ~~secured (with first ranking security) over such assets~~.

PARTICULARS

Loyalty Trust Deed at cl 30(j)(vi) (~~MPG.009.001.0072~~VAH.003.001.0198_CONF).

29 Pursuant to the terms of an investment policy implemented by VRPL (**Investment Policy**), the board of VRPL (which at all material times consisted of only Mr Sweeney):

(a) had ultimate responsibility for ensuring that the investment of funds of the Loyalty Trust were properly managed;

(b) was required to appoint members to an investment committee (**Investment Committee**) in accordance with the Investment Policy;

(c) was required to consider and have regard to the recommendations of the Investment Committee regarding the investments of the Loyalty Trust; and

(d) delegated to the Chief Financial Officer of VAH the day-to-day administration of the investment portfolio of the Loyalty Trust and implementation of actions decided upon by the Investment Committee.

PARTICULARS

Velocity Rewards Pty Limited as Trustee for: The Velocity Trust – Investment Policy (VAH.003.001.0197).

30 At all material times, the Investment Committee:

(a) was comprised of:

(i) the Chief Financial Officer of VAA and/or his delegate;

(ii) delegated members of the board of VRPL; and

(iii) up to three other members who could be internal or external representatives with particular expertise to provide investment advice to the board of VRPL.

PARTICULARS

Velocity Rewards Pty Limited as Trustee for: The Velocity Trust – Investment Policy (VAH.003.001.0197).

(b) had delegated authority from the board of VRPL (which at all material times consisted of only Mr Sweeney) and was required to:

(i) discuss and approve investments by VRPL in in accordance with the Loyalty Trust Investment Policy; and

(ii) mark recommendations to the board of VRPL regarding the investments of the Loyalty Trust.

PARTICULARS

A. *Velocity Rewards Pty Limited as Trustee for: The Velocity Trust – Investment Policy (VAH.003.001.0197).*

B. *VRPL Investment Committee Charter dated 14 October 2016 (VAH.002.055.9814).*

(c) made recommendations to the board of VRPL regarding investments of the Loyalty Trust, including the VRPL Loan;

PARTICULARS

A. *Minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VRP.003.001.0011).*

B. *Further documents may be included in the Applicant's tender bundle.*

31 By reason of the matters pleaded in paragraphs 29 and 30 above, the conduct and knowledge of the Investment Committee and its members was at all material times the conduct and knowledge of VRPL.

32 From September 2015 to 1 October 2019, the Investment Committee was comprised of:

(a) Jonathan Sweeney;

(b) Geoff Smith in his capacity as CFO of the VAH Group; and

(c) Brett Sutton.

PARTICULARS

A. Minutes of Loyalty Trust Investment Committee Meeting dated 17 December 2019 (VRP.001.001.0006).

B. Outline of Evidence of Jonathan Sweeney dated 18 August 2025 at [43].

33 From 1 October 2019 to 26 November 2019, the Investment Committee was comprised of:

(a) Jonathan Sweeney;

(b) Keith Neate in his capacity as CFO of the VAH Group; and

(c) Brett Sutton.

PARTICULARS

A. Minutes of Loyalty Trust Investment Committee Meeting dated 17 December 2019 (VRP.001.001.0006).

B. Outline of Evidence of Jonathan Sweeney dated 18 August 2025 at [43].

34 From 26 November 2019 to 21 April 2020, the Investment Committee was comprised of:

(a) Jonathan Sweeney; and

(b) Keith Neate in his capacity as CFO of the VAH Group.

PARTICULARS

A. Minutes of Loyalty Trust Investment Committee Meeting dated 17 December 2019 (VRP.001.001.0006).

B. Outline of Evidence of Jonathan Sweeney dated 18 August 2025 at [43].

35 Personnel who worked in or for Group Treasury (as that term is defined in paragraph

54 below) were aware of the matters pleaded in paragraphs 27 and 28 above.

PARTICULARS

A. The personnel within Group Treasury who were aware of the matters pleaded were Peter Hudson, Geoff Smith, Shane Whimp, Steven Fouracre, Jackie Poetzscher and Keith Neate.

B. Geoff Smith and Shane Whimp attended meetings of the Loyalty Trust Investment Committee and spoke to the terms and conditions of the Velocity Loan: see, eg, VRP.003.001.0013; VRP.003.001.0004; VRP.003.001.0011; VRP.003.001.0015.

C. Emails between Shane Whimp, Steven Fouracre dated 23 and 24 March 2019 (VAH.004.292.7959; VAH.004.301.8311).

D. Email from Shane Whimp to Peter Hudson and Jackie Poetzscher dated 3 May 2019 (VAH.004.292.7997).

E. Email from Shane Whimp to Peter Hudson copied to Steven Fouracre dated 10 May 2019 and attached note (VAH.004.301.9148; VAH.004.301.9149).

F. Email from Shane Whimp to Connie Li attaching Trust Considerations note (VAH.004.301.4553; VAH.004.301.4554).

G. Email from Stuart Moxon to Shane Whimp dated 16 July 2019 attaching draft EY valuation (VAH.004.292.7435; VAH.004.292.7436; VAH.004.292.7437).

H. Further particulars may be provided with the Applicant's tender bundle and/or ahead of the initial trial of common questions.

The Velocity Loan

36 From 27 August 2014, VRPL in its capacity as trustee of the Loyalty Trust entered into a ~~revolving~~ secured loan facility with **VAA**, the limit of which varied over time, and on terms:

(a) first set out in the 2014 Loan Facility Deed between VAA and VRPL dated 27 August 2014 (**2014 Loan Facility Deed**);

(b) which were amended and restated by a variation letter dated 27 August 2017 between VAA and VRPL (**Amended and Restated Loan Facility Deed**); and

(c) which were further amended by a supplemental deed dated 28 July 2016 between VAA and VRPL, an extension deed dated 27 August 2018 between VAA

and VRPL, an amendment deed dated 29 July 2019 between VAA and VRPL, and a facility limit increase deed dated 18 December 2019 between VAA and VRPL,

(the **Velocity Loan**).

PARTICULARS

A. Explanatory Statement – Virgin Australia Holdings Ltd ACN 100 686 226 (Subject to A Deed of Company Arrangement) (VAH or Company) dated 21 October 2020, pgs 52 and 86.

B. 2014 Loan Facility Deed (VAH.002.001.1590).

C. Amended and Restated Loan Facility Deed (VAH.002.001.1589).

D. Supplemental Deed dated 28 July 2016 (VAH.002.001.1591).

E. Extension Deed dated 27 August 2018 (VAH.002.001.1670).

F. Amendment Deed dated 29~~6~~ July 2019 (VAH.002.001.1588).

G. Facility Limited Increase Deed dated 18 December 2019 (VAH.002.001.1660).

*H. Each of the documents particularised in Particulars B to G above are referred to collectively in this FASOC as the **Velocity Loan Agreement**.*

37 The Velocity Loan was secured by way of security granted by Virgin Australia Airlines Holdings Pty Limited (**VAAH**) over convertible notes issued by VFFPL to VAAH.

PARTICULARS

A. In the 2014 Loan Facility Deed (VAH.002.001.1590), cl 1.1, "Security" was defined as the Specific Security Deed dated on or about 27 August 2014 pursuant to which VAAH granted security over the convertible notes issued by VFFPL to VAAH.

*B. The definition of "Secured Property" and "Initial Securities" in the Specific Security Deed (Convertible Notes) dated 27 August 2014 (VAH.001.002.3087) (the **Specific Security Deed**).*

38 Pursuant to the terms of the Velocity Loan Agreement:

(a) the loan facility provided under the Velocity Loan Agreement was cancelled on the "Maturity Date", being 12 months from the Effective Date (as notified by VRPL to VAA pursuant to cl 1.7 of the Velocity Loan Agreement) or as extended in

accordance with cl 2.1(d) or otherwise by agreement between the parties;

PARTICULARS

Velocity Loan Agreement, cl 2.1(b) (VAH.002.001.1590).

(b) immediately after each Balance Date, VRPL and VAA were required to enter into discussions with a view to agreeing an updated Facility Limit, with respect to which VRPL was required to have regard to its Investment Committee and the amount of the Deferred Revenue as of the most recent Balance Date; and

PARTICULARS

A. Velocity Loan Agreement, cl 2.1(c) (VAH.002.001.1590).

B. The term "Balance Date" was defined in cl 1.1 of the Velocity Loan Agreement to mean 30 June and 31 December in each year.

C. The term "Deferred Revenue" wa~~i~~s defined in cl 30(o) of the Loyalty Trust Deed to mean the deferred revenue or unearned income in respect of Member Rewards. ~~, discovery of which has not been given by VAH.~~

(c) immediately after each Balance Date falling on 30 June in each year, VRPL and VAA were required to enter into discussions with a view to extending the Maturity Date for 12 months from the then-current Maturity Date and agreeing the terms which should apply to the extended Facility.

PARTICULARS

Velocity Loan Agreement, cl 2.1(d) (VAH.002.001.1590).

39 Pursuant to the terms of the Specific Security Deed:

(a) VAAH granted a first ranking security interest in VAAH's present and future interest in, under or derived from any convertible notes issued by VFFPL to VAAH, to secure payment of all amounts payable or owing at any time under or in connection with the Velocity Loan;

PARTICULARS

A. Clauses 2.1 and 2.2 of the Specific Security Deed (VAH.001.002.3087).

B. The definitions of "Additional Security", "Initial Security", "Issuer", "Secured Money" and "Secured Property" in the Specific Security Deed (VAH.001.002.3087).

(b) If VAAH acquired any additional convertible notes, it was obliged to deposit with VRPL or its nominee all certificates for the additional convertible notes and executed transfer forms in respect of them;

PARTICULARS

Clause 2.5 of the Specific Security Deed (VAH.001.002.3087).

(c) VAAH was not permitted to, inter alia, create or allow other interests in the convertible notes, dispose of the convertible notes, or convert the convertible notes into shares;

PARTICULARS

Clauses 3 and 5.3(g) of the Specific Security Deed (VAH.001.002.3087).

(d) VRPL was entitled to enforce the security interest in respect of the convertible notes by, inter alia, transferring the convertible notes to itself or any other person or by appointing a receiver to the convertible notes with powers to deal with the convertible notes (including to sell the convertible notes); and

PARTICULARS

Clauses 6.4 and 9 of the Specific Security Deed (VAH.001.002.3087).

(e) VAAH indemnified VRPL against, all losses, liabilities, costs and expenses and VRPL was entitled to recover amounts to be indemnified direct from the convertible notes.

PARTICULARS

Clause 16 of the Specific Security Deed (VAH.001.002.3087).

40 On 27 August 2018, the Velocity Loan Agreement was amended so as to permit VRPL to make advances requested by VAA if VRPL was satisfied (acting reasonably) that:

(a) no "Repayment Event" had occurred and was continuing, and the provision of the advance would not result in the occurrence of a Repayment Event;

(b) no "VAH Free Cash Event" was subsisting, meaning that VAH's ~~c~~Consolidated unrestricted cash balance (excluding any cash held by the Velocity Group or VRPL as trustee for the Loyalty Trust) was not less than the "VAH Free Cash Amount" (being the actuary calculated amount required to be maintained under the Loyalty Trust Deed as notified after 30 June and 31 December each year plus a $10 million buffer);

(c) no "Velocity Leverage Event" was subsisting, meaning that the Velocity Group had not exceeded a leverage limit of 3.5 times;

(d) no demand under cl 5.1(b) of the Velocity Loan Agreement was outstanding, and VRPL would not at the proposed drawdown date need to make a further demand under cl 5.1(b);

(e) in the case of an advance that would result in the "Principal Outstanding" being in excess of the amount specified in cl 1.6(a) of the Velocity Loan Agreement, VRPL had unrestricted cash available to fund that advance; and

(f) the advance would not cause the "Drawn Loan Amount" plus the "Invested Amount" to exceed the "Investable Proceeds" (as defined in the investment mandate letter dated August 2018 (**Investment Mandate Letter**)).

PARTICULARS

A. 2018 Facility Extension Deed (2014 Loan Facility Deed) dated 27 August 2018, cl 2.2(c), amending cl 2.2(d) of the Velocity Loan Agreement (VAH.002.001.1670).

B. As to sub-paragraph (a), "Repayment Event" was defined in cl 5.2(a) of the Velocity Loan Agreement: VAH.002.001.1589 (as amended).

C. As to sub-paragraph (b):

i. the actuary calculated amount for 30 June 2019 was in the range of $297 million to $302 million: VAH.850.001.0032; VAH.001.002.3084; ~~and~~

ii. no VAH Free Cash Amount was set from 31 December 2019: Letter from Gilbert + Tobin to Corrs Chambers Westgarth dated 31 May 2024 at [22] (MPG.011.001.0001); and

iii. "Consolidated" was defined in clause 1.1 of the Velocity Loan Agreement: VAH.002.001.1589.

D. As to sub-paragraph (d), the terms of cl 5.1(b) of the Velocity Loan Agreement are pleaded at paragraph 41(b) below.

E. As to sub-paragraph (e):

i. the amount specified in cl 1.6(a) of the Velocity Loan Agreement was $203,796,998.48; and

ii. the term "Principal Outstanding" was defined in cl 1.1 of the Velocity Loan Agreement: VAH.002.001.1589 (as amended).

F. As to sub-paragraph (f): ~~, discovery has not been given of the investment mandate letter dated August 2018. The Applicant may provide further particulars following discovery of the Investment Mandate Letter.~~

i. "Drawn Loan Amount" was defined in cl 1 of the Investment Mandate Letter to mean the aggregate principal amount outstanding at any time under the Velocity Loan Agreement (VAH.003.001.0199);

ii. "Invested Amount" was defined in cl 1 of the Investment Mandate Letter to mean the aggregate amount of all investments in Authorised Instruments outstanding at any time (VAH.003.001.0199); and

iii. "Investable Proceeds" was defined in cl 1 of the Investment Mandate Letter to mean the amount determined by VRPL (in its full discretion) as the maximum amount that may be invested by the Investment Manager at any time (including, for the avoidance of doubt, the Drawn Loan Amount) and any interest or returns generated from the investment of the Surplus Proceeds and the Drawn Loan Amount (VAH.003.001.0199).

41 Further, pursuant to clause 5 of the Velocity Loan Agreement:

(a) VAA was required to repay the Principal Outstanding under the Facility and all accrued interest outstanding in relation to each Advance and all other debts and monetary liabilities of VAA to VRPL under or in relation to the Velocity Loan Agreement in full on the Maturity Date and otherwise as required under the Velocity Loan Agreement; and

PARTICULARS

A. Each of the terms "Principal Outstanding", "Facility", "Advance" and "Maturity Date" are defined in cl 1.1 of the Velocity Loan Agreement: VAH.002.001.1589 (as amended).

B. Velocity Loan Agreement, cl 5.1(a).

(b) at any time, if VRPL (acting reasonably) considered that repayment was required to protect Tertiary Beneficiaries' interest (including, without limitation, by reason of a VAH Free Cash Event or a Velocity Leverage Event having occurred), VAA was required to repay Principal Outstanding and accrued and unpaid interest in connection with that Principal Outstanding in an amount up to or equal to the Amount (Requisite Amount Obligations) to VRPL within three Business Days of demand.

PARTICULARS

A. Each of the terms "Tertiary Beneficiaries", "Principal Outstanding", "Amount (Requisite Amount Obligations)" and "Business Days" are defined in cl 1.1 of the Velocity Loan Agreement: VAH.002.001.1590 (as amended).

B. Velocity Loan Agreement, cl 5.1(b)(ii): VAH.002.001.1590 (as amended).

42 Pursuant to the terms of the Velocity Loan Agreement, VRPL, in exercising its rights and discretions under the "Transaction Documents" (which were defined in cl 1.1 to mean, amongst other documents, the Velocity Loan Agreement and any document or agreement which amends the Velocity Loan Agreement), was required to have regard to the Investment Committee.

PARTICULARS

Velocity Loan Agreement, cl 1.8 (VAH.002.001.1590).

43 At all material times, and pursuant to an arrangement or on a basis not presently known to the Applicant, funds lent to VAA by VRPL pursuant to the Velocity Loan Agreement were:

(a) on-lent, or otherwise made available, to VAH; and

(b) repayable by VAH to VAA or directly to VRPL on VAA's behalf.

~~The Investment Committee:~~

~~acted as an advisor to VRPL as trustee of the Loyalty Trust on investment matters, including the Facility Limit under the Velocity Loan Agreement;~~

~~made recommendations to the board of VRPL, which consisted only of Mr Sweeney; and~~

~~was comprised of, at least, two executives from the VAH Group~~

~~***PARTICULARS***~~

~~*A.Email from Alex Helbig to Shane Whimp dated 20 November 2019 (VAH.004.304.8759).*~~

~~*B.Email from Shane Whimp to Steven Fouracre and Connie Li dated 9 December 2019 and attached paper entitled "Request to increase the Loan Facility Limit" dated 9 December 2019 (VAH.002.002.6488; VAH.002.002.6489).*~~

~~*C.Article published in the Australian Financial Review dated 25 April 2020, "Failed Virgin tapped frequent flyer trust for loan".*~~

44 From around 29 July 2019, the combined effect of the covenants pleaded in paragraphs 40 and 41 above was understood by VAH to be that:

(a) the undrawn balance under the Velocity Loan would become unavailable if VAH's unrestricted cash position fell below $550 million; and

(b) the drawn balance under the Velocity Loan would become repayable if VAH's unrestricted cash position fell below $300 million.

PARTICULARS

A. Slidedeck prepared by Ernst & Young entitled "Velocity Frequent Flyer Valuation services in relation to Velocity frequent flyer program as at 30 June 2019" dated 29 July 2019 (VAH.001.002.3084).

B. Audit and Risk Management Paper for Approval – Review of Minimum Required Liquidity dated 15 January 2020 (VAH.004.118.9373).

C. Email from Shane Whimp to Alex Helbig, Steven Fouracre and Teresa McAdam dated 3 March 2020 (VAH.002.011.6816).

D. Slidedeck entitled "Cash and liquidity reporting" dated 18 March 2020 (VAH.002.001.9657).

45 By reason of the matters pleaded in paragraphs 40 to 44 above, the requirement to repay the drawn balance under the Velocity Loan when called upon ~~repayment~~ was, amongst other things, subject to the discretion of VRPL.

46 VAH's ability to access ~~and/~~or ~~use cash~~ draw~~n~~ down cash under the Velocity Loan was restricted by:

(a) the terms of the Velocity Loan Agreement;

(b) the terms of the Loyalty Trust Deed;

(c) VRPL's fiduciary and equitable duties as trustee of the Loyalty Trust, which necessarily took precedence over any duties it might have had to other members

of the VAH Group or Velocity Group;

(d) the views, advice and position of the Investment Committee with respect to, amongst other things, drawdown requests, extensions of the Maturity Date and increases to the Facility Limit;

(e) the views and position of Mr Sweeney with respect to amongst other things, drawdown requests, extensions of the Maturity Date and increases to the Facility Limit;

(f) the Loyalty Trust Investment Policy; and/or

(g) the terms of the Investment Mandate Letter.

PARTICULARS

A. As to sub-paragraph (a), the Applicant refers to and repeats the matters pleaded at paragraph 40 above.

B. As to sub-paragraph (b):

I. these matters may be inferred from:

i. the fact that VRPL holds the position of trustee and is accordingly subject to fiduciary duties, including to act in the best interests of the beneficiaries of the trust, which is further confirmed by the conditions in cl 2.2(d) of the Velocity Loan Agreement (conferring discretion upon VRPL not to advance funds pursuant to the Velocity Loan where it is not in the interests of Tertiary Beneficiaries): VAH.002.001.1590 (as amended); and

ii. the fact that a drawdown request under the Velocity Loan Agreement was submitted on 30 March 2020, which the Applicant infers was refused by VRPL by reason of Mr Sweeney's request for advice from PricewaterhouseCoopers with respect to the drawdown request, his subsequent request of Mr Neate for disclosure of the current and forecast VAH Cash (consolidated but excluding cash held by the Velocity Group or the Loyalty Trust), and VAH's entry into voluntary administration on 20 April 2020: VAH.002.043.5366; VAH.002.043.5489; VAH.002.031.0332; and

II. *the Applicant refers to and repeats paragraph 40 above.*

C. *As to sub-paragraph (d), the Applicant refers to and repeats paragraphs 42 and 43 above and as to sub-paragraph (e), the Applicant refers to and repeats paragraphs 22(e), 40, 41 and 43(b).*

D. *As to sub-paragraph (f), these matters may be inferred from:*

I. *the email from Teresa McAdam to Courtney Peterseen (copied to others) dated 5 February 2020 (VAH.002.002.2996), in which reference is made to the "investment mandate letter which sets our [sic] the terms for investments made by VAA as investment manager on behalf of VRPL"; and*

II. *the email from Shane Whimp to Alex Helbig, Steven Fouracre and Connie Li dated 23 March 2020 (VAH.002.002.0149), in which Mr Whimp notes "Keith and I are speaking with Jonathan this week about drawdowns under VRPL as well as relaxation of the investment mandate (ie keep cash at call as opposed to on deposit as per mandate)".*

47 By reason of the matters pleaded in paragraphs 45 and 46 above, VAH did not have control over:

(a) the Loyalty Trust; and/or

(b) VRPL in its capacity as trustee for the Loyalty Trust,

and accordingly could not direct or control the investment decisions of VRPL in its capacity as trustee for the Loyalty Trust, including with respect to (amongst other things):

(c) whether to permit further drawdowns under the Velocity Loan;

(d) whether to extend the Maturity Date of the Velocity Loan pursuant to cl 2.1(d) of the Velocity Loan Agreement; and

(e) whether to increase the size of the "Facility Limit" (as defined in the Velocity Loan Agreement), pursuant to cl 2.1(c) of the Velocity Loan Agreement; and/or

(f) whether and in what circumstances ~~to require~~ repayment of some or all of the drawn amounts of the Velocity Loan might be required pursuant to clauses 5.1(a) and/or (b) of the Velocity Loan Agreement.

PARTICULARS

A. Email from Keith Neate to Emma-Jane Newton of Morgan Stanley dated ~~21~~12 April 2020 (VAH.002.043.5413).

B. Email from Shane Whimp to Geoff Smith and Steven Fouracre dated 27 March 2019 (VAH.004.301.8375).

C. Email from Shane Whimp to Steven Fouracre dated 15 April 2019 (VAH.004.301.8768).

48 In the premises of paragraphs 27 to 47 above,

(a) the conditions, covenants and restrictions which applied to the Velocity Loan, including pursuant to the Velocity Loan Agreement, the Loyalty Trust Deed, the Loyalty Trust Investment Policy and/or the Investment Mandate Letter, constrained VAA's ability to draw down under the Velocity Loan and, consequently, VAH's ability to ~~draw~~ freely ~~upon~~ access the undrawn balance of the Velocity Loan;

(b) ~~VAH was not permitted to use funds drawn from the Velocity Loan other than to purchase assets upon arms-length terms secured (with first ranking security) over such assets~~ [Not used]

(c) VAA's ability to draw down under the Velocity Loan and, consequently, VAH's ability to access the undrawn balance of the Velocity Loan was also subject to the discretion of VRPL, ~~which~~ had to be exercised in accordance with VRPL's fiduciary and equitable duties as trustee of the Loyalty Trust;

(d) VAH or the VAH Group was not capable of controlling or directing the investment decisions of VRPL, including with respect to the funds under the Loyalty Trust;

(e) VAA and, derivatively, VAH ~~was~~ were subject to a corresponding liability to repay the outstanding principal and interest on advances made under the Velocity Loan Agreement at any time and at VRPL's election;

(f) accordingly, the ~~drawn and~~ undrawn balance of the Velocity Loan:

(i) was not, and/or ought not to have been treated as being, ~~unrestricted~~ cash freely and unconditionally available for VAH's ~~free and unconditional~~ use.~~;~~ ~~and~~

~~(ii) was, and/or ought to have been treated as being, restricted cash for the purpose of VAH's accounts and financial reports.~~

49 Personnel who worked in or for Group Treasury (as that term is defined in paragraph 54 below) ~~was~~were aware of the matters pleaded in paragraphs 36 to 48 above.

PARTICULARS

A. The personnel within Group Treasury who were aware of the matters pleaded were Peter Hudson, Geoff Smith, Shane Whimp, Steven Fouracre, Teresa McAdam, Keith Neate, Jackie Poetzscher and Alex Helbig.

B. Email from Shane Whimp to Peter Hudson dated 23 March 2019 (VAH.004.292.7959).

C. Email from Shane Whimp to Geoff Smith, copied to Steven Fouracre dated 27 March 2019 (VAH.004.301.8377).

D. Email from Peter Hudson to Shane Whimp and Steven Fouracre dated 14 Mary 2019 (VAH.004.292.8035).

E. Email from Shane Whimp to Steven Fouracre dated 24 March 2019 (VAH.004.301.8311).

F. Email from Peter Hudson to Shane Whimp dated 10 May 2019 and attached Group Cash Requirements Paper (VAH.004.292.8021; VAH.004.292.8022).

G. Email from Shane Whimp to Steven Fouracre dated 15 April 2019 (VAH.004.301.8768).

H. Email from Shane Whimp to Peter Hudson copied to Steven Fouracre dated 10 May 2019 and attached note (VAH.004.301.9148; VAH.004.301.9149).

I. Email from Shane Whimp to Will Barker, Peter Hudson, and Steven Fouracre dated 1 July 2019 (VAH.002.003.4326).

J. Memo from Shane Whimp to the VRPL Board dated 24 July 2019 (VAH.002.003.5584).

K. Letter from VAA (signed by Geoff Smith) to VRPL dated 26 July 2019 (VAH.004.006.0871).

L. Email from Shane Whimp to Steven Fouracre dated 9 December 2019 and attached draft memo to the VRPL Investment Committee and VRPL Board (VAH.002.002.6488; VAH.002.002.6489).

M. Email from Teresa McAdam to Courtney Petersen and copied to Steven Fouracre, Shane Whimp, and Sharyn Page dated 7 February 2020 (VAH.002.002.2996).

N. Further particulars may be provided with the Applicant's tender bundle and/or ahead of the initial trial of common questions.

50 The Investment Committee was aware of the matters pleaded in paragraphs 36 to 48 above.

PARTICULARS

A. Email from Shane Whimp to Geoff Smith, copied to Steven Fouracre dated 27 March 2019 (VAH.004.301.8377).

B. Memo from Shane Whimp to the VRPL Board dated 24 July 2019 (VAH.002.003.5584).

C. Letter from VAA (signed by Geoff Smith) to VRPL dated 26 July 2019 (VAH.004.006.0871).

D. Further particulars may be provided with the Applicant's tender bundle and/or ahead of the initial trial of common questions

B1A. The VAH Group's financial statements

51 At all material times following Affinity's acquisition of its minority interest in Velocity Holdco, VAH consolidated the Velocity Group (including VRPL and the Loyalty Trust) and the VAH Group for the purpose of reporting its consolidated financial statements.

PARTICULARS

A. Virgin Australia Group Annual Financial Report FY15 at note 33 (MPG.009.002.0001).

B. Virgin Australia Group Annual Financial Report FY19 at note F3 (VAH.003.002.0005).

52 VAH's audited financial statements for the 2019 financial year:

(a) were prepared on a consolidated basis, with VRPL and the Loyalty Trust being treated as part of the VAH Group for the purpose of its consolidated financial reports;

PARTICULARS

VAH Annual Report FY2019, pg 86, Note F3 (VAH.003.002.0005).

(b) disclosed that there were no significant restrictions on VAH's ability to access or use the assets and settle the liabilities of the VAH Group other than those disclosed in Note E2;

PARTICULARS

VAH Annual Report FY2019, pg 86, Note F3 (VAH.003.002.0005).

(c) recognised a 35.28% non-controlling interest in the Velocity Group, including VRPL and the Loyalty Trust, and noted in Note E2 to the financial statements that cash held in entities with non-controlling interests was subject to restrictions relating to distributions;

PARTICULARS

VAH Annual Report FY2019, pgs 73 (Note E2), 86-87 (VAH.003.002.0005).

(d) included in "cash and cash equivalents" all cash on hand, on-demand deposits and short-term highly liquid investments that were readily convertible to known amounts of cash and subject to insignificant changes in value; and

PARTICULARS

VAH Annual Report FY2019, pg 73 (VAH.003.002.0005).

(e) disclosed that cash held in entities with non-controlling interests was classified as "restricted cash".

PARTICULARS

VAH Annual Report FY19, pg 73 (VAH.003.002.0005).

53 Prior to the release of the Report to Creditors (as defined in paragraph 174 below) by VAH's voluntary administrators on 25 August 2020, VAH had not disclosed, including in its financial statements:

(a) the existence and terms of the Velocity Loan (including the matters pleaded at paragraphs 36 to 43 above); and

(b) the existence of a debt or liability owing to VRPL as trustee of the Loyalty Trust equivalent to the drawn amount under the Velocity Loan Agreement.

PARTICULARS

The VAH Annual Report FY2019 disclosed a loan described as "other" in the "Secured bank loans" section, which refers to a syndicated loan facility entered into by Velocity VFFPL with Australia and New Zealand Banking Group Limited, AustralianSuper Pty Ltd (as trustee of AustralianSuper), Challenger Life Company Limited and Fidante Partners Services Limited (as trustee for the HESTA Relative Value Debt Trust) as lenders, Australian and New Zealand

Banking Group Limited as agent and ANZ Fiduciary Services Pty Limited as Security Trustee: see:

A. Project Jade Syndicated Facility Agreement dated 26 May 2015 (VAH.002.040.5060);

B. Working Papers for VAH Annual Report FY19 (VAH.004.015.4505); and

C. Note 15 to the Special Purpose Financial Report for VFFPL (MPG.008.001.0028).

B1B. The Virgin Australia Group Treasury

54 At all material times, the personnel within the Virgin Australia Group Treasury function (**Group Treasury**) were responsible for, amongst other things:

(a) risk management, including implementing the treasury risk management and investment strategies, assessing and monitoring counterparties' financial and credit capacity, recommending to the CFO approval of new counterparties and preparation of policy and strategy updates;

(b) funding and capital management, including day-to-day management of the VAH Group's liquidity position, arranging asset or other financing, and maintaining relationships with financiers and debt investors; and

(c) treasury compliance and control environment, including monitoring and reporting compliance with the Treasury Risk Management Policy and approved treasury risk management strategies.

PARTICULARS

A. Virgin Australia Group Treasury Risk Management Policy May 2019, Section 2.4 (VAH.001.014.9983).

B. Outline of Evidence of Steven James Fouracre dated 15 August 2025 at [15].

55 The Treasury Risk Management Policy:

(a) was approved by the VAH Board;

(b) at all material times, applied to all members of the VAH Group; and

(c) at all material times, required that the VAH Group maintain a minimum free cash balance of $350 million at any point in time.

56 At all material times, the functions of Group Treasury were carried out by, amongst

other people:

(a) up until October 2019, Geoff Smith, CFO;

(b) from August 2019, Keith Neate, CFO;

(c) Steven Fouracre, Group Treasurer;

(d) Shane Whimp, Head of Treasury & Risk Management;

(e) Alex Helbig, Treasury Cash and Liquidity Leader;

(f) Jackie Poetzscher, Manager, Group Reporting;

(g) Peter Hudson, whose title is not presently known to the Applicant;

(h) Garrett Mayall, Manager, Treasury Operations; and

(i) Teresa McAdam, General Manager, Funding & Leasing.

57 At all material times, personnel who worked in or for Group Treasury carried out treasury services and functions for the VAH Airline Group, including for VAA, VAAH and VAH.

PARTICULARS

A. Virgin Australia Group Treasury Risk Management Policy May 2019, sections 1.1 and 2.2 (VAH.001.014.9983).

B. Further particulars may be provided with the Applicant's tender bundle.

58 At all material times, VFF carried out corporate services for VRPL in relation to the Velocity Loyalty Program.

PARTICULARS

A. Amendment and Restatement Deed – VRPL Services Agreement dated 8 October 2014 (VAH.001.014.9989).

B. Further particulars may be provided with the Applicant's tender bundle.

59 At all material times, personnel who worked in or for Group Treasury carried out treasury services and functions for VRPL, including by managing the Velocity Loan (as lender) and VRPL's cash (as the mandated investment manager).

PARTICULARS

A. Email from Shane Whimp to Geoff Smith dated 25 August 2019 (VAH.004.301.6439).

B. "Project Vector Separation Analysis" draft report (UBS.0001.0001.5625).

C. The particular personnel who were involved in managing the Velocity Loan and VRPL's cash are not presently known to the Applicant.

D. Further particulars may be provided with the Applicant's tender bundle and/or prior to the initial trial of common questions.

60 At all material times, VRPL:

(a) did not independently employ any personnel to perform treasury services for it or the Loyalty Trust; and

(b) did not maintain its own treasury function.

PARTICULARS

A. This may be inferred from at least:

i. the delegation set out in the Investment Policy (VAH.003.001.0197) to the Chief Financial Officer of VAA of responsibility for the day-to-day administration of the investment portfolio of the Loyalty Trust and implementation of actions decided upon by the Investment Committee, including specific responsibility for investing the Liquid Assets component of the investment portfolio and investing in the Authorised Investments component of the investment portfolio unless delegated by the Investment Committee to an Investment Manager;

ii. the appointment of VAA as Investment Manager to invest surplus cash held by VRPL on a fully discretionary basis subject to terms set out in the Investment Management Mandate Letter dated 21 August 2018 (VAH.003.001.0199); and

iii. email from Shane Whimp to Geoff Smith, confirming that "VA Treasury manages the VRPL loan (as the lender)" and "VA Treasury also manages the cash in VRPL (as mandated investment manager)" (VAH.004.301.6439).

B. Further particulars may be provided by way of the Applicant's tender bundle.

61 By reason of the matters pleaded in paragraphs 54 to 60 above, VRPL in its capacity as trustee for the Loyalty Trust relied upon Group Treasury personnel to perform treasury functions, including by managing the Velocity Loan (as lender) and VRPL's cash (as mandated investment manager).

62 At all materials times:

(a) there was no separation of the different functions being performed by Group Treasury on behalf of different entities within the VAH Group; and

(b) Group Treasury personnel did not otherwise distinguish treasury services and functions performed on behalf of companies within the VAH Airline Group from treasury services and functions performed on behalf of VRPL.

PARTICULARS

A. *Emails from Shane Whimp to Steven Fouracre and Geoff Smith dated 27 March 2019 (VAH.004.301.8377).*

B. *Email from Shane Whimp to Steven Fouracre dated 12 April 2019 (VAH.004.116.9606).*

C. *Email from Shane Whimp to Peter Hudson and Jackie Poetzscher dated 3 May 2019 (VAH.004.292.7997).*

D. *Email from Stuart Moxon to Maria Philips and Shane Whimp dated 12 July 2019, which Shane Whimp forwarded to Connie Li on the same date (VAH.004.301.4553).*

E. *VRPL Board Paper for Approval dated 13 August 2019, regarding VRPL/VA Loan Amendment (VRP.003.001.0001).*

F. *Email from Will Barker (in house legal counsel for VAH) to Christopher Coleman-Fenn (Treasury Specialist, Risk Management, Virgin Australia), copying Shane Whimp and Teresa McAdam, dated 4 October 2019 (VAH.004.355.1583).*

G. *Email from Tereasa McAdam to Shane Whimp, Chris Coleman-Fenn, and Christina Pedersen dated 12 October 2019 (VAH.004.355.2674).*

H. *Email from Shane Whimp to Steven Fouracre, copying Alex Helbig, dated 20 November 2019 (VAH.002.002.8693; VAH.002.002.8694).*

I. *Email from Shane Whimp to Steven Fouracre, copying Connie Li, dated 9 December 2019 (VAH.002.002.6488).*

J. *Email from Berdette Zolezzi to Keith Neate dated 13 February 2020 (VAH.002.028.5367).*

K. *Email from Teresa McAdam to Steven Fouracre, copying Shane Whimp, Jason Lanfranchi, and Emily Yeo, dated 17 March 2020 regarding unsecured credit limits (VAH.002.001.9467).*

L. *Emails between Steven Fouracre and Shane Whimp dated 26 March 2020 regarding queries from Commonwealth Bank (VAH.002.052.5454).*

M. *Emails between Warwick Negus, Paul Scurrah, Keith Neate and Steven Fouracre dated 10 April 2020: VAH.002.052.4927; VAH.002.012.5943.*

N. *Email from Shane Whimp to Andrew Sellick, Glen Steedman (VAH General Manager of Finance) and Anthony Stokes (VAH General Manager of Airports, Property and Procurement), copying Steven Fouracre, dated 12 April 2020 (VAH.002.001.8087).*

O. *Email exchanges between Central Treasury and Velocity personnel in April 2020 (VAH.002.043.5422).*

P. *Board resolution from Anthony Stokes on proposed distribution addressed to VFF board (VAH.002.043.5433)*.

63 By reason of the matters pleaded in paragraphs 54 to 62 above, the conduct and knowledge of (at least) the Group Treasury personnel identified in paragraphs 54 to 62 above, including the particulars thereto, were at all material times the conduct and knowledge of VRPL.

PARTICULARS

Further particulars as to the personnel within Group Treasury whose knowledge and conduct may be attributed to VRPL may be provided following the completion of discovery, with the Applicant's tender bundle and/or prior to the initial trial of common questions.

B.2. The Velocity Acquisition and the 2019 Velocity Loan Extension

64 ~~In the period prior to 31 October 2018, at a precise time not presently known to the Applicant,~~ On 25 January 2018, Affinity notified VAH that it had decided to exit its investment in the Velocity Group either by a trade sale or initial public offering (**IPO**).

PARTICULARS

A. VAH Board Paper for Information – Project Vector dated 30 January 2018 (VAH.001.017.9997).

B. VAH Board Paper for Information – Project Vector – Update / Project Ray – Overview dated 24 May 2019 (VAH.950.001.0116).

C. VAH Board Paper for Information – Project Ray/Vector dated 18 July 2019 (VAH.950.001.0023).

D. VAH Board Paper for Information - Project Vector / Ray Update and Overview of NBIO dated 27 August 2019 (VAH.002.024.5472).

65 On 18 October 2018, VAH notified Affinity that VAH would not be exercising its right of first offer in respect of Affinity's investment in the Velocity Group (**ROFO Notice**).

PARTICULARS

VAH Board Paper for Approval – Project Vector: Phase 2 dated 31 October 2018 (VAH.002.003.4451).

66 After the issuance of the ROFO Notice, VAH expected Affinity to provide an "Exit Notice" in accordance with the terms of a deed of investment between VAH and Affinity (**Investment Deed**).

PARTICULARS

VAH Board Paper for Approval – Project Vector: Phase 2 dated 31 October 2018 (VAH.002.003.4451).

67 In anticipation of an "Exit Notice" being issued, VAH's management identified six strategic objectives by which to assess the desirability of the potential transaction scenarios by which Affinity would exit its investment in the Velocity Group as follows:

(a) VAH maintaining at least a 50.1% stake in the Velocity Group to enable VAH to continue to consolidate the Velocity Group in the VAH's consolidated financial statements as pleaded in paragraph 51;

(b) VAH maintaining deductibility of carried forward income tax losses as part of the VAH tax consolidated group;

(c) VAH minimising liquidity and refinancing risks including avoiding the loss of the Velocity Loan;

(d) VAH avoiding any negative impact on its corporate credit rating;

(e) VAH maintaining governance control of the Velocity Group; and

(f) VAH delivering further value accretion within the Velocity Group through the introduction of a strategic partner.

PARTICULARS

VAH Board Paper for Approval – Project Vector: Phase 2 dated 31 October 2018 (VAH.002.003.4451).

68 By at least 31 October 2018, VAH's management had assessed various transaction scenarios regarding Affinity's exit on a preliminary basis and, amongst other things, assessed that any IPO of the Velocity Group was highly undesirable including because VAH would lose access to the Velocity Loan.

PARTICULARS

VAH Board Paper for Approval – Project Vector: Phase 2 dated 31 October 2018 (VAH.002.003.4451).

69 On 1 November 2018, Affinity issued an "Exit Notice" in accordance with the terms of the Investment Deed.

70 On or around 24 May 2019, a board paper was produced for the VAH Board of Directors with respect to VAH's potential acquisition of Affinity's stake in Velocity Holdco and the steps that were being considered by VAH's Management in arranging a funding structure that could enable that acquisition to proceed, in which VAH's "key objectives" included the minimisation of the impact on leverage levels and deconsolidation of the Velocity Group if Affinity's interest was to be acquired by a third-party.

PARTICULARS

VAH Board Paper for Information – Project Vector – Update / Project Ray – Overview dated 24 May 2019 (VAH.950.001.0116).

71 On 28 May 2019, a meeting of the VAH Board of Directors was convened, during which:

(a) the potential acquisition of Affinity's stake in Velocity Holdco was discussed and approval was given to continue investigating options to acquire that stake; and

(b) the Board:

(i) noted that VAH had issued a profit downgrade in the previous week and the need to return VAH to profitability;

(ii) reinforced the need for the company's financial performance to improve;

(iii) ~~was informed by~~noted, through Ms Bryan, that VAH would not seek to raise further funding from shareholders; and

(iv) was informed that the "Better Business Plan" had delivered good initiatives, but a review of overheads and operational efficiency had not been included in its scope and there was no holistic cost reduction or efficiency program in place across VAH.

PARTICULARS

VAH Minutes of Board Meeting dated 28 May 2019 (VAH.002.001.0743).

72 On or around 7 June 2019, Affinity notified VAH that it intended to exit its investment in Affinity via an IPO and would no longer pursue a trade sale.

PARTICULARS

Letter from Affinity to VAAH dated 7 June 2019 (VAH.002.034.6393).

73 On or around 18 July 2019, a further board paper was prepared for the VAH Board with respect to the acquisition of Affinity's stake in Velocity Holdco.

PARTICULARS

The board paper was prepared for the VAH Board by, amongst others, Geoff Smith (UBS.0001.0001.0099).

74 The board paper pleaded at paragraph 73 above recorded, as was the fact, that:

(a) the negative consequences of an IPO had been assessed with more clarity, and included:

(i) the potential loss or unnecessary use of carry forward tax losses of approximately $1 billion; and

(ii) the potential loss of the Velocity Loan, which would require refinancing from alternative funding sources in the event that alternative security could not be provided;

(b) any buyback of Affinity's stake would need to be predominantly funded with equity or equity-style hybrid capital as the VAH Group had very little headroom available for debt under its current credit metrics; and

(c) VAH's strategic objectives in acquiring Affinity's stake in Velocity Holdco included:

(i) maintaining at least a 50.1% stake in Velocity Holdco to continue consolidating the Velocity Group into the VAH accounting group for the purpose of VAH's financial reports (including profit and loss, balance sheet and statement of cash flows), which was important because deconsolidation could result in adverse impacts on VAH's financial and

ratings agency metrics; and

(ii) minimising liquidity and refinancing risk, which was important because VAH had a significant refinancing roadmap over the following 18 months (including the maturity of USD$400 million bonds in November 2019) and the Velocity Loan was a key source of cash which VAH classified as unrestricted cash and which VAH believed would need to be re-classified as restricted cash if the Velocity Loan was lost, thereby impacting available liquidity.

PARTICULARS

A. VAH Board Paper for Information – Project Ray/Vector dated 18 July 2019 (VAH.950.001.0023).

B. As to sub-paragraph 74(a)(ii), the board paper identified that:

i. the reason for the potential loss of the Velocity Loan was that the Velocity Loan was secured by convertible notes issued by Velocity Holdco to VAAH, which would cease to exist on conversion, and VAAH would not be able to offer replacement security in the form of VAAH's new shares in Velocity Holdco resulting from the conversion due to a restriction under the Corporations Act preventing VRPL from taking security over shares in an entity which controlled it; and

ii. legal advisors for Velocity Holdco had yet to consider whether it was appropriate for the Velocity Loan to remain in place post-listing having regard to Velocity Holdco's status as a listed entity, so that there was a significant residual risk that the Velocity Loan would not be available post-IPO.

75 On or around 23 July 2019, a separate board paper was prepared for the VAH Board with respect to the funding strategy for the 2020 financial year.

76 The board paper pleaded at paragraph 75 above recorded, as was the fact, that:

(a) the purpose of the funding strategy was to further support Group liquidity; and

(b) the deterioration in the FY20 free cash outlook from the prior year forecast meant

that the VAH Group was still not in a positive free cash position and had to continue to borrow to maintain an adequate liquidity buffer.

PARTICULARS

VAH Board Paper for Approval entitled "FY20 Funding Strategy" dated 23 July 2019 (VAH.950.001.0027).

77 On 24 July 2019, VAH submitted a proposal to VRPL that the Maturity Date of the Velocity Loan be extended from 27 August 2019 to 27 August 2020 and increase the Facility Limit from $400 million to $460 million, subject to Investment Committee approval.

PARTICULARS

A. *Email from Shane Whimp to Steven Fouracre and Geoff Smith dated 17 July 2019 (VAH.002.003.5582).*

B. *2019 Facility Extension Deed (2014 Loan Facility Deed) - clean version.docx (VAH.002.003.5583).*

C. *2.2.1 Loan Facility Deed - Request to Extend July 2019 - clean.docx dated 24 July 2019 (VAH.002.003.5584).*

D. *Trust Considerations Briefing Note dated 24 July 2019 (VRP.002.001.1853).*

78 On 24 July 2019, the Investment Committee held a meeting during which:

(a) Mr Sutton informed Mr Sweeney that Affinity was conducting a proposed transaction process to exit its investment in the Velocity Group;

(b) the impact of Affinity's proposed transaction on the Velocity Loan and the Velocity Loan security was considered;

(c) the Investment Committee discussed that it was not advisable to approve a 12-month extension of the Velocity Loan until the effect of Affinity's proposed transaction on the Velocity Loan and the Velocity Loan security was resolved;

(d) Mr Sweeney was informed that VRPL had to make a decision on whether or not to renew Velocity Loan by 15 August 2019; and

(e) the Investment Committee resolved that a decision on whether or not to renew the Velocity Loan be deferred until no later than 14 August 2019, with the Velocity Loan to remain in place on the same terms in the meantime and the date for renewal of the Velocity Loan to be extended accordingly by agreement between VRPL and VAA to be executed by 30 July 2019.

PARTICULARS

Minutes of the Investment Committee dated 24 July 2019 (VRP.003.001.0013).

79 By at least 24 July 2019, Mr Sweeney was aware that Affinity was pursuing an IPO in order to exit its investment in the Velocity Group.

PARTICULARS

Draft minutes of Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VAH.004.305.7277).

80 Following the Investment Committee on 24 July 2019, on or around 26 July 2019 Geoff Smith wrote to VRPL regarding the Velocity Loan and stated, amongst other things, that:

(a) VAAH would be required to convert the convertible notes held as the Velocity Loan security in order to effect Affinity's proposed IPO;

(b) the conversion of the convertible notes would be a breach of the Specific Security Deed;

(c) VAH would not be unable to provide adequate alternative security as replacement security for the Velocity Loan;

(d) VAH considered it likely that the Velocity Loan would not be able to exist post-conversion of VAAH's convertible notes;

(e) VAH was proposing to extend the Maturity Date of the Velocity Loan to 27 August 2020 and would provide VRPL with additional rights to call the Velocity Loan immediately in the event that the convertible notes were converted.

PARTICULARS

Letter from VAA to VRPL dated 26 July 2019 (VAH.004.006.0871).

81 On 14 August 2019, the Investment Committee held a meeting during which:

(a) Mr Sweeney informed the Investment Committee that VAH and VRPL had reached a joint position whereby VRPL would allow the Velocity Loan to roll over automatically under the terms of the Velocity Agreement (having regard to the protection of the security position afforded by VRPL's right to veto any conversion of the convertible notes), and the consent of Connectivity is not required;

(b) the Investment Committee discussed that that the undrawn portion of the Velocity Loan was deemed by VAH to be unrestricted;

(c) Mr Smith advised that VAH's intention at the time of the meeting was not to draw down further on the Velocity Loan over the next couple of months;

(d) the Committee resolved (with Mr Sutton dissenting) to recommend to the VRPL board (which consisted of only Mr Sweeney) that the Maturity Date of the VRPL Facility Deed is automatically extended (through VRPL taking no action) to 27 August 2020.

PARTICULARS

Minutes of Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VRP.003.001.0011).

82 On 14 August 2019, the board of VRPL (consisting only of Mr Sweeney) resolved to permit the Maturity Date of the Velocity Loan to be automatically extended (through VRPL taking no action) for a further period of 12 months.

PARTICULARS

Minutes of VRPL board meeting dated 14 August 2019 (VRP.003.001.0015).

83 In the premises of the matters pleaded at paragraph 31 above, on 14 August 2019, the Investment Committee was aware of the matters pleaded in paragraphs 68 and 74 above, and paragraph 101 below.

84 Further or alternatively, by at least 14 August 2019, VRPL knew that VAH was prepared to pay an above market premium was to avoid the negative consequences of the proposed IPO referred to in paragraph 101 below.

PARTICULARS

A. Letter from VAA to VRPL dated 26 July 2019 (VAH.004.006.0871).

B. Outline of Evidence of Jonathan Sweeney dated 18 August 2025 at [78], [93] and [103(b)].

85 On 15 August 2019, Mr Scurrah sent an email to Ms Bryan, in which he stated that:

(a) Affinity had threatened action over the efforts of VAH and the Velocity Group to extend the Velocity Loan and had declined consent to KPMG and Gilbert+Tobin entering the dataroom to assist VAH's financiers to consider funding VAH's potential acquisition of Affinity's stake;

(b) VAH had "always known" that it would not "get a bargain" for the acquisition of Affinity's stake and that "paying a premium would still be in [VAH's] best

interests"; and

(c) given the significant impact on VAH's financial position if Affinity exited its investment by way of an IPO, VAH needed to be open minded about an offer in the range of $700 million.

PARTICULARS

Email from Paul Scurrah to Elizabeth Bryan dated 15 August 2019 (BRY.002.001.3755).

86 On 15 August 2019, Ms Bryan responded to Mr Scurrah's email pleaded at paragraph 85 above, stating that the Board was aware that VAH faced costly downside risk with respect to the sale of Affinity's stake in Velocity Holdco and that "no doubt a price will be extracted by Affinity for us to avoid that".

PARTICULARS

Email from Elizabeth Bryan to Paul Scurrah copying Trevor Bourne, Ken Dean, Warwick Negus ~~Warwick~~ and Mark Chellew dated 15 August 2019 (BRY.002.001.3755).

87 On 15 August 2019, Warwick Negus, a director of VAH, responded to the email exchange between Mr Scurrah and Ms Bryan pleaded at paragraphs 85 and 86 above, stating that the "real problem is that we don't really think [Affinity's stake] is worth $700m and we are stretching right to the very edge to finance it".

PARTICULARS

Email from Warwick Negus to Trevor Bourne copying Paul Scurrah, Elizabeth Bryan, Ken Dean and Mark Chellew dated 15 August 2019 (NEG.001.004.6440).

88 On 15 August 2019, Mr Scurrah responded to Mr Negus' email pleaded at paragraph 87 above, stating to the effect that:

(a) any rational pure play view of valuation would not arrive at $700 million as the purchase price for Affinity's stake in Velocity;

(b) unfortunately for VAH, there was a very unique and sizeable penalty to VAH in the event it did not acquire Affinity's stake, and Affinity exited its investment by way of an IPO, that meant VAH could not view this as rational or pure play;

(c) in Mr Scurrah's view, that unique and sizeable penalty to VAH will "significantly dwarf" the amount of above market premium VAH may have to pay to secure the business.

PARTICULARS

Email from Paul Scurrah to Warwick Negus copying Trevor Bourne, Elizabeth Bryan, Ken Dean and Mark Chellew dated 15 August 2019 (NEG.001.004.6440).

89 The "unique and sizeable penalty" referred to by Mr Scurrah in the email pleaded at paragraph 88 comprised, alternatively included:

(a) the loss of carry forward tax losses of approximately $1 billion with a present value to VAH of approximately $50 million to $150 million;

(b) the likely loss of the Velocity Loan, which would:

a. reduce the VAH Group's unrestricted cash by $400 million;

b. require refinancing from alternative funding sources in the event that alternative security could not be provided;

(c) the potential inability to continue consolidating the Velocity Group into the VAH accounting group for the purpose of VAH's financial reports;

(d) the potential adverse impacts of deconsolidation on VAH's financial and ratings agency metrics;

(e) reduced dividends of $38 million being distributed to VAH due to an operating structure carrying higher operating costs and reduced earnings; and

(f) increased liquidity and refinancing risk.

PARTICULARS

The Applicant refers to and repeats paragraph 74 above and 97(b) and (c) below.

90 On 16 August 2019, Mr Negus sent an email to Josh Bayliss stating that Affinity was "playing hardball" and being "as uncooperative as possible" and further stating that he could not see how VAH could justify paying $700 million to acquire Affinity's stake in Velocity when the stake was worth $500 million - $600 million.

PARTICULARS

Email from Warwick Negus to Josh Bayliss dated 16 August 2019 (NEG.001.004.6437)

91 On or around 27 August 2019, a board paper was prepared for the VAH Board with

respect to its funding and liquidity position for the 2020 financial year.

PARTICULARS

VAH Board Paper for Approval entitled "FY20 Funding & Liquidity Update" dated 27 August 2019 (VAH.002.044.8613).

92 The board paper pleaded at paragraph 91 above recorded, as was the fact, that:

(a) unless VAH participated in an IPO of Velocity Holdco and sold down 14% of its stake in Velocity Holdco, VAH would fall below the $350 million ~~policy~~ minimum level of liquidity required by the Treasury Risk Management Policy in January 2020 unless (as yet unidentified) funding initiatives were approved and executed in accordance with the funding plan; and

(b) all other forecast scenarios relied upon the renewal of the Velocity Loan in August 2019 and remaining available throughout the forecast period.

PARTICULARS

VAH Board Paper for Approval entitled "FY20 Funding & Liquidity Update" dated 27 August 2019 (VAH.002.044.8613).

93 In the premises, were the Velocity Loan to terminate in August 2019, VAH would fall, or was at a material risk of falling, below the $350 million Board-approved minimum liquidity limit.

PARTICULARS

As to the Board -approved minimum liquidity limit, the Applicant refers to:

A. Slidedeck entitled "Cash and liquidity reporting" dated 18 March 2020 (VAH.002.001.9657).

B. Virgin Australia Group Treasury Risk Management Policy dated January 2020 (VAH.004.118.9372).

C. Outline of evidence of Steven Fouracre at [26] – [27].

94 On or around 27 August 2019, a board paper was prepared for the VAH Board with respect to the potential acquisition of Affinity's stake in Velocity Holdco and VAH's proposed non-binding indicative offer for that stake.

PARTICULARS

VAH Board Paper for Information entitled "Project Vector / Ray Update and Overview of NBIO" dated 27 August 2019 (VAH.002.024.5472).

95 The board paper pleaded at paragraph 94 above recorded:

(a) and it was the fact, that Affinity had ceased facilitating access to information required by potential lenders to consider funding VAH's acquisition of Affinity's stake in Velocity Holdco, with access to the due diligence data room being refused unless VAH made an offer to buy-back Affinity's stake;

(b) and it was the fact, that VAH management had therefore provided a confidential, non-binding indicative offer of $650 million to Affinity;

(c) and it was the fact, that the conversion by Affinity of its stake (held in convertible notes) to ordinary shares would lead to the loss of the Velocity Loan if alternative security could not be provided, as the convertible notes held by VAAH had been pledged as security to VRPL for the Velocity Loan;

(d) and it was the fact, that VAH management considered that VAH did not have adequate replacement security available that could be provided to VRPL having regard to other funding commitments and plans, meaning that the conversion of the convertible notes would lead to the loss of the Velocity Loan; and

(e) the loss of the Velocity Loan would reduce the VAH Group's unrestricted cash by $400 million and have a potential negative ratings impact due to the need to source replacement funding to cover lost liquidity.

PARTICULARS

VAH Board Paper for Information entitled "Project Vector / Ray Update and Overview of NBIO" dated 27 August 2019 (VAH.002.024.5472).

96 In or around 9 September 2019, a further board paper was prepared for the VAH Board with respect to the potential acquisition of Affinity's stake in Velocity Holdco and VAH's proposed non-binding indicative offer for that stake.

PARTICULARS

VAH Board Paper for Information entitled "Project Vector / Ray Update and Overview of NBIO" dated 9 September 2019 (VAH.950.001.0082).

97 The board paper pleaded at paragraph 96 above recorded:

(a) and it was the fact, that Affinity's best and final offer for the sale of its stake in Velocity Holdco to VAH was $700 million, with a $20 million break fee and the waiver by VAH of certain conditions under the ~~i~~Investment ~~d~~Deed;

(b) and it was the fact, that should VAH not accept Affinity's offer, Affinity "guaranteed" that it would proceed with an IPO of its stake, which would have

significant negative financial consequences for VAH, including:

(i) the loss of $1 billion in carry forward tax losses with a present value to VAH of approximately $50 million to $150 million;

(ii) immediate annual tax payments of approximately $32 million due to Velocity's exit from the VAH consolidated tax group and the separate taxation of the Velocity Group, equating to a net present value impact of $150-$250 million (post accounting for franking credit benefits);

(iii) the loss of the Velocity Loan, which would require refinancing; and

(iv) reduced dividends of $38 million being distributed to VAH due to an operating structure carrying higher operating costs and reduced earnings; and

(c) that, should Affinity proceed with an IPO of its stake, the loss of the Velocity Loan which would likely occur would reduce the VAH Group's unrestricted cash by $400 million; and

(d) that, in the foregoing circumstances, the proposal to acquire Affinity's stake met VAH's corporate objectives of improving its cash position and regaining 100% of the Velocity Group.

PARTICULARS

VAH Board Paper for Information entitled "Project Vector / Ray Update and Overview of NBIO" dated 9 September 2019 (VAH.950.001.0082).

98 On 2 September 2019, Mr Scurrah sent an email to Ms Bryan, Ken Dean and Trevor Bourne, in which Mr Scurrah stated that, while VAH management believed that Affinity's stake in Velocity Holdco was overvalued and that there were some "possible headwinds", he could not satisfy himself that allowing an IPO to occur was in VAH's best interests because of, amongst other things, the negative impact of the loss of the $400 million unrestricted cash from the Velocity Loan.

PARTICULARS

Email from Mr Scurrah to Ms Bryan, Mr Dean and Mr Bourne dated 2 September 2019 (BRY.002.001.3551).

99 On 12 September 2019, a meeting of the VAH Board was convened, during which:

(a) Mr Scurrah explained that the value of the Velocity Group to the VAH Group was higher than its market value under a sale or IPO because of:

(i) the loss of $1 billion of carry forward tax losses;

(ii) the fact that the Velocity Group would become a tax paying entity, resulting in tax leakage of $32 million per annum;

(iii) the loss of the $400 million in unrestricted cash due to the need to refinance the Velocity Loan; and

(iv) earnings erosion for the Velocity Group from higher standalone costs; and

(b) the Board endorsed Mr Scurrah entering into a non-binding indicative offer with Affinity of $700 million.

PARTICULARS

Minutes of a meeting of the VAH Board dated 12 September 2019~~2024~~ (VAH.900.001.0077).

100 On 4 October 2019, VAH entered into a securities sale agreement with Affinity which provided that:

(a) VAH would, through its wholly-owned subsidiary VAAH, acquire Affinity's 2,612,750 convertible notes (representing a 34.82% interest in Velocity Holdco) for consideration of approximately $700 million (**Velocity Acquisition**); and

(b) Velocity Holdco's management would exit from their 0.52% interest in Velocity Holdco, such that Velocity Holdco would, following the Velocity Acquisition, be wholly owned by VAH.

PARTICULARS

Securities Sale Agreement between Connectivity Pte Ltd; VAAH and VFFPL dated 4 October 2019 (VAH.002.001.1705).

101 In the premises of the matters pleaded at paragraphs 64 to 99 above, a significant and/or material factor to VAH justifying the Velocity Acquisition was to avoid the negative consequences of the proposed IPO of Affinity's stake in Velocity Holdco for VAH's consolidated financial position, which consequences included, on VAH's assessment:

(a) the deconsolidation of cash held in the Loyalty Trust from VAH's own cash balance for financial reporting purposes; and

(b) the loss of the Velocity Loan, which would result in:

(i) the conversion of the undrawn and drawn balance of the Velocity Loan from unrestricted cash to restricted cash in VAH's accounts;

(ii) a requirement for VAH to repay the total amount of cash drawn under the

Velocity Loan, which would necessitate refinancing; and

(iii) in turn, ratings pressure and an additional funding burden on the VAH Group to maintain appropriate liquidity levels.

PARTICULARS

A. VAH Board Paper for Information entitled "Project Vector/Ray" dated 18 July 2019 at pgs 1 and 4-6 (VAH.950.001.0023).

B. VAH Board Paper for Information - Project Vector / Ray Update and Overview of NBIO dated 27 August 2019 (VAH.002.024.5472).

C. Email chain between Ms Bryan, Mr Scurrah, Ken Dean and Trevor Bourne dated 2 September 2019 (BRY.002.001.3551).

102 In the premises of the matters pleaded at paragraphs 64 to 99 above:

(a) VAH was aware that a purchase price of A$700 million for Affinity's stake in Velocity Holdco:

(i) reflected an above market premium; and/or

(ii) was higher than what Affinity's stake in Velocity Holdco was rationally worth;

(b) a material reason why VAH was prepared to pay an above market premium was to avoid the negative consequences of the proposed IPO referred to in paragraph 101 above.

103 Personnel who worked in or for Group Treasury were aware of the matters pleaded in paragraphs 101 and 102 above.

PARTICULARS

A. Email from Peter Hudson to Shane Whimp, Will Barker, Steven Fouracre, copying Susan Schneider dated 1 July 2019 (VAH.002.003.4322).

B. Email from Shane Whimp to Will Barker, Peter Hudson, Steven Fouracre copying Susan Schneider dated 1 July 2019 (VAH.002.003.4326).

C. Email from Shane Whimp to Will Barker, Peter Hudson, Steven Fouracre copying Susan Schneider dated 1 July 2019

(VAH.002.047.9895).

D. Email from Alex Helbig to Shane Whimp dated 15 July 2019 (VAH.004.304.7990; VAH.004.304.7991).

E. Email from Alex Helbig to Shane Whimp dated 31 July 2019 (VAH.004.304.7476).

F. VAH Board Paper for Approval – FY20 Funding & Liquidity Update dated 27 August 2019 (VAH.950.001.0055), which was written by Teresa McAdam, reviewed by Steven Fouracre and Geoff Smith.

H. VAH Board Paper for Information – Project Vector / Project Ray and Overview of NBIO 9 September 2019 (VAH.950.001.0082), which was written by Keith Neate.

G. Further particulars may be provided with the Applicant's tender bundle and/or prior to the initial trial of common questions.

104 Further, VRPL was aware of:

(a) the importance of the Velocity Loan to VAH's liquidity position; and/or

(b) the matters pleaded in paragraphs 101 and 102 above.

PARTICULARS

A. Email from Jonathan Sweeney to Geoff Smith, copied to Jason Lambeth, Susan Schneider and Sharyn Page dated 26 July 2019 (VAH.004.229.9830).

B. Letter from Geoff Smith to Jonathan Sweeney entitled "Project Vector – Proposed way forward regarding VRPL Loan" dated 26 July 2019 (VAH.004.006.0871).

C. Draft minutes of Loyalty Trust Investment Committee Meeting held 14 August 2019 (VAH.004.305.7277).

D. Minutes of Loyalty Trust Investment Committee Meeting held 14 August 2019 (VRP.003.001.0011).

E. Letter from Affinity to Mr Sweeney dated 12 August 2019 (VAH.002.034.6062)

F. Letter from KWM to DWF dated 28 August 2019 (VAH.001.009.6268).

G. Letter from DWF to KWM dated 30 August 2019 (VAH.001.009.6269).

H. Email from Geoff Smith to Jonathan Sweeney dated 4 September 2019 attaching S&P ratings bulletin and FY19 Results presentation (VRP.002.001.1868, VRP.002.001.1869, VRP.002.001.1870).

I. Letter from DWF to KWM dated 9 September 2019 (VAH.001.009.6270).

J. Further particulars may be provided with the Applicant's tender bundle and/or prior to the initial trial of common question.

B.3. Offer and issuance of the Notes

105 In order to finance the Velocity Acquisition, VAH proposed to raise funds by way of the issue of:

(a) the Notes; and

(b) the US Notes, being US$425 million in unsecured notes offered to qualified institutional buyers within the United States pursuant to Rule 144A of the US Securities Act and other persons outside the United States pursuant to Regulation S of the US Securities Act.

PARTICULARS

*As to sub-paragraph (b), the Applicant refers to the Offering Circular for 8.125% Senior Notes due 2024 dated 24 October 2019 (**Offering Circular**).*

106 The issue of the Notes was managed by Morgan Stanley, Morgans, Ord Minnett and UBS (together, **Joint Lead Managers**).

PARTICULARS

Notes Prospectus.

107 The Notes were:

(a) securities within the meaning of ss 700(1)(a) and 761A of the Corporations Act;

(b) financial products within the meaning of s 764A(1)(a) of the Corporations Act;

(c) not simple corporate bonds depository interests in simple corporate bonds issued under a 2-part simple corporate bonds prospectus within the meaning of s 700(1)(b) of the Corporations Act; and

(d) not simple corporate bonds within the meaning of s 713A of the Corporations Act.

108 By reason of the matters pleaded in paragraph 107(a), (c) and (d) above, VAH's offer of the Notes required disclosure to prospective investors pursuant to s 706 of the Corporations Act.

109 On 24 October 2019, VAH issued its Offering Circular with respect to its proposed issue of the US Notes.

110 On 28 October 2019, VAH issued a prospectus with respect to its proposed issue of unsecured notes to raise $150 million to finance the Velocity Acquisition.

PARTICULARS

*Virgin Australia Holdings Limited Notes Prospectus dated 28 October 2019 (**Original Prospectus**).*

111 On 5 November 2019, VAH lodged the Notes Prospectus with the Australian Securities and Investments Commission (**ASIC**), replacing the Original Prospectus pleaded at paragraph 110 above with the Notes Prospectus.

PARTICULARS

Notes Prospectus, pg (II).

112 Personnel who worked in or for Group Treasury were responsible for leading, and were otherwise involved in, the preparation and verification of the Offering Circular, Original Prospectus and Notes Prospectus.

PARTICULARS

A. Personnel who worked in or for Group Treasury and who were involved in the preparation and verification of the Offering Circular, Original Prospects and Notes Prospectus included Keith Neate, Teresa McAdam, Steven Fouracre, Shane Whimp, Geoff Smith, Jackie Poetzscher and Garrett Mayall.

B. Email from Keith Neate to Executive Leadership Team, copied to Steven Fouracre and Teresa McAdam, dated 18 September 2019 (VAH.002.003.2037).

C. Email from Teresa McAdam to Andrew Selick and others dated 18 September 2019 (VAH.002.003.2037).

D. Draft Prospectus dated 14 October 2019 (VAH.002.040.5477), sections of which were prepared or verified by, or were otherwise the responsibility of, Garrett Mayall, Jackie Poetzscher, Shane Whimp, and

Teresa McAdam.

E. Project Ray – Verification Table (VAH.004.343.2523), which allocated verification responsibility for parts of the Draft Prospectus to Jackie Poetzscher, Shane Whimp, Garrett Mayall, Steven Fouracre, and Teresa McAdam.

F. Email from Daniel Teoh of UBS to Geoff Smith, Peter Hudson, Teresa McAdam, Steven Fouracre, and others dated 3 August 2019 (VAH.002.003.6488).

G. Draft VAH Management Questionnaire (VAH.002.043.3767), which allocated responsibility for sections and answers to Jackie Poetzscher, Keith Neate, Geoff Smith, Steven Fouracre, Shane Whimp, and Teresa McAdam in connection with the US Notes and the Notes.

H. Draft Offering Circular (VAH.002.040.3275), which allocated responsibility for sections to Jackie Poetzscher, Shane Whimp, Steven Fouracre, and Teresa McAdam.

I. Each of Steven Fouracre, Shane Whimp, Teresa McAdam and Geoff Smith prepared answers to the VAH Management Questionnaire (VAH.002.003.2448; VAH.002.003.2449; VAH.002.003.2458; VAH.002.046.9426; VAH.002.040.3023; VAH.002.016.6332; VAH.002.031.7002).

J. Each of Teresa McAdam, Steven Fouracre, Geoff Smith and Keith Neate attended meetings of the Due Diligence Committee (VAH.002.001.1904).

K. Emails from Christopher Coleman-Fenn to (among others) Jackie Poetzscher, Garrett Mayall, and Shane Whimp and copied to (among others) Teresa McAdam dated 16 October 2019 (VAH.002.040.5615).

L. Verification Signoff Certificates of Teresa McAdam, Steven Fouracre, Garrett Mayall, Shane Whimp, Jackie Poetzscher, and Keith Neate (VAH.002.001.1898).

M. Keith Neate signed the final Management Questionnaire (VAH.002.040.3023).

N. Keith Neate signed the Final Report of the Due Diligence Committee (VAH.002.040.4322).

O. Further particulars may be provided with the Applicant's tender bundle

and/or prior to the initial trial of common questions.

113 The Notes Prospectus contained the following material changes from the Original Prospectus:

(a) the offer of the Notes to raise $150 million disclosed in the Original Prospectus was revised in the Notes Prospectus to an offer of the Notes to raise approximately $325 million;

PARTICULARS

Original Prospectus, pg 7 and Notes Prospectus, pg 7.

(b) the interest rate applicable to the Notes, which was described as an expected interest rate of 8% per annum which was to be determined under the bookbuild, was confirmed in the Notes Prospectus to be an interest rate of 8% per annum;

PARTICULARS

Original Prospectus, pg 11 and Notes Prospectus, pg 11.

(c) equal ranking claims were revised from $1,651 million in the Original Prospectus to $1,821 million in the Notes Prospectus;

PARTICULARS

Original Prospectus, pg 14 and Notes Prospectus, pg 14.

(d) VAH's pro forma debt maturity profile following issue of the US Notes and the Notes as at 30 June 2019 for FY25 was revised from $1,044 million in the Original Prospectus to $1,219 million in the Notes Prospectus;

PARTICULARS

Original Prospectus, pg 90 and Notes Prospectus, pg 90.

(e) VAH's consolidated pro forma balance sheet for FY19 was revised as follows:

	Original Prospectus	**Notes Prospectus**
Cash and cash equivalents (in millions $)		
VAH reported	$1,740	$1,740
US$ Notes Offer	$617.6	$619.2
Offer	$144.4	$313.2
Velocity Acquisition	($732.7)	($732.7)
Repayment of November 19	($575.3)	($575.3)

	Original Prospectus	Notes Prospectus
US$ Notes		
VAH Pro forma	$1,194	$1,364.4
Total Current Assets (in millions $)		
VAH Pro forma	$1,619.3	$1,789.7
Total Assets (in millions $)		
VAH Pro forma	$5,922.2	$6,092.6
Total Liabilities (in millions $)		
VAH Pro forma	$6,033.2	$6,203.7

PARTICULARS

Original Prospectus, pgs 82 and 83 and Notes Prospectus, pgs 82 and 83.

(f) VAH's pro forma capitalisation was revised from $1,194 million of cash in the Original Prospectus to $1,364 million in the Notes Prospectus.

PARTICULARS

Original Prospectus, pg 87 and Notes Prospectus, pg 87.

114 Other than the differences pleaded at paragraph 113 above, the Notes Prospectus otherwise contained materially the same information as the information contained in the Original Prospectus, including relevantly:

(a) the Cash Balance Representation pleaded at paragraph 125 below;

(b) the Post Velocity Cash Representation pleaded at paragraph 126 below;

(c) the Undrawn Facilities Representation pleaded at paragraph 127 below;

(d) the Repayment Representation pleaded at paragraph 128 below; and

(e) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 below.

115 Neither the Original Prospectus nor the Notes Prospectus contained the Withheld Information pleaded at paragraph 220 below.

116 By the Notes Prospectus, VAH offered to issue the Notes to raise approximately $325 million, with the ability to raise more or less, to finance the Velocity Acquisition.

117 The Original Prospectus and Notes Prospectus were each a prospectus issued

pursuant to s 709 of the Corporations Act.

B.4. Contents of the Original Prospectus and Notes Prospectus

118 Pursuant to the Original Prospectus and the Notes Prospectus, the offer of the Notes comprised:

(a) an "Institutional Offer" made to certain institutional investors in Australia and other jurisdictions (excluding the United States of America) who were invited by VAH or the Joint Lead Managers to bid for Notes in the bookbuild conducted by the Joint Lead Managers, which completed on 31 October 2019; and

(b) a "Broker Firm Offer", which was made to eligible Australian clients of the Syndicate Brokers (being any of the Joint Lead Managers, Bell Potter, Crestone Wealth Management, Escala Partners or any other eligible participating broker which participated in the bookbuild).

PARTICULARS

Original Prospectus, pg 44 and Notes Prospectus, pg 44.

119 Pursuant to the Original Prospectus and the Notes Prospectus, the Notes:

(a) were fully paid with a face value of $100 each;

(b) were issued for a fixed five-year term with a maturity date of 26 November 2024;

(c) were guaranteed by certain other entities within the VAH group of companies;

(d) were unsecured by any mortgage, charge or other security over any asset;

(e) were listed on the ASX; and

(f) entitled noteholders to interest at a rate of 8% per annum, paid on 26 May and 26 November each year until the Notes were redeemed.

PARTICULARS

A. Original Prospectus, pgs 10-11 and Notes Prospectus, pgs 10-11.

B. As to sub-paragraph (c), the guarantors of the Notes were identified in Schedule 1 to the Unsecured Note Trust Deed dated 28 October 2019, being:

i. *VAAH;*

ii. *VAA;*

iii. *VB Leaseco Pty Ltd (ABN 29 134 268 741);*

iv. *VAH Newco No. 1 Pty Ltd (ABN 41 160 881 345);*

v. *ACN 098 904 262 Pty Ltd (ABN 51 098 904 262);*

vi. *Virgin Australia Regional Airlines Pty Ltd (ABN 76 008 997 662);*

vii. *Virgin Australia International Holdings Pty Ltd (ABN 23 155 860 021);*

viii. *Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823);*

ix. *Virgin Australia Airlines (SE Asia) Pty Ltd (ABN 79 097 892 389);*

x. *Tiger Airways Australia Pty Limited (ABN 52 124 369 008); and*

xi. *Tiger International Number 1 Pty Ltd (ABN 61 606 131 944).*

120 In the Original Prospectus and the Notes Prospectus, VAH represented to prospective investors in the Notes that:

(a) prospective investors should rely only on information contained in the Original Prospectus and the Notes Prospectus;

(b) Net Debt, which was defined as current and non-current interest-bearing liabilities less cash and cash equivalents, as presented in the Original Prospectus and the Notes Prospectus was:

(i) "non-IFRS financial information" within the meaning of ASIC Regulatory Guide 230, meaning that it was not recognised under Australian Accounting Standards; and

(ii) a measure used by VAH's Board of Directors to assess the financial condition of the VAH group of companies; and

(iii) presented in the Notes Prospectus as an additional tool for investors to use to evaluate an investment in the Notes; and

(c) the historical financial information contained in the Original Prospectus and the Notes Prospectus had been derived from VAH's audited financial statements for the 2017, 2018 and 2019 financial years, the approval of which was the responsibility of the Board of Directors.

PARTICULARS

A. As to sub-paragraph (a), the Applicant refers to pg II of the Original Prospectus and pg II of the Notes Prospectus.

B. As to sub-paragraph (b), the Applicant refers to pgs 1-2 of the Original Prospectus and pgs 1-2 of the Notes Prospectus.

C. As to sub-paragraph (c), the Applicant refers to pg 76 of the Original Prospectus and pg 76 of the Notes Prospectus.

121 Pursuant to the Original Prospectus and the Notes Prospectus, VAH represented to potential investors that the offer of the Notes was intended to fund the acquisition of Affinity's minority interest in Velocity to:

(a) enable a realignment of Velocity's existing platform to focus on driving better passenger traffic and loyalty engagement across the VAH Group and was expected to realise $20 million per annum of cost synergies.

PARTICULARS

Original Prospectus, pg 7 and Notes Prospectus, pg 7.

(b) obtain the following benefits for VAH:

(i) the ability to retain 100% of the cash flows and equity upside from the cash-generative loyalty program;

(ii) the simplification of the business, which enables cost savings and operational integration;

(iii) revenue synergy and diversification opportunities from integration and improved loyalty engagement;

(iv) increased wallet share with Velocity members through enhanced data and analytics initiatives;

(v) increased use of direct channel distribution; and

(vi) substantial value driven by elimination of existing cash equity distributions to minority interests and identified $20 million per annum of cost synergies, alongside revenue and operational initiatives, which is expected to more than offset the annual interest costs arising from proceeds of the offer of the Notes and the US Notes used to fund the Velocity Acquisition.

PARTICULARS

Original Prospectus, pg 20 and Notes Prospectus, pgs 20 and 65.

122 VAH did not disclose the matters pleaded in paragraphs 101 and/or 102 above or the

Withheld Information referred to in paragraph 220 below in the Original Prospectus, the Notes Prospectus, by way of announcements to the ASX or by way of any supplementary prospectus prior to its entry into voluntary administration on 20 April 2020.

123 By reason of the matters pleaded in paragraphs 121 and 122 above, VAH impliedly represented that:

(a) the significant and/or material reasons for pursuing the Velocity Acquisition were those disclosed in the Original Prospectus and the Notes Prospectus (as pleaded at paragraph 121 above);

(b) it had no additional significant and/or material reasons to pursue the Velocity Acquisition other than those disclosed in the Original Prospectus and the Notes Prospectus (as pleaded at paragraph 121 above); and/or

(c) to the extent that there were additional reasons to pursue the Velocity Acquisition other than those disclosed in the Original Prospectus and the Notes Prospectus, those reasons were not significant and/or material to the decision to pursue the Velocity Acquisition and/or an investor's decision whether to apply for and/or acquire the Notes,

(the **Velocity Acquisition Rationale Representations**).

124 Pursuant to the Original Prospectus and the Notes Prospectus, VAH:

(a) disclosed that the cash generated by the Velocity ~~Sub-~~Group would not be available to service the indebtedness of members of the VAH Group due to covenants in Velocity's debt, except to the extent of equity distributions permitted to be made to the VAH Group in compliance with the limitations on such distributions contained in the Velocity ~~Sub-~~Group's financing facilities;

PARTICULARS

Original Prospectus, Section 7.11.8 and Notes Prospectus, Section 7.1.18.

(b) did not disclose the existence or terms of the Velocity Loan, through which cash was (subject to the restrictions pleaded at paragraphs 28, 40, 41, 45, 46 and/or 47 above) also potentially available from the Velocity ~~Sub-~~Group; and

(c) did not disclose that, as at 30 June 2019, $400 million of VAH's cash and cash equivalents was attributable to the Velocity Loan, of which:

(i) $282 million comprised the drawn balance of the Velocity Loan, which was subject to the restrictions pleaded at paragraphs 41, 45, 46 and/or 47

above; and

(ii) $118 million comprised the undrawn balance under the Velocity Loan, which was subject to the restrictions pleaded at paragraphs 40 and/or 47 above.

125 In the Original Prospectus and the Notes Prospectus, VAH represented to prospective investors in the Notes that:

(a) as at 30 June 2019, VAH had:

(i) $300.8 million of available liquidity from net undrawn debt facilities;

(ii) cash and cash equivalents of $1,740 million, of which $1,330.3 million was unrestricted; and

(iii) its "highest ever cash balance"; and

(b) its cash balance had not materially decreased or changed from the position reported in its financial statements as at 30 June 2019,

(together, the **Cash Balance Representation**).

PARTICULARS

A. Original Prospectus, Sections 6.4, 6.10, 6.10.2, 6.10.3, 7.1.19 and Notes Prospectus, Sections 6.4, 6.10, 6.10.2, 6.10.3, 7.1.19.

B. As to the proposition that VAH's cash balance had not materially decreased or changed from the position reported in its financial statements as at 30 June 2019, those matters were implied by:

i. the contents of the Original Prospectus and Notes Prospectus (including the matters particularised in Particular (A) above);

ii. the fact that VAH's pro forma financial position following completion of the Velocity Acquisition had been prepared upon the basis of VAH's financial position (including its cash balance) as at 30 June 2019; and

iii. the absence of any disclosure of any such material decrease or change in VAH's cash balance from the balance reported in VAH's financial statements for FY19 in the Original Prospectus and/or the Notes Prospectus.

126 In the Original Prospectus and the Notes Prospectus, VAH also represented that, following:

(a) the Velocity Acquisition;

(b) the repayment of a US dollar denominated unsecured note issuance to the value of US$400 million, which was due to mature in November 2019 (**2019 US Notes**); and

(c) the issue of the US Notes and the Notes,

VAH would have, on a pro forma basis, $1.194 billion (in the Original Prospectus) and $1.364 billion (in the Notes Prospectus) in cash using the 30 June 2019 financial reports (**Post Velocity Cash Representation**).

PARTICULARS

Original Prospectus, pgs 81-82 and Notes Prospectus, pgs 81-82.

127 In the Original Prospectus and the Notes Prospectus, VAH represented that VAH and its controlled entities had $470.2 million of undrawn financing facilities in place as at 30 June 2019, including:

(a) $84.8 million of standby multi-option facilities;

(b) $350 million of committed undrawn secured funding facilities (which would raise $180.4 million of additional cash after repayment of outstanding secured debt); and

(c) US$25 million (or AUD$35.6 million) of uncommitted facilities,

the effect of which was to convey the impression that:

(d) $300 million of the VAH Group's finance facilities were able to be drawn as at 30 June 2019;

(e) the VAH Group's undrawn finance facilities would remain available to, and accessible by, VAH following issuance of the Notes and the US Notes and/or completion of the Velocity Acquisition; and/or

(f) the quantum of funds available from VAH's undrawn financing facilities, as well as VAH's ability to access those funds, had not materially decreased or changed from the position reported in its financial statements as at 30 June 2019.

(**Undrawn Facilities Representation**).

PARTICULARS

A. Original Prospectus, Section 7.1.19 and Notes Prospectus, Section 7.1.19.

B. As to sub-paragraphs (e) and (f), those matters were implied by:

i. the contents of the Original Prospectus and Notes Prospectus (including the matters particularised in Particular (A) above);

ii. the fact that VAH's pro forma financial position following completion of the Velocity Acquisition had been prepared upon the basis of VAH's financial position as at 30 June 2019; and

iii. the absence of any disclosure of any such material decrease or change in the quantum of funds available from VAH's undrawn financing facilities and/or VAH's ability to access those undrawn facilities from the position reported in its financial statements for FY19 in the Original Prospectus and/or the Notes Prospectus.

128 The Cash Balance Representation, the Post Velocity Cash Representation and the Undrawn Facilities Representation, taken together, conveyed the impression to prospective investors in the Notes that:

(a) VAH had sufficient cash reserves and funding sources available to it to meet its costs, including its debt repayments; and

(b) accordingly, the additional debt to be incurred pursuant to the issue of the Notes would be capable of being serviced by VAH or there was a low probability of financial default by VAH,

(together, the **Repayment Representation**).

PARTICULARS

A. The Repayment Representation was both express and implied from the content and effect of the Original Prospectus and the Notes Prospectus.

B. As to the express content of the Repayment Representation, the Applicant refers to and repeats paragraphs 125 to 127 above, Section 6 of the Original Prospectus and Section 6 of the Notes Prospectus.

B.4A. Contents of the Offering Circular

Characteristics of the US Notes

129 Pursuant to the Offering Circular, the US Notes:

(a) had an issue price of 8.125% plus accrued and unpaid interest (if any) from 7 November 2019;

(b) had a maturity date of 15 November 2024;

(c) were guaranteed by certain other entities within the VAH group of companies;

(d) were unsecured by any mortgage, charge or other security over any asset;

(e) were not to be listed on any securities exchange; and

(f) entitled noteholders to interest at a rate of 8.125% per annum, accruing from 7 November 2019 and being paid on 15 May and 15 November each year until the US Notes were redeemed.

PARTICULARS

Offering Circular, cover page, pgs 11-12, 182.

130 The US Notes would be issued under an indenture, dated 7 November 2019 and as supplemented from time to time (**Indenture**), with the Bank of New York Mellon as trustee.

PARTICULARS

Offering Circular, pg 123.

131 The US Notes were to be distributed by:

(a) the entire principal amount being sold to Morgan Stanley & Co LLC, UBS Securities LLC and the Hongkong and Shanghai Banking Corporation Limited, being the "Initial Purchasers" of the US Notes; and

(b) the Initial Purchasers subsequently making a market for the US Notes through which "qualified institutional buyers" within the USA (within the meaning of Rule 144A of the US Securities Act) and/or non-US persons outside of the USA could acquire and dispose of the US Notes.

PARTICULARS

Offering Circular, pgs 41, 182-183.

US Noteholder access to information concerning VAH

132 Pursuant to the Indenture and the US Notes, VAH:

(a) would provide to the trustee and each holder of the US Notes, or would provide to the trustee for forwarding or otherwise making available to each holder of the US Notes on request, amongst other things, any other documents filed, furnished or otherwise provided or that would be required to be provided to the ASX pursuant to the continuous reporting requirements under Australian securities laws and regulations and ASX rules;

(b) would not need to provide annual or interim reports to the trustee and each holder of the US Notes if and to the extent that VAH files or furnishes those reports with the ASX and those reports are publicly available on the ASX website within certain time periods, and VAH notifies the trustee that such reports have been so filed or furnished and are publicly available.

PARTICULARS

Offering Circular, pgs 142-143.

133 The Offering Circular disclosed that VAH filed annual reports, half-year reports and other continuous disclosure documents with the ASX, and that prospective investors may obtain copies of the documents filed with the ASX from the ASX's website.

PARTICULARS

Offering Circular, pg viii.

VAH's representations and non-disclosures in the Offering Circular

134 In the Offering Circular, VAH represented to prospective investors in the US Notes that:

(a) prospective investors should rely only on information contained in the Offering Circular;

(b) in making an investment decision, investors must rely on the terms of the Offering Circular and the US Notes;

(c) Net Debt, which was defined as current and non-current interest-bearing liabilities less cash and cash equivalents, as presented in the Offering Circular was:

(i) a measure used by VAH's Board of Directors to assess the financial condition of the VAH group of companies; and

(ii) presented in the Offering Circular as an additional tool for investors to use to evaluate an investment in the Notes; and

(d) the historical financial information contained in the Offering Circular had been derived from VAH's consolidated financial statements as at and for the 2019, 2018 and 2017 financial years, which were prepared in accordance with the Australian Accounting Standards and comply with the International Financial Reporting Standards.

PARTICULARS

A. As to sub-paragraph (a), the Applicant refers to pg i of the Offering Circular.

B. As to sub-paragraph (b), the Applicant refers to pg v of the Offering

Circular.

C. As to sub-paragraph (c), the Applicant refers to pgs xi-xii of the Offering Circular.

D. As to sub-paragraph (d), the Applicant refers to pgs xi, 15 and 45 of the Offering Circular.

135 The Offering Circular also provided that, by purchasing the US Notes, prospective investors were deemed to have acknowledged, amongst other things, that:

(a) prospective investors were relying only on the Offering Circular in making an investment decision with respect to the US Notes; and

(b) prospective investors have had access to such financial and other information concerning VAH and the US Notes as the prospective investors deemed necessary in connection with the decision to purchase the US Notes, including an opportunity to ask questions of and request information from VAH.

PARTICULARS

Offering Circular, pg 188.

136 In the Offering Circular, VAH made the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above.

PARTICULARS

Offering Circular, pg 8.

137 In the Offering Circular, VAH also made the Cash Balance Representation pleaded at paragraph 125 above.

PARTICULARS

A. The Offering Circular included statements identical to those pleaded at paragraphs 125(a)(i) and (ii) above at page 16, 28, 47, 51, 71, 72 and 74.

B. At pages 37 and 125 of the Offering Circular, VAH disclosed that its available undrawn facilities balance had reduced to $106.6 million, but otherwise did not disclose a material decline from the position reported in its financial statements as at 30 June 2019.

C. The Offering Circular did not describe VAH's cash balance as being the "highest ever cash balance".

138 In the Offering Circular, VAH also made the Post Velocity Cash Representation pleaded

at paragraph 126 above.

PARTICULARS

Offering Circular, pg 51.

139 In the Offering Circular, VAH represented that the VAH Group had $466.2 million of undrawn financing facilities in place as at 30 June 2019, including:

(a) $86.4 million of standby multi-option facilities;

(b) $344.2 million of committed undrawn secured funding facilities (which would raise $174.6 million of additional cash after repayment of outstanding secured debt); and

(c) US$25.0 million (A$35.6 million) of uncommitted facilities,

the effect of which was to convey the impression that:

(d) $300 million of the VAH Group's finance facilities were able to be drawn as at 30 June 2019;

(e) the VAH Group's undrawn finance facilities would remain available to, and accessible by, VAH following issuance of the Notes and the US Notes and/or completion of the Velocity Acquisition; and/or

(f) the quantum of funds available from VAH's undrawn financing facilities, as well as VAH's ability to access those funds, had not materially decreased or changed from the position reported in its financial statements as at 30 June 2019.

PARTICULARS

Offering Circular, pgs 28 and 71.

140 The matters represented in the Offering Circular, as pleaded at paragraph 139 above, were in substance the same as the matters pleaded at paragraph 127 above.

141 By reason of the matters pleaded in paragraphs 139 and 140 above, VAH also made the Undrawn Facilities Representation pleaded at paragraph 127 above in the Offering Circular.

142 Further, by reason of the matters pleaded in paragraphs 137 to 141 above, VAH also made the Repayment Representation pleaded at paragraph 128 above in the Offering Circular.

143 In the Offering Circular, VAH did not disclose the Withheld Information referred to at paragraph 220 below.

B.5. MPG's and Group Members' acquisition of the Notes and the US Notes

144 On and prior to 26 November 2019:

(a) Dr Daniel Fleming, pursuant to authority conferred upon him by the sole director of MPG, Kylie-Jane Matheson, was responsible for the management and investment decisions of MPG in its capacity as trustee of the MPG Trust; and

(b) MPG, through Dr Fleming, from time to time received financial product advice from Escala Partners.

PARTICULARS

A. *As to sub-paragraph (a), the Applicant refers to:*

i. *the Affidavit of Daniel Vandermere Fleming affirmed 17 November 2023 (**Fleming Affidavit**) at [12]; and*

ii. *the Affidavit of Kylie-Jane Fleming affirmed 16 November 2023 (**Kylie-Jane Fleming Affidavit**) at [5].*

B. As to sub-paragraph (b), Dr Fleming had regular contact primarily with Simon Dawkins, a Partner and the Head of Capital Markets at Escala Partners.

145 In the period between 28 and 30 October 2019, Dr Fleming became aware of VAH's proposed Notes issue and reviewed the Original Prospectus with respect to the proposed Notes issue.

PARTICULARS

Dr Fleming became aware of VAH's proposed Notes issue via communications from Escala Partners.

146 From Dr Fleming's review of the Original Prospectus, Dr Fleming understood that:

(a) VAH had incurred substantial losses in previous financial years and that VAH had a shortfall of assets to liabilities;

(b) VAH's ability to pay interest on the Notes and the face value of the Notes upon maturity depended upon VAH continuing to trade; and

(c) should VAH cease to trade, it would be unlikely that MPG would recover its investment in the Notes, should MPG choose to invest in the Notes.

147 Further, by reason of:

(a) the contents of the Original Prospectus;

(b) the Cash Balance Representation pleaded at paragraph 125 above;

(c) the Post Velocity Cash Representation pleaded at paragraph 126 above;

(d) the Undrawn Facilities Representation pleaded at paragraph 127 above;

(e) the Repayment Representation pleaded at paragraph 128 above; and/or

(f) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above,

Dr Fleming believed that, even if VAH continued to trade at a loss, VAH would have access to significant cash reserves and undrawn facilities, which would enable it to:

(g) continue to trade while it continued to pursue increased profitability;

(h) pay interest on the Notes even if in the short-term it was not profitable; and

(i) minimise the short-term risk of default during the period of time in which MPG intended to hold the Notes (being a period less than the full term of the Notes).

148 On 18 November 2019, and in reliance upon:

(a) the contents of the Original Prospectus;

(b) the Cash Balance Representation pleaded at paragraph 125 above;

(c) the Post Velocity Cash Representation pleaded at paragraph 126 above;

(d) the Undrawn Facilities Representation pleaded at paragraph 127 above;

(e) the Repayment Representation pleaded at paragraph 128 above;

(f) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above; and/or

(g) the understanding obtained from the Original Prospectus pleaded at paragraph 146 above and the belief pleaded at paragraph 147 above,

MPG, in its capacity as trustee of the MPG Trust, subscribed for 4,000 Notes at an issue price of $100 per Note and an aggregate value of $400,000.

PARTICULARS

Escala Partners Buy Order Invoice dated 18 November 2019 issued to MPG with an ASX Settlement Date of 25 November 2019.

149 Further, on or before 26 November 2019, and in reliance upon:

(a) the contents of the Original Prospectus and/or the Notes Prospectus;

(b) the Cash Balance Representation pleaded at paragraph 125 above;

(c) the Post Velocity Cash Representation pleaded at paragraph 126 above;

(d) the Undrawn Facilities Representation pleaded at paragraph 127 above;

(e) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above; and/or

(f) the Repayment Representation pleaded at paragraph 128 above,

as conveyed in the Original Prospectus and/or Notes Prospectus, some or all of the Group Members applied to invest in the Notes.

PARTICULARS

A. The reliance of Group Members on the matters pleaded at sub-paragraphs (a) to (f) above may be inferred from:

i. the fact that Group Members acquired the Notes;

ii. the fact that the Original Prospectus and Notes Prospectus were issued specifically for the purpose of offering the Notes and contained the most up-to-date disclosure and analysis of VAH's financial position;

iii. the fact that the Original Prospectus and Notes Prospectus were required to comply with Part 6D.2 of the Corporations Act, which included mandatory disclosure requirements of matters important to the decision whether to invest in the Notes;

iv. the fact that each of the representations pleaded at sub-paragraphs (b) to (f) was material to the risk profile of the Notes and accordingly likely to have been relevant to Group Members' decisions whether to invest in the Notes;

v. the fact that each of the representations pleaded at sub-paragraphs (b) to (f) was made in the context of offering documents directed to inducing the acquisition of the Notes; and

vi. the matters pleaded at paragraph 120(a) above.

B. Particulars of Group Members' application(s) to be issued Notes may be provided following the trial of common questions or otherwise as the Court may direct.

150 On 7 November 2019, the US Notes were issued and acquired by each of the Initial Purchasers.

151 On 7 November 2019, in reliance upon:

(a) the contents of the Offering Circular;

(b) the Cash Balance Representation pleaded at paragraphs 125 and 137 above;

(c) the Post Velocity Cash Representation pleaded at paragraphs 126 and 138 above;

(d) the Undrawn Facilities Representation pleaded at paragraphs 127 and 139 to 141 above;

(e) the Velocity Acquisition Rationale Representations pleaded at paragraphs 123 and 136 above; and/or

(f) the Repayment Representation pleaded at paragraphs 128 and 142 above,

as conveyed in the Offering Circular, some or all of the Group Members acquired the US Notes from the Initial Purchasers.

PARTICULARS

A. The reliance of Group Members on the matters pleaded at sub-paragraphs (a) to (f) above may be inferred from the fact that:

i. Group Members acquired the US Notes;

ii. the Offering Circular was issued specifically for the purpose of offering the US Notes and contained the most up-to-date disclosure and analysis of VAH's financial position;

iii. each of the representations pleaded at sub-paragraphs (b) to (f) was material to the risk profile of the US Notes and accordingly likely to have been relevant to Group Members' decisions whether to invest in the US Notes; ~~and~~

iv. each of the representations pleaded at sub-paragraphs (b) to (f) was made in the context of offering documents directed to inducing the acquisition of the US Notes;~~.~~

v. the matters pleaded in paragraph 134(a) and (b) above; and

vii. brokers which received the Offering Circular did, or were likely to, rely upon the contents of the Offering Circular (including, in particular, the representations pleaded at sub-paragraphs (b) to (f)) in determining whether to offer and/or promote an investment in the US Notes to clients such as Group Members and in advising Group Members as to the

attractiveness, risks and benefits of an investment in the US Notes.

B. Particulars of Group Members' acquisition of the US Notes may be provided following the trial of common questions or otherwise as the Court may direct.

152 On 26 November 2019, 4,000 Notes at an issue price of $100 per Note were issued to MPG in its capacity as trustee of the MPG Trust.

153 Further, on 26 November 2019, Notes at an issue price of $100 per Note were issued to some or all of the Group Members.

PARTICULARS

Particulars of Group Members' acquisition of Notes on the date of issue may be provided following the trial of common questions or otherwise as the Court may direct.

154 On 26 November 2019, the Notes were admitted to the official list of the ASX.

PARTICULARS

A. The Notes commenced trading on a deferred settlement basis from 27 November 2019.

B. The Notes commenced trading on a normal basis from 29 November 2019.

155 Through the issue of the Notes and the US Notes, VAH raised:

(a) $325 million through the issue of the Notes; and

(b) US$425 million (equivalent to $625 million at an assumed AUD:USD exchange rate of 0.68) through the issue of the US Notes.

PARTICULARS

ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) announces issue of Virgin Australia Notes and Velocity Frequent Fyler acquisition now unconditional" dated 26 November 2019.

156 On 26 November 2019, VAH completed the Velocity Acquisition using funds raised through the issue of the Notes and the US Notes.

157 On 26 November 2019, as required by clause 2.5 of the Specific Security Deed, VAAH deposited with Sharyn Page (in her capacity as secretary of VRPL) the original convertible note certificates and transfer forms for the 2,612,750 convertible notes that VAAH had acquired from Affinity upon completion of the Velocity Acquisition.

PARTICULARS

A. Email from Will Barker on behalf of VAAH to Treasury@virginaustralia.com on behalf of VRPL on 26 November 2019 (VAH.002.047.9844).

B. Letter from Paul Scurrah on behalf of VAAH to VRPL dated 26 November 2019 (VAH.002.047.9845).

C. Convertible note certificate executed on behalf of Velocity Frequent Flyer Holdco Pty Ltd by Paul Scurrah and Keith Neate (VAH.002.047.9847).

D. Blank transfer forms executed on behalf of VAAH by Paul Scurrah and Keith Neate (VAH.002.047.9846).

B.6. VAH's conduct and performance prior to and following issue of the Notes and the US Notes

VAH's financial position

158 Prior to 30 November 2019, VAH faced liquidity challenges and, against that background, and to fund the Velocity Acquisition, sought to raise capital by way of the issuance of the Notes and the US Notes.

PARTICULARS

Paragraph 24 of "Notification of Potential Claims" letter to Liberty dated 29 October 2020.

159 Prior to 20 April 2020, ~~at~~ from a precise time currently not known to the Applicant, VAH was:

(a) dependent on the ongoing availability to it of the drawn and undrawn balance under the Velocity Loan;

(b) unlikely to be able to meet any cash shortfall or significant financial demand outside the ordinary course of its business; and

~~(a)~~(c) likely to enter into external administration, irrespective of the impact of the COVID-19 pandemic, unless a very significant restructuring occurred.

PARTICULARS

A. VAH Board Paper entitled "FY20 Funding & Liquidity Update" dated 27 August 2019 (VAH.950.001.0055).

B. Email from Paul Scurrah dated 2 September 2019 (BRY.002.001.3551).

C. *Email from Ken Dean to Trevor Bourne, Elizabeth Bryan and Paul Scurrah dated 3 September 2019 (VAH.002.034.6197).*

D. *Email from Warwick Negus to Josh Bayliss dated 10 September 2019 (NEG.001.004.3046).*

E. *Email from Ray Gammell to Elizabeth Bryan dated 12 September 2019 (VAH.001.002.0589).*

F. *Tony Boyd, "I'm not afraid: Virgin CEO's moment of truth", The Australian Financial Review Magazine (online 31 May 2023)* < https://www.afr.com/life-and-luxury/fashion-and-style/i-m-not-afraid-virgin-ceo-s-moment-of-truth-20230301-p5col4#:~:text='I'm%20not%20afraid',dollar%20float%20of%20Virgin%20Australia.>.

160 Further to paragraph 159 above, prior to 20 April 2020:

(a) VAH was not a credible business, and in order to become one, every part of the business had to be taken apart and put back together again; and

(b) the opportunity to attempt to restore VAH as a credible business was only made possible by the COVID-19 pandemic.

PARTICULARS

The Applicant repeats the particulars to paragraph 159 above.

VAH's ASX Announcements

161 On 26 February 2020, VAH issued a release to the ASX disclosing its financial results for the first half of the 2020 financial year, in which it disclosed that, as at 31 December 2019:

(a) VAH had recorded a "record 1H revenue of $4,116.3 million (pre-AASB 16)";

(b) VAH had cash and cash equivalents of $1,107.6 million;

(c) VAH had an unrestricted cash balance of $900.3 million; and

(d) VAH expected the outbreak of COVID-19 to negatively impact earnings of the VAH Group by $50-$75 million in the second half of the 2020 financial year, and that revenue would "remain flat for FY20 on the prior corresponding period".

PARTICULARS

A. VAH ASX Release dated 26 February 2020.

B. VAH H1 FY20 Results Presentation dated 26 February 2020.

C. VAH Appendix D and Interim Financial Report for the year ended 31 December 2019.

162 On 28 February 2020, VAH issued a release to the ASX disclosing the S&P Global Ratings Report, which stated that:

(a) S&P assessed VAH's liquidity position as adequate and that sources of liquidity were likely to exceed uses even if EBITDA were to decline by 30%; and

(b) S&P's assessment of VAH's liquidity was based upon the $900.3 million of unrestricted cash and short-term investments as at 31 December 2019, around $166 million in undrawn bank facilities as at 31 December 2019 and cash funds from operations of above $100 million after lease payments.

PARTICULARS

ASX Announcement dated 28 February 2020 and entitled "S&P Global Ratings Outlook Update".

163 On 13 March 2020, VAH announced to the ASX that it had a cash position in excess of $1 billion, with no significant debt maturities until October 2021 and no new aircraft deliveries until July 2021.

PARTICULARS

ASX Announcement dated 13 March 2020 and entitled "Virgin Australia Group update on COVID-19 response".

164 On 17 March 2020, VAH issued a release to the ASX disclosing the S&P Global Ratings Report, which stated that:

(a) VAH's large cash balance and limited debt maturities over the next 18 months provided important flexibility to accommodate the evolving operating environment; and

(b) VAH's liquidity position, which comprised primarily about A$900 million of unrestricted cash, should provide adequate flexibility to accommodate the VAH Group's cash requirements.

PARTICULARS

ASX Announcement dated 17 March 2020 and entitled "S&P Global Ratings Update".

165 On 27 March 2020, VAH issued a release to the ASX disclosing the Fitch Global Ratings Report, which stated that:

(a) VAH had taken steps in cutting capacity (including fuel and other costs), staff and

salary reductions and the implementation of initiatives to further cut expenses in its domestic and short-haul businesses and pausing key supplier agreements; and

(b) these actions, combined with its cash on hand of around $1 billion, provided VAH with some headroom to manage through the effective shut down.

PARTICULARS

ASX Announcement dated 27 March 2020 and entitled "Fitch's Global Ratings Update".

166 None of the ASX Announcements pleaded in paragraphs 161 to 165 above contained the Withheld Information pleaded at paragraph 220 below or any of it.

The Notes Meetings

167 In or around February and March 2020, several Group Members attended one or more meetings with representatives of VAH to discuss the Notes and/or the US Notes and VAH's financial position in light of the COVID-19 pandemic (**Notes Meetings**).

PARTICULARS

A. *The following representatives of VAH attended one or more of the Notes Meetings:*

i. *Keith Neate (the Chief Financial Officer of VAH);*

ii. *Steven Fouracre (the Group Treasurer of VAH) and other members of ~~the VAH Treasury Team~~Group Treasury; and/or*

iii. *the Third Respondent.*

B. *At least the following Group Members attended the Notes Meetings:*

i. *Mason Stevens Limited on 7 and 13 March 2020 (represented by, at least, Vincent Hua, Chief Executive Officer and Chief Investment Officer); and*

ii. *other group members, being holders of the Notes and/or US Notes, further particulars of which will be provided following the completion of discovery.*

C. *Outline of Evidence of Teresa Maria McAdam dated 15 August 2025 at [102], [105] and [107].*

D. *Further particulars may be provided with the Applicant's lay evidence.*

168 During the Notes Meetings, representatives of VAH represented to Group Members

that:

(a) VAH had $1.107 billion of unrestricted cash reserves and that those cash reserves were not being "burned" since 31 December 2019;

(b) the COVID-19 pandemic offered an opportunity to accelerate VAH's restructuring initiatives;

(c) VAH's revenue for the first half of the 2020 financial year had increased by 1.5%;

(d) VAH's underlying profit before tax for the first half of the 2020 financial year was $14.5 million;

(e) VAH's top 4 shareholders would provide support if VAH needed it, but such support was not, at that time, required;

(f) VAH had sufficient cash reserves to continue operating for 12 months, notwithstanding the financial pressures and disruption of the COVID-19 pandemic.

169 During the Notes Meetings, representatives of VAH failed to disclose the:

(a) the Withheld Information;

(b) the existence and terms of the Velocity Loan;

(c) the fact that approximately $310 million of the represented $1.107 billion of unrestricted cash reserves comprised the undrawn balance of the Velocity Loan;

(d) the constraints on VAH's ability to freely access the undrawn balance of the Velocity Loan; and/or

(e) the circumstances in which:

(i) the undrawn balance under the Velocity Loan would become unavailable;

(ii) the drawn balance under the Velocity Loan would become repayable.

PARTICULARS

As to sub-paragraph (c), the value of the undrawn balance of the Velocity Loan at the time of the Notes Meetings can be inferred from the fact that:

i. *as at 31 December 2019 the undrawn balance of the Velocity Loan was $160 million; and*

ii. *on 31 January 2020 the Velocity Loan was partly repaid in the amount of $150 million: Outline of Evidence of Jonathan Westaby Sweeney at [111].*

170 Further, during the Notes Meetings:

(a) Mr Vincent Hua of Mason Stevens Ltd proposed that VAH undertake a buy-back of the Notes in order to signal its strong position to the market and to support the price of the Notes; and

(b) Mr Hua, Mr Neate and representatives from UBS engaged in further discussions with respect to the mechanics of a buy-back program.

PARTICULARS

A. *As to sub-paragraph (a), Mr Hua recommended that VAH undertake a buy-back of the Notes at a meeting with Mr Neate and VAH's Treasury Team on 13 March 2020.*

B. *As to sub-paragraph (b), the further discussions occurred during a meeting which took place on a date shortly after the meeting of 13 March 2020.*

VAH's actual performance

171 At all material times, VAH had in place a Treasury Risk Management Policy in which all cash held, plus cash in transit through relevant forms of payment (excluding collateral held by acquirers in respect of forward credit card sales) and additional standby lines of credit up to 80% of the undrawn facility amount was treated as "unrestricted cash".

PARTICULARS

Audit and Risk Management Information Paper entitled "Treasury Policy Update – Fuel Hedging and Liquidity" dated 24 February 2020 (VAH.850.001.0032).

172 Further, at all material times, VAH classified:

(a) all cash that had been drawn down from the Velocity Loan; and

(b) the total undrawn balance of the Velocity Loan, irrespective of the conditions upon VAH's ability to access the undrawn balance,

as "unrestricted cash" when reporting its cash balance.

PARTICULARS

A. Email chain between Warwick Negus, Keith Neate and Paul Scurrah dated 10 April 2020 (VAH.002.012.5943).

B. Working paper (VAH.002.025.1701).

C. *Email chain between Keith Neate and Steven Fouracre dated 10 April 2020 (VAH.002.052.4927).*

D. *Slidepack extract entitled "Cash Position Summary" (VAH.002.001.7478; VAH.002.001.7480).*

E. *Email chain between Garrett Mayall, Jason Lanfranchi and Steven Fouracre (copied to others) dated 21 January 2020 (VAH.002.002.4178).*

F. *Email chain between Alex Helbig and Shane Whimp dated 20 November 2019 (VAH.004.304.8759).*

173 [Not used] ~~By reason of the matters pleaded in paragraph 9 above, VAH's classification of the drawn and undrawn balance of the Velocity Loan as unrestricted cash, as pleaded at paragraph 46B above, was incorrect (**Velocity Loan Misclassification**).~~

174 By 30 November 2019, following issuance of the Notes and the US Notes:

(a) the VAH Group's unrestricted cash balance, including both the drawn and undrawn funds under the Velocity Loan, had decreased to $642.8 million;

PARTICULARS

*"Report to Creditors pursuant to section 75-225 of the Insolvency Practice Rules (Corporations)" issued by Deloitte and dated 25 August 2020 (**Report to Creditors**), Section 6.4.8.1.*

(b) the total of VAH Group's total unused facilities was $136.1 million, $100 million of which was purportedly available pursuant to the Velocity Loan; and

PARTICULARS

Report to Creditors, Section 6.4.8.1.

(c) excluding cash that had already been drawn from the Velocity Loan and the remaining undrawn amount purportedly available to VAH pursuant to the Velocity Loan (as pleaded at sub-paragraph (b) above), VAH had an unrestricted cash balance which was not subject to an associated liability of no more than $400 million.

PARTICULARS

A. *As at 29 October 2019, VAH had an unrestricted cash balance (including the aggregate of drawn and undrawn amounts under the Velocity Loan of $400 million) of $853.2 million: VAH.004.117.4130.*

B. *As at November 2019, VAH recorded an unrestricted cash balance*

pf $742 million, $300 million of which was attributable to the drawn amount under the Velocity Loan and $100 million of which was attributable the undrawn balance of the Velocity Loan, leaving $342 million of unrestricted cash available to VAH outside of the funds obtained or purportedly available pursuant to the Velocity Loan: VAH.004.120.0430.

C. *Compliance and Reporting Notices prepared by VAA to VRPL for the purpose of the Velocity Loan recorded that VAH's unrestricted cash balance for the period from 1 November 2019 to 30 November 2019, excluding cash held by VRPL under the Velocity Loan and drawn and undrawn amounts under the Velocity Loan, was $341.713 million: VAH.004.304.8762.*

D. *Further particulars may be provided with the Applicant's expert evidence.*

175 Further, notwithstanding VAH's disclosures to the ASX pleaded at paragraphs 161 to 165 above:

(a) in the period from July 2019 to December 2019, VAH had overdue payments owing to its trade creditors of between $10.6 million and $121.7 million each month;

PARTICULARS

Report to Creditors, pg 65.

(b) VAH's debts to trade creditors increased from $137.5 million as at 30 November 2019 to $200.9 million as at 31 December 2019, and its overdue payables increased from $16.3 million to $121.7 million in December 2019; and

PARTICULARS

Report to Creditors, Section 6.4.6.

(c) VAH's debts to trade creditors were the consequence of a deliberate practice of holding back payments to trade creditors in order to increase VAH's reported cash balances.

PARTICULARS

A. *As at July 2019, the VAH Group had total holdbacks of approximately $223,823,385.00: email from Alex Helbig to Steven Fouracre and Tanya Riley dated 18 November 2019 (VAH.002.002.5685).*

B. *Email from Alex Helbig to Steven Fouracre (copied to Shane Whimp) dated 5 November 2019 (VAH.002.002.7796).*

176 Further, notwithstanding VAH's disclosures to the ASX pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above:

(a) on and after 30 June 2019, VAH had identified that there was a risk that VAH may not be able to maintain sufficient cash reserves and funding sources to meet ongoing operating costs, pay contractual payment commitments or fund growth opportunities, which risk was:

(i) evaluated as having a "possible" likelihood;

(ii) deemed to exceed VAH's liquidity risk appetite; and

(iii) considered to require treatment, including through renegotiation of merchant acquiring facilities, implementing supplier and receivables finance facilities to optimise free cashflow and investigating further diversification of funding sources;

PARTICULARS

VAH Treasury Risk Assessment (VAH.002.002.2049).

(b) as at January 2020, VAH's funding sources were "largely tapped out", with:

(i) operating cash being lower than budgeted for the first half of FY20;

(ii) leverage "moving into danger zone for downgrade";

(iii) no more aircraft being available to refinance;

(iv) the Notes significantly underperforming the market;

(v) most lending banks reaching their lending limits; and

(vi) most treasury cash levers from prior years no longer being available; and

PARTICULARS

Slidepack entitled "Liquidity and Funding Update – ELT" dated January 2020 (VAH.002.002.4325).

(c) in the period from January 2020 to April 2020, the management of VAH forecasted that VAH would have insufficient cash to continue operations past 30 June 2020.

PARTICULARS

Report to Creditors, Section 4.4 (pg 45).

177 Further, notwithstanding VAH's disclosures to the ASX pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above, in the period from December 2019 to April 2020:

(a) total unused facilities and unrestricted cash decreased as cash was being used to fund VAH's losses;

PARTICULARS

Report to Creditors, Section 4.4 (pg 45) and Section 6.4.8.1 (pg 68).

(b) a significant proportion of VAH's total unused facilities was attributable to the Velocity Loan, with the only other material source of credit being available through its Multi-Option Facility Agreements and all other sources of surety, guarantee and receivable funding facilities being either unavailable for general working capital purposes, not considered by VAH management in analysing VAH's liquidity or otherwise immaterial;

PARTICULARS

Report to Creditors, Section 6.4.8.1 (pg 67).

(c) while $310 million of unused facilities were purportedly available under the Velocity Loan between January 2020 and 20 April 2020, VAH was not able to immediately draw down on those funds unless relevantly VAH's unrestricted cash balance would not be less than the drawn amount of the loan, which was not likely to be the case by, at the latest, April 2020, due to VAH's use of unrestricted cash to fund its losses;

PARTICULARS

Report to Creditors, Section 6.4.8.1 (pgs 68-69).

(d) the $310 million of unused facilities under the Velocity Loan was otherwise not readily available to VAH;

PARTICULARS

A. The Applicant refers to and repeats the matters pleaded at paragraphs 40, 41, 45, 46 and/or 47 above.

B. On 30 March 2020, VAA sought to draw down $125 million from the Velocity Loan: Notice of Drawdown issued by VAA to VRPL dated 30 March 2020 (VAH.002.043.5364; VAH.002.043.5365).

C. On or around 2 April 2020, VRPL sought advice from

PricewaterhouseCoopers with respect to VAA's request to draw down $125 million from the Velocity Loan, including whether permitting the drawdown was in the best interests of members of the Velocity Frequent Flyer Scheme (VAH.002.043.5489).

D. *It may be inferred from the matters particularised above and VAH's entry into voluntary administration on 20 April 2020 (pleaded at paragraph 186 below) that the drawdown was refused or not permitted by VRPL.*

E. *On 10 April 2020, Warwick Negus sent an email to Mr Scurrah in which he questioned whether the undrawn component of the Velocity Loan was counted as cash on VAH's balance sheet, querying whether the "$800 million we said we had may have included money we can't actually access?" (VAH.002.012.5943).*

F. *Further particulars may be provided with the Applicant's expert evidence.*

(e) VAH's unrestricted cash reserves decreased from $728.1 million in January 2020 to $317.4 million in April 2020;

PARTICULARS

Report to Creditors, Section 6.4.8.1.

(f) As at 31 December 2019, VAH had overdue trade creditors of $121.7 million and had increased the limit of the Velocity Loan to $460 million;

PARTICULARS

Report to Creditors, Section 6.4. and 6.4.8.1.

(g) Taking into account the matters pleaded above, VAH's unrestricted cash balance was, after taking into account the payment of overdue trade creditors, no more than $606.4 million as at 31 December 2019, $460 million of which was attributable to drawn and undrawn amounts under the Velocity Loan.

PARTICULARS

A. *As to the drawn and undrawn amounts under the Velocity Loan as at 31 December 2019, the total facility limit under the Velocity Loan is recorded in the Report to Creditors, Section 6.4.8.1.*

B. *Further particulars will be provided with the Applicant's expert evidence.*

B.7. MPG's and Group Members' acquisition of further Notes and US Notes

178 On 26 February 2020, Dr Fleming received an email from Mr Dean Italia of Mutual Limited attaching an article prepared by Mutual Limited recording that VAH's cash reserves of $1.35 billion and its funding of its maintenance capital expenditure from its operating activities meant that it had ample liquidity to meet challenging operating conditions.

PARTICULARS

Email from Dean Italia to Dr Fleming dated 26 February 2020 attaching article entitled "Where selling begets selling – Merits to buy the Virgin ASX listed bond".

179 On 26 February 2020, and in reliance upon:

(aa) the contents of the Original Prospectus;

(a) the Cash Balance Representation pleaded at paragraph 125 above;

(b) the Post Velocity Cash Representation pleaded at paragraph 126 above;

(c) the Undrawn Facilities Representation pleaded at paragraph 127 above;

(d) the Repayment Representation pleaded at paragraph 128 above;

(e) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above;

(f) the understanding obtained from the Original Prospectus pleaded at paragraph 146 above and the belief pleaded at paragraph 147 above;

(g) the matters set out in the article prepared by Mutual Limited, which relied upon information as to VAH's cash reserves disclosed by VAH to the market; and/or

(h) VAH's obligation to update or correct the market as a continuously disclosing entity as pleaded in paragraphs 369 to 388 below;

Dr Fleming:

(i) formed the belief that VAH had sufficient cash reserves to withstand the impact of the outbreak of COVID-19 on VAH's revenue and profit; and

(j) caused MPG, in its capacity as trustee of the MPG Trust, to acquire 550 Notes on the ASX at a price of $0.90 per Note and at an aggregate value of $49,500.

PARTICULARS

Escala Partners Buy Order Invoice dated 26 February 2020 issued to MPG.

180 From 26 November 2019, and in reliance upon:

(aa) the contents of the Original Prospectus;

(a) the Cash Balance Representation pleaded at paragraph 125 above;

(b) the Post Velocity Cash Representation pleaded at paragraph 126 above;

(c) the Undrawn Facilities Representation pleaded at paragraph 127 above;

(d) the Repayment Representation pleaded at paragraph 128 above;

(e) the Velocity Acquisition Rationale Representations pleaded at paragraph 123 above;

(f) the representations made to Group Members during Notes Meetings pleaded at paragraphs 167 to 170 above; and/or

(g) VAH's announcements to the ASX with respect to its cash position as pleaded at paragraphs 161 to 165 above,

some Group Members acquired Notes on the ASX.

PARTICULARS

A. As to the reliance of Group Members on the matters pleaded at sub-paragraphs (a) to (e) above, the Applicant refers to and repeats the particulars to paragraph 149 above.

B. As to the reliance of Group Members on the matters pleaded at sub-paragraphs (f) and (g) above, that matter may be inferred from:

i. the fact that Group Members acquired the Notes;

ii. each of the representations pleaded at sub-paragraphs (f) and (g) was material to the risk profile of the Notes and accordingly likely to have been relevant to Group Members' decisions whether to invest in the Notes; and

iii. each of the representations pleaded at sub-paragraphs (f) and (g) was made in the context of offering documents directed to inducing the acquisition of the Notes.

C. Particulars of Group Members' acquisition of Notes following issue may be provided following the trial of common questions or otherwise as the Court may direct.

181 From 7 November 2019, and in reliance upon:

(a) the contents of the Original Prospectus;

(b) the Cash Balance Representation pleaded at paragraphs 125 and 137 above;

(c) the Post Velocity Cash Representation pleaded at paragraphs 126 and 138 above;

(d) the Undrawn Facilities Representation pleaded at paragraphs 127 and 139 to 141 above;

(e) the Velocity Acquisition Rationale Representations pleaded at paragraphs 123 and 136 above;

(f) the Repayment Representation pleaded at paragraphs 128 and 142 above; and/or

(g) VAH's announcements to the ASX with respect to its cash position as pleaded at paragraphs 161 to 165 above,

some Group Members acquired US Notes.

PARTICULARS

A. As to the reliance of Group Members on the matters pleaded at sub-paragraphs (a) to (f) above, the Applicant refers to and repeats the particulars to paragraph 151 above.

B. As to the reliance of Group Members on the matters pleaded at sub-paragraph (g) above, that matter may be inferred from:

i. the fact that Group Members acquired the US Notes;

ii. the representations pleaded at sub-paragraph (g) were material to the risk profile of the US Notes and accordingly likely to have been relevant to Group Members' decisions whether to invest in the US Notes; and

iii. the representations pleaded at sub-paragraph (g) was made in the context of offering documents directed to inducing the acquisition of the US Notes.

C. Particulars of Group Members' acquisition of US Notes may be provided following the trial of common questions or otherwise as the Court may direct.

B.8. Group Members' disposal of the Notes and the US Notes

182 In the period following the issue of the US Notes on 7 November 2019 and the Notes on 26 November 2019 until VAH's entry into voluntary administration (as pleaded in Section B.9 below):

(a) certain Group Members who had acquired the Notes upon their issue (as pleaded at paragraphs 149 and 153 above) disposed of the Notes at a price that was less than the Notes' face value;

(b) certain Group Members who had acquired the Notes on the ASX disposed of the Notes at a price that was less than the price for which they were acquired; and

(c) certain Group Members who had acquired the US Notes disposed of the Notes at a price that was less than the price for which they were acquired,

(together, **Pre-Administration Disposing Group Members**).

PARTICULARS

Particulars of Pre-Administration Disposing Group Members' disposal of the Notes and the US Notes and the value at which the Notes and the US Notes were disposed may be provided following the trial of common questions or otherwise as the Court may direct.

B.9. VAH's entry into voluntary administration

183 On 31 March 2020, trading in VAH securities on the ASX was temporarily paused.

PARTICULARS

ASX Market Release dated 31 March 2020 for Virgin Australia Holdings Limited.

184 On 14 April 2020, trading in VAH securities, including the Notes, were placed in trading halt at the request of VAH.

PARTICULARS

ASX Market Announcement dated 14 April 2020 for Virgin Australia Holdings Limited.

185 On 16 April 2020, VAH securities, including the Notes, were suspended from quotation under ASX Listing Rule 17.2 at the request of VAH.

PARTICULARS

ASX Market Announcement dated 16 April 2020 for Virgin Australia Holdings Limited.

186 On 20 April 2020, Vaughan Strawbridge, John Greig, Salvatore Algeri and Richard Hughes were appointed Joint and Several Administrators (**Administrators**) to VAH and a number of its subsidiaries (together, the **VAH Group**) pursuant to s 436A of the Corporations Act.

PARTICULARS

A. The entities in the VAH Group which entered into voluntary administration are listed in Appendix A to the Report to Creditors.

B. Tiger International Number 1 Pty Ltd, being an entity identified in Appendix A to the Report to Creditors as an entity to which Messrs Strawbridge, Greig, Algeri and Hughes were appointed Joint and Several Administrators, did not enter into administration until 28 April 2020: Report to Creditors, Section 1.1.

187 As at the date of the VAH Group's entry into voluntary administration, MPG and Group Members remained holders of the Notes.

PARTICULARS

A. As at 20 April 2020, MPG continued to hold the 4,550 Notes that it had acquired on 26 November 2019 and 26 February 2020, as pleaded at paragraphs 148 and 179 above.

B. Particulars of Group Members' holdings of Notes as at 20 April 2020 may be provided following the trial of common questions or otherwise as the Court may direct.

188 On 21 April 2020, VAH announced that its entry into voluntary administration was for the purpose of recapitalising its business to ensure that it emerged in a stronger financial position on the other side of the COVID-19 pandemic.

PARTICULARS

Media release dated 21 April 2020, entitled "Virgin Australia enters voluntary administration".

189 As at 21 April 2020:

(a) VAH held cash that it categorised as unrestricted of $319.2 million, of which $157.6 million ~~$164.1 million of which~~ had been set -off against liabilities owing to financiers ~~and $215.7 million of which~~or had been frozen by financiers; and

PARTICULARS

Report to Creditors, pgs 77, 78 and Table 23.

(b) only approximately $10 million was available to the VAH Group as potential distributions from the Velocity Group, and accordingly the Velocity Group was unable to provide meaningful liquidity support to the VAH Group, except for the unused limit of the Velocity Loan.

PARTICULARS

Report to Creditors, pgs 69

190 On 21 April 2020, the Administrators formed the view that an expedited sale of business process needed to be conducted because of:

(a) the significant cash constraints facing the VAH Group and the initial projection that there would be insufficient cash to continue trading post 30 June 2020 without additional funding;

(b) the impact of the COVID-19 pandemic on the viability of the business and the ability to generate revenue to cover costs;

(c) the need to retain key contracts, assets, employees and regulatory approvals to preserve the value of the business; and

(d) the impact of the uncertainty of the future of the business on employees, customers, financiers, business partners and the general market.

PARTICULARS

Report to Creditors, pg 83.

191 Also on 21 April 2020, the Administrators commenced a public sale of business campaign for the sale of the VAH business to identify any and all possible proposals for a sale of assets or undertaking, or deed of company arrangement (**DOCA**) proposals, in respect of the VAH Group.

PARTICULARS

Report to Creditors, pg 83.

192 As part of the sale of business campaign, the Administrators proposed that:

(a) the sale of the VAH business would be effected by way of a binding sale and implementation deed, which provided for the sale of the business by the Administrators exercising their power of sale pursuant to s 437A(1)(c) of the Corporations Act; and

(b) the sale would otherwise be effected by way of an asset sale agreement unless

creditors approved DOCAs at the second meeting of creditors.

PARTICULARS

Report to Creditors, pg 86.

193 On 26 June 2020, the Administrators exercised their power of sale pursuant to s 437A(1)(c) of the Corporations Act and signed a document styled as a binding sale and implementation deed (**Sale Deed**) with BC Hart Aggregator, L.P. (**Bain**).

194 Pursuant to the Sale Deed, it was agreed that:

(a) should the completion of the sale to Bain proceed by way of an asset sale agreement, the business would be transferred into a new corporate structure owned by Bain with the existing corporate entities within the VAH Group being placed into liquidation; and

(b) should the sale proceed by way of DOCAs, ownership of VAH would be transferred to Bain by way of share transfer.

PARTICULARS

Report to Creditors, pg 88.

195 Pursuant to the Sale Deed, completion of the sale by way of DOCAs involved:

(a) the proposal of 10 DOCAs covering all entities in the VAH Group under administration (**Bain DOCAs**), with a single pooled DOCA relating to 14 of the entities in administration, including VAH (the **Primary DOCA**);

(b) the creation of a single Creditors' Trust, against which all creditors of the VAH Group would have claims; and

(c) the release of all creditors' claims against the VAH Group which arose prior to 20 April 2020, with each creditor possessing eligible creditors' claims becoming beneficiaries of the Creditors' Trust and entitled to receive a dividend out of one of four pools of funds within the Creditors' Trust.

PARTICULARS

Report to Creditors, pgs 93-96.

196 Pursuant to the Sale Deed, were the sale to complete by way of the Bain DOCAs, holders of the Notes and US Notes, including MPG and Group Members, were expected to receive an estimated dividend of between 12.8% and 8.4% of the face value and interest owing by VAH under the Notes and the US Notes by reason of the

fact that they were unsecured creditors of VAH.

PARTICULARS

Report to Creditors, pg 112.

B.10. The Report to Creditors

197 On 25 August 2020, the Administrators issued the Report to Creditors.

198 In the Report to Creditors, the Administrators reported, as was the fact, that:

(a) the VAH Group's financial difficulties and failure were due to an already highly-leveraged balance sheet, resulting from past years of losses, that was unable to support the business impact caused by the COVID-19 pandemic;

PARTICULARS

Report to Creditors, Section 5.6.2.

(b) between 30 June 2019 and 31 July 2019, VAH's true liquidity position was approximately $544 million (comprising a reduction of $406.5 million in cash and $140.9 million in undrawn facilities) and was materially less than the amount disclosed in the Original Prospectus and the Notes Prospectus;

PARTICULARS

A. *With respect to VAH's cash position:*

i. the Original Prospectus disclosed that VAH's pro-forma cash and cash equivalents position as at 30 June 2019 was $1,194 million: Original Prospectus at pg 82;

ii. the Notes Prospectus disclosed that VAH's pro-forma cash and cash equivalents position as at 30 June 2019 was $1,364.4M: Notes Prospectus at pg 82; and

iii. figure 14 on page 68 of the Report to Creditors shows a decline in "unrestricted cash" as at 31 July 2019 to $957.9 (being a $406.5M decline).

B. *With respect to VAH's undrawn facilities:*

i. the Original Prospectus and the Notes Prospectus disclosed that VAH had undrawn facilities of $300.8M as at 30 June 2019: Original Prospectus at pg 88 and Notes Prospectus at pg 88; and

ii. figure 14 on page 68 of the Report to Creditors shows a

decline in "unused facilities (MOFA & Velocity Group Loan)" as at 30 July 2019 to $159.9M (being a $140.9M decline).

(c) as at July 2019, VAH had unused facilities and unrestricted cash of $1,117.8 million, comprising $957.9 million in unrestricted cash and $159.9 million in unused facilities;

PARTICULARS

Report to Creditors, Section 6.4.8.1.

(d) of the cash held on its balance sheet, approximately 30% was restricted cash, held as collateral under finance agreements with financiers and merchant providers;

PARTICULARS

Report to Creditors, Section 4.4 (pg 45).

(e) from July 2019, VAH's unused facilities were significantly attributable to the Velocity Loan, which was subject to the pre-conditions and covenants pleaded at paragraph 177(c) above; and

(f) the matters pleaded at paragraphs 174(a) and 174(b), 175(a) and 175(b), 176(c), 177(a) to (c) and 177(e) to 177(g) above.

199 In the Report to Creditors, the Administrators recommended that the creditors approve each of the DOCAs proposed as part of the Sale Deed with Bain.

PARTICULARS

Report to Creditors, pg 119.

B.11. Approval of the Bain DOCAs

200 On 4 September 2020, the Administrators convened the second meeting of creditors pursuant to s 439A of the Corporations Act.

201 At the second meeting of creditors, the creditors resolved that:

(a) the VAH Group enter into the Primary DOCA; and

(b) the Administrators be appointed as joint and several deed administrators.

202 On 25 September 2020, the Primary DOCA was executed.

203 By reason of the execution of the Primary DOCA, the Applicant became entitled to receive an estimated return of between 12.8% and 8.4% of the face value of the Notes

and all accrued interest owing on the Notes as pleaded at paragraph 196 above.

PARTICULARS

Report to Creditors at pg 112.

204 Further, by reason of the execution of the Primary DOCA, Group Members became entitled to receive an estimated return of between 12.8% and 8.4% of the face value of the Notes and the US Notes and all accrued interest owing on the Notes and US Notes as pleaded at paragraph 196 above.

205 On 17 November 2020, VAH was delisted from the ASX pursuant to ASX Listing Rule 17.11.

B.12. Group Members' disposal of the Notes and the US Notes following VAH's entry into voluntary administration

206 In the period following VAH's entry into voluntary administration on 20 April 2020:

(a) certain Group Members who had acquired the Notes upon their issue (as pleaded at paragraphs 149 and 153 above) disposed of the Notes at a price that was less than the Notes' face value;

(b) certain Group Members who had acquired the Notes on the ASX disposed of the Notes at a price that was less than the price for which they were acquired; and

(c) certain Group Members who had acquired the US Notes disposed of the Notes at a price that was less than the price for which they were acquired,

(together, **Post-Administration Disposing Group Members**).

C. CLAIMS AGAINST VAH – CONTRAVENTIONS OF PARTS 6D AND 7.10 OF THE CORPORATIONS ACT AND THE ASIC ACT

C.1. Omissions from the Original Prospectus and the Notes Prospectus

~~*Omissions in light of the Velocity Loan Misclassification*~~

207 The Applicant repeats the matters pleaded in paragraphs 48 and 172 above.

208 The Original Prospectus and the Notes Prospectus were required, pursuant to s 710(1) of the Corporations Act, to contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of:

(a) the rights and liabilities attaching to the Notes offered; and

(b) the assets and liabilities, financial position and performance, profits and losses

and prospects of VAH.

PARTICULARS

Corporations Act, s 728(1), Table Item 1.

209 The balance of VAH's unrestricted cash reserves and undrawn facilities as at the date of the Original Prospectus and/or the Notes Prospectus, ~~including~~ being the information disclosed in the Report to Creditors and as pleaded at paragraphs 174, 177, 198(b), 198(c) and 198(d) above, was information with respect to:

(a) the assets and liabilities of VAH;

(b) the financial position and performance of VAH; and/or

(c) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

PARTICULARS

The Applicant refers to and repeats paragraph 120 above.

210 The fact, existence and terms of the Velocity Loan and the Specific Security Deed, ~~including~~ specifically the matters pleaded at paragraphs 27, 28 and 36 to 48 above, was information with respect to:

(a) the assets and liabilities of VAH;

(b) the financial position and performance of VAH; and/or

(c) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

211 VAH's conduct in treating the drawn and undrawn balance of the Velocity Loan as unrestricted cash, as pleaded at paragraph 172 above, was information with respect to:

(a) the assets and liabilities of VAH;

(b) the financial position and performance of VAH; and/or

(c) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

212 The ~~fact that the drawn and undrawn balance of the Velocity Loan was restricted cash, as pleaded at paragraph 9 above, was~~:

(a) total amount of VAH's unrestricted cash reserves and unused facilities which were attributable to the Velocity Loan; and

(b) fact that VAH's unrestricted cash reserves and unused facilities were significantly attributable to the Velocity Loan,

were, separately and/or together information with respect to:

~~(a)~~(c) the assets and liabilities of VAH;

~~(b)~~(d) the financial position and performance of VAH; and/or

~~(c)~~(e) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

213 The:

(a) circumstances as to Affinity's intention to dispose of its stake in Velocity Holdco by way of an IPO and the reasons for VAH's desire to avoid that outcome;

(b) rationale for VAH's acquisition of Affinity's stake in Velocity Holdco (as pleaded at paragraph 101 above);

(c) fact that, in the view of the Board of VAH, the approximate $700 million consideration that VAH had agreed to pay Affinity for its interest in Velocity Holdco reflected an above market premium and/or was higher than Affinity's interest in Velocity Holdco was rationally worth; and

(d) the fact that a material reason why VAH was prepared to pay an above market premium was to avoid the negative consequences of the proposed IPO of Affinity's stake in Velocity Holdco for VAH's consolidated financial position pleaded in paragraph 101 above,

were separately and/or together information with respect to:

(e) the assets and liabilities of VAH;

(f) the financial position and performance of VAH; and/or

(g) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

214 The fact that the convertible notes acquired by VAH through its subsidiary VAAH from Affinity upon completion of the Velocity Acquisition would become security for the Velocity Loan to be held by VAAH subject to the terms of the Specific Security Deed was information with respect to:

(a) the assets and liabilities of VAH;

(b) the financial position and performance of VAH; and/or

(c) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

215 The reduction in available unrestricted cash and undrawn facilities:

(a) between 30 June 2019 and the date on which the Original Prospectus and/or the Notes Prospectus was issued; and

(b) since the date on which the Original Prospectus and/or the Notes Prospectus was issued,

~~including~~ being the information disclosed in the Report to Creditors and as pleaded at paragraphs 175, 176(b), 177, 198(b), 198(c) and 198(d) above, was information with respect to:

(c) the assets and liabilities of VAH;

(d) the financial position and performance of VAH; and/or

(e) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

PARTICULARS

The Applicant refers to and repeats paragraph 120 above.

216 The source and terms on which VAH's undrawn facilities could be accessed (as pleaded at paragraphs 27 to 47, 177(b), 177(c), 177(d) and 198(e) above), in particular:

(a) the circumstances in which the undrawn balance under the Velocity Loan would become unavailable; and

(b) the circumstances in which the undrawn balance under the Velocity Loan would become repayable,

was information with respect to:

(c) the assets and liabilities of VAH;

(d) the financial position and performance of VAH; and/or

(e) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

PARTICULARS

The Applicant refers to and repeats paragraph 120 above.

217 The:

(a) increase in the amount of overdue payables and debts to VAH's trade creditors, as disclosed in the Report to Creditors and as pleaded at paragraphs 175(a) and

175(b) above;

(b) ~~the~~ increased delay with which VAH was paying its trade creditors, as disclosed in the Report to Creditors and as pleaded at paragraphs 175(a) and 175(b) above; and

(c) existence and implementation by VAH of a process of holding back payments to trade creditors in order to increase its reported cash balances pleaded at paragraph 175(c) above,

~~including the information disclosed in the Report to Creditors and as pleaded at paragraphs 48(a) and 48(b) above,~~ was information with respect to:

(d) the assets and liabilities of VAH;

(e) the financial position and performance of VAH; and/or

(f) the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

218 Having regard to:

(a) the volatility and competitiveness of the airline sector;

(b) VAH's recorded history of statutory losses after tax of $185.8 million in FY17, $653.3 million in FY18 and $315.4 million in FY19;

(c) VAH's credit rating at the time of issuance of the Original Prospectus and/or the Notes Prospectus, which was below investment grade, implying that investments in debt instruments such as debentures issued by such an entity carried a material risk of default;

(d) VAH's operating costs, including projected increases in VAH's maintenance capital costs and future commitments to capital expenditure;

(e) VAH's significant existing indebtedness; and

(f) the increased likelihood of default on repayment of the Notes for an entity with low levels of liquidity,

VAH's level of liquidity, the availability of unrestricted cash and its access to undrawn credit facilities were important factors in assessing VAH's ability to repay the Notes.

PARTICULARS

A. *As to sub-paragraph (b), the Applicant refers to page 93 of the Original Prospectus and page 93 of the Notes Prospectus.*

B. *As to sub-paragraph (c), the Applicant refers to page 107 of the*

Original Prospectus and page 107 of the Notes Prospectus.

C. *As to sub-paragraph (d), the Applicant refers to pages 22, 94-95 and 100 of the Original Prospectus and pages 22, 94-95 and 100 of the Notes Prospectus.*

D. *As to sub-paragraph (e), the Applicant refers to pages 22, 86-90, 99-100 of the Original Prospectus and pages 22, 86-90, 99-100 of the Notes Prospectus.*

E. *The Applicant refers to and repeats paragraphs 158 and 159 above.*

219 Further, having regard to:

(a) the matters pleaded in paragraph 218 above;

(b) the fact that the Velocity Acquisition was disclosed as being part of VAH's broader business improvement program that was directed towards reducing costs and improving profitability;

PARTICULARS

Original Prospectus at pgs 66-67 and Notes Prospectus at pgs 66-67.

(c) the significance of the matters pleaded at paragraphs 101 and 102 to VAH's rationale in pursuing the Velocity Acquisition;

(d) the fact that the matters pleaded at paragraph 101 revealed potentially negative consequences of not acquiring Velocity Holdco for VAH's levels of liquidity and the availability and extent of VAH's unrestricted cash reserves; and

(e) the fact that VAH was paying an above market premium to acquire Affinity's stake in Velocity Holdco and that a material reason for paying that premium was to avoid the negative consequences of an IPO as pleaded in paragraph 102 above,

the importance of the Velocity Acquisition to the ongoing availability of finance to the VAH Group through the Velocity Loan was an important factor in assessing VAH's ability to repay the Notes.

220 In the premises, the information pleaded at paragraphs 209 to 217 above (individually, together or in any combination, the **Withheld Information**) was information that the Applicant, Group Members and their professional advisers reasonably required to make an informed assessment of:

(a) the assets and liabilities of VAH;

(b) the financial position and performance of VAH; and/or

(c) the prospects of VAH.

221 By reason of:

(a) the matters pleaded at paragraphs 218 and 219 above;

(b) the fact that the Original Prospectus and the Notes Prospectus disclosed VAH's unrestricted cash reserves and undrawn facility balances and forecasted its unrestricted cash reserves on a pro forma basis following the Velocity Acquisition, the issuance of the Notes and the US Notes and the repayment of the 2019 US Notes;

(c) the fact that the Original Prospectus and the Notes Prospectus conveyed the impression that VAH's access to cash reserves and undrawn facilities in light of its existing levels of debt was significant and relevant to an investor's decision to invest in the Notes by representing that:

(i) VAH had diverse funding sources across the secured and unsecured debt markets; and

(ii) VAH was seeking to maintain a strong level of liquidity and access to diverse sources of funding from debt capital markets, commercial bank markets and aircraft operating lease markets,

it was reasonable, within the meaning of s 710(1)(a) of the Corporations Act, for investors and their professional advisers to expect to find the Withheld ~~i~~information ~~pleaded at paragraphs 79 to 82 above~~ in the Original Prospectus and the Notes Prospectus.

PARTICULARS

As to sub-paragraphs (c)(i) and (ii), the Applicant refers to page 88 of the Original Prospectus and page 88 of the Notes Prospectus.

222 The Withheld ~~i~~information ~~pleaded at paragraphs 79 to 82 above~~ was actually known to, or alternatively, in the circumstances, ought reasonably have been obtained through enquiries made by:

(a) VAH; and/or

(b) the Second and Third Respondents,

within the meaning of ss 710(1)(b), (3)(a) and 3(b) of the Corporations Act.

PARTICULARS

A. *The actual knowledge of VAH and/or its Board of Directors may be inferred from the following facts, matters and circumstances:*

i. *the fact that the directors of VAH were responsible for the*

preparation of the pro forma historical information including the selection and determination of the pro forma transactions and/or adjustments, and for properly compiling the pro forma historical information on the basis stated in section 6 of the Original Prospectus and the Notes Prospectus, as confirmed in KPMG's letter entitled "Limited Assurance Investigating Accountant's Report and Financial Services Guide" dated 28 October 2019 and 5 November 2019 and appearing at Section 10 (pgs 129-130) of the Original Prospectus and Section 10 (pgs 129-130) of the Notes Prospectus;

ii. *the fact that the directors' responsibility referred to in (i) above included establishing and maintaining such internal controls as the directors determine are necessary to enable the preparation of financial information that is free from material misstatement, whether due to fraud or error, as confirmed in KPMG's letter entitled "Limited Assurance Investigating Accountant's Report and Financial Services Guide" dated 28 October 2019 and 5 November 2019 and appearing at Section 10 (pg 130) of the Original Prospectus and Section 10 (pg 130) of the Notes Prospectus;*

iii. *the fact that each director gave and did not withdraw his or her consent to the issue of the Original Prospectus and the Notes Prospectus and its lodgement with ASIC, as confirmed at pg 147 of the Original Prospectus and pg 147 of the Notes Prospectus, from which it may be inferred that each of the Second and Third Respondents read the Original Prospectus and the Notes Prospectus and was aware of the representations made therein;*

iv. *the directors' awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which the directors commented in the Directors' Report at pgs 15-21 of the FY19 Annual Report, which must have encompassed:*

   I. knowledge of the basis upon which VAH's balance of cash reserves and undrawn facilities was reported;

   II. knowledge of VAH's delinquency in paying trade creditors

and the effect of that delinquency on VAH's cash reserves; and

III. *knowledge of the terms of the Velocity Loan;*

v. *the directors' awareness of the financial performance of the VAH business on and after 1 July 2019, including the erosion of VAH's cash balance and undrawn facilities;*

vi. *the Second and Third Respondents' positions within the VAH business as directors;*

vii. *the matters pleaded at paragraphs 27, 28, 36 to 47, 64 to 99, 101, 158, 159, 160, 172, 174(c), 175 and 176(a) above.*

B. *As to the allegation that the information ought reasonably to have been obtained by enquiries, the Applicant refers to and repeats paragraphs 209 to 221 above and the particulars thereto.*

C. *Email from Alex Helbig to Steven Fouracre and Shane Whimp dated 5 November 2019 (VAH.002.002.7796).*

D. *Email from Keith Neate to Steven Fouracre dated 21 November 2019 (VAH.002.002.5685).*

E. Further particulars may be provided with the Applicant's tender bundle.

223 In the premises, the Withheld ~~i~~Information ~~pleaded at paragraphs 79 to 82 above~~ was required by s 710(1) of the Corporations Act to be disclosed in the Original Prospectus and the Notes Prospectus.

224 The Withheld ~~i~~Information ~~pleaded at paragraphs~~ ~~79 to 82 above~~ was not disclosed in the Original Prospectus and the Notes Prospectus.

225 By reason of the omission of the Withheld I~~i~~nformation ~~pleaded at paragraphs 79 to 82 above~~ from the Original Prospectus and the Notes Prospectus, VAH offered securities under a disclosure document in contravention of s 728(1)(b) of the Corporations Act.

~~*Omissions – Velocity Loan correctly classified as unrestricted cash*~~

226 [Not used] ~~In the alternative to paragraphs 77A to 89 above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, the Applicant pleads as follows.~~

227 [Not used] ~~The Applicant repeats paragraphs 78 to 79B and 80 to 82 above.~~

228 [Not used]~~Further, the:~~

(a) circumstances as to Affinity's intention to dispose of its stake in Velocity Holdco by way of an IPO; and

(b) the rationale for VAH's acquisition of Affinity's stake in Velocity Holdco (as pleaded at paragraph 10A above),

was separately and/or together information with respect to:

(c)the assets and liabilities of VAH;

(d)the financial position and performance of VAH; and/or

(e)the prospects of VAH,

within the meaning of s 710(1) of the Corporations Act.

229 [Not used] The Applicant repeats paragraph 83 above.

230 [Not used] Having regard to:

(a) the matters pleaded in paragraphs 83 and 89D above;

(b) the fact that the Velocity Acquisition was disclosed as being part of VAH's broader business improvement program that was directed towards reducing costs and improving profitability;

PARTICULARS

Original Prospectus at pgs 66-67 and Notes Prospectus at pgs 66-67.

(c) the significance of the matters pleaded at paragraph 10A to VAH's rationale in pursuing the Velocity Acquisition; and

(d) the fact that the matters pleaded at paragraph 10A revealed potentially negative consequences of not acquiring Velocity Holdco for VAH's levels of liquidity and the availability and extent of VAH's unrestricted cash reserves,

the importance of the Velocity Acquisition to the ongoing availability of finance to the VAH Group through the Velocity Loan was an important factor in assessing VAH's ability to repay the Notes.

231 [Not used] In the premises, the information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above was information that the Applicant, Group Members and their professional advisers reasonably required to make an informed assessment of

(a) the assets and liabilities of VAH;

(a) the financial position and performance of VAH; and/or

(a) the prospects of VAH.

232 [Not used] ~~By reason of:~~

~~(a) the matters pleaded at paragraphs 89D and 89E above;~~

~~(a) the fact that the Original Prospectus and the Notes Prospectus disclosed VAH's unrestricted cash reserves and undrawn facility balances and forecasted its unrestricted cash reserves on a pro forma basis following the Velocity Acquisition, the issuance of the Notes and the US Notes and the repayment of the 2019 US Notes;~~

~~(a) the fact that the Original Prospectus and the Notes Prospectus conveyed the impression that VAH's access to cash reserves and undrawn facilities in light of its existing levels of debt was significant and relevant to an investor's decision to invest in the Notes by representing that:~~

~~(i) VAH had diverse funding sources across the secured and unsecured debt markets; and~~

~~(i) VAH was seeking to maintain a strong level of liquidity and access to diverse sources of funding from debt capital markets, commercial bank markets and aircraft operating lease markets; and~~

~~(d) the fact that the Original Prospectus and the Notes Prospectus conveyed the impression that the Velocity Acquisition was an important initiative to drive profitability and did not otherwise identify the importance of the Velocity Acquisition to the maintenance of its existing levels of unrestricted cash and its access to sources of funding, being matters relevant to an investor's decision to invest in the Notes,~~

~~it was reasonable, within the meaning of s 710(1)(a) of the Corporations Act, for investors and their professional advisers to expect to find the information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above in the Original Prospectus and the Notes Prospectus.~~

~~***PARTICULARS***~~

~~*As to sub-paragraphs (c)(i) and (ii), the Applicant refers to page 88 of the Original Prospectus and page 88 of the Notes Prospectus.*~~

233 [Not used] ~~The information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above was actually known to, or alternatively, in the circumstances, ought reasonably have been obtained through enquiries made by:~~

~~(a) VAH; and/or~~

~~(a) the Second and Third Respondents,~~

~~within the meaning of ss 710(1)(b), (3)(a) and 3(b) of the Corporations Act.~~

~~***PARTICULARS***~~

~~*A. The Applicant repeats the matters particularised at paragraph 86 above.*~~

~~*A. Further, the actual knowledge of VAH and/or its Board of Directors may be inferred from the following facts, matters and circumstances:*~~

~~*i. the matters pleaded at paragraphs 9D to 9U and 10A above; and*~~

~~*i. the Board's awareness of the importance of the Velocity Loan to VAH's liquidity position, including the fact that the drawn and undrawn balance of the Velocity Loan was treated by VAH as unrestricted funds, which would have necessitated knowledge and understanding of the terms of the Velocity Loan Agreement, the Loyalty Trust, the Loyalty Trust Investment Policy and the Investment Mandate Letter.*~~

~~*A. Further particulars may be provided with the Applicant's tender bundle.*~~

234 [Not used] ~~In the premises, the information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above was required by s 710(1) of the Corporations Act to be disclosed in the Original Prospectus and the Notes Prospectus.~~

235 [Not used] ~~The information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above was not disclosed in the Original Prospectus and the Notes Prospectus.~~

236 [Not used] ~~By reason of the omission of the information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above from the Original Prospectus and the Notes Prospectus, VAH offered securities under a disclosure document in contravention of s 728(1)(b) of the Corporations Act.~~

Involvement of VRPL

237 By the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL had engaged in the following conduct:

(a) Entering into the deeds and agreements pleaded at paragraph 36 above, by which the Facility Limit and Maturity Date of the Velocity Loan were extended;

(b) resolving to permit the Maturity Date of the Velocity Loan to be automatically extended (through VRPL taking no action) until 27 August 2020 as pleaded in paragraph 82;

(c) Approving drawdowns of the Velocity Loan;

(d) Facilitating or otherwise permitting VAH to treat the drawn and undrawn balance of the Velocity Loan as unrestricted cash; and/or

PARTICULARS

A. Minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VRP.003.001.0011).

B. Draft minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VAH.004.305.7277).

C. This conduct may be inferred from:

i. VRPL's receipt of "Compliance & Reporting Notices" executed by representatives of VAA recording VAH's unrestricted cash, which included drawn and undrawn amounts under the Velocity Loan Agreement, to which VRPL did not object, challenge or query: see, for example, VAH.001.002.3033; VAH.001.002.3039; VAH.004.124.2113; VAH.004.132.5573; VAH.004.124.1987; VAH.004.132.1712; VAH.002.043.6383; ~~and~~

ii. the matters pleaded at paragraph 43; ~~the absence of steps taken by VRPL to ensure that the amounts drawn under the Velocity Loan Agreement by VAH were being used for the purpose of an "Authorised Investment" in accordance with the Loyalty Trust Deed and Loyalty Trust Investment Policy.~~

iii. Email from Shane Whimp to Geoff Smith and Steve Fouracre dated 18 July 2018 (VAH.002.059.1707);

iv. Briefing Note for VRPL Investment Committee Meeting dated 24 July 2019 (VAH.004.301.4554);

v. Memorandum from Shane Whimp to VRPL Board (VAH.002.003.5584).

D. Further particulars may be included with the Applicant's tender bundle and/or prior to the initial trial of common questions~~provided following further and better discovery~~.

(e) Participating in the due diligence conducted for the purpose of preparing and

issuing, and assisting in the drafting and verification of, the Original Prospectus, the Notes Prospectus and the Offering Circular.

PARTICULARS

A. Sharyn Page was a member of the Due Diligence Committee and provided a Verification Sign-Off Certificate with respect to the Original Prospectus and Notes Prospectus on 18 October 2019: VAH.004.346.1885.

B. The Applicant refers to and repeats the matters pleaded and particularised in paragraphs 54 to 63 and 112 above.

C. Geoff Smith provided responses to the Management Due Diligence Questionnaire, in particular "any potential adverse effects to Virgin from Affinity converting its Notes in Velocity to ordinary equity either as part of an IPO of Velocity or otherwise.": VAH.004.091.2086; VAH.002.046.9426; VAH.002.046.9427.

D. Further particulars may be provided with the Applicant's tender bundle and/or prior to the initial trial of common questions.

238 By the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL knew that:

(a) the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and 79C above was~~ constituted information with respect to the assets and liabilities of VAH, the financial position and performance of VAH and/or the prospects of VAH within the meaning of s 710(1) of the Corporations Act;

(b) the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and 79C above was~~ constituted information that prospective noteholders and their professional advisers reasonably required to make an informed assessment of the assets and liabilities, the financial position and performance, and/or the prospects of VAH;

(c) it was reasonable for prospective noteholders and their professional advisers to expect to find the Withheld I~~i~~nformation ~~pleaded at paragraphs 79A, 79B and 79C above~~ in the Original Prospectus and the Notes Prospectus;

(d) the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and 79C above were~~ was actually known to, or ought reasonably have been obtained through enquiries made by VAH and/or the Second and Third Respondents;

(e) the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and 79C above~~

~~were~~ was required to be disclosed in the Original Prospectus and Notes Prospectus; and

(f) the Withheld Information was ~~matters pleaded at paragraphs 79A, 79B and 79C above were~~ not disclosed in the Original Prospectus and Notes Prospectus.

PARTICULARS

A. *The knowledge of VRPL may be inferred from:*

i. *the fact that VRPL was a party to the Velocity Loan Agreement, and was bound by the terms of the Loyalty Trust Deed, the Loyalty Trust Investment Policy and the Investment Mandate Letter, and accordingly must have been aware of those terms and their effect: see, eg, VAH.002.002.0149;*

ii. *VRPL's receipt of "Compliance & Reporting Notices" recording VAH's unrestricted cash, which included drawn and undrawn amounts under the Velocity Loan Agreement: see, for example, VAH.001.002.3033; VAH.001.002.3039; VAH.004.124.2113; VAH.004.132.5573; VAH.004.124.1987; VAH.004.132.1712; VAH.002.043.6383;*

iii. *the fact that Ms Page was the company secretary for both VRPL and VAH;*

iv. *the fact that Ms Page was responsible for executing the deeds and agreements pleaded at paragraph 36 above to extend the Facility Limit and Maturity Date of the Velocity Loan;*

v. *the fact that Ms Page was a member of the Due Diligence Committee and attended meetings of the Due Diligence Committee and VAH Board, during which the existence and importance of the Velocity Loan to VAH's unrestricted cash position, as well as the treatment of the drawn and undrawn balance of the Velocity Loan as unrestricted cash, was discussed: see, eg, VAH.002.011.9059; VAH.002.001.0297; VAH.002.024.5472; VAH.900.001.0077; VAH.002.001.0019;*

vi. *the fact that Ms Page was copied to emails in which the importance of the Velocity Loan and VAH's acquisition of Affinity's minority stake in order to ensure that the Velocity Loan Agreement remains on foot were disclosed and discussed: see, eg, BRY.002.001.3755; BRY.002.001.3448; and*

vii. *the fact that Ms Page executed the Verification Sign-Off Certificate (VAH.004.346.1885) and the VAH Management Questionnaire in relation to the business and financial due diligence questionnaire (VAH.002.040.4491), from which it may be inferred that Ms Page had knowledge and an understanding of the contents of the Original Prospectus and Notes Prospectus;*

viii. *the matters pleaded in paragraphs 29, 49, 54 to 63, 103, 104 and 112 above;*

ix. *the awareness of Geoff Smith, Keith Neate, Steven Fouracre, Shane Whimp, Alex Helbig, Garrett Mayall, Teresa McAdam, Peter Hudson and Jackie Poetzscher, being personnel who worked in or for Group Treasury and whose knowledge may be attributed to VRPL as pleaded at paragraph 63 above, of the financial performance of the VAH business, which must have encompassed:*

I. *knowledge of the basis upon which VAH's balance of cash reserves and undrawn facilities was reported;*

II. *knowledge of VAH's delinquency in paying trade creditors and the effect of that delinquency on VAH's cash reserves; and*

III. *knowledge of the terms of the Velocity Loan;*

x. *the awareness of Geoff Smith, Keith Neate, Steven Fouracre, Shane Whimp, Alex Helbig, Garrett Mayall, Teresa McAdam, Peter Hudson and Jackie Poetzscher, being personnel who worked in or for Group Treasury and whose knowledge may be attributed to VRPL as pleaded at paragraph 63 above, of the financial performance of the VAH business on and after 1 July 2019, including the erosion of VAH's cash balance and undrawn facilities;*

xi. *Email from Alex Helbig to Steven Fouracre and Shane Whimp dated 5 November 2019 (VAH.002.002.7796);*

xii. *Email from Keith Neate to Steven Fouracre dated 21 November 2019 (VAH.002.002.5685);*

xiii. *Minutes of the Loyalty Trust Investment Committee Meeting*

dated 14 August 2019 (VRP.003.001.0011), which record discussions as to the implications of the Velocity Loan for VAH's unrestricted cash balance and VAH's ability to repay the Velocity Loan if it was not rolled over; and

xiv. *Draft minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VAH.004.305.7277), which record discussions as to the extension of the Velocity Loan in 2019.*

B. *Further particulars may be provided ~~following further or better discovery~~with the Applicant's tender bundle and/or before the initial trial of common questions*.

239 [Not used] ~~In the alternative to paragraph 89M above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then by the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL knew that:~~

~~(a) the matters pleaded at paragraphs 79A, 79B and 89C above was information with respect to the assets and liabilities of VAH, the financial position and performance of VAH and/or the prospects of VAH within the meaning of s 710(1) of the Corporations Act;~~

~~(a) the matters pleaded at paragraphs 79A, 79B and 89C above was information that prospective noteholders and their professional advisers reasonably required to make an informed assessment of the assets and liabilities, the financial position and performance, and/or the prospects of VAH;~~

~~(a) it was reasonable for prospective noteholders and their professional advisers to expect to find the information pleaded at paragraphs 79A, 79B and 89C above in the Original Prospectus and the Notes Prospectus;~~

~~(a) the matters pleaded at paragraphs 79A, 79B and 89C above were actually known to, or ought reasonably have been obtained through enquiries made by VAH and/or the Second and Third Respondents;~~

~~(a) the matters pleaded at paragraphs 79A, 79B and 89C above were required to be disclosed in the Original Prospectus and Notes Prospectus; and~~

~~(a) the matters pleaded at paragraphs 79A, 79B and 89C above were not disclosed in the Original Prospectus and Notes Prospectus.~~

~~PARTICULARS~~

~~*The Applicant refers to and repeats the particulars to paragraph 89M above.*~~

240 By reason of the matters pleaded at paragraphs 237 to 238 above, VRPL:

(a) aided, abetted, counselled or procured, or was directly or indirectly knowingly concerned in, or party to, VAH's omission of the Withheld ~~i~~nformation ~~pleaded in paragraphs 79A and 79B above~~ in contravention of s 728(1)(b) of the Corporations Act~~; or~~;

(b) [not used] ~~in the alternative to sub-paragraph (a), aided, abetted, counselled or procured, or was directly or indirectly knowingly concerned in, or party to, VAH's omission of the information pleaded in paragraphs 79A, 79B and 89C above in contravention of s 728(1)(b) of the Corporations Act,~~

and is accordingly liable pursuant to s 729(1) of the Corporations Act as a person "involved" in VAH's contravention.

C.2. Misleading or deceptive statements – Corporations Act, s 728(1)

The Cash Balance Representation

241 [Not used] ~~By reason of the matters pleaded at paragraph 46B above, VAH's unrestricted cash balance included:~~

~~(a) the total drawn balance of the Velocity Loan, implying that the drawn balance of the Velocity Loan was available for VAH's free use and not subject to any other conditions or restrictions; and~~

~~(b) the total undrawn balance of the Velocity Loan, implying that the undrawn balance of the Velocity Loan was unconditionally available to be freely accessed and used by VAH without restriction,~~

~~when in fact:~~

~~(c) by reason of the matters pleaded in paragraphs 9 and 46C above, the drawn and undrawn balance of the Velocity Loan was not, and/or ought not to have been treated as being, unrestricted cash available for VAH's free and unconditional use; and/or~~

~~(d) VAH otherwise had, from its financial statements for FY19, disclosed that cash held in the Velocity Group was treated by VAH for the purpose of its consolidated financial statements as restricted cash.~~

242 [Not used] ~~The effect of the matters pleaded in paragraph 89P was to overstate VAH's unrestricted cash to a material extent.~~

~~***PARTICULARS***~~

~~*A. The incorrect classification of the drawn and undrawn funds under the Velocity Loan meant that approximately 30% of VAH's cash and cash equivalents disclosed in VAH's Annual Report for FY19, the Original Prospectus and the Notes Prospectus, as pleaded at paragraph 25(b) above.*~~

~~*A. Such misclassification of the drawn and undrawn funds under the Velocity Loan was material in accordance with AASB 101 Presentation of Financial Statements.*~~

~~*A. Further particulars may be provided with the Applicant's expert evidence.*~~

243 [Not used] ~~By reason of the matters pleaded in paragraphs 89P and 89Q above, VAH did not have $1,330.3 million of unrestricted cash:~~

~~(a) as at 30 June 2019;~~

~~(a) as at the date of issuance of the Original Prospectus and/or the Notes Prospectus; and/or~~

~~(a) in the period from issuance of the Original Prospectus and/or the Notes Prospectus on 5 November 2019 and the date on which the offer of Notes became unconditional on 26 November 2019.~~

244 ~~Further and/or in the alternative, even if, contrary to the matters pleaded at paragraph 9, 46B and 46C above, VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, by reason of the cash balance disclosed in the Report to Creditors, as pleaded at paragraphs 47, 70(b), 70(c) and 70(d) above,~~ VAH's cash balance as at 26 November 2019 was materially less than $1,740 million in cash and cash equivalents in the period from issuance of the Original Prospectus and/or the Notes Prospectus on 5 November 2019 and the date on which the offer of Notes became unconditional on 26 November 2019.

PARTICULARS

The Applicant refers to the Report to Creditors and paragraphs 174, 198(b), 198(c) and 198(d) above.

245 ~~Further and/or in the alternative, even if, contrary to the matters pleaded at paragraphs 9, 46B and 46C above, VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, b~~By reason of the matters pleaded in paragraphs 175, 177(e) and 177(f), above:

(a) VAH's cash balance as at 30 June 2019 and 26 November 2019 included

substantial amounts payable to VAH's trade and other creditors, including amounts which were overdue for payment; and

(b) as a consequence, VAH's liquidity position was overstated when compared to its actual liquidity position once payments were made to creditors (as reflected in the July 2019 cash balance as pleaded in paragraph 198 above).

PARTICULARS

A. The Applicant refers to and repeats the particulars to paragraph 175, 177(e) and 177(f) above.

B. Further particulars may be provided with the Applicant's tender bundle.

246 ~~Further and/or in the alternative to paragraphs 89P to 89R above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ Further, the effect of the Cash Balance Representation was to convey to prospective investors in the Notes that VAH's unrestricted cash was:

(a) readily and freely accessible by, or available to, VAH; and

(b) able to be used as VAH chose, including to pay its operating expenses and debts,

when, in fact, VAH's ability to access and use a substantial proportion of its unrestricted cash was subject to the matters pleaded in paragraph 48 above.

247 In the premises of:

(a) [Not used] ~~the matters pleaded in paragraphs 89P to 91; or~~

(b) the matters pleaded in paragraphs 244 to 246,

the Cash Balance Representation was misleading or deceptive.

248 By reason of the matters pleaded at paragraph 247 above, the Cash Balance Representation was a misleading or deceptive statement within the meaning of s 728(1)(a) of the Corporations Act.

249 In the premises, offering the Notes under the Original Prospectus and the Notes Prospectus while it contained the Cash Balance Representation was in breach of s 728(1)(a) of the Corporations Act.

PARTICULARS

Original Prospectus, Sections 6.10, 6.10.2 and the Notes Prospectus, Section 6.10, 6.10.2.

The Post Velocity Cash Representation

250 The Post Velocity Cash Representation was a representation about a future matter within the meaning of s 728(2) of the Corporations Act.

~~By reason of:(a) the matters pleaded at paragraphs 9, 38A, 38B, 38C, 46B, 46C, 47, 48, 49, 50, 70(b), 70(c), 70(e), 89P to 89R, 90, 91 above;~~

~~(a) the fact that, as VAH's cash balance as at 30 June 2019 included:~~

~~(i) amounts owing to trade debtors which were overdue as at 30 June 2019; and~~

~~(ii) the drawn and undrawn balance of the Velocity Loan,~~

~~the cash balance used to forecast VAH's pro-forma balance sheet following completion of the Velocity Acquisition was likely overstated; and~~

~~(a) the fact that VAH could reasonably expect that, as part of the Velocity Acquisition, its cash position would decline by approximately $393 million assuming constant trading performance such that its cash position would decline further,~~

~~VAH did not have reasonable grounds for making the Post Velocity Cash Representation.~~

251 ~~In the alternative to paragraph 96 above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then b~~By reason of:

(a) the matters pleaded at paragraphs 158 to 160, 174 to 177, 198(b), 198(c) and 244 to 246 above; and

(b) the fact that, as VAH's cash balance as at 30 June 2019 included amounts owing to trade debtors which were overdue as at 30 June 2019, the cash balance used to forecast VAH's pro-forma balance sheet following completion of the Velocity Acquisition was likely overstated.~~; and~~

(c) [Not used] ~~the fact that VAH could reasonably expect that, as part of the Velocity Acquisition, its cash position would decline by approximately $393 million assuming constant trading performance such that its cash position would decline further,~~

VAH did not have reasonable grounds for making the Post Velocity Cash Representation.

252 In the premises of paragraphs 250 and 251 above:

(a) the Post Velocity Cash Representation was deemed by operation of s 728(2) to be a misleading or deceptive statement within the meaning of s 728(1)(a) of the

Corporations Act; and

(b) offering the Notes under the Original Prospectus and the Notes Prospectus while it contained the Post Velocity Cash Representation contravened s 728(1)(a) of the Corporations Act.

The Undrawn Facilities Representation

253 By reason of the matters pleaded at paragraphs 28, 40, 41, 45, 46, 47, 174(b), 176(a), 177(a), 177(b), 177(c), 177(d), 198(b), 198(c), 198(e), and 246 above:

(a) VAH and its controlled entities did not have access to $470.2 million of undrawn financing facilities at the time it issued the Original Prospectus and the Notes Prospectus;

(b) as at November 2019, VAH was (subject to the matters pleaded in sub-paragraph (c)) only able to draw-down $136.1 million from its undrawn facilities, $100 million of which was provided by the Velocity Group pursuant to the Velocity Loan; and/or

(c) the undrawn balance of the Velocity Loan could not be freely accessed and/or was accessible subject to the discretion of VRPL as trustee for the Loyalty Trust, which discretion had to be exercised in accordance with VRPL's fiduciary and equitable duties as trustee, duties which necessarily took precedence over any duties it might have had to other members of the VAH Group or Velocity Group (as pleaded at paragraph 46 above).

254 In the premises, the Undrawn Facilities Representation was misleading and was accordingly a misleading or deceptive statement within the meaning of s 728(1)(a) of the Corporations Act.

255 Further, to the extent that the Undrawn Facilities Representation conveyed the impression that each of VAH's undrawn financing facilities would remain accessible following issuance of the Notes and the US Notes and/or the completion of the Velocity Acquisition (as pleaded at paragraph 127(e) above), the Undrawn Facilities Representation was a representation about a future matter within the meaning of s 728(2) of the Corporations Act.

256 By reason of the matters pleaded in paragraphs 28, 40, 41, 45, 46, 47, 174(b), 176(a), 177(a) to 177(d), 198(b), 198(c), 198(e), 246 and 253 above, VAH did not have reasonable grounds for making the Undrawn Facilities Representation.

257 In the premises, the Undrawn Facilities Representation, to the extent that it was a representation about a future matter, was deemed by operation of s 728(2) to be a misleading or deceptive statement within the meaning of s 728(1)(a) of the Corporations Act.

258 In the premises, offering the Notes under the Original Prospectus and the Notes Prospectus while it contained the Undrawn Facilities Representation was a breach of s 728(1)(a) of the Corporations Act.

The Repayment Representation

259 The Repayment Representation was a representation as to a future matter within the meaning of s 728(2) of the Corporations Act.

260 [Not used] ~~By reason of:~~

~~(a)the Velocity Loan Misclassification, which overstated VAH's unrestricted cash by its inclusion of the drawn and undrawn balance of the Velocity Loan; and~~

~~(b)the matters pleaded at 38A to 38C, 47 to 49, 50(a), 50(d) to 50(f), 70, 89P to 91, 96 and 98 to 99B above;~~

~~VAH did not have reasonable grounds to make the Repayment Representation.~~

261 ~~In the alternative to paragraph 101A above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then b~~By reason of:

(a) the fact that VAH's main source of liquidity was the Velocity Loan, as pleaded at paragraphs 101, 177(b), 177(c) and 198(e) above;

(b) the fact that VAH's ability to draw down upon the Velocity Loan was likely to be restricted or inhibited by the covenants, conditions or terms applicable to the Velocity Loan pursuant to the Loyalty Trust Deed, the Velocity Loan Agreement, the Loyalty Trust Investment Policy and/or the Investment Mandate Letter, as pleaded at paragraphs 28, 40, 41, 45, 46, 47, 177(c), 177(d) and 198(e) above;

(c) the fact that VAH's ability to access the undrawn balance of the Velocity Loan, increase the Facility Limited and extend the Maturity Date of the Velocity Loan, as well as its obligation to repay the entirety of the amount advanced, with interest, under the Velocity Loan, was:

(i) subject to the discretion of VRPL, which discretion had to be exercised in accordance with VRPL's fiduciary and equitable duties as trustee of the Loyalty Trust, which duties necessarily took precedence over any duties it might have had to other members of the VAH Group or Velocity Group (as pleaded at paragraph 46 above); and/or

(i) could not be controlled nor directed by VAH or the VAH Group, as pleaded at paragraph 47 above; and

(d) the matters pleaded at paragraphs 158, 159, 160, 174, 175, 176, 177(a), 177(d),

198, 244, 245, 246, 251 and 253 to 256 above,

VAH did not have reasonable grounds to make the Repayment Representation.

262 In the premises:

(a) the Repayment Representation was deemed by operation of s 728(2) to be a misleading or deceptive statement within the meaning of s 728(1)(a) of the Corporations Act; and

(b) offering the Notes under the Original Prospectus and the Notes Prospectus while it contained the Repayment Representation contravened s 728(1)(a) of the Corporations Act.

The Velocity Acquisition Rationale Representations

263 ~~In the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then c~~Contrary to the Velocity Acquisition Rationale Representations, the matters pleaded in paragraph 101 and 102 above were:

(a) material and/or significant reasons for VAH deciding to pursue the Velocity Acquisition; and

(b) material and/or significant to an investor in deciding whether to apply for and/or acquire the Notes.

PARTICULARS

A. As to sub-paragraph (a), the Applicant refers to and repeats paragraphs 64 to 99 above.

B. As to sub-paragraph (b), the Applicant refers to and repeats paragraphs 218 to 221 above.

264 Further, to the extent that the Velocity Acquisition Rationale Representations were statements of opinion, VAH impliedly represented that it had reasonable grounds to make those representations.

265 By reason of the matters pleaded at paragraphs 64 to 99, 101, 102, 174(b), 177(b), 177(c), 198(e), 218 to 221 and 263 above, VAH did not have reasonable grounds to make the Velocity Acquisition Rationale Representations.

266 In the premises, the Velocity Acquisition Rationale Representations were misleading or deceptive.

267 By reason of the matters pleaded at paragraphs 263 to 266 above, the Velocity Acquisition Rationale Representations were misleading or deceptive statements within the meaning of s 728(1)(a) of the Corporations Act.

268 In the premises, offering the Notes under the Original Prospectus and the Notes Prospectus while it contained the Velocity Acquisition Rationale Representations was in breach of s 728(1)(a) of the Corporations Act.

269 Further or alternatively, by reason of the omission of the Withheld Information from ~~I~~the Original Prospectus and the Notes Prospectus, the Original Prospectus and Notes Prospectus were misleading and deceptive, within the meaning of and contrary to s 728(1)(b) of the Corporations Act.

Involvement of VRPL

270 By the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL had engaged in the following conduct:

(a) Entering into the deeds and agreements pleaded at paragraph 36 above, by which the Facility Limit and Maturity Date of the Velocity Loan were extended;

(b) resolving to permit the Maturity Date of the Velocity Loan to be automatically extended (through VRPL taking no action) until 27 August 2020 as pleaded in paragraph 82;

(c) Approving drawdowns of the Velocity Loan;

(d) Facilitating or otherwise permitting VAH to treat the drawn and undrawn balance of the Velocity Loan as unrestricted cash; and/or

PARTICULARS

A. Minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VRP.003.001.0011).

B. Draft minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VAH.004.305.7277).

C. This conduct may be inferred from:

i. VRPL's receipt of "Compliance & Reporting Notices" executed by representatives of VAA recording VAH's unrestricted cash, which included drawn and undrawn amounts under the Velocity Loan Agreement, to which VRPL did not object, challenge or query: see, for example, VAH.001.002.3033; VAH.001.002.3039; VAH.004.124.2113; VAH.004.132.5573; VAH.004.124.1987; VAH.004.132.1712; VAH.002.043.6383;

ii. ~~the absence of steps taken by VRPL to ensure that the~~

~~*amounts drawn under the Velocity Loan Agreement by VAH were being used for the purpose of an "Authorised Investment" in accordance with the Loyalty Trust Deed and Loyalty Trust Investment Policy.*~~*the matters pleaded at paragraph 43;*

iii. Email from Shane Whimp to Geoff Smith and Steve Fouracre dated 18 July 2018 (VAH.002.059.1707);

iv. Briefing Note for VRPL Investment Committee Meeting dated 24 July 2019 (VAH.004.301.4554);

v. Memorandum from Shane Whimp to VRPL Board (VAH.002.003.5584).

D. Further particulars may be provided with the Applicant's tender bundle and/or prior to the initial trial of common questions~~following further and better discovery~~.

(e) Participating in the due diligence conducted for the purpose of preparing and issuing, and assisting in the drafting and verification of, the Original Prospectus, the Notes Prospectus and the Offering Circular.

PARTICULARS

A. Sharyn Page was a member of the Due Diligence Committee and provided a Verification Sign-Off Certificate with respect to the Original Prospectus and Notes Prospectus on 18 October 2019: VAH.004.346.1885.

B. The Applicant refers to and repeats the matters pleaded and particularised in paragraphs 54 to 63 and 112 above.

C. Geoff Smith provided responses to the Management Due Diligence Questionnaire, in particular "any potential adverse effects to Virgin from Affinity converting its Notes in Velocity to ordinary equity either as part of an IPO of Velocity or otherwise.": VAH.004.091.2086; VAH.002.046.9426; VAH.002.046.9427.

D. Further particulars may be provided with the Applicant's tender bundle.

271 [Not used] ~~By the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL knew that:~~

~~(a) the Original Prospectus and Notes Prospectus contained the Cash Balance Representation; and~~

~~(a) the Cash Balance Representation was misleading or deceptive.~~

~~***PARTICULARS***~~

~~A. *The Applicant refers to and repeats the particulars to paragraph 89M above.*~~

~~A. *Further particulars may be provided following further or better discovery.*~~

272 ~~In the alternative to paragraph 103H above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, b~~By the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL knew that:

(a) the Original Prospectus and Notes Prospectus contained the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or Velocity Acquisition Rationale Representations;

(b) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or Velocity Acquisition Rationale Representations were misleading or deceptive; and

(c) to the extent that the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations were statements of opinion, VAH did not have reasonable grounds for that opinion.

PARTICULARS

A. The Applicant refers to and repeats the particulars to paragraph 238~~N~~ above.

B. Further particulars may be included with the Applicant's tender bundle~~provided following further or better discovery~~.

273 By reason of the matters pleaded at paragraphs ~~103G and 103H or, alternatively,~~ 270 and 272 above, VRPL:

(a) aided, abetted, counselled or procured VAH's contravention of s 728(1)(a) of the Corporations Act; or

(b) was directly or indirectly knowingly concerned in, or party to, VAH's contravention of s 728(1)(a) of the Corporations Act,

and is accordingly liable pursuant to s 729(1) of the Corporations Act as a person "involved" in VAH's contravention.

C.3. Misleading or deceptive conduct – Corporations Act, s 1041E

Liability of VAH – Original Prospectus and Notes Prospectus Representations

274 By:

(a) publishing the Original Prospectus and, subsequently, the Notes Prospectus; and

(b) making the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and the Repayment Representation,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

275 By reason of the matters pleaded at:

(a) Paragraphs ~~89P to 91 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 244 to 246 with respect to the Cash Balance Representation;

(b) paragraphs ~~95 and 96 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 250 and 251 with respect to the Post Velocity Cash Representation;

(c) paragraphs 253 to 258 with respect to the Undrawn Facilities Representation; and

(d) paragraphs ~~101 and 101A or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 259 and 261 with respect to the Repayment Representation,

each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and the Repayment Representation was false in a material particular or materially misleading.

276 Each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation was likely to induce persons in this jurisdiction to apply for and/or acquire the Notes.

PARTICULARS

A. *The Applicant refers to and repeats the particulars to paragraph*

151 above and the matters pleaded in paragraphs 218 and 221 above.

B. *Fleming Affidavit at [24]-[26], [29], [35]-[37].*

277 At the time of dissemination of the Original Prospectus and the Notes Prospectus, VAH knew, or alternatively ought reasonably to have known, that each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation was false in a material particular or materially misleading.

PARTICULARS

A. *The Applicant refers to and repeats the matters pleaded and particularised at paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 48, 124, 174 to 177, 198(b), 198(c), 198(e) and 222 above.*

B. *VAH August 2019 Finance Report dated 1 October 2019 at Section 3.2.1. (VAH.003.001.0070);*

C. *Compliance & Reporting Notice dated 23 October 2019 (VAH.004.118.7594).*

D. *Compliance & Reporting Notice dated 29 October 2019 (VAH.004.117.4130).*

E. *CEO Report – VAH Board – October 2019 Distribution dated 29 October 2019 at Section 3.5 (VAH.003.002.0028).*

F. *Liquidity Plan prepared 1 November 2019 (VAH.004.077.6688).*

G. *Further particulars may be provided with the Applicant's tender bundle.*

278 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

279 Further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ by:

(a) publishing the Original Prospectus and, subsequently, the Notes Prospectus; and

(b) making the Velocity Acquisition Rationale Representations,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

280 By reason of the matters pleaded at paragraphs 263 to 269, the Velocity Acquisition Rationale Representations were false in a material particular or materially misleading.

281 The Velocity Acquisition Rationale Representations were likely to induce persons in this jurisdiction to apply for and/or acquire the Notes.

PARTICULARS

A. *The Applicant refers to and repeats the particulars to paragraph 151 above and the matters pleaded in paragraphs 218, 219 and 221 above.*

B. *Fleming Affidavit at [24]-[26], [29], [35]-[37].*

282 At the time of dissemination of the Original Prospectus and the Notes Prospectus, VAH knew, or alternatively ought reasonably to have known, that the Velocity Acquisition Rationale Representations were false in a material particular or materially misleading.

PARTICULARS

A. The Applicant refers to and repeats the matters pleaded and particularised at paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 64 to 99, 101, 121, 122, 124, 174 to 177, 198(b), 198(c), 198(e) and 222 above.

B. VAH August 2019 Finance Report dated 1 October 2019 at Section 3.2.1. (VAH.003.001.0070);

C. Compliance & Reporting Notice dated 23 October 2019 (VAH.004.118.7594).

D. Compliance & Reporting Notice dated 29 October 2019 (VAH.004.117.4130).

E. CEO Report – VAH Board – October 2019 Distribution dated 29 October 2019 at Section 3.5 (VAH.003.002.0028).

F. Liquidity Plan prepared 1 November 2019 (VAH.004.077.6688).

G. Further particulars may be provided with the Applicant's tender bundle.

283 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

284 Further or alternatively, by reason of the omission of the Withheld Information from the Original Prospectus and the Notes Prospectus, the Original Prospectus and Notes Prospectus, the statements and information in those documents were false in a material particular and materially misleading, and the dissemination of the documents was contrary to s 1041E of the Corporations Act.

285 Further or alternatively, by not including the Withheld Information within the Original Prospectus and the Notes Prospectus, VAH made a statement or disseminated information that was false in a material particular or materially misleading as to:

(a) the true financial position of VAH as at the date of the Original Prospectus and the Notes Prospectus;

(b) the risks associated with VAH's ability to repay the Notes; and/or

(c) the reasons VAH was acquiring Affinity's interest in Velocity Holdco.

286 At the time of dissemination of the Original Prospectus and the Notes Prospectus, VAH knew, or alternatively ought reasonably to have known, that omitting from the Original Prospectus and the Notes Prospectus the Withheld Information made the Original Prospectus and the Notes Prospectus false in a material particular or materially misleading.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraphs 277 and 282 above.

287 VAH's conduct in publishing the Original Prospectus and the Notes Prospectus without including the Withheld Information was likely to induce persons in this jurisdiction to acquire the Notes.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraphs 276 and 281 above.

288 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

Liability of VAH – Post Original Prospectus and Notes Prospectus Representations

289 By:

(a) making the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above; and

(b) making the representations during the Notes Meetings pleaded at paragraph 168 above,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

290 By reason of the matters pleaded at paragraphs 169, 174 to 177 above, each of:

(a) the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above; and

(b) the representations made during the Notes Meetings pleaded at paragraph 168 above,

was false in a material particular or materially misleading.

291 Each of the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above was likely to induce persons in this jurisdiction to apply for and/or acquire the Notes and/or not dispose of them.

PARTICULARS

A. *The Applicant refers to and repeats paragraphs 218 and 221 above.*

B. *Further particulars may be provided with the Applicant's evidence.*

292 At the time of:

(a) the publication of the ASX announcements pleaded at paragraphs 161 to 165 above; and

(b) the Notes Meetings pleaded at paragraph 167 above,

VAH knew, or alternatively ought reasonably to have known, that each of the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and/or the representations made at the Notes Meeting pleaded at paragraph 168 above was false in a material particular or materially misleading.

PARTICULARS

A. *The Applicant refers to and repeats paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 48, 124, 158, 159, 169, 172, 174 to 177, 198(b), 198(c), 198(e) above.*

B. *Email from Emily Yeo to Alex Helbig and others dated 9 January 2020 (VAH.002.045.8340).*

C. *Draft memo to KPMG regarding "assessment of going concern as at 31 December 2019) prepared 16 January 2020 (VAH.002.053.5797).*

D. *Compliance and Reporting Notice dated 29 January 2020 with respect to consolidated cash balance of VAH Group at 13 January*

2020 (VAH.004.123.9894).

E. *Compliance and Reporting Notice dated 29 January 2020 with respect to consolidated cash balance of VAH Group at 20 January 2020 (VAH.004.123.9896).*

F. *Compliance and Reporting Notice dated 5 February 2020 (VAH.004.131.8150).*

G. *CEO Report – VAH Board – January 2020 issued on 19 February 2020 (VAH.002.011.2506).*

H. *Email from Steven Fouracre to Keith Neate dated 23 February 2020 (VAH.002.002.1954).*

I. *Compliance and Reporting Notice dated 12 March 2020 (VAH.001.002.3031).*

J. *Further particulars may be provided with the Applicant's tender bundle.*

293 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

294 Further or alternatively, by reason of the omission of the Withheld Information from the ASX announcements pleaded at paragraphs 161 to 165 above and/or by failing to disclose the Withheld Information during the Notes Meeting pleaded at paragraph 168 above, those ASX announcements and the representations made at the Notes Meeting were false in a material particular and materially misleading contrary to s 1041E of the Corporations Act.

Liability of VAH – Offering Circular Representations

295 By:

(a) publishing the Offering Circular; and

(b) making the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

296 By reason of the matters pleaded at:

(a) Paragraphs ~~89P to 91 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 244

to 246 with respect to the Cash Balance Representation;

(b) paragraphs ~~95 and 96 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 250 and 251 with respect to the Post Velocity Cash Representation;

(c) paragraphs 253 to 258 with respect to the Undrawn Facilities Representation; and

(d) paragraphs ~~101 and 101A or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 259 and 261 with respect to the Repayment Representation,

each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation was false in a material particular or materially misleading.

297 Each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation was likely to induce persons in this jurisdiction to acquire the US Notes.

PARTICULARS

A. *The Applicant refers to and repeats the particulars to paragraph 151 above and the matters pleaded in paragraphs 218 and 221 above.*

B. *Further particulars may be provided with the Applicant's evidence.*

298 At the time of dissemination of the Offering Circular, VAH knew, or alternatively ought reasonably to have known, that each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and the Repayment Representation was false in a material particular or materially misleading.

PARTICULARS

A. The Applicant refers to and repeats the matters pleaded and particularised at paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 48, 124, 174 to 177, 198(b), 198(c), 198(e) and 222 above.

B. The Applicant refers to and repeats the particulars to paragraph 277 above.

C. Further particulars may be provided with the Applicant's tender bundle.

299 In the premises, VAH made a statement or disseminated information in contravention

of s 1041E(1) of the Corporations Act.

300 Further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ by:

(a) publishing the Offering Circular; and

(b) making the Velocity Acquisition Rationale Representations,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

301 By reason of the matters pleaded at paragraphs 263 to 268, the Velocity Acquisition Rationale Representations were false in a material particular or materially misleading.

302 The Velocity Acquisition Rationale Representations were likely to induce persons in this jurisdiction to acquire the US Notes and/or not dispose of them.

PARTICULARS

A. The Applicant refers to and repeats the particulars to paragraph 151 above and the matters pleaded in paragraphs 218, 219 and 221 above.

B. Further particulars may be provided with the Applicant's evidence.

303 At the time of dissemination of the Offering Circular, VAH knew, or alternatively ought reasonably to have known, that the Velocity Acquisition Rationale Representations were false in a material particular or materially misleading.

PARTICULARS

A. The Applicant refers to and repeats the matters pleaded and particularised at paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 64 to 99, 101, 102, 121, 122, 124, 174 to 177, 198(b), 198(c), 198(e) and 222 above.

B. The Applicant refers to and repeats the particulars to paragraph 282 above.

C. Further particulars may be provided with the Applicant's tender bundle.

304 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

305 Further or alternatively, by reason of the omission of the Withheld Information from the Offering Circular, the Offering Circular and the statements and information in those documents were false in a material particular and materially misleading, and the

dissemination of the document was contrary to s 1041E of the Corporations Act.

306 Further or alternatively, by not including the Withheld Information within the Offering Circular, VAH made a statement or disseminated information that was false in a material particular or materially misleading as to:

(a) the true financial position of VAH as at the date of the Offering Circular;

(b) the risks associated with VAH's ability to repay the US Notes; and/or

(c) the reasons VAH was acquiring Affinity's interest in Velocity Holdco.

307 At the time of dissemination of the Offering Circular, VAH knew, or alternatively ought reasonably to have known, that omitting from the Offering Circular the Withheld Information made the Offering Circular false in a material particular or materially misleading.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraphs 298 and 303 above.

308 VAH's conduct in publishing the Offering Circular without including the Withheld Information was likely to induce persons in this jurisdiction to acquire the US Notes and/or not dispose of them.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraphs 297 and 302 above.

309 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

Liability of VAH – Post Offering Circular Representations

310 By:

(a) making the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above; and

(b) making the representations during the Notes Meetings pleaded at paragraph 168 above,

VAH made a statement or disseminated information for the purpose of s 1041E(1) of the Corporations Act.

311 By reason of the matters pleaded at paragraphs 169, 174 to 177 above, each of:

(a) the representations contained in the announcements to the ASX pleaded at

paragraphs 161 to 165 above; and

(b) the representations made during the Notes Meetings pleaded at paragraph 168 above,

was false in a material particular or materially misleading.

312 Each of the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above was likely to induce persons in this jurisdiction to acquire the US Notes and/or not dispose of them.

PARTICULARS

A. The Applicant refers to and repeats paragraphs 132, 133, 218 and 221 above.

B. Further particulars may be provided with the Applicant's evidence.

313 At the time of the publication of the ASX announcements pleaded at paragraphs 161 to 165 above VAH knew, or alternatively ought reasonably to have known, that each of the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above was false in a material particular or materially misleading.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 292 above.

314 In the premises, VAH made a statement or disseminated information in contravention of s 1041E(1) of the Corporations Act.

Involvement of the Second and Third Respondents

315 By the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, the Second and Third Respondents had engaged in the following conduct:

(a) Authorising the publication and release to the ASX of VAH's financial reports and results, including the FY19 Annual Report;

PARTICULARS

A. VAH Board Minutes dated 27 August 2019, Item 6.6 (VAH.900.001.0084).

B. ASX Release entitled "FY19 Results" dated 28 August 2019 (VAH.002.044.8424).

(b) Participating in meetings of the VAH Board where the Velocity Acquisition was discussed and approved, and otherwise considering and communicating with respect to VAH's approach to the Velocity Acquisition;

PARTICULARS

The Applicant refers to and repeats paragraphs 64 to 99 above.

(c) Sitting on the Due Diligence Committee established as part of the process of preparing the Original Prospectus, Notes Prospectus and Offering Circular;

PARTICULARS

A. Project Ray DDC Meeting 1 – Agenda and Minutes dated 26 August 2019 (VAH.002.001.1904).

B. Project Ray DDC Meeting 2 – Agenda and Minutes dated 17 September 2019 (VAH.002.003.2614).

C. Project Ray DDC Meeting 3 – Agenda and Minutes dated 1 October 2019 (VAH.002.002.9265).

D. Project Ray DDC Meeting 4 – Agenda and Minutes dated 17 October 2019 (VAH.002.040.4504).

E. Project Ray DDC Meeting 5 – Agenda and Minutes dated 27 October 2019 (VAH.002.040.4658).

F. Project Ray DDC Meeting 6 – Agenda and Minutes dated 5 November 2019 (VAH.002.043.9582).

G. Project Ray DDC Meeting 7 – Agenda and Minutes dated 25 November 2019 (VAH.002.040.4122).

(d) Reviewing and providing input with respect to the contents of the Original Prospectus, the Notes Prospectus and Offering Circular;

PARTICULARS

A. Project Ray DDC Meeting 3 – Agenda and Minutes dated 1 October 2019 (VAH.002.002.9265).

B. Project Ray DDC Meeting 4 – Agenda and Minutes dated 17 October 2019 (VAH.002.040.4504).

C. Project Ray DDC Meeting 5 – Agenda and Minutes dated 27 October 2019 (VAH.002.040.4658).

D. Project Ray DDC Meeting 6 – Agenda and Minutes dated 5

November 2019 (VAH.002.043.9582).

E. *Email from Catherine Hicks to Ms Bryan, Mr Scurrah and others dated 27 September 2019 (VAH.004.017.6807).*

F. *Email from Sharyn Page to Ms Bryan, Mr Scurrah and others dated 10 October 2019 (VAH.002.024.5398).*

G. *Email from Sharyn Page to Ms Bryan, Mr Scurrah and others dated 16 October 2019 (VAH.002.040.3886).*

H. *Email from Michelle Milligan to ~~to~~ Ms Bryan, Mr Scurrah and others dated 26 October 2019 (VAH.002.014.7015).*

I. *Email from Mr Scurrah to Ms McAdam and others dated 28 October 2019 (VAH.002.033.8239).*

(e) In the case of the Third Respondent, issuing the "Management Sign-Off" with respect to the contents of the Notes Prospectus;

PARTICULARS

Project Ray Due Diligence Management Sign-Offs (VAH.002.001.1900).

(f) Signing-off on the Final Report of the DDC and approving the lodgement of the Notes Prospectus with ASIC;

PARTICULARS

Project Ray DDC Meeting 6 – Agenda and Minutes dated 5 November 2019 (VAH.002.043.9582).

(g) Issuing the "Form of final certificate", confirming that each of the Second and Third Respondent was not aware of a misleading or deceptive statement in, or omission from, the Notes Prospectus or new circumstance arising since the Notes Prospectus was lodged which would have been required to be included if it had arisen before lodgement or a new circumstance which would have required the issue of a supplementary document; and

PARTICULARS

Form of final certificate of the DDC dated 25 November 2019 (VAH.002.001.0527).

(h) Authorising and approving the issue of the Notes and the US Notes and the issue of the Original Prospectus, the Notes Prospectus and Offering Circular.

PARTICULARS

A. VAH Board Paper entitled "US& Rule 144A and A$ Notes Offer for Project Ray Funding" dated 9 October 2019 (VAH.002.001.1913).

B. Minutes of Board Meeting dated 10 October 2019 (VAH.002.001.0019).

C. VAH Board Paper entitled ""US& Rule 144A and A$ Notes Offer for Project Ray Funding" dated 24 October 2019 (VAH.002.001.1902).

D. Director's Consent to Lodgement with ASIC dated 27 October 2019 in relation to the Original Prospectus (VAH.002.001.0304; VAH.002.001.0315).

E. Board Paper entitled "Guarantee of US$ Rule 144A and A$ Retail Notes for Project Ray Funding – Supplementary Approval" dated 6 November 2019 (VAH.002.002.7872).

316 By the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, the Second and Third Respondents knew that:

(a) the Original Prospectus, Notes Prospectus, Offering Circular and/or one or more of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were:

(i) contained or implied in the Original Prospectus and the Notes Prospectus, each of which was to be distributed to prospective noteholders in Australia and other jurisdictions (except the United States of America);

(ii) would likely be received at least by recipients of the Institutional Offer or the Broker Firm Offer, as pleaded at paragraph 118 above; and

(iii) accordingly likely to be received and relied upon by investors located in Australia;

(c) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were:

(i) contained or implied in the Offering Circular, which was to be distributed to

prospective noteholders in Australia; and

(ii) accordingly, likely to be received and relied upon by investors located in Australia and by brokers in deciding whether to offer or promote an investment in the US Notes to their clients;

(d) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were false in a material particular or materially misleading; and

(e) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were likely to induce:

(i) prospective investors in the Notes and/or the US Notes in this jurisdiction to purchase the Notes and/or the US Notes; and/or

(ii) brokers to offer or promote an investment in the US Notes to their clients; and/or

~~(i)~~(iii) holders of the Notes and / or the US Notes to retain them.

PARTICULARS

A. *The knowledge of the Second and Third Respondents may be inferred from:*

i. *the fact that the directors of VAH were responsible for the preparation of the pro forma historical information including the selection and determination of the pro forma transactions and/or adjustments, and for properly compiling the pro forma historical information on the basis stated in section 6 of the Original Prospectus and the Notes Prospectus, as confirmed in KPMG's letter entitled "Limited Assurance Investigating Accountant's Report and Financial Services Guide" dated 28 October 2019 and 5 November 2019 and appearing at Section 10 (pgs 129-130) of the Original Prospectus and Section 10 (pgs 129-130) of the Notes Prospectus;*

ii. *the fact that the directors' responsibility referred to in (i) above included establishing and maintaining such internal controls as the directors determine are necessary to enable the preparation of financial information that is free from material misstatement, whether due to fraud or error, as confirmed in KPMG's letter entitled "Limited Assurance Investigating Accountant's Report*

and Financial Services Guide" dated 28 October 2019 and 5 November 2019 and appearing at Section 10 (pg 130) of the Original Prospectus and Section 10 (pg 130) of the Notes Prospectus;

iii. *the fact that each director gave and did not withdraw his or her consent to the issue of the Original Prospectus and the Notes Prospectus and its lodgement with ASIC, as confirmed at pg 147 of the Original Prospectus and pg 147 of the Notes Prospectus, from which it may be inferred that the Second and Third Respondents read the Original Prospectus and the Notes Prospectus and were aware of the representations made therein;*

iv. *the directors' awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which the directors commented in the Directors' Report at pgs 15-21 of the FY19 Annual Report, which must have encompassed:*

I. knowledge of the basis upon which VAH's balance of cash reserves and undrawn facilities was reported; and

II. knowledge of the terms of the Velocity Loan;

v. *the directors' awareness of the financial performance of the VAH business on and after 1 July 2019, including the erosion of VAH's cash balance and undrawn facilities;*

vi. *the Second and Third Respondents' positions within the VAH business as directors; and*

vii. *the particulars to paragraph 151 above and the matters pleaded in paragraphs 158 and 159 above.*

B. *Further, the knowledge of the Second Respondent may be inferred from:*

i. *Ms Bryan's comments on an episode of the programme "Four Corners" aired by the Australian Broadcasting Corporation on 29 June 2020 that:*

I. "As soon as I started to understand my way around the numbers and where it all worked out, it was very clear to me that the company was over-leveraged and that it

needed a capital raise"; and

II. *"John Borghetti did build Virgin and he did build a good airline. He did not build a good enough business and I think it's because of not building a good enough business that he's faced this criticism".*

ii. *Ms Bryan's awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which she commented in her Chairman's Report at pgs 4-5 of the FY19 Annual Report; and*

iii. *Ms Bryan's position as Chairman of VAH.*

C. *Further, the knowledge of the Third Respondent may be inferred from:*

i. *Mr Scurrah's position within the VAH business as Chief Executive Officer and Managing Director;*

ii. *Mr Scurrah's awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which he commented in the CEO's Report at pgs 6-7 of the FY19 Annual Report.*

D. *The Applicant refers to and repeats paragraphs 28, 38, 40, 41, 44, 45, 46, 47, 121, 122, 124, 158, 159, 174 to 177, 198(b), 198(c) and 198(e) and 222 above.*

E. *Email from Paul Scurrah to Annie Sutton and others dated 25 October 2019 (VAH.002.033.8183), in which distribution of the US Notes, 12% of which were distributed to Australia and New Zealand.*

F. *Slidedeck prepared by UBS and Morgan Stanley entitled "Project Ray Board Materials" dated 27 October 2019 (VAH.002.001.1897), recording the location of investors in the US Notes, including that 12% of investors were located in Australia and New Zealand.*

G. *VAH Board Minutes dated 28 May 2019 (VAH.002.001.0743).*

H. *VAH Board Paper entitled "Preparation for Listed Retail Hybrid for Project Ray or BAU Funding" dated 13 August 2019 (VAH.002.043.1269).*

I. *VAH Board Paper entitled "Project Ray" dated 18 July 2019 (VAH.950.001.0023).*

J. *Email from Mr Scurrah to Ms Bryan and others dated 15 August 2019 (BRY.002.001.3776).*

K. *VAH Board Paper entitled "Project Vector / Ray Update and Overview of NBIO" dated 27 August 2019 (VAH.002.024.5472).*

L. *Email chain between Ms Bryan, Mr Scurrah, Ken Dean and Trevor Bourne dated 2 September 2019 (BRY.002.001.3551).*

M. *Management Questionnaire dated 30 September 2019 (VAH.004.355.1539; VAH.004.355.1541).*

N. *ELT Finance Updated Presentation dated 31 October 2019 (VAH.002.015.7232; VAH.002.015.7234).*

O. *Launch Due Diligence Questionnaire dated 10 October 2019 (VAH.002.014.7781; VAH.002.014.7782).*

P. *Expected Investor Q&A dated 13 October 2019 (VAH.002.043.4213; VAH.002.043.4214).*

Q. *Board Paper entitled "Guarantee of US$ Rule 144A and A$ Retail Notes for Project Ray Funding – Supplementary Approval" dated 6 November 2019 (VAH.002.002.7872).*

R. *Further particulars may be provided with the Applicant's tender bundle.*

317 Further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ by the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, the Second and Third Respondents also knew that:

(a) the Original Prospectus, Notes Prospectus, Offering Circular and/or the Velocity Acquisition Rationale Representations involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Velocity Acquisition Rationale Representations were:

(i) contained or implied in the Original Prospectus and the Notes Prospectus, each of which was to be distributed to prospective noteholders in Australia and other jurisdictions (except the United States of America);

(ii) would likely be received at least by recipients of the Institutional Offer or the Broker Firm Offer, as pleaded at paragraph 118 above; and

(iii) accordingly, likely to be received and relied upon by investors located in Australia;

(c) the Velocity Acquisition Rationale Representations were:

(i) contained or implied in the Offering Circular, which was to be distributed to prospective noteholders in Australia; and

(ii) accordingly, likely to be received and relied upon by investors located in Australia and by brokers in deciding whether to offer or promote an investment in US Notes to their clients;

(d) the Velocity Acquisition Rationale Representations were false in a material particular or materially misleading; and

(e) the Velocity Acquisition Rationale Representations were likely to induce:

(i) prospective investors in the Notes and/or the US Notes in this jurisdiction to purchase the Notes and/or the US Notes; and/or

(ii) brokers to offer or promote an investment in the US Notes to their clients; and/or

~~(i)~~(iii) holders of the Notes and / or the US Notes to retain them.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 316 above.

318 Further or alternatively, by the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, the Second and Third Respondents also knew:

(a) that the Original Prospectus, Notes Prospectus, Offering Circular involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Withheld Information;

(c) that the Withheld Information was being omitted from the Original Prospectus, Notes Prospectus and Offering Circular;

(d) that the omission of the Withheld Information from the Original Prospectus, Notes Prospectus and Offering Circular made or was likely to make statements and information within those documents false in a material particular or materially misleading; and

(e) that publishing the Offering Circular without including the Withheld Information was likely to induce persons in this jurisdiction to acquire and/or not dispose of

them the US Notes.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 316 above.

319 By reason of the matters pleaded at paragraphs 315 to 318 above, the Second and Third Respondents:

(a) aided, abetted, counselled or procured or were directly or indirectly knowingly concerned in, or party to the making or dissemination of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and the Repayment Representation in contravention of s 1041E(1) of the Corporations Act;

(b) further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, also~~ aided, abetted, counselled or procured or were directly or indirectly knowingly concerned in, or party to the making or dissemination of the Velocity Acquisition Rationale Representations in contravention of s 1041E(1) of the Corporations Act,

and are accordingly liable pursuant to ss 1041I(1) and/or 1325 of the Corporations Act as persons "involved" in those contraventions.

320 In the period between the issue of the Notes and the US Notes and 20 April 2020, the Second and Third Respondents had engaged in the following conduct:

(a) Attending meetings of the VAH Board where VAH's financial position, including remaining cash balance, the availability of undrawn facilities and access to funding, was discussed;

PARTICULARS

The Applicant refers to and repeats paragraphs 174 to 177 above.

(b) in the case of the Third Defendant, attending the Notes Meetings and making the representations at those meetings pleaded at paragraph 168 above; and

(c) authorising the release of the ASX announcements pleaded at paragraphs 161 to 165 above.

PARTICULARS

This conduct may be inferred from the Second and Third Respondents' positions as members of the VAH Board.

321 By the time of:

(a) the publication of the ASX announcements pleaded at paragraphs 161 to 165

above; and

(b) the Notes Meetings pleaded at paragraph 167 above,

the Second and Third Respondents knew that:

(c) the dissemination of the ASX announcements and the representations made during the Notes Meetings involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(d) the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above:

(i) were being made to existing noteholders in Australia (in the case of the Notes Meetings);

(ii) were being disseminated through the ASX; and

(iii) accordingly were likely to be received and relied upon by existing and prospective noteholders located in Australia;

(e) the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above were or were likely to be false in a material particular or materially misleading; and

(f) the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and the representations made during the Notes Meetings pleaded at paragraph 168 above were likely to induce prospective or existing investors in the Notes and/or the US Notes in this jurisdiction to purchase and/or retain the Notes and/or the US Notes or purchase more Notes and/or US Notes.

PARTICULARS

A. *The knowledge of the Second and Third Respondents may be inferred from:*

i. *the directors' awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which the directors commented in the Directors' Report at pgs 15-21 of the FY19 Annual Report, which must have encompassed:*

I. knowledge of the basis upon which VAH's balance of cash reserves and undrawn facilities was reported; and

II. knowledge of the terms of the Velocity Loan;

ii. *the directors' awareness of the financial performance of the VAH business on and after 1 July 2019, including the erosion of VAH's cash balance and undrawn facilities;*

iii. *the fact that the VAH Board had commenced holding more frequent board meetings and obtaining more frequent information regarding VAH's cash flows and trading outlook following the commencement of the COVID-19 pandemic, as reported in the Report to Creditors at Section 5.6.1;*

iv. *the fact that VAH was attempting to, and had failed, to obtain support from its airline shareholders to manage the impact of the COVID-19 pandemic, as reported in the Report to Creditors at Section 5.6.1;*

v. *the fact that the VAH Board took steps promptly to assess the impact of the COVID-19 pandemic on the business, including the likely short, medium and long term effects on VAH's operations, revenue and cashflow, which revealed that VAH required interim funding of $200 million and total funding of $1.4 billion in order to remain solvent and continue operating once the COVID-19 restrictions had eased, as reported in the Report to Creditors at Section 5.6.1;*

vi. *the fact that the reduction in VAH's operating capacity from March 2020 by reason of the imposition of COVID-19 restrictions was not sustainable to service VAH's costs and debt load, as reported in the Report to Creditors at Section 5.6.2;*

vii. *the fact that the VAH Board had forecasted that VAH would likely have insufficient cash reserves to continue trading beyond 30 June 2020, as reported in the Report to Creditors at Section 4.4; and*

viii. *the Second and Third Respondents' positions within the VAH business as directors; and*

ix. *the matters pleaded at paragraphs 158 and 159 above.*

B. *Further, the knowledge of the Second Respondent may be inferred from:*

i. *Ms Bryan's awareness of the financial performance of the VAH*

business as recorded in the VAH Annual Report FY19 and on which she commented in her Chairman's Report at pgs 4-5 of the FY19 Annual Report; and

ii. *Ms Bryan's position as Chairman of VAH.*

C. *Further, the knowledge of the Third Respondent may be inferred from:*

i. *Mr Scurrah's position within the VAH business as Chief Executive Officer and Managing Director;*

ii. *Mr Scurrah's involvement in and attendance at the Notes Meetings; and*

iii. *Mr Scurrah's awareness of the financial performance of the VAH business as recorded in the VAH Annual Report FY19 and on which he commented in the CEO's Report at pgs 6-7 of the FY19 Annual Report.*

D. *Liquidity and Funding Update – ELT dated January 2020 (VAH.002.034.4689; VAH.002.034.4690).*

E. Emails between Ms Bryan and Mr Scurrah dated 22 and 23 January 2020 (BRY.002.001.2224).

F. Email from Mr Neate to MR Scurrah dated 12 February 2020 (VAH.002.033.6137).

G. Email from Mr Scurrah to Warwick Negus dated 12 March 2020 (VAH.002.033.5466).

H. Emails from Mr Scurrah dated 11 and 12 February 2020 (VAH.002.033.6083).

I. Email from Sharyn Page to Mr Scurrah dated 17 February 2020 (VAH.002.038.5827).

J. VAH Board Minutes dated 24 February 2020 (VAH.900.001.0092).

K. Cash Reporting Presentation dated 6 March 2020 (VAH.002.033.5335; VAH.002.033.5336).

L. FY20 Outlook and FY21 Forecast VAIH Board Updated dated 9 March 2020 (VAH.002.024.2171; VAH.002.024.2172).

M. Further particulars may be provided with the Applicant's tender bundle.

322 By reason of the matters pleaded at paragraphs 320 and 321 above, the Second and Third Respondents:

(a) aided, abetted, counselled or procured; or

(b) were directly or indirectly knowingly concerned in, or party to,

the making or dissemination of the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and/or the representations made during the Notes Meetings pleaded at paragraph 168 above, in contravention of s 1041E(1) of the Corporations Act and are accordingly liable pursuant to ss 1041I(1) and/or 1325 of the Corporations Act as persons "involved" in those contraventions.

Involvement of VRPL

323 By the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, VRPL had engaged in the following conduct:

(a) Entering into the deeds and agreements pleaded at paragraph 36 above, by which the Facility Limit and Maturity Date of the Velocity Loan were extended;

(b) resolving to permit the Maturity Date of the Velocity Loan to be automatically extended (through VRPL taking no action) until 27 August 2020 as pleaded in paragraph 82;

(c) Approving drawdowns of the Velocity Loan;

(d) Facilitating or otherwise permitting VAH to treat the drawn and undrawn balance of the Velocity Loan as unrestricted cash; and/or

PARTICULARS

A. Minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VRP.003.001.0011).

B. Draft minutes of the Loyalty Trust Investment Committee Meeting dated 14 August 2019 (VAH.004.305.7277).

C. This conduct may be inferred from:

i. VRPL's receipt of "Compliance & Reporting Notices" executed by representatives of VAA recording VAH's unrestricted cash, which included drawn and undrawn amounts under the Velocity Loan Agreement, to which VRPL did not object, challenge or query: see, for example, VAH.001.002.3033; VAH.001.002.3039; VAH.004.124.2113; VAH.004.132.5573;

VAH.004.124.1987; VAH.004.132.1712; VAH.002.043.6383; and

ii. ~~the absence of steps taken by VRPL to ensure that the amounts drawn under the Velocity Loan Agreement by VAH were being used for the purpose of an "Authorised Investment" in accordance with the Loyalty Trust Deed and Loyalty Trust Investment Policy.~~ the matters pleaded at paragraph 43;

iii. Email from Shane Whimp to Geoff Smith and Steve Fouracre dated 18 July 2018 (VAH.002.059.1707);

iv. Briefing Note for VRPL Investment Committee Meeting dated 18 April 2019 (VAH.004.301.4554);

v. Memorandum from Shane Whimp to VRPL Board (VAH.002.003.5584).

D. Further particulars may be included with the Applicant's tender bundle~~provided following further and better discovery~~.

(e) Participating in the due diligence conducted for the purpose of preparing and issuing, and assisting in the drafting and verification of, the Original Prospectus, the Notes Prospectus and the Offering Circular.

PARTICULARS

A. *Sharyn Page was a member of the Due Diligence Committee and provided a Verification Sign-Off Certificate with respect to the Original Prospectus and Notes Prospectus on 18 October 2019: VAH.004.346.1885.*

B. *Ms Page was also responsible for reviewing particular parts of the Offering Circular: VAH.002.001.0791.*

C. The Applicant refers to and repeats the matters pleaded and particularised in paragraphs 54 to 63 and 112 above.

D. Further particulars may be provided with the Applicant's tender bundle.

324 By the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, VRPL knew that:

(a) the Original Prospectus, Notes Prospectus, Offering Circular, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment

Representation and/or the Cash Balance Representation involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation ~~was~~:

(i) were contained or implied in the Original Prospectus and the Notes Prospectus, each of which was to be distributed to prospective noteholders in Australia and other jurisdictions (except the United States of America);

(ii) would likely be received at least by recipients of the Institutional Offer or the Broker Firm Offer, as pleaded at paragraph 118 above; and

(iii) were accordingly likely to be received and relied upon by investors located in Australia;

(c) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were ~~was~~:

(i) contained or implied in the Offering Circular, which was to be distributed to prospective noteholders in Australia; and

(ii) accordingly, likely to be received and relied upon by investors located in Australia and by brokers in deciding whether to offer or promote an investment in US Notes to their clients;

(d) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were ~~was~~ false in a material particular or materially misleading; and

(e) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation were ~~was~~ likely to induce:

(i) prospective investors in the Notes and/or the US Notes in this jurisdiction to purchase the Notes and/or the US Notes; and/or

(ii) brokers to offer or promote an investment in the US Notes to their clients; and/or

~~(i)~~(iii) holders of the Notes and / or the US Notes to retain them.

PARTICULARS

A. *The Applicant refers to and repeats the particulars to paragraph 238*

above.

B. *Further particulars may be included with the Applicant's tender bundle~~provided following further or better discovery~~.*

325 Further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ by the time of the publication and dissemination of the Original Prospectus and the Notes Prospectus, VRPL also knew that:

(a) the Original Prospectus, Notes Prospectus, Offering Circular and/or the Velocity Acquisition Rationale Representations involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Velocity Acquisition Rationale Representations were:

(i) contained or implied in the Original Prospectus and the Notes Prospectus, each of which was to be distributed to prospective noteholders in Australia and other jurisdictions (except the United States of America);

(ii) would likely be received at least by recipients of the Institutional Offer or the Broker Firm Offer, as pleaded at paragraph 118 above; and

(iii) accordingly likely to be received and relied upon by investors located in Australia;

(c) the Velocity Acquisition Rationale Representations were:

(i) contained or implied in the Offering Circular, which was to be distributed to prospective noteholders in Australia; and

(ii) accordingly, likely to be received and relied upon by investors located in Australia and by brokers in deciding whether to offer or promote an investment in US Notes to their clients;

(d) the Velocity Acquisition Rationale Representations were or were likely to be false in a material particular or materially misleading; and

(e) the Velocity Acquisition Rationale Representations were likely to induce:

(i) prospective investors in the Notes and/or the US Notes in this jurisdiction to purchase the Notes and/or the US Notes; and/or

(ii) brokers to offer or promote an investment in the US Notes to their clients; and/or

(iii) holders of the Notes and / or the US Notes to retain them.

PARTICULARS

A. The Applicant refers to and repeats the particulars to paragraph 238 above.

B. Further particulars may be included with the Applicant's tender bundle~~provided following further or better discovery~~.

326 Further or alternatively, by the time of the publication and dissemination of the Original Prospectus, the Notes Prospectus and the Offering Circular, VRPL also knew:

(a) that the Original Prospectus, Notes Prospectus, Offering Circular involved the making of statements or the dissemination of information within the meaning of s 1041E(1) of the Corporations Act;

(b) the Withheld Information;

(c) that the Withheld Information was being omitted from the Original Prospectus, Notes Prospectus and Offering Circular;

(d) that the omission of the Withheld Information from the Original Prospectus, Notes Prospectus and Offering Circular made or were likely to make statements and information within those documents false in a material particular or materially misleading; and

(e) that publishing the Offering Circular without including the Withheld Information was likely to induce persons in this jurisdiction to acquire the US Notes.

PARTICULARS

The Applicant refers to and repeats the matters pleaded and particularised in paragraphs 54 to 63 and 112 above.

327 By reason of the matters pleaded at paragraphs 323 to 326 above, VRPL:

(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to the making or dissemination of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation in contravention of s 1041E(1) of the Corporations Act; and/or

(b) further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, also~~ aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to, the making or dissemination of the Velocity Acquisition Rationale Representations in contravention of s 1041E(1) of the Corporations Act,

and is accordingly liable pursuant to ss 1041I(1) and/or 1325 of the Corporations Act as a person "involved" in VAH's contraventions.

C.3A. Misleading or deceptive conduct – Corporations Act, s 1041H and ASIC Act, s 12DA

VAH Liability – Offering Circular Representations

328 By reason of VAH's conduct in:

(a) preparing, publishing and disseminating the Offering Circular; and

(b) making the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation,

VAH engaged in conduct:

(c) in this jurisdiction within the meaning of s 1041H(1) of the Corporations Act; and

(d) in trade or commerce in relation to a financial product or financial service within the meaning of s 1041H(1) of the Corporations Act and s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

329 By reason of the matters pleaded at:

(a) Paragraphs ~~89P to 91 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 244 to 246 with respect to the Cash Balance Representation;

(b) paragraphs ~~95 and 96 or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 250 and 251 with respect to the Post Velocity Cash Representation;

(c) paragraphs 253 to 258 with respect to the Undrawn Facilities Representation; and

(d) paragraphs ~~101 and 101A or, alternatively, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ 259 and 261 with respect to the Repayment Representation,

each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation contained in the Offering Circular was misleading or deceptive or likely to mislead or deceive.

330 Further, ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash,~~ by reason of VAH's conduct in:

(a) preparing, publishing and disseminating the Offering Circular; and

(b) making the Velocity Acquisition Rationale Representations,

VAH engaged in conduct:

(c) in this jurisdiction within the meaning of s 1041H(1) of the Corporations Act; and

(d) in trade or commerce in relation to a financial product or financial service within the meaning of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.

331 By reason of the matters pleaded at paragraphs 263 to 269 above, the Velocity Acquisition Rationale Representations contained in the Offering Circular was misleading or deceptive or likely to mislead or deceive.

VAH Liability – Offering Circular Omissions

332 By reason of the matters pleaded at paragraphs 209 to 221 above, a person in the position of Group Members considering acquiring US Notes (including brokers considering whether to offer or promote the US Notes to clients) would have had a reasonable expectation that VAH would have disclosed the ~~matters pleaded in paragraphs 79 to 82 above~~Withheld Information in the Offering Circular.

333 The ~~matters pleaded in paragraphs 79 to 82 above were~~ Withheld Information was not disclosed in the Offering Circular.

334 By reason of the matters pleaded in paragraphs 332 and 333 above, VAH's failure to disclose the ~~matters pleaded in paragraphs 79 to 82 above~~ Withheld Information was misleading or deceptive or likely to mislead or deceive.

335 Further or alternatively, by reason of the omission of the Withheld Information from the Offering Circular, the Offering Circular and the statements and information in it were misleading or deceptive or likely to mislead or deceive. ~~Further, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, by reason of the matters pleaded at paragraphs 89D to 89G above, a person in the position of Group Members considering acquiring US Notes would have had a reasonable expectation that VAH would have disclosed the matters pleaded in paragraphs 79 to 79B, 80 to 82 and 89C above in the Offering Circular.~~

336 Further or alternatively, by not including the Withheld Information within the Offering Circular, the Offering Circular contained information with respect to:

(a) the true financial position of VAH as at the date of the Offering Circular;

(b) the risks associated with VAH's ability to repay the US Notes; and/or

(c) the reasons VAH was acquiring Affinity's interest in Velocity Holdco,

which was misleading or deceptive or likely to mislead or deceive. ~~The matters pleaded in paragraphs 79 to 79B, 80 to 82 and 89C above were not disclosed in the Offering Circular.~~

~~By reason of the matters pleaded in paragraphs 117K and 117L above, VAH's failure to disclose the matters pleaded in paragraphs 79 to 79B, 80 to 82 and 89C above was misleading or deceptive or likely to mislead or deceive.~~

VAH Liability – ASX Announcements and Notes Meetings

337 By:

(a) making the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above;

(b) failing to disclose the Withheld Information in the announcements to the ASX, as pleaded at paragraph 166 above;

(c) making the representations during the Notes Meetings pleaded at paragraph 168 above; and/or

(d) failing to disclose the Withheld Information during the Notes Meetings, as pleaded at paragraph 169 above,

VAH engaged in conduct:

~~(a)~~(e) in this jurisdiction within the meaning of s 1041H(1) of the Corporations Act; and

~~(b)~~(f) in trade or commerce in relation to a financial product or financial service within the meaning of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.

338 ~~By reason of the matters pleaded at paragraphs 47 to 50 above, e~~Each of the:

(a) ~~-~~representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above;

(b) representations made during the Notes Meetings pleaded at paragraph 168 above;

(c) non-disclosure of the Withheld Information in the announcements to the ASX, as pleaded at paragraph 166 above; and

(d) non-disclosure of the Withheld Information during the Notes Meetings, as pleaded at paragraph 169 above,

was misleading or deceptive or likely to mislead or deceive.

PARTICULARS

A. The Applicant refers to and repeats paragraphs 174 to 177, 269, 277, 282, 294 and 303 above.

B. Further particulars may be provided with the Applicant's tender bundle.

Contraventions

339 In the premises, by:

(a) making each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Velocity Acquisition Rationale Representations and/or the Repayment Representation in the Offering Circular;

(b) failing to disclose the ~~matters pleaded in paragraphs 79 to 82 above~~Withheld Information;

(c) [Not used] ~~in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash:~~

~~(i)making the Velocity Acquisition Rationale Representation; and~~

~~(ii) alternatively to sub-paragraph (b) above, failing to disclose the matters pleaded in paragraphs 79 to 79B, 80 to 82 and 89A above; and~~

(d) making the representations contained in the announcements to the ASX pleaded at paragraphs 161 to 165 above and during the Notes Meetings pleaded at paragraph 168 above,

VAH engaged in conduct in contravention of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act.

Involvement of the Second and Third Respondents

340 By the time that the Offering Circular was issued by VAH, the Second and Third Respondents had engaged in the conduct pleaded at paragraph 315 above.

341 By the time that the Offering Circular was issued by VAH, the Second and Third Respondents knew that:

(a) making each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Velocity Acquisition Rationale Representations and/or the Repayment Representation in the Offering Circular and/or failing to disclose the ~~matters pleaded at paragraphs 79 to 82 above~~ Withheld Information involved conduct in this jurisdiction in trade or

commerce and in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act;

(b) the Offering Circular was being disseminated to prospective investors in the USA and outside the USA (including brokers who would potentially offer or promote an investment in the US Notes to clients) and was therefore likely to be received and relied upon by such prospective investors;

(c) a reasonable investor in the US Notes would have had a reasonable expectation that VAH would have disclosed Withheld Information~~the matters pleaded at paragraphs 79 to 82 above~~; and

(d) each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Velocity Acquisition Rationale Representations and/or the Repayment Representation, and/or the failure to disclose the ~~matters pleaded at paragraphs 79 to 82 above~~Withheld Information was or was likely to be misleading or deceptive or likely to mislead or deceive.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 316 above.

342 [Not used]~~In the alternative to the matters pleaded in paragraph 117R above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, by the time that the Offering Circular was issued by VAH, the Second and Third Respondents knew that:~~

~~(a) making each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations in the Offering Circular and/or failing to disclose the matters pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above involved conduct in this jurisdiction in trade or commerce and in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act;~~

~~(b) the Offering Circular was being disseminated to prospective investors in the USA and outside the USA and was therefore likely to be received and relied upon by such prospective investors;~~

~~(c) a reasonable investor in the US Notes would have had a reasonable expectation that VAH would have disclosed the matters pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above; and~~

~~(d) each of the Cash Balance Representation, the Post Velocity Cash~~

~~Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations and/or the failure to disclose the matters pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above was misleading or deceptive or likely to mislead or deceive.~~

~~***PARTICULARS***~~

~~*The Applicant refers to and repeats the particulars to paragraph 114 above.*~~

343 By reason of the matters pleaded at paragraphs 340 and 341, the Second and Third Respondents:

(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to, the making or dissemination of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Velocity Acquisition Rationale Representations and/or the Repayment Representation and/or the omission of the ~~matters pleaded at paragraphs 79 to 82 above from,~~Withheld Information the Offering Circular in contravention of:

(i) s 1041H(1) of the Corporations Act; and/or

(ii) s 12DA(1) of the ASIC Act; and

(b) are accordingly liable pursuant to:

(i) s 1041I(1) and/or s 1325(1) of the Corporations Act; and/or

(ii) s 12GF(1) and/or s 12GM of the ASIC Act,

as persons "involved" in VAH's contraventions.

344 [Not used] ~~In the alternative to the matters pleaded in paragraph 117T above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then by reason of the matters pleaded in paragraphs 117Q and 117S, the Second and Third Respondents:~~

~~(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to, the making or dissemination of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or Velocity Acquisition Rationale Representations and/or the omission of the matters pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above from, the Offering Circular in contravention of:~~

~~(i) s 1041H(1) of the Corporations Act; and/or~~

~~(i) s 12DA(1) of the ASIC Act; and~~

~~(a) are accordingly liable pursuant to:~~

~~(i) s 1041I(1) and/or s 1325(1) of the Corporations Act; and/or~~

~~(i) s 12GF(1) and/or s 12GM of the ASIC Act,~~

~~as persons "involved" in VAH's contraventions.~~

345 By the time that the announcements to the ASX pleaded at paragraphs 161 to 165 above had been published and/or the representations made during the Notes Meetings pleaded at paragraph 168 above had been made, the Second and Third Respondents had engaged in the conduct pleaded at paragraph 320 above.

346 By the time of the publication of the ASX announcements pleaded at paragraphs 161 to 165 above and/or the representations made during the Notes Meetings pleaded at paragraph 168 above had been made, the Second and Third Respondents knew that:

(a) the publication of the ASX announcements pleaded at paragraphs 161 to 165 above and/or the representations made during the Notes Meetings pleaded at paragraph 168 above involved conduct in this jurisdiction in trade or commerce and in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act;

(b) the ASX announcements pleaded at paragraphs 161 to 165 above:

(i) were being disseminated through the ASX;

(ii) were available to actual and prospective investors in the US Notes;

(iii) were a source of information to which actual and prospective investors in the US Notes had been directed by the Offering Circular; and

(iv) accordingly were likely to be received and relied upon by existing and prospective investors in the US Notes;

(c) attendees at the Notes Meeting were likely to include actual and prospective investors in the US Notes who were likely to receive and rely upon the representations made during the Notes Meeting pleaded at paragraph 168 above; and

(d) the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and/or the representations made during the Notes Meeting pleaded at paragraph 168 above were, or were likely to be, misleading or deceptive or likely to mislead or deceive.

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 321 above.

347 By reason of the matters pleaded at paragraphs 345 and 346 above, each of the Second and Third Respondents:

(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to, the making or dissemination of the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above, the making or dissemination of the representations during the Notes Meetings pleaded at paragraph 168 above, the withholding of the Withheld Information from the ASX Announcements pleaded in paragraph 166 above and/or the withholding of the Withheld Information from the Notes Meetings as pleaded in paragraph 169 above, in contravention of:

(i) s 1041H(1) of the Corporations Act; and/or

(ii) s 12DA(1) of the ASIC Act; and

(b) is accordingly liable pursuant to:

(i) s 1041I(1) and/or s 1325(1) of the Corporations Act; and/or

(ii) s 12GF(1) and/or s 12GM of the ASIC Act,

as a person "involved" in VAH's contraventions.

Involvement of VRPL

348 By the time of the publication and dissemination of the Offering Circular, VRPL had engaged in the conduct pleaded at paragraph 323 above.

349 By the time of the publication and dissemination of the Offering Circular, VRPL knew that:

(a) making the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations in the Offering Circular and/or failing to disclose the ~~matters pleaded at paragraphs 79A, 79B and/or 79C above~~Withheld Information involved conduct in this jurisdiction in trade or commerce and in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act;

(b) the Offering Circular was being disseminated to prospective investors in the USA and outside the USA (including brokers who would potentially offer or promote an

investment in the US Notes to clients) and was therefore likely to be received and relied upon by such prospective investors;

(c) a reasonable investor in the US Notes would have had a reasonable expectation that VAH would have disclosed the Withheld Information; ~~matters pleaded at paragraphs 79A, 79B and/or 79C above~~; and

(d) the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation, the Velocity Acquisition Rationale Representations and/or the failure to disclose the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and/or 79C~~ above was misleading or deceptive or likely to mislead or deceive.

PARTICULARS

A. The Applicant refers to and repeats the particulars to paragraph 238 above.

B. Further particulars may be provided with the Applicant's tender bundle~~following further or better discovery~~.

350 [Not used] ~~In the alternative to the matters pleaded in paragraph 117Z above, in the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, by the time of the publication and dissemination of the Offering Circular, VRPL knew that:~~

~~(a) making the Cash Balance Representation and/or the Velocity Acquisition Rationale Representations in the Offering Circular and/or failing to disclose the matters pleaded at paragraphs 79A, 79B and 89C above involved conduct in this jurisdiction in trade or commerce and in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act;~~

~~(b) the Offering Circular was being disseminated to prospective investors in the USA and outside the USA and was therefore likely to be received and relied upon by such prospective investors;~~

~~(c) a reasonable investor in the US Notes would have had a reasonable expectation that VAH would have disclosed the matters pleaded at paragraphs 79A, 79B and 89C above; and~~

~~(d) the Cash Balance Representation and/or the Velocity Acquisition Rationale Representations and/or the failure to disclose the matters pleaded at paragraphs 79A, 79B and 89C above was misleading or deceptive or likely to mislead or deceive.~~

~~***PARTICULARS***~~

~~*A. The Applicant refers to and repeats the particulars to paragraph 89N above.*~~

~~*A. Further particulars may be provided following further or better discovery.*~~

351 By reason of the matters pleaded at paragraphs 348 and 349 above, VRPL:

(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to the making or dissemination of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation and/or the Repayment Representation in, and/or the omission of the Withheld Information ~~matters pleaded at paragraphs 79A, 79B and 79C above~~ from, the Offering Circular in contravention of:

(i) s 1041H(1) of the Corporations Act; and/or

(ii) s 12DA(1) of the ASIC Act; and

(b) is accordingly liable pursuant to:

(i) s 1041I(1) and/or s 1325(1) of the Corporations Act; and/or

(ii) s 12GF(1) and/or s 12GM of the ASIC Act,

as a person "involved" in VAH's contraventions.

352 [Not used] ~~In the alternative to the matters pleaded in paragraph 117AB above, by reason of the matters pleaded at paragraphs 117Y and 117AA above, VRPL:~~

~~(a) aided, abetted, counselled or procured or was directly or indirectly knowingly concerned in, or party to the making or dissemination of the Cash Balance Representation and/or the Velocity Acquisition Rationale Representations in, and/or the omission of the matters pleaded at paragraphs 79A, 79B and 89C above from, the Offering Circular in contravention of:~~

~~(i) s 1041H(1) of the Corporations Act; and/or~~

~~(ii) s 12DA(1) of the ASIC Act; and~~

~~(a) is accordingly liable pursuant to:~~

~~(i) s 1041I(1) and/or s 1325(1) of the Corporations Act; and/or~~

~~(ii) s 12GF(1) and/or s 12GM of the ASIC Act,~~

~~as a person "involved" in VAH's contraventions.~~

C.4. Loss or damage

353 Had VAH acted in accordance with the requirements of the Corporations Act pleaded above, it would have recognised that it was required to include the Withheld Information within the Offering Circular, the Original Prospectus and the Notes Prospectus, and, in so recognising, would have:

(a) determined that any offering circular or prospectus containing the Withheld Information would be unattractive to the market of potential investors in the Notes and US Notes, and was therefore unlikely to succeed;

(b) pursued alternative options for funding the acquisition of Affinity's stake; and

(c) not issued the Notes or the US Notes.

~~Had VAH:(a)not engaged in the Velocity Loan Misclassification; and~~

~~(b) properly classified the drawn and undrawn balance under the Velocity Loan as "restricted cash";~~

~~VAH would have:~~

~~(c) prepared its financial statements and pro forma financial position following the Velocity Acquisition for inclusion in the Original Prospectus, Notes Prospectus and Offering Circular upon the basis referred to in sub-paragraph (b) above;~~

~~(d) determined, or reasonably suspected, that:~~

~~(i)it did not have; and/or~~

~~(ii) it would not have or it was unlikely that it would have,~~

~~sufficient unrestricted cash reserves and undrawn facilities to fund its repayment obligations under the Notes and the US Notes;~~

~~(e) determined that raising funds for the Velocity Acquisition by way of issuance of the Notes and the US Notes was not a viable funding option; and~~

~~(f) accordingly decided not to issue the Notes and/or the US Notes.~~

354 In the premises:

(a) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes and/or the US Notes upon issue;

(b) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes on the ASX and/or the US Notes being traded on the market made by the Initial Purchasers; and

(c) Group Members:

(i) would, in the case of Group Members other than the Pre-Administration Disposing Group Members, not have acquired and held the Notes and/or the US Notes at the time of VAH's entry into voluntary administration;

(ii) could, in the case of the Pre-Administration Disposing Group Members, not have acquired the Notes and/or the US Notes and disposed of them at a loss prior to VAH's entry into voluntary administration.

~~Had VAH taken the steps pleaded in paragraph 117AD above:~~

~~VAH would not have released the Original Prospectus, the Notes Prospectus and/or the Offering Circular;~~

~~(a) VAH would, in turn, not have:~~

~~(i) failed to disclose the matters pleaded at paragraphs 79 to 82 above;~~

~~(i) made the Cash Balance Representation pleaded at paragraphs 25 and 28G above;~~

~~(i) made the Post Velocity Cash Representation pleaded at paragraphs 26 and 28H above;~~

~~(i) made the Undrawn Facilities Representation pleaded at paragraphs 27 and 28I to 28K above; and~~

~~(i) made the Repayment Representation pleaded at paragraphs 28 and 28L above;~~

~~(a) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes and/or the US Notes upon issue;~~

~~(d) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes on the ASX and/or the US Notes being traded on the market made by the Initial Purchasers; and~~

~~(e) accordingly, would not have acquired and held the Notes and/or the US Notes at the time of VAH's entry into voluntary administration.~~

355 By 12 September 2019, VAH had:

(a) been advised by UBS that, in order to acquire Affinity's stake in Velocity for a purchase price of $700 million, the minimum funding requirement was A$670 million (US$455 million);

(b) resolved to pursue, in the first instance, a "Plan A" funding strategy, comprising the issue of the US Notes, the issue of the Notes and use of VAH's unrestricted cash;

(c) identified various "Plan B" strategies as an alternative to "Plan A", which included bridge financing, a shareholder loan or vendor loan; and

(d) been advised that there were execution risks to the "Plan A" funding strategy, given VAH's nature as a B rated airline, which included both market and company-specific risks.

PARTICULARS

A. UBS Presentation (VAH.002.024.5506).

B. VAH Board Paper dated 11 September 2019 (VAH.950.001.0081).

C. Minutes of VAH Board meeting held on 12 September 2019 (VAH.900.001.0077).

356 Prior to issuing the Offering Circular on 24 October 2019, VAH was aware that, if demand for the US Notes was below US$300 million (A$430 million), it was unlikely that a retail notes offering in Australia would be sufficient to raise the funds required to acquire Affinity's stake in Velocity for a purchase price of A$700 million and that alternative funding options, including "Plan B" options, would need to be considered.

PARTICULARS

A. Email from Steven Fouracre to Teresa McAdam and copied to Keith Neate on 7 October 2019 and attached draft board paper (VAH.002.024.5875; VAH.002.024.5876).

B. Subsequent emails between Keith Neate, Steven Fouracre and Teresa McAdam on 7 October 2019 (VAH.002.003.3046).

357 In the alternative to the matters pleaded in paragraph 353 above, had VAH: ~~proceeded with the Velocity Acquisition and the issue of the Notes and/or the US Notes notwithstanding the Velocity Loan Misclassification and, in so doing:~~

(a) disclosed in the Offering Circular, the Original Prospectus and, subsequently, the Notes Prospectus the Withheld Information ~~matters pleaded at paragraphs 79 to 82 above~~;

(b) [Not used]~~disclosed that VAH was not paying its creditors within terms in order to enhance the reported cash position as at 30 June 2019;~~

(c) not made the Cash Balance Representation pleaded at paragraphs 125 and 137 above;

(d) not made the Post Velocity Cash Representation pleaded at paragraphs 126 and

138 above;

(e) not made the Velocity Acquisition Rationale Representations pleaded at paragraphs 123 and 136 above;

(f) not made the Undrawn Facilities Representation pleaded at paragraphs 127 and 139 to 141 above; and/or

(g) not made the Repayment Representation pleaded at paragraphs 128 and 142 above,

then:

(h) demand for the US Notes would have been below US$300 million (A$430 million) with the consequence that VAH would have withdrawn the offer for the US Notes and the Notes;

(i) further or alternatively, overall demand for the US Notes and the Notes would have been insufficient to raise, in conjunction with VAH's unrestricted cash reserves, the A$670 million (US$455 million) required to acquire Affinity's stake in Velocity for a purchase price of A$700 million, and VAH would have:

(i) withdrawn the offer for the Notes and redeemed the US Notes; and

(ii) pursued alternative funding strategies for the acquisition of Affinity's stake.

PARTICULARS

A. *VAH was competent to withdraw the offer of the Notes on the basis that the Notes Prospectus reserved VAH's right to withdraw the offer at any time for any reason without prior notice.*

B. *VAH was competent to redeem the US Notes on the basis that the Offering Circular contained a right of redemption if the Velocity Acquisition was not complete by 13 December 2019, the Securities Sale Agreement pleaded at paragraph 100 was terminated prior to 13 December 2019, or VAH announced that the Velocity Acquisition had been abandoned or terminated.*

C. *The Applicant will provide particulars of sub-paragraphs (g) and (h) through the service of its expert evidence.*

358 In the premises, had VAH disclosed, or not represented, the matters pleaded in

paragraphs 357(a) to (g) above:

(a) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes and/or the US Notes upon issue;

(b) Dr Fleming (on behalf of MPG) and Group Members would not have had the opportunity to acquire the Notes on the ASX and/or the US Notes being traded on the market made by the Initial Purchasers; and

(c) Group Members:

(i) would, in the case of Group Members other than the Pre-Administration Disposing Group Members, not have acquired and held the Notes and/or the US Notes at the time of VAH's entry into voluntary administration;

~~(i)~~(ii) could, in the case of the Pre-Administration Disposing Group Members, not have acquired the Notes and/or the US Notes and disposed of them at a loss prior to VAH's entry into voluntary administration.

359 Further and in the alternative to the matters pleaded at paragraphs 353, 354, 357 and 358, if the matters pleaded in paragraphs 357(a) to (g) had been disclosed, or not represented, Dr Fleming would:

(a) [not used]

(b) not have formed the beliefs pleaded at paragraphs 146 and 147 above and would therefore have understood that VAH's cash reserves and access to undrawn facilities were materially more limited than conveyed by the Original Prospectus and the Notes Prospectus and the risk of default was substantially higher; and

(c) have formed the view that there was a materially higher prospect of VAH ceasing to trade, thereby causing MPG to suffer a loss on its investment in the Notes.

360 [Not used] ~~Further and in the alternative to the matters pleaded at paragraphs 117AD, 117AE and 118 above, in the event that:~~

~~(a) VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash; and~~

~~(b) proceeded with the Velocity Acquisition and the issue of the Notes and/or US Notes, and, in so doing:~~

~~(c) disclosed in the Original Prospectus and, subsequently, the Notes Prospectus the matters pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above;~~

~~(d) disclosed that VAH was not paying its creditors within terms in order to enhance~~

~~the reported cash position as at 30 June 2019;~~

~~(e) not made the Cash Balance Representation pleaded at paragraphs 25 and 28G above;~~

~~(f) not made the Post Velocity Cash Representation pleaded at paragraphs 26 and 28H above;~~

~~(g) not made the Undrawn Facilities Representation pleaded at paragraphs 27 and 28I to 28K above;~~

~~(h) not made the Repayment Representation pleaded at paragraphs 28 and 28L above; and/or~~

~~(i) not made the Velocity Acquisition Rationale Representations pleaded at paragraphs 24C and 28F above~~

~~Dr Fleming would:~~

~~(a) not have formed the beliefs pleaded at paragraphs 31 and 32 above and would therefore have understood that VAH's cash reserves and access to undrawn facilities were materially more limited than conveyed by the Original Prospectus and the Notes Prospectus and the risk of default was substantially higher; and~~

~~(k)have formed the view that there was a materially higher prospect of VAH ceasing to trade, thereby causing MPG to suffer a loss on its investment in the Notes.~~

361 In the premises, had VAH ~~taken one or more of the steps~~disclosed, or not represented, the matters pleaded at paragraphs 357(a) to (g) above, ~~or alternatively paragraphs 118A(c) to (i) above,~~ Dr Fleming would not have caused MPG, in its capacity as trustee of the MPG Trust, to acquire the Notes on the date of issue.

362 Further and in the alternative to the matters pleaded at paragraphs 353, 354, 357 and 358, had VAH disclosed, or not represented, the matters~~taken one or more of the steps~~ pleaded at paragraphs 357(a) to (g) above, ~~or alternatively paragraphs 118A(c) to (i) above,~~ Group Members:

(a) would have formed the view that there was a materially higher prospect of VAH ceasing to trade and that investing in the Notes carried a significant or material risk of loss; and

(b) would not have acquired the Notes and/or the US Notes on the date of issue.

363 Further and in the alternative to the matters pleaded at paragraphs 353, 354, 357 and

358, had VAH:

(a) disclosed, or not represented, the matters~~taken one or more of the steps~~ pleaded at paragraphs 357(a) to (g) above;~~, or alternatively paragraphs 118A(c) to (i) above,;~~

(b) [not used]

(c) [not used]

Dr Fleming would:

(d) [not used]

(e) not have formed the beliefs pleaded at paragraphs 146, 147 and 179(i) above and would therefore have understood that VAH's cash reserves and access to undrawn facilities were materially more limited than conveyed by the Original Prospectus and the Notes Prospectus and the risk of default was substantially higher; and

(f) have formed the view that there was a materially higher prospect of VAH ceasing to trade, thereby causing MPG to suffer a loss on its investment in the Notes.

364 In the premises, had VAH disclosed, or not represented, the matters~~taken the steps~~ pleaded at paragraph 357(a) to (g), ~~or alternatively paragraphs 118A(c) to (i) above,~~ Dr Fleming would not have caused MPG, in its capacity as trustee of the MPG Trust, to acquire further Notes on the ASX.

365 Further and in the alternative to the matters pleaded at paragraphs 353, 354, 357 and 358, had VAH:

(a) disclosed, or not represented, the matters ~~taken the steps~~ pleaded at paragraphs 357(a) to (g) above; ~~, or alternatively paragraphs 118A(c) to (i) above;~~

(b) not made the representations in the ASX announcements pleaded at paragraphs 161 to 165 above; ~~and/or~~

(c) not made the representations that were made during the Notes Meetings pleaded at paragraph 168 above;

(d) not failed to disclose the Withheld Information in the ASX announcements, as pleaded at paragraph 166 above; and/or

~~(d)~~(e) not failed to disclose the Withheld Information during the Notes Meetings, as pleaded at paragraph 169 above,

Group Members:

~~(e)~~(f) would have formed the view that there was a materially higher prospect of VAH

ceasing to trade and that investing in the Notes carried a significant or material risk of loss; and

~~(f)~~(g) would not have acquired the Notes on the ASX and/or the US Notes being traded on the market made by the Initial Purchasers.

366 In the premises, the Applicant and Group Members:

(a) have suffered loss or damage because the offer of the Notes under the Original Prospectus and the Notes Prospectus contravened s 728(1) of the Corporations Act; and

(b) are entitled, pursuant to s 729(1) of the Corporations Act to recover that loss or damage from:

(i) VAH, being the body which made the offer of the Notes under the Original Prospectus and the Notes Prospectus;

(ii) each of the Second and Third Respondents, being directors of the body which made the offer of the Notes under the Original Prospectus and the Notes Prospectus; and/or

(iii) VRPL, being a person involved in VAH's contravention of s 728(1) of the Corporations Act.

PARTICULARS

A. *The Applicant's loss comprises:*

i. *for Notes acquired on the date of issue, the difference between the face value of the Notes paid on or before 26 November 2019 to acquire the Notes and the dividend received pursuant to the Bain DOCAs; and*

ii. *for Notes subsequently acquired on the open market, the difference between the price prevailing on the ASX for the Notes at which the Notes were acquired and the dividend received pursuant to the Bain DOCAs.*

B. The loss suffered by Group Members who did not dispose of their Notes and/or US Notes comprises:

i. for Notes and/or US Notes acquired on the date of issue, the difference between the face value of the Notes and/or US Notes paid on their respective dates of issue and the dividend received pursuant to the Bain DOCAs; and

ii. for Notes and/or US Notes subsequently acquired on the open market, the difference between the price prevailing on the ASX (for the Notes) or on the market made by the Initial Purchasers (for the US Notes) at which the Notes and/or US Notes respectively were acquired and the dividend received pursuant to the Bain DOCAs.

B1. Pre-Administration Disposing Group Members' and Post-Administration Disposing Group Members' loss comprises the difference between the price paid to acquire the Notes and/or the US Notes and the price at which the Notes and/or the US Notes were disposed.

C. Further particulars of the Applicant's loss may be provided with the Applicant's lay and expert evidence.

D. Particulars of Group Members' loss or damage may be provided following the trial of common questions or otherwise as the Court may direct.

367 Further, in the premises, the Applicant:

(a) has suffered loss or damage by the making or dissemination by VAH of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations, and/or the dissemination of the Original Prospectus and the Notes Prospectus without the Withheld Information, in contravention of s 1041E(1) of the Corporations Act; and

(b) is entitled, pursuant to s 1041I(1) and/or s 1325 of the Corporations Act, to recover that loss or damage from:

(i) VAH;

(ii) each of the Second and Third Respondents, by reason of their involvement in VAH's contravention; and/or

(iii) ~~with respect to the making or dissemination of the Cash Balance Representation and/or the Velocity Acquisition Rationale Representations,~~ VRPL, by reason of its involvement in VAH's contravention.

PARTICULARS

The Applicant refers to and repeats the particulars at paragraph 366 above.

368 Further, in the premises, Group Members:

(a) have suffered loss or damage by the making or dissemination by VAH of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Repayment Representation and/or the Velocity Acquisition Rationale Representations in contravention of s 1041E(1) and/or s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act;

(b) have suffered loss or damage by the omission of the ~~matters pleaded at paragraphs 79 to 82~~Withheld Information ~~(and, in the event that that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, paragraph 89C)~~ from the Original Prospectus, the Notes Prospectus and/or the Offering Circular in contravention of s 1041E(1) and/or s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act;

(c) have suffered loss or damage by the making or dissemination by VAH of the representations contained in the ASX announcements pleaded at paragraphs 161 to 165 above and/or the failure to disclose the Withheld Information in the ASX announcements as pleaded at paragraph 166 above, in contravention of s 1041E(1) and/or s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act;

(d) have suffered loss or damage by ~~the making of the representations made~~the conduct during the Notes Meetings pleaded at paragraphs 168 and 169 above in contravention of s 1041E(1) of the Corporations Act; and

(e) are entitled, pursuant to s 1041I(1) and/or s 1325 of the Corporations Act and/or s 12GF(1) and/or s 12GM of the ASIC Act, to recover that loss or damage from:

(i) VAH;

(ii) each of the Second and Third Respondents, by reason of their involvement in VAH's contraventions; and/or

(iii) in the case of the contraventions referred to in:

A. sub-paragraph (a) ~~(with respect to the making or dissemination of the Cash Balance Representation and/or the Velocity Acquisition Rationale Representations)~~; and

B. sub-paragraph (b) ~~(with respect to the omission from the Offering Circular of the matters pleaded at paragraphs 79A, 79B, and/or 89C above)~~,

VRPL, by reason of its involvement in VAH's contraventions.

PARTICULARS

The Applicant refers to and repeats the particulars at paragraph 366 above.

D. CLAIMS AGAINST VAH – BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

D.1. VAH was required to comply with s 674(2) of the Corporations Act with respect to the Notes

369 By reason of the fact that:

(a) the Notes were listed on the ASX (as pleaded at paragraphs 1(a), 119(e) and 154 above);

(b) VAH was required to appoint a trustee and enter into a trust deed with respect to the Notes pursuant to s 283AA of the Corporations Act; and

(c) the ASX Listing Rules applied to VAH with respect to the Notes,

the Notes were:

(d) ED securities within the meaning of ss 111AD(1) and 111AE(1) of the Corporations Act; and

(e) quoted ED securities within the meaning of s 111AM of the Corporations Act.

PARTICULARS

A. *As to sub-paragraph (b), the Applicant refers to:*

i. *pages 16, 35, 47 and 149 of the Original Prospectus and the pages 16, 35, 46 and 149 of the Notes Prospectus;*

ii. *the Notes Trust Deed dated 28 October 2019, by which Sargon CT Pty Ltd (ABN 12 106 424 088) was appointed Notes Trustee; and*

iii. *Corporations Act, s 111AI.*

B. *As to sub-paragraph (c), the Applicant refers to:*

i. *paragraph 154 above; and*

ii. *ASX Listing Rules, r 18.6.*

C. *As to sub-paragraph (e), the Applicant refers to and relies upon sub-paragraphs (a) and (c) only.*

370 By reason of the matters pleaded in paragraph 369 above, VAH was a disclosing entity

for the purpose of the Corporations Act, within the meaning of s 111AC(1).

371 By reason of the fact that the Notes were quoted ED securities (as pleaded at paragraph 369(e) above), VAH was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act.

372 As a listed disclosing entity, on and from the date of the Notes' admission to the official list of the ASX, VAH was required to comply with ASX Listing Rule 3.1.

PARTICULARS

ASX Listing Rule 18.6.

373 By reason of:

(a) the matters pleaded in paragraph 372 above; and

(b) section 674(1) of the Corporations Act,

VAH was required:

(c) pursuant to the ASX Listing Rules, to notify the ASX about specified events or matters as they arose for the purpose of the ASX making that information available to market participants; and

(d) accordingly, to comply with the continuous disclosure obligation under s 674(2) of the Corporations Act.

D.2. The Cash Position Information

374 ~~By~~ From at least December 2019 and throughout the period from December 2019 to April 2020, VAH was or became aware that:

(a) its unrestricted cash balance and total unused facilities had materially decreased from the figures disclosed in VAH's financial accounts for the 2019 financial year and used for the purpose of disclosing VAH's financial position in the Original Prospectus and the Notes Prospectus;

(b) in the period from July 2019 to December 2019, VAH had overdue payments owing to its trade creditors of between $10.6 million and $121.7 million each month and had been holding back payments to trade creditors in order to increase its reported cash balances;

(c) VAH's debts to trade creditors increased from $137.5 million as at 30 November 2019 to $200.9 million as at 31 December 2019, and its overdue payables increased from $16.3 million to $121.7 million in December 2019,

(the **December 2019 Cash Position Information**).

PARTICULARS

A. VAH had actual knowledge of the matters pleaded in sub-paragraphs (a) to (c) by reason of the matters pleaded and particularised in paragraphs 222, 277 and 292 above.

B. In the alternative, an officer of VAH ought reasonably to have come into possession of the information pleaded in sub-paragraphs (a) to (c) in the course of performing his or her duties as an officer of VAH (within the meaning of ASX Listing Rules, r 19.12) by reason of:

i. the Board's usual role in monitoring the financial performance of VAH, particularly in light of recent historical losses, the identified importance of improving VAH's financial performance, and the significant indebtedness of VAH;

ii. the heightened importance of considering and assessing VAH's financial position, including its cash reserves and access to undrawn facilities, in light of the issuance of the Notes and the US Notes, which would have necessitated access to the information pleaded in sub-paragraphs (a) to (c) in deciding initiatives to reduce expenditure, increase cost-savings and improve revenue;

iii. the fact that the calculation of overdue payments to trade creditors was carried out on a regular basis as part of VAH's policy of deliberately holding back payments to trade creditors in order to retain VAH's cash reserves for an extended period of time; and

iv. the fact that VAH's unrestricted cash reserves were calculated on a regular basis to prepare and issue "Compliance and Reporting Notices" to the providers of VAH's merchant and loan facilities.

375 Further, from as early as January 2020, ~~and throughout the period January 2020 to~~ alternatively by no later than April 2020, VAH was or became aware that its total unused facilities and unrestricted cash had materially decreased

from December 2019 (the **Additional Cash Position Information**).

PARTICULARS

The Applicant refers to and repeats the particulars to paragraph 374 above.

376 [Not used] ~~Further, from as early as January 2020, and throughout the period January 2020 to April 2020, VAH was or became aware that:~~

~~(a) its ability to access the undrawn component of the Velocity Loan, as well as its liability to repay the drawn amount of the Velocity Loan, with interest, was subject to:~~

~~(i)the terms and conditions of the Loyalty Trust, the Loyalty Trust Investment Policy, the Investment Mandate Letter and the Velocity Loan Agreement pleaded at paragraphs 7E and 8B to above; and~~

~~(ii) the discretion of VRPL; and~~

~~(b) it was accordingly erroneous to include the undrawn component of the Velocity Loan as unrestricted cash in the Original Prospectus, the Notes Prospectus and/or other disclosures made to the ASX since the Notes were issued,~~***~~PARTICULARS~~***

~~*A. VAH's actual knowledge may be inferred from:*~~

~~*i. the emails between Courtney Petersen of Velocity, Jonathan Sweeney of VRPL and Keith Neate of VAH dated 2 April 2020 (VAH.002.043.5489); and*~~

~~*ii. the emails between Warwick Negus, Paul Scurrah and Keith Neate on 10 April 2020 (VAH.002.012.5943);*~~

~~*iii. the email from Shane Whimp to Steven Fouracre dated 20 November 2019 (VAH.002.002.8703);*~~

~~*iv. the email from Teresa McAdam to Courtney Petersen dated 5 February 2020 (VAH.002.002.2996);*~~

~~*v. the Certificate from VAA to VRPL dated 28 February 2020 (VAH.002.043.6384);*~~

~~*vi. the email from Jonathan Sweeney of VRPL to Shane Whimp dated 30 March 2020 (VAH.002.043.5366); and*~~

~~*vii. the email from Jonathan Sweeney of VRPL to Keith Neate dated 13 April 2020 (VAH.002.031.0332).*~~

~~*B. In the alternative, an officer of VAH ought reasonably to have come into possession of the matters pleaded in this paragraph in the course of performing his or her duties as an officer of VAH (within the meaning of ASX Listing Rules, r 19.12) by reason of:*~~

i.the Board's usual role in monitoring the financial performance of VAH, particularly in light of recent historical losses, the identified importance of improving VAH's financial performance, and the significant indebtedness of VAH;

ii. the emergence and impact of COVID-19 upon VAH's operations, which ought to have warranted greater consideration and monitoring of VAH's financial position, including its cash balance;

iii. the Board's awareness of the importance of the Velocity Loan to VAH's liquidity position, including the fact that the drawn and undrawn balance of the Velocity Loan was treated by VAH as unrestricted funds, which would have necessitated knowledge and understanding of the terms of the Velocity Loan Agreement, the Loyalty Trust, the Loyalty Trust Investment Policy and the Investment Mandate Letter;

iv. the Board's role in approving the financial statements, which included disclosures to the effect that entities within the consolidated VAH Group (including VRPL and the Loyalty Trust) with non-controlling interests were subject to restrictions on distributions and that the cash in those entities with non-controlling interests was otherwise treated as restricted cash, as pleaded at paragraph 9B above;

v. the fact that VAH's unrestricted cash reserves were calculated on a regular basis to prepare and issues "Compliance and Reporting Notices" to the providers of VAH's merchant and loan facilities; and

vi. the heightened importance of considering and assessing VAH's financial position, including its cash reserves and access to undrawn facilities, in light of the issuance of the Notes and the US Notes, which would have necessitated access to information regarding the financial position of the VAH Group, including the information pleaded in sub-paragraph (a).

~~The information pleaded at:~~

~~(a)paragraphs 132, 132A and 133 above is together referred to as the **Cash Position Information**; and~~

~~(b) paragraphs 132 and 132A is together referred to as the **Alternative Cash Position Information**.~~

~~The Applicant relies upon:~~

~~(a)the Cash Position Information in the event that VAH engaged in the Velocity Loan Misclassification; and~~

~~(b) the Alternative Cash Position Information in the event that VAH correctly~~

~~classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash.~~

377 By reason of any one or more of:

(a) the importance of VAH's level of liquidity and the availability of unrestricted cash to VAH's ability to repay the Notes, having regard to any one or more of:

(i) the volatility and competitiveness of the airline sector;

(ii) VAH's recorded history of statutory losses after tax of $185.8 million in FY17, $653.3 million in FY18 and $315.4 million in FY19;

(iii) VAH's credit rating at the time of issuance of the Original Prospectus and the Notes Prospectus was below investment grade, which implied that investments in debt instruments such as debentures issued by such an entity carried a risk of default;

(iv) VAH's operating costs, including projected increases in VAH's maintenance capital costs;

(v) VAH's significant existing indebtedness;

(vi) the increased likelihood of default on repayment of the Notes for an entity with low levels of liquidity; and

(vii) the prospective impact of the COVID-19 pandemic upon the airline sector and VAH's ability to continue to trade from around January or February 2020, including the increased likelihood that VAH would not be able to return to a profitable trading position while the pandemic dissuaded or prevented people from travelling domestically and internationally;

(b) the fact that representatives of VAH in February and March 2020 sought to:

(i) dissuade noteholders from disposing of the Notes; and

(ii) take steps to maintain the strength of the price of the Notes on the ASX,

during the Notes Meetings by making the representations as to its cash position pleaded at paragraph 168 above and failing to disclose some or all of the Withheld Information as pleaded at paragraph 169 above;

(c) the fact that VAH released to the ASX information with respect to its cash reserves in February and March 2020 (as pleaded at paragraph 161 and 163 above); and

(d) the fact that VAH released to the ASX the ratings update reports published by S&P and Fitch in February and March 2020 (as pleaded at paragraphs 162, 164

and 165 above), which disclosed a forecast as to VAH's future prospects on the basis of its available liquidity and cash reserves,

the December 2019 Cash Position Information and the Additional Cash Position Information (individually and together)~~(or, alternatively, the Alternative Cash Position Information)~~ was information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Notes within the meaning of s 677(1) of the Corporations Act.

378 In the premises, for the purposes of ASX Listing Rule 3.1 and s 674(2)(d) of the Corporations Act, a reasonable person would have expected the December 2019 Cash Position Information and the Additional Cash Position Information (individually and together) ~~(or, alternatively, the Alternative Cash Position Information)~~ to have a material effect on the price or value of the Notes and accordingly VAH was required, pursuant to ASX Listing Rule 3.1, to immediately disclose that information to the ASX.

379 [Not used] ~~Further, the Cash Position Information was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:~~

~~(a) VAH's financial reports for the 2019 financial year, the Original Prospectus, the Notes Prospectus, VAH's half-year accounts for the 2020 financial year and VAH's announcements to the ASX did not disclose the Cash Position Information and otherwise disclosed information as to the treatment of cash in the Velocity Group (as restricted, as pleaded at paragraph 9B above) which was inconsistent with the way in which cash potentially available from the Loyalty Trust was actually treated (as unrestricted, as pleaded at paragraph 46B above);~~

~~(a) VAH's announcements to the ASX conveyed that VAH's cash position was substantially higher than was actually the case as reported by the Administrators in the Report to Creditors;~~

~~(a) it was not otherwise possible to observe or ascertain the Cash Position Information outside of the financial information disclosed to the market by VAH referred to at sub-paragraph (a) above; and~~

~~(a) ascertaining VAH's actual unrestricted cash position and access to undrawn facilities required knowledge of information which was not made available to the market, including VAH's monthly management accounts, the terms of VAH's undrawn facilities, and the terms and existence of the Velocity Loan.~~

380 ~~Alternatively,~~Further, the ~~Alternative~~ December 2019 Cash Position Information and the Additional Cash Position Information (individually and together) was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:

(a) VAH's financial reports for the 2019 financial year, the Original Prospectus, the Notes Prospectus, VAH's half-year accounts for the 2020 financial year and VAH's announcements to the ASX did not disclose the Alternative Cash Position Information;

(b) VAH's announcements to the ASX conveyed that VAH's cash position was substantially higher than was actually the case as reported by the Administrators in the Report to Creditors;

(c) it was not otherwise possible to observe or ascertain the Cash Position Information outside of the financial information disclosed to the market by VAH referred to at sub-paragraph (a) above; and

(d) ascertaining VAH's actual unrestricted cash position and access to undrawn facilities required knowledge of information which was not made available to the market, including VAH's monthly management accounts, the terms of VAH's undrawn facilities, and the terms and existence of the Velocity Loan.

PARTICULARS

As to sub-paragraph (b) the Applicant refers to:

i. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) FY19 Results" dated 28 August 2019;*

ii. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) 1H20 Results" dated 26 February 2020;*

iii. *ASX Announcement titled "S&P Global Ratings Outlook Updated" dated 28 February 2020 (VAH.003.002.0117);*

iv. *ASX Announcement titled "Virgin Australia update on COVID-19 Response" dated 13 March 2020;*

v. *ASX Announcement titled "S&P Global Ratings Update" dated 17 March 2020 (VAH.002.011.4416); and*

vi. *ASX Announcement titled "Fitch Ratings Update" dated 27 March 2020 (VAH.003.002.0120).*

381 In the premises, VAH was required pursuant to s 674(2) of the Corporations Act to disclose the December 2019 Cash Position Information and the Additional Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~ to the ASX immediately as and when it became aware of that information.

382 In contravention of VAH's obligation under s 674(2) of the Corporations Act, VAH failed to disclose the December 2019 Cash Position Information and the Additional Cash

Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~ to the ASX immediately as and when it became aware of that information.

D.3. The Viability Information

383 Further, ~~in the period January 2020 to April 2020~~from as early as 4 March 2020, and alternatively by 12 April 2020 at the latest, VAH became aware that it was unlikely to have sufficient cash to continue operations past 30 April 2020 (**Viability Information**).

PARTICULARS

A. VAH's actual awareness may be inferred from:

i. the matters pleaded and particularised in paragraphs 277 and 292 above;

ii. the emails between Courtney Petersen of Velocity, Jonathan Sweeney of VRPL and Keith Neate of VAH dated 2 April 2020 (VAH.002.043.5489);

iii. Daily Cash Forecast slidedeck dated 12 April 2020 (VAH.002.044.5200); ~~and~~

iv. the emails between Warwick Negus, Paul Scurrah and Keith Neate on 10 April 2020 (VAH.002.012.5943); and

v. Cash Reporting Presentation dated 4 March 2020 (VAH.002.017.4557).

C. Alternatively, an officer of VAH ought reasonably to have come into possession of the Viability Information in the course of performing his or her duties as an officer of VAH (within the meaning of ASX Listing Rules, r 19.12) by reason of the matters particularised in paragraph 374 above.

384 By reason of the fact that:

(a) VAH's ability to continue operations had a direct and material bearing upon its ability to repay its debts, including to pay the principal and interest owing with respect to the Notes;

(b) VAH's inability to continue operations would likely necessitate its entry into external administration; and

(c) in an external administration scenario, holders of the Notes faced a material risk of losing all or a substantial part of their investment in the Notes given that VAH was otherwise significantly indebted and the Notes were unsecured,

the Viability Information was information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Notes within the meaning of s 677(1) of the Corporations Act.

385 In the premises, for the purposes of ASX Listing Rule 3.1 and s 674(2)(d) of the Corporations Act, a reasonable person would have expected that the Viability Information would have a material effect on the price or value of the Notes and accordingly VAH was required, pursuant to ASX Listing Rule 3.1, to immediately disclose that information to the ASX as and when it became aware of it.

386 Further, the Viability Information was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:

(a) VAH's financial reports for the 2019 financial year, the Original Prospectus, the Notes Prospectus, VAH's half-year accounts for the 2020 financial year and VAH's announcements to the ASX did not disclose the Viability Information;

(b) VAH's announcements to the ASX conveyed that VAH's financial position was substantially stronger than was otherwise the case; and

(c) the Viability Information was only known to VAH's Board of Directors and/or other personnel of VAH based upon internal financial analysis, projections and data which had not otherwise been made available to the market.

PARTICULARS

As to sub-paragraph (b) the Applicant refers to:

i. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) FY19 Results" dated 28 August 2019;*

ii. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) 1H20 Results" dated 26 February 2020;*

iii. *ASX Announcement titled "S&P Global Ratings Outlook Updated" dated 28 February 2020 (VAH.003.002.0117);*

iv. *ASX Announcement titled "Virgin Australia update on COVID-19 Response" dated 13 March 2020;*

v. *ASX Announcement titled "S&P Global Ratings Update" dated 17 March 2020 (VAH.002.011.4416); and*

vi. *ASX Announcement titled "Fitch Ratings Update" dated 27 March 2020 (VAH.003.002.0120).*

387 In the premises, VAH was required pursuant to s 674(2) of the Corporations Act to

disclose the Viability Information to the ASX immediately upon becoming aware of it.

388 In contravention of VAH's obligation under s 674(2) of the Corporations Act, VAH failed to disclose the Viability Information to the ASX immediately upon becoming aware of it.

D.3A. The Velocity Loan Reliance Information

389 Further, in the period between 12 March 2020 and 25 March 2020, VAH was, or became, aware that:

(a) it~~'~~s ~~actual~~ unrestricted cash balance (~~excluding~~ if the drawn and undrawn balance of the Velocity Loan was excluded):

(i) had fallen below the Board-approved minimum liquidity limit of $350 million;

(ii) had also fallen below $300 million; and

(iii) was projected to be completely eroded by around 21 April 2020;

(b) the Board considered the reduction of VAH's unrestricted cash balance below the minimum liquidity limit of $350 million to be an "extreme risk";

(c) if VAH's unrestricted cash balance fell below $300 million:

(i) a "merchant facility event" would be triggered, requiring payment of $91 million under those facilities;

(ii) a "VAH Free Cash Event" would be triggered, which could trigger an obligation to repay the drawn amount of the Velocity Loan with interest and prevent VAH from accessing the undrawn balance of the Velocity Loan; and

(iii) VAH would, accordingly, have insufficient cash to meet its debt and payment obligations and continue operations;

(d) VAH's deemed unrestricted cash balance only remained above the limits referred to at sub-paragraphs (a)(i) and (a)(ii) above because:

(i) it was a party to the Velocity Loan Agreement, by which VRPL as trustee of the Loyalty Trust gave the VAH Group access to cash on the terms and conditions set out in the Velocity Loan Agreement, the Loyalty Trust Deed, the Loyalty Trust Investment Policy and the Investment Mandate Letter; and

(ii) in accordance with the terms of the Velocity Loan Agreement, the Loyalty Trust Deed, the Loyalty Trust Investment Policy and the Investment Mandate Letter, ~~it treated~~ the drawn and undrawn balance of the Velocity Loan remained available to VAH as unrestricted cash; and

(e) its ability to access the undrawn component of the Velocity Loan, as well as its liability to repay the drawn amount of the Velocity Loan, with interest, was in fact

subject to:

(i) the terms and conditions of the Loyalty Trust, the Loyalty Trust Investment Policy, the Investment Mandate Letter and the Velocity Loan Agreement pleaded in paragraphs 28 and 38 to 42 above; and

(ii) the discretion of VRPL; and

(f) accordingly~~,~~:

(i) VAH's deemed ability to continue operations and its exposure to repayment obligations was entirely reliant upon its access to the Velocity Loan, the terms and conditions of which did not give VAH free and unrestricted access to the undrawn balance~~,~~;

~~(iii)~~(ii) by reason of the conditions, covenants and restrictions which applied to the Velocity Loan, VAH faced a greater risk that it could no longer rely upon its access to the Velocity Loan to continue operations and would be required to repay the drawn balance should its financial performance decline.

(the **Velocity Loan Reliance Information**).

PARTICULARS

A. VAH had actual awareness of the Velocity Loan Reliance Information by reason of:

i. [Not used] ~~*the matters particularised in particular A to paragraph 133 above;*~~

ii. the Cash and Liquidity Reporting slidedeck dated 12 March 2020 (VAH.950.001.0001);

iii. the email from Alex Helbig to Steven Fouracre and Shane Whimp dated 25 March 2020 (VAH.002.001.8265);

iv. the matters pleaded and particularised at paragraphs 176 and 177 above; ~~*and*~~

v. the matters pleaded and particularised at paragraphs 28 to 47 above, which it may be inferred were known by officers of VAH given the importance of the Velocity Loan to VAH's financial position;~~.~~

vi. the emails between Courtney Petersen of Velocity, Jonathan Sweeney of VRPL and Keith Neate of VAH dated 2 April 2020 (VAH.002.043.5489); and

vii. *the emails between Warwick Negus, Paul Scurrah and Keith Neate on 10 April 2020 (VAH.002.012.5943);*

viii. *the email from Shane Whimp to Steven Fouracre dated 20 November 2019 (VAH.002.002.8703);*

ix. *the email from Teresa McAdam to Courtney Petersen dated 5 February 2020 (VAH.002.002.2996);*

x. *the Certificate from VAA to VRPL dated 28 February 2020 (VAH.002.043.6384);*

xi. *the email from Jonathan Sweeney of VRPL to Shane Whimp dated 30 March 2020 (VAH.002.043.5366); and*

xii. *the email from Jonathan Sweeney of VRPL to Keith Neate dated 13 April 2020 (VAH.002.031.0332).*

B. *Further or in the alternative, to the extent that VAH did not have actual awareness of any component of the Velocity Loan Reliance Information, an officer of VAH ought reasonably to have come into possession of the Velocity Loan Reliance Information in the course of performing his or her duties as an officer of VAH (within the meaning of ASX Listing Rules, r 19.12) by reason of:*

i. *the matters particularised in particular B to paragraph 374 above; ~~and particular B to paragraph 133 above.~~*

ii. *the Board's awareness of the importance of the Velocity Loan to VAH's liquidity position, which would have necessitated knowledge and understanding of the terms of the Velocity Loan Agreement, the Loyalty Trust, the Loyalty Trust Investment Policy and the Investment Mandate Letter; and*

iii. *the emergence and impact of COVID-19 upon VAH's operations, which ought to have warranted greater consideration and monitoring of VAH's financial position, including its cash balance.*

390 By reason of the fact that:

(a) VAH's unrestricted cash position from its own operations and not by reason of its access to loan facilities had a direct and material bearing upon its ability to repay its debts and to avoid entering into external administration;

(b) VAH had classified certain cash as unrestricted when it was subject to a number of terms and conditions which may have compromised, limited or restricted VAH's ability to access and use freely a substantial amount of its unrestricted cash, which would have a material bearing upon the likelihood that such cash would be available to repay VAH's debts, including principal and interest owing with respect to the Notes;

(c) VAH had otherwise disclosed its unrestricted cash balance without disclosing the potential limitations upon its ability to access or use some or all of that cash or disclosing that a significant portion of its unrestricted cash position was attributable to loan facilities; and

(d) the terms and conditions referred to in sub-paragraph (b) above were more likely to impede VAH's ability to retain funds drawn down from the Velocity Loan, restrict its access to the undrawn balance of the Velocity Loan and expose it to an obligation to repay the drawn balance of the Velocity Loan with interest having regard to VAH's financial performance as at March 2020 (including as pleaded at paragraphs 175 to 177 above);

(e) in an external administration scenario, holders of the Notes faced a material risk of losing all or a substantial part of their investment in the Notes given that VAH was otherwise significantly indebted and the Notes were unsecured,

the Velocity Loan Reliance Information was information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Notes within the meaning of s 677(1) of the Corporations Act.

391 In the premises, for the purposes of ASX Listing Rule 3.1 and s 674(2)(d) of the Corporations Act, a reasonable person would have expected that the Velocity Loan Reliance Information would have a material effect on the price or value of the Notes and accordingly VAH was required, pursuant to ASX Listing Rule 3.1, to immediately disclose that information to the ASX.

392 Further, the Velocity Loan Reliance Information was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:

(a) VAH's financial reports for the 2019 financial year, the Original Prospectus, the Notes Prospectus, VAH's half-year accounts for the 2020 financial year and VAH's announcements to the ASX did not disclose the Velocity Loan Reliance Information;

(b) VAH's announcements to the ASX conveyed that VAH's unrestricted cash balance was substantially stronger than was otherwise the case;

(c) the Velocity Loan Reliance Information was only known to VAH's Board of Directors and/or other personnel of VAH based upon internal financial analysis, projections and data which had not otherwise been made available to the market; and

(d) the Velocity Loan Reliance Information could not otherwise be derived from publicly-available information due to:

(i) the non-disclosure by VAH of the existence of the Velocity Loan Agreement, its terms, and the terms and covenants of its merchant and loan facilities; and

(i) VAH's disclosure in its Annual Report for FY19 of the matters pleaded in paragraph 52 above.

PARTICULARS

As to sub-paragraph (b) the Applicant refers to:

i. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) FY19 Results" dated 28 August 2019;*

ii. *ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) 1H20 Results" dated 26 February 2020;*

iii. *ASX Announcement titled "S&P Global Ratings Outlook Updated" dated 28 February 2020 (VAH.003.002.0117);*

iv. *ASX Announcement titled "Virgin Australia update on COVID-19 Response" dated 13 March 2020;*

v. *ASX Announcement titled "S&P Global Ratings Update" dated 17 March 2020 (VAH.002.011.4416); and*

vi. *ASX Announcement titled "Fitch Ratings Update" dated 27 March 2020 (VAH.003.002.0120).*

393 In the premises, VAH was required pursuant to s 674(2) of the Corporations Act to disclose the Velocity Loan Reliance Information to the ASX immediately upon becoming aware of it.

394 In contravention of VAH's obligation under s 674(2) of the Corporations Act, VAH failed to disclose the Velocity Loan Reliance Information to the ASX immediately upon becoming aware of it.

D.3B. The Velocity Acquisition Rationale Information

395 [Not used] ~~In the event that VAH correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, the Applicant pleads the matters at paragraphs 144H to 144M below.~~

396 On and from at least ~~26 November~~24 October 2019, VAH was aware that a significant and/or material factor justifying to VAH the Velocity Acquisition was to avoid the negative consequences of the proposed IPO of Affinity's stake in Velocity Holdco for VAH's consolidated financial position, which consequences included, on VAH's assessment:

(a) the deconsolidation of cash held in the Loyalty Trust from VAH's own cash balance, for financial reporting purposes; and

(b) the loss of the Velocity Loan, which would result in:

(i) the conversion of the undrawn and drawn balance of the Velocity Loan from unrestricted cash to restricted cash in VAH's accounts;

(ii) a requirement for VAH to repay the total amount of cash drawn under the Velocity Loan, which would necessitate refinancing; and

(iii) in turn, ratings pressure and an additional funding burden on the VAH Group to maintain appropriate liquidity levels,

(together, the **Velocity Acquisition Rationale Information**).

PARTICULARS

The actual awareness of VAH may be inferred from:

A. VAH Board Paper for Information entitled "Project Vector/Ray" dated 18 July 2019 at pgs 1 and 4-6 (VAH.950.001.0023);

B. VAH Board Paper for Information - Project Vector / Ray Update and Overview of NBIO dated 27 August 2019 (VAH.002.024.5472);

C. Email chain between Ms Bryan, Mr Scurrah, Ken Dean and Trevor Bourne dated 2 September 2019 (BRY.002.001.3551); and

D. the matters pleaded and particularised at paragraphs 64 to 99 and 101 above.

397 By reason of the matters pleaded at paragraphs 210 to 213 and 218 to 221 above, the Velocity Acquisition Rationale Information was information which would, or would be

likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Notes within the meaning of s 677(1) of the Corporations Act.

398 In the premises, for the purposes of ASX Listing Rule 3.1 and s 674(2)(d) of the Corporations Act, a reasonable person would have expected that the Velocity Acquisition Rationale Information would have a material effect on the price or value of the Notes and accordingly VAH was required, pursuant to ASX Listing Rule 3.1, to immediately disclose that information to the ASX.

399 Further, the Velocity Acquisition Rationale Information was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:

(a) VAH's announcements to the market, and information otherwise disclosed by the Original Prospectus and Notes Prospectus, conveyed the Velocity Acquisition Rationale Representations, which omitted the Velocity Acquisition Rationale Information;

(b) the Velocity Acquisition Rationale Information was only known to VAH's Board of Directors and/or other personnel of VAH who had been privy to discussions and deliberations with respect to the strategic and financial importance of the Velocity Acquisition, which had not otherwise been made available to the market; and

(c) the Velocity Loan, its terms, and the conditions upon VAH's ability to access and use funds drawn down from the Velocity Loan, had not been disclosed in VAH's financial accounts or announcements to the market, and accordingly the significance of the Velocity Acquisition to VAH's ongoing ability to rely upon the Velocity Loan could not have been deduced, derived or ascertained from publicly-available information.

PARTICULARS

As to sub-paragraph (a) the Applicant refers to:

i. ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) launches ASX-listed Virgin Australia Notes Offer" dated 28 October 2019; and

ii. ASX Announcement titled "2019 Annual General Meeting Address by CEO and Managing Director, Paul Scurrah" dated 6 November 2019.

400 In the premises, VAH was required pursuant to s 674(2) of the Corporations Act to disclose the Velocity Acquisition Rationale Information to the ASX immediately upon becoming aware of it.

401 In contravention of VAH's obligation under s 674(2) of the Corporations Act, VAH failed to disclose the Velocity Acquisition Rationale Information to the ASX immediately upon becoming aware of it.

D.3C. The Withheld Information

402 On and from at least 24 October 2019, VAH was aware of the Withheld Information.

PARTICULARS

A. The Applicant refers to and repeats paragraphs 35, 44, 49, 102, 103, 112, and 222 above.

B. Further particulars may be provided with the Applicant's tender bundle.

403 By reason of the matters pleaded at paragraphs 218 to 221 above, the Withheld Information was information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the Notes within the meaning of s 677(1) of the Corporations Act.

404 In the premises, for the purposes of ASX Listing Rule 3.1 and s 674(2)(d) of the Corporations Act, a reasonable person would have expected that the Withheld Information would have a material effect on the price or value of the Notes and accordingly VAH was required, pursuant to ASX Listing Rule 3.1, to immediately disclose that information to the ASX.

405 Further, the Withheld Information was not generally available, within the meaning of ss 674(2)(c) and 676 of the Corporations Act, because:

(a) VAH's announcements to the market, the Original Prospectus and Notes Prospectus omitted the Withheld Information;

(b) the Withheld Information was only known to VAH's Board of Directors and/or other personnel of VAH based upon internal financial analysis, projections and data or who had been privy to discussions and deliberations with respect to the strategic and financial importance of the Velocity Acquisition, none of which had otherwise been made available to the market;

(c) the Velocity Loan, its terms, and the conditions upon VAH's ability to access and use funds drawn down from the Velocity Loan, had not been disclosed in VAH's financial accounts or announcements to the market, and accordingly the significance of the Velocity Acquisition to VAH's ongoing ability to rely upon the Velocity Loan could not have been deduced, derived or ascertained from publicly-

available information;

(d) the Velocity Loan Reliance Information could not otherwise be derived from publicly-available information due to:

(i) the non-disclosure by VAH of the existence of the Velocity Loan Agreement, its terms, and the terms and covenants of its merchant and loan facilities; and

(i) VAH's disclosure in its Annual Report for FY19 of the matters pleaded in paragraph 52 above.

PARTICULARS

As to sub-paragraph (a) the Applicant refers to:

i. ASX Announcement titled "Virgin Australia Holdings Limited (ASX: VAH) launches ASX-listed Virgin Australia Notes Offer" dated 28 October 2019;

ii. ASX Announcement titled "2019 Annual General Meeting Address by CEO and Managing Director, Paul Scurrah" dated 6 November 2019.~~;~~

406 In the premises, VAH was required pursuant to s 674(2) of the Corporations Act to disclose the Withheld Information to the ASX immediately upon becoming aware of it.

407 In contravention of VAH's obligation under s 674(2) of the Corporations Act, VAH failed to disclose the Withheld Information to the ASX immediately upon becoming aware of it.

D.4. Loss or damage

408 By reason of VAH's contravention of s 674(2) with respect to non-disclosure of the December 2019 Cash Position Information, the Additional Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~, the Viability Information, the Velocity Loan Reliance Information, ~~and/or~~ the Velocity Acquisition Rationale Information and/or the Withheld Information, VAH contravened a financial services civil penalty provision as defined in s 1317E(3) of the Corporations Act.

409 Had VAH disclosed the December 2019 Cash Position Information, the Additional Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information when it became aware of that information, MPG and Group Members would:

(a) not have acquired any, or any more, Notes being traded on the open market after

the date of issue of the Notes; and/or

(b) at the time of disclosure of the December 2019 Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~, the Additional Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information, or shortly thereafter, have disposed of their existing holding of Notes.

410 Had either of the steps pleaded at paragraph 409(a) and (b) above been taken by MPG and Group Members, MPG and Group Members (excluding Pre-Administration Disposing Group Members):

(a) would not have held any Notes at the time that VAH entered into voluntary administration;

(b) would not have been unsecured creditors of VAH for the purpose of the Bain DOCAs; and

(c) would not have been limited to recovering the dividend payable under the Bain DOCAs as pleaded at paragraph 196 above,

~~(or~~and~~, in the case of~~ Post-Administration Disposing Group Members ~~,~~ would not have been limited to recovering the sums they received upon disposal following VAH's entry into voluntary administration~~)~~.

411 Further, had either of the steps pleaded at paragraph 409(a) and (b) above been taken by Pre-Administration Disposing Group Members who had acquired the Notes at the time, or after, VAH became aware of the December 2019 Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~, the Additional Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information, those Pre-Administration Disposing Group Members would not have lost the difference between the price paid to acquire the Notes and the price at which the Notes were disposed.

412 In the premises, MPG and Group Members have suffered damage from VAH's contravention of s 674(2) of the Corporations Act.

PARTICULARS

A. *MPG's damage comprises:*

i. *with respect to the Notes acquired on the issuance date, the difference between the issue price paid by MPG at the date*

of issuance of the Notes and the dividend to which MPG is entitled for each Note under the Bain DOCAs; and

ii. *with respect to the Notes acquired after the issuance date on the open market, the difference between the price prevailing on the ASX at which the Notes were acquired and the dividend to which MPG is entitled for each Note under the Bain DOCAs.*

B. *For Group Members (excluding Pre-Administration Disposing Group Members and Post-Administration Disposing Group Members) who acquired Notes at the date of issue and on the open market, those Group Members' loss comprises the loss particularised at paragraphs* A(i) *and* (ii) *above.*

C. *For Group Members (excluding Pre-Administration Disposing Group Members and Post-Administration Disposing Group Members) who only acquired Notes on the open market, those Group Members' loss comprises the loss particularised at paragraph* A(ii) *above.*

D. *For:*

i. *Post-Administration Disposing Group Members who acquired Notes at the date of issue and/or on the open market; and*

ii. *Pre-Administration Disposing Group Members who acquired Notes at the date of issue or on the open market,*

those Group Members' loss comprises the difference between the price at which the Notes were acquired and the price at which the Notes were disposed.

E. *Further particulars of the Applicant's loss may be provided with its lay and expert evidence.*

F. *Further particulars of Group Members' loss may be provided following the trial of common questions or otherwise as the Court may direct.*

413 VAH is accordingly liable, pursuant to s 1317HA(1), to compensate MPG and Group Members for the damage that resulted from its contravention of s 674(2) of the Corporations Act.

Involvement of the Second and Third Respondents

414 At the time that VAH became aware of the December 2019 Cash Position Information ~~(or, alternatively, the Alternative Cash Position Information)~~, the Additional Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information, the Second and Third Respondents had engaged in the conduct pleaded at paragraphs 315 and 340 above.

415 [Not used] ~~At the time that VAH became aware of the Cash Position Information, the Viability Information and/or the Velocity Loan Reliance Information, the Second and Third Respondents were aware that:~~

~~(a) the Notes were ED Securities within the meaning of ss 111AD(1) and 111AE(1) of the Corporations Act and quoted ED Securities within the meaning of s 111AM;~~

~~(a) VAH was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;~~

~~(a) VAH was required to comply with ASX Listing Rule 3.1 and s 674(2) of the Corporations Act;~~

~~(a) a reasonable person would have expected the Cash Position Information, the Viability Information and/or the Velocity Loan Reliance Information and/or the Velocity Acquisition Rationale Information to have a material effect on the price or value of the Notes;~~

~~(a) the Cash Position Information, the Viability Information and/or the Velocity Loan Reliance Information was not generally available;~~

~~(a) by reason of the matters pleaded in sub-paragraphs (a) to (e) above, VAH was required to disclose the Cash Position Information, the Viability Information and/or the Velocity Loan Reliance Information to the ASX; and~~

~~(a) VAH failed to disclose the Cash Position Information, the Viability Information and/or the Velocity Loan Reliance Information to the ASX.~~

~~***PARTICULARS***~~

~~A. *The actual knowledge of the Second and Third Respondents may be inferred from the matters pleaded and particularised in paragraphs 86, 114, 116 above.*~~

~~A. *Further particulars may be provided with the Applicant's tender bundle.*~~

416 ~~In the alternative to the matters pleaded in paragraph 151 above, in the event that VAH~~

~~correctly classified the drawn and undrawn balance of the Velocity Loan as unrestricted cash, then a~~At the time that VAH became aware of the ~~Alternative~~ December 2019 Cash Position Information, the Additional Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information, the Second and Third Respondents were aware that:

(a) the Notes were ED Securities within the meaning of ss 111AD(1) and 111AE(1) of the Corporations Act and quoted ED Securities within the meaning of s 111AM;

(b) VAH was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(c) VAH was required to comply with ASX Listing Rule 3.1 and s 674(2) of the Corporations Act;

(d) a reasonable person would have expected the ~~Alternative~~ December 2019 Cash Position Information, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information to have a material effect on the price or value of the Notes;

(e) the ~~Alternative~~ December 2019 Cash Position Information, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information was not generally available;

(f) by reason of the matters pleaded in sub-paragraphs (a) to (e) above, VAH was required to disclose the ~~Alternative~~ December 2019 Cash Position Information, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information to the ASX; and

(g) VAH failed to disclose the ~~Alternative~~ December 2019 Cash Position Information, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information to the ASX.

PARTICULARS

A. *The actual knowledge of the Second and Third Respondents may be inferred from the matters pleaded and particularised in paragraphs 222, 316 and 321 above.*

B. *Further particulars may be provided with the Applicant's tender*

bundle.

~~*The Applicant refers to and repeats the particulars to paragraph 151 above.*~~

417 By reason of the matters pleaded at paragraphs 414 and 416 ~~or, alternatively, 150A and 0~~ above, each of the Second and Third Respondents

(a) aided, abetted, counselled or procured; or

(b) was directly or indirectly knowingly concerned in, or party to,

VAH's contraventions of s 674(2) of the Corporations Act and were accordingly "involved" in VAH's contravention within the meaning of s 674(2A) of the Corporations Act.

418 In the premises, the Second and Third Respondents are liable to compensate MPG and the Group Members for the damage that resulted from those contraventions pursuant to s 1317HA(1) of the Corporations Act.

PARTICULARS

As to MPG's and Group Members' damage, the Applicant refers to and repeats paragraph 412 above.

Involvement of VRPL

419 At the time that VAH became aware of the December 2019 Cash Position Information, the Alternative Cash Position Information, ~~or, alternatively,~~ the Viability Information, the Velocity Loan Reliance Information, the Velocity Acquisition Rationale Information and/or the Withheld Information, VRPL had engaged in the conduct pleaded at paragraph 323 above.

420 At the time that VAH became aware of the December 2019 Cash Position Information, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information ~~or, alternatively, the Alternative Cash Position Information and/or~~, the Velocity Acquisition Rationale Information and/or the Withheld Information, VRPL was aware that:

(a) the Notes were ED Securities within the meaning of ss 111AD(1) and 111AE(1) of the Corporations Act and quoted ED Securities within the meaning of s 111AM;

(b) VAH was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(c) VAH was required to comply with ASX Listing Rule 3.1 and s 674(2) of the Corporations Act;

(d) a reasonable person would have expected the December 2019 Cash Position

Information ~~or, alternatively, the Alternative Cash Position Information and/or~~, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information, the Velocity Acquisition Rationale Information and/or the Withheld Information to have a material effect on the price or value of the Notes;

(e) the December 2019 Cash Position Information ~~or, alternatively, the Alternative Cash Position Information and/or~~, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information, the Velocity Acquisition Rationale Information and/or the Withheld Information was not generally available;

(f) by reason of the matters pleaded in sub-paragraphs (a) to (e) above, VAH was required to disclose the December 2019 Cash Position Information ~~or, alternatively, the Alternative Cash Position Information and/or~~, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information, the Velocity Acquisition Rationale Information and/or the Withheld Information to the ASX; and

(g) VAH had not disclosed the December 2019 Cash Position Information ~~or, alternatively, the Alternative Cash Position Information and/or~~, the Alternative Cash Position Information, the Viability Information, the Velocity Loan Reliance Information, the Velocity Acquisition Rationale Information and/or the Withheld Information to the ASX.

PARTICULARS

A. *The Applicant refers to and repeats the particulars to paragraph~~s~~ 238 ~~and 89N~~ above.*

B. *Further, VRPL's knowledge of the matters pleaded in sub-paragraphs (a) to (c) above may be inferred from the fact Ms Page was company secretary for both VAH and VRPL and accordingly must have understood, and carried out roles and functions for VAH on the basis that VAH was a listed disclosing entity which had obligations to disclose market sensitive information to the ASX under the ASX Listing Rules and Corporations Act.*

C. *Further particulars may be provided ~~following further or better discovery~~with the Applicant's tender bundle.*

421 By reason of the matters pleaded at paragraphs 419 and 420 above, VRPL:

(a) aided, abetted, counselled or procured; or

(b) was directly or indirectly knowingly concerned in, or party to,

VAH's contravention of s 674(2) of the Corporations Act and was accordingly "involved" in that contravention for the purpose of s 674(2A) of the Corporations Act.

422 In the premises, VRPL is liable to compensate MPG and the Group Members for the damage that resulted from that contravention pursuant to s 1317HA(1) of the Corporations Act.

PARTICULARS

As to MPG's and Group Members' damage, the Applicant refers to and repeats paragraph 412 above.

E. RELEASE OF CLAIMS UNDER PRIMARY DOCA OTHER THAN INSURED CLAIMS

423 The Primary DOCA relevantly provides that:

(a) subject to clause 8 of the Primary DOCA in relation to Insured Claims, a Creditor may not, in relation to that Creditor's Claim:

(i) institute any action, suit or proceeding against VAH;

(ii) take any action whatsoever to seek to recover any part of its Claim;

except and to the extent of that Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed;

PARTICULARS

Primary DOCA, cl 6.3

(b) if insurance is held by or on behalf of VAH in respect of an Insured Claim then:

(i) the Creditor may, in relation to its Insured Claim and notwithstanding that Completion has occurred, take action to recover the amount due in respect of the Claim against VAH, but such action must not exceed what is necessary to obtain payment from the insurer;

(ii) to the extent that the Creditor is able, by settlement, arbitral award or judgment, to obtain payment from the insurer on account of the Claim, the Creditor may retain that amount in full satisfaction of its right to receive a distribution from the Trust Fund in respect of that Claim;

(iii) VAH is not required to provide assistance to a Creditor in relation to a Claim under this clause or take any action in response to enforcement action taken by a Creditor in accordance with cl 8.1; and

(iv) where a Creditor intends to take enforcement action in relation to a Claim under this clause the Creditor must, if requested by VAH, provide VAH with

an indemnity in the form of Schedule 5; and

PARTICULARS

Primary DOCA, cl 8.1

(c) to the extent that the Creditor is unable to seek or obtain payment on account of its Insured Claim from the insurer (including by reason of any excess or deductible applicable to the insurance policy), the Primary DOCA operates as a complete release and bar to that part of the Creditor's Claim which has not been met by the insurer.

PARTICULARS

Primary DOCA, cl 8.2

424 The Primary DOCA defined "Insured Claim" as a claim which a Creditor has against VAH where:

(a) VAH is insured against that Claim under a contract of insurance entered into before 20 April 2020; and

(b) an amount in respect of that Claim would be payable by the insurer to VAH under the contract of insurance,

but only to the extent of such part of the Claim as would be discharged by the payment from the insurer.

PARTICULARS

Primary DOCA, cl 1.1

425 In the premises of paragraphs 423 and 424 above, the entitlement to recover loss and damage from VAH pursuant to:

(a) s 729(1) of the Corporations Act (as alleged in paragraph 366(b)(i) above);

(b) s 1041I(1) of the Corporations Act (as alleged in paragraph 368(e)(i) above); and/or

(c) s 1317HA(1) of the Corporations Act (as alleged in paragraph 413 above),

only arises to the extent that the claim which caused that loss and damage is an Insured Claim.

426 By reason of the matters pleaded in Section F below, the claims against VAH in Sections C and D above are Insured Claims within the meaning of the Primary DOCA.

F. THE INSURANCE POLICIES

F.1. The Primary Policy

427 On or about 18 November 2019, Liberty issued the Primary Policy in which:

(a) VAH was identified as the "named insured"; and

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Policy Period"; and

(c) Liberty was the insurer.

PARTICULARS

Primary Policy, Schedule.

428 VAH, is an "Insured" under the Primary Policy.

PARTICULARS

A. "Insured" is defined at cl 7.15 of the Primary Policy to mean any Insured Person and/or the Company.

B. "Company" is defined at cl 7.4 of the Primary Policy to mean the Named Insured specified in the Schedule, being VAH, and its Subsidiaries prior to or at the commencement of the Policy Period.

429 The Primary Policy relevantly defined:

(a) "Claim" to mean any:

(i) written demand or civil proceeding for a Wrongful Act;

(ii) criminal proceeding for a Wrongful Act;

(iii) administrative or regulatory proceeding for a Wrongful Act; or

(iv) Extradition Proceeding,

first made or brought against an Insured Person and reported to Liberty during the Policy Period or any applicable Extended Reporting Period, and included a Securities Claim;

PARTICULARS

Primary Policy, cl 7.2.

(b) "Disclosure Document" to mean any prospectus, information memorandum, registration statement or similar document whether or not it has been or is required to be filed or registered with a local or foreign stock exchange or any administrative or regulatory authority exercising control over the affairs of the

Company;

PARTICULARS

Primary Policy, cl 7.7.

(c) "Loss" to mean any amount an Insured Person (or the Company in respect of Optional Extension 3.1 "Company Securities Liability") is legally liable to pay, including:

(i) damages or claimant's costs or both pursuant to an award or judgment;

(ii) settlements negotiated by Liberty and consented to by the Insured;

(iii) settlements negotiated by the Insured but only with the prior written consent of Liberty; and

(iv) Defence Costs;

PARTICULARS

Primary Policy, cl 7.19.

(d) "Securities Claim" to mean any:

(i) written demand or civil proceeding brought either directly or derivatively by any holder of Securities (other than an Insured Person) in the holder's capacity as an investor in the Company;

(ii) criminal proceeding; or

(iii) administrative or regulatory proceeding,

in relation to the Company's Securities first made or brought against the Company and reported to Liberty during the Policy Period (or any applicable Extended Reporting Period) for a Wrongful Act;

PARTICULARS

Primary Policy, cl 7.28.

(e) "Securities" to mean any security representing an equity interest in or debt of the Company; and

PARTICULARS

Primary Policy, cl 7.27.

(f) "Wrongful Act" to mean any:

(i) act, error or omission including breach of duty, breach of trust, neglect, misstatement, misleading statement, misrepresentation or breach of

warranty of authority committed or allegedly committed by an Insured Person in his or her capacity as a Director, Officer or Employee; or

(ii) matter claimed against an Insured Person solely because of his or her status as a Director, Officer or Employee,

and, for the purposes of a Securities Claim against the Company, any act, error or omission including breach of duty, breach of trust, neglect, misstatement, misleading statement, misrepresentation or breach of warranty of authority committed or allegedly committed by the Company in connection with the ownership, purchase or sale of, or the offer to purchase or sell, Securities whether such purchase, sale or offer involves a transaction with the Company or occurs in the open market.

PARTICULARS

Primary Policy, cl 7.32.

430 Pursuant to the Primary Policy, Liberty agreed to pay to or on behalf of VAH the Loss which VAH is legally liable to pay as a result of a Securities Claim.

PARTICULARS

Primary Policy, cl 3.1.

431 VAH has committed a "Wrongful Act" within the meaning of the Primary Policy.

PARTICULARS

The Applicant refers to and repeats Sections C and D above.

432 During the Policy Period or any applicable Extended Reporting Period, Liberty was notified of circumstances that could give rise to a Claim and/or a Securities Claim against VAH under the Primary Policy.

PARTICULARS

"Notification of Potential Claims" letter to Liberty dated 29 October 2020.

433 In the premises, Liberty is required under the Primary Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' Claims and/or Securities Claims against it.

F.2. The First Excess Policy

434 On or about 3 December 2019, HDI Global issued the First Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) HDI Global was the Insurer.

PARTICULARS

First Excess Policy, Schedule, Items 1-3.

435 VAH is an "Insured Person" under the First Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in the Schedule to the First Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

436 The First Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

First Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, or any policy replacing the Primary Policy;

PARTICULARS

First Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

First Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty; and

PARTICULARS

First Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $10 million in the aggregate for all Loss during the period of insurance.

PARTICULARS

First Excess Policy, Definitions and Schedule, Item 7.

437 Pursuant to the First Excess Policy, HDI Global agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the First Excess Policy) as are contained in or as may be added to the Primary Policy, provided that HDI Global shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the First Excess Policy.

PARTICULARS

First Excess Policy, cl 1.

438 The Applicant repeats paragraph 431 above.

439 During the Period of Insurance, HDI Global was notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the First Excess Policy.

PARTICULARS

This may be inferred from HDI Global's confirmation of indemnity as communicated in the letter from HDI Global's solicitors Gilchrist Connell to Gilbert + Tobin dated 11 November 2022, which does not reject VAH's claim for indemnity on the basis that no such notification was given.

440 In the premises, HDI Global is required under the First Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.3. The Second Excess Policy

441 In or around November or December 2019, Beazley, Endurance and ACT Lloyd's Syndicate issued the Second Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Beazley, Endurance and ACT Lloyd's Syndicate were the Insurer.

PARTICULARS

Second Excess Policy, Schedule, Items 1-3.

442 VAH is an "Insured Person" under the Second Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Second Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

443 The Second Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Second Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy and the First Excess Policy, or any policy replacing the Primary Policy and/or the First Excess Policy;

PARTICULARS

Second Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Second Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty and HDI Global; and

PARTICULARS

Second Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $20 million in respect of Loss arising from any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Second Excess Policy, Definitions and Schedule, Item 7.

444 Pursuant to the Second Excess Policy, Beazley, Endurance and ACT Lloyd's Syndicate agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of

Liability, the premium, or as specifically provided for in the Second Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Beazley, Endurance and ACT Lloyd's Syndicate shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Second Excess Policy.

PARTICULARS

Second Excess Policy, cl 1.

445 The Applicant repeats paragraph 431 above.

446 During the Period of Insurance, Beazley, Endurance and ACT Lloyd's Syndicate were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Second Excess Policy.

PARTICULARS

This may be inferred from:

(a) Beazley and ACT Lloyd's Syndicate's confirmation of indemnity communicated in a letter from their solicitors Clyde & Co to Gilbert + Tobin dated 22 November 2022, which refers to a notification made by VAH on 29 October 2020; and

(b) Endurance's confirmation of indemnity communicated in a letter from its solicitors Clyde & Co to Gilbert + Tobin dated 7 December 2022, which refers to a notification made by VAH on 29 October 2020.

447 In the premises, Beazley, Endurance and ACT Lloyd's Syndicate are required under the Second Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.4. The Third Excess Policy

448 In or around November or December 2019, Hiscox and ACT Lloyd's Syndicate issued the Third Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were

identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Hiscox and ACT Lloyd's Syndicate were the Insurer.

PARTICULARS

Third Excess Policy, Schedule, Items 1, 3 and 5.

449 VAH is an "Insured Person" under the Third Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Third Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

450 The Third Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Third Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, the First Excess Policy and the Second Excess Policy, or any policy replacing the Primary Policy, the First Excess Policy and/or the Second Excess Policy;

PARTICULARS

Third Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Third Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global and Beazley, being the Lead Underlying Insurers identified in Item 8 to the Schedule; and

PARTICULARS

Third Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $40 million in respect of Loss arising from

any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Third Excess Policy, Definitions and Schedule, Item 7.

451 Pursuant to the Third Excess Policy, Hiscox and ACT Lloyd's Syndicate agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Third Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Hiscox and ACT Lloyd's Syndicate shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Third Excess Policy.

PARTICULARS

Third Excess Policy, cl 1.

452 The Applicant repeats paragraph 431 above.

453 During the Period of Insurance, Hiscox and ACT Lloyd's Syndicate were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Third Excess Policy.

PARTICULARS

This may be inferred from:

(a) Hiscox's confirmation of indemnity in a letter from its solicitors Kennedys to Gilbert + Tobin dated 13 December 2022, which refers to a notification made by VAH on 29 October 2020; and

(b) ACT Lloyd's Syndicate's confirmation of indemnity in a letter from its solicitors Clyde & Co to Gilbert + Tobin dated 13 April 2023, which confirms that ACT Lloyd's Syndicate is bound by Hiscox's coverage position contained in Kennedys' letter referred to in the preceding paragraph.

454 In the premises, Hiscox and ACT Lloyd's Syndicate are required under the Third Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.5. The Fourth Excess Policy

455 In or around November or December 2019, Everest and CV Starr issued the Fourth Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Everest and CV Starr were the Insurer.

PARTICULARS

Fourth Excess Policy, Schedule, Items 1, 3 and 5.

456 VAH is an "Insured Person" under the Fourth Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Fourth Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

457 The Fourth Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Fourth Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, First Excess Policy, the Second Excess Policy and the Third Excess Policy or any policy replacing the Primary Policy, First Excess Policy, the Second Excess Policy and/or the Third Excess Policy;

PARTICULARS

Fourth Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Fourth Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global, Beazley and Hiscox, being the Lead Underlying Insurers identified in Item 8 of the Schedule; and

PARTICULARS

Fourth Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $52.5 million in respect of Loss arising from any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Fourth Excess Policy, Definitions and Schedule, Item 7.

458 Pursuant to the Fourth Excess Policy, Everest and CV Starr agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Fourth Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Everest and CV Starr shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Fourth Excess Policy.

PARTICULARS

Fourth Excess Policy, cl 1.

459 The Applicant repeats paragraph 431 above.

460 During the Period of Insurance, Everest and CV Starr were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Fourth Excess Policy.

PARTICULARS

This may be inferred from:

(a) Everest's confirmation of indemnity communicated by a letter from their solicitors Clyde & Co to Gilbert + Tobin dated 4 April 2023, which refers to a notification made by VAH on 29 October 2020; and

(b) CV Starr's confirmation of indemnity communicated by a letter from its solicitors Colin Biggers & Paisley to Gilbert + Tobin dated

21 April 2023, which does not reject VAH's claim for indemnity on the basis that no such notification was given.

461 In the premises, Everest and CV Starr are required under the Fourth Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.6. The Fifth Excess Policy

462 In or around November or December 2019, HCC, Aspen and ACT Lloyd's Syndicate issued the Fifth Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) HCC, Aspen and ACT Lloyd's Syndicate were the Insurer.

PARTICULARS

Fifth Excess Policy, Schedule, Items 1, 3 and 5.

463 VAH is an "Insured Person" under the Fifth Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Fifth Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

464 The Fifth Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Fifth Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy and Fourth Excess Policy or any policy replacing the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy and/or Fourth Excess Policy;

PARTICULARS

Fifth Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Fifth Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global, Beazley, Hiscox and Everest, being the Lead Underlying Insurers identified in Item 8 of the Schedule; and

PARTICULARS

Fifth Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $60 million in respect of Loss arising from any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Fifth Excess Policy, Definitions and Schedule, Item 7.

465 Pursuant to the Fifth Excess Policy, HCC, Aspen and ACT Lloyd's Syndicate agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Fifth Excess Policy) as are contained in or as may be added to the Primary Policy, provided that HCC, Aspen and ACT Lloyd's Syndicate shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Fifth Excess Policy.

PARTICULARS

Fifth Excess Policy, cl 1.

466 The Applicant repeats paragraph 431 above.

467 During the Period of Insurance, HCC, Aspen and ACT Lloyd's Syndicate were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Fifth Excess Policy.

PARTICULARS

This may be inferred from:

(a) HCC's and Aspen's confirmation of indemnity communicated in a letter from their solicitors YPOL Lawyers to Gilbert + Tobin dated 2 March 2023, which does not reject VAH's claim for indemnity on the basis that no such notification was given;

(b) ACT Lloyd's Syndicate's confirmation of indemnity communicated in a letter from its solicitors YPOL Lawyers to Gilbert + Tobin dated 31 March 2023, which confirms that ACT Lloyd's Syndicate is bound by HCC and Aspen's coverage position contained in YPOL Lawyers' letter referred to in the preceding paragraph.

468 In the premises, HCC, Aspen and ACT Lloyd's Syndicate are required under the Fifth Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.7. The Sixth Excess Policy

469 In or around November or December 2019, Assicurazioni and Aviva issued the Sixth Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Assicurazioni and Aviva were the Insurer.

PARTICULARS

Sixth Excess Policy, Schedule, Items 1, 3 and 5.

470 VAH is an "Insured Person" under the Sixth Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Sixth Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

471 The Sixth Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in

excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Sixth Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy and Fifth Excess Policy or any policy replacing the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy and/or Fifth Excess Policy;

PARTICULARS

Sixth Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Sixth Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global, Beazley, Hiscox, Everest and HCC, being the Lead Underlying Insurers identified in Item 8 of the Schedule; and

PARTICULARS

Sixth Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $70 million in respect of Loss arising from any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Sixth Excess Policy, Definitions and Schedule, Item 7.

472 Pursuant to the Sixth Excess Policy, Assicurazioni and Aviva agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Sixth Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Assicurazioni and Aviva shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss

unless otherwise specified in terms and conditions of the Sixth Excess Policy.

PARTICULARS

Sixth Excess Policy, cl 1.

473 The Applicant repeats paragraph 431 above.

474 During the Period of Insurance, Assicurazioni and Aviva were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Sixth Excess Policy.

PARTICULARS

This may be inferred from Assicurazioni's and Aviva's confirmation of indemnity communicated by a letter from its solicitors Colin Biggers & Paisley to Gilbert + Tobin dated 21 April 2023, which does not reject VAH's claim for indemnity on the basis that no such notification was given.

475 In the premises, Assicurazioni and Aviva are required under the Sixth Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.8. The Seventh Excess Policy

476 On or about 12 December 2019, Berkshire Hathaway issued the Seventh Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Berkshire Hathaway was the Insurer.

PARTICULARS

Seventh Excess Policy, Schedule, Items 1-3.

477 VAH is an "Insured Person" under the Seventh Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Seventh Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

478 The Seventh Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Seventh Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy, Fifth Excess Policy and Sixth Excess Policy or any policy replacing the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy, Fifth Excess Policy and/or Sixth Excess Policy;

PARTICULARS

Seventh Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Seventh Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global and "London"; and

PARTICULARS

Seventh Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $90 million in the aggregate for all Loss during the Period of Insurance.

PARTICULARS

Seventh Excess Policy, Definitions and Schedule, Item 7.

479 Pursuant to the Seventh Excess Policy, Berkshire Hathaway agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Seventh Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Berkshire Hathaway shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC

Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Seventh Excess Policy.

PARTICULARS

Seventh Excess Policy, cl 1.

480 The Applicant repeats paragraph 431 above.

481 During the Period of Insurance, Berkshire Hathaway was notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Seventh Excess Policy.

PARTICULARS

This may be inferred from the email sent by Hayden Gregory on behalf of Berkshire Hathaway dated 17 October 2022 to Gilbert + Tobin, by which Berkshire Hathaway advised that it adopts and follows Liberty's indemnity position and which does not reject VAH's claim for indemnity on the basis that no such notification was given.

482 In the premises, Berkshire Hathaway is required under the Seventh Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

F.9. The Eighth Excess Policy

483 In or around November or December 2019, Travelers and Ryan issued the Eighth Excess Policy in which:

(a) VAH and all other entities or enterprises insured under the Primary Policy were identified as the "Insured Organisations";

(b) the period from 4 pm on 1 November 2019 to 4 pm on 1 November 2020 was identified as the "Period of Insurance"; and

(c) Travelers and Ryan were the Insurer.

PARTICULARS

Eighth Excess Policy, Schedule, Items 1, 3 and 5.

484 VAH is an "Insured Person" under the Eighth Excess Policy.

PARTICULARS

A. "Insured Persons" are specified in Item 2 of the Schedule to the Eighth Excess Policy to be all persons insured in the Primary Policy.

B. The Applicant refers to and repeats paragraph 428 above.

485 The Eighth Excess Policy relevantly defined:

(a) "DIC Insurer" to mean the Insurer(s) of a difference-in-conditions policy written in excess of the Underlying Insurance, which by its terms, agrees to drop down and pay Loss which is not paid by an Underlying Insurer;

PARTICULARS

Eighth Excess Policy, Definitions.

(b) "Underlying Insurance" to mean the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy, Fifth Excess Policy, Sixth Excess Policy and Seventh Excess Policy or any policy replacing the Primary Policy, First Excess Policy, Second Excess Policy, Third Excess Policy, Fourth Excess Policy, Fifth Excess Policy, Sixth Excess Policy and/or Seventh Excess Policy;

PARTICULARS

Eighth Excess Policy, Definitions and Schedule, Item 8.

(c) "Loss" to mean "Loss" as described in the Primary Policy and any other amounts described as payable thereunder;

PARTICULARS

Eighth Excess Policy, Definitions.

(d) "Underlying Insurer" to mean Liberty, HDI Global, Beazley, Hiscox, Everest, HCC, Assicurazioni and Berkshire Hathaway, being the Lead Underlying Insurers identified in Item 8 of the Schedule; and

PARTICULARS

Eighth Excess Policy, Definitions and Schedule, Item 8.

(e) "Underlying Limit of Liability" to mean $100 million in respect of Loss arising from any one Claim and in the aggregate for all Claims during the Period of Insurance.

PARTICULARS

Eighth Excess Policy, Definitions and Schedule, Item 7.

486 Pursuant to the Eighth Excess Policy, Travelers and Ryan agreed to pay on behalf of the Insured Persons and Insured Organisations in accordance with the terms, conditions and exclusions (except as regards the Limit of Liability, the premium, or as specifically provided for in the Eighth Excess Policy) as are contained in or as may be added to the Primary Policy, provided that Travelers and Ryan shall only be liable for Loss in excess of the Underlying Limit of Liability and any applicable retention, specified

in the Underlying Insurance, after all of the Underlying Limit of Liability has been exhausted by the payment of Loss, or the agreement to pay Loss, by or on behalf of Underlying Insurers, the Insured Persons, the Insured Organisations or a DIC Insurer, or where Underlying Insurers have been held legally liable to pay such Loss unless otherwise specified in terms and conditions of the Eighth Excess Policy.

PARTICULARS

Eighth Excess Policy, cl 1.

487 The Applicant repeats paragraph 431 above.

488 During the Period of Insurance, Travelers and Ryan were notified of the Applicant's and Group Members' claims or circumstances pertaining to the Applicant's and Group Members' claims in accordance with cl 7 of the Eighth Excess Policy.

PARTICULARS

This may be inferred from Travelers and Ryan's confirmation of indemnity communicated by a letter from its solicitors Colin Biggers & Paisley to Gilbert + Tobin dated 21 April 2023, which does not reject VAH's claim for indemnity on the basis that no such notification was given.

489 In the premises, Travelers and Ryan are required under the Eighth Excess Policy to indemnify VAH for any liability to the Applicant and Group Members with respect to the Applicant's and Group Members' claims in these proceedings against it.

G. COMMON QUESTION OF FACT OR LAW

The Notes, the Original Prospectus and the Notes Prospectus

490 Did the Notes require disclosure to prospective investors pursuant to s 706 of the Corporations Act?

491 Was each of the Original Prospectus and the Notes Prospectus a prospectus issued pursuant to s 706 of the Corporations Act?

~~***The Velocity Loan Misclassification***~~

492 [Not used] ~~Did VAH wrongly classify the drawn and undrawn balance of the Velocity Loan as "unrestricted cash", when it ought to have been classified as "restricted cash"?~~

The representations

493 Did VAH make the Velocity Acquisition Rationale Representations in the manner pleaded at paragraphs 123 (in the context of the Original Prospectus and the Notes

Prospectus) and 136 above (in the context of the Offering Circular)?

494 Did VAH make the Cash Balance Representation in the manner pleaded at paragraphs 125 (in the context of the Original Prospectus and the Notes Prospectus) and 137 above (in the context of the Offering Circular)?

495 Did VAH make the Post Velocity Cash Representation in the manner pleaded at paragraphs 126 (in the context of the Original Prospectus and the Notes Prospectus) and 138 above (in the context of the Offering Circular)?

496 Did VAH make the Undrawn Facilities Representation in the manner pleaded at paragraphs 127 (in the context of the Original Prospectus and the Notes Prospectus) and 139 to 141 above (in the context of the Offering Circular)?

497 Did VAH make the Repayment Representation in the manner pleaded at paragraphs 128 (in the context of the Original Prospectus and the Notes Prospectus) and 142 above (in the context of the Offering Circular)?

498 Did VAH make the representations by its announcements to the ASX as pleaded at paragraphs 161 to 165 above?

499 Did VAH make the representations pleaded at paragraph 168 above during the Notes Meetings?

The omissions from the Original Prospectus, the Notes Prospectus and the Offering Circular

500 Was the Original Prospectus and the Notes Prospectus required to disclose the information pleaded at paragraphs 209 to 217 above pursuant to s 710(1) of the Corporations Act?

501 [Not used] ~~In the event that VAH did not misclassify the drawn and undrawn balance of the Velocity Loan as unrestricted cash, was the Original Prospectus and the Notes Prospectus required to disclose the information pleaded at paragraphs 79 to 79B, 80 to 82 and 89C above pursuant to s 710(1) of the Corporations Act?~~

502 Was the information pleaded at paragraphs 209 to 217 ~~and/or 89C~~ above disclosed in the Original Prospectus, the Notes Prospectus and the Offering Circular?

503 Did VAH offer securities under a disclosure document in contravention of s 728(1)(b) of the Corporations Act?

Misleading or deceptive statements or conduct

504 Was the Cash Balance Representation:

(a) misleading or deceptive within the meaning of s 728(1)(a) of the Corporations

Act;

(b) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(c) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

505 Was the Post Velocity Cash Representation:

(a) misleading or deceptive within the meaning of s 728(1)(a) of the Corporations Act;

(b) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(c) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

506 Was the Undrawn Facilities Representation:

(a) misleading or deceptive within the meaning of s 728(1)(a) of the Corporations Act;

(b) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(c) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

507 Was the Repayment Representation:

(a) misleading or deceptive within the meaning of s 728(1)(a) of the Corporations Act;

(b) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(c) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

508 Were the Velocity Acquisition Rationale Representations:

(a) misleading or deceptive within the meaning of s 728(1)(a) of the Corporations Act;

(b) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(c) misleading or deceptive or likely to mislead or deceive within the meaning of s

1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

509 Was the failure to disclose the information pleaded in paragraphs 209 to 217 ~~and/or 89C~~ above in the Offering Circular misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

510 Were the representations contained in VAH's announcements to the ASX as pleaded at paragraphs 161 to 165 above:

(a) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(b) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

511 Were the representations made to Group Members during the Notes Meetings pleaded at paragraph 168 above:

(a) false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act; and/or

(b) misleading or deceptive or likely to mislead or deceive within the meaning of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

512 Were each of the:

(a) Cash Balance Representation;

(b) Post Velocity Cash Representation;

(c) Undrawn Facilities Representation;

(d) Repayment Representation;

(e) Velocity Acquisition Rationale Representations;

(f) representations contained in VAH's announcements to the ASX as pleaded at paragraphs 161 to 165 above; and/or

(g) representations made to Group Members during the Notes Meetings pleaded at paragraph 168 above,

likely to induce persons in this jurisdiction to apply for and/or acquire the Notes?

513 At the time of dissemination of the Original Prospectus and the Notes Prospectus, did VAH know that each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, the Velocity Acquisition Rationale Representations ~~(in the event that VAH did not misclassify the drawn and~~

~~undrawn balance of the Velocity Loan as unrestricted cash)~~ and/or the Repayment Representation were false in a material particular or materially misleading?

514 At the time of dissemination of the Original Prospectus and the Notes Prospectus, ought VAH have known that each of the Cash Balance Representation, the Post Velocity Cash Representation, the Undrawn Facilities Representation, Velocity Acquisition Rationale Representations ~~(in the event that VAH did not misclassify the drawn and undrawn balance of the Velocity Loan as unrestricted cash)~~ and/or the Repayment Representation were false in a material particular or materially misleading?

515 Did VAH know, at the time that VAH's announcements to the ASX as pleaded at paragraphs 161 to 165 above were published, that the representations contained in those announcements were false in a material particular or materially misleading?

516 Ought VAH have known, at the time that VAH's announcements to the ASX as pleaded at paragraphs 161 to 165 above were published, that the representations contained in those announcements were false in a material particular or materially misleading?

517 Did VAH know, at the time that the representations to Group Members during the Notes Meetings pleaded at paragraph 168 above were made, that those representations were false in a material particular or materially misleading?

518 Ought VAH have known, at the time that the representations to Group Members during the Notes Meetings pleaded at paragraph 168 above were made, that those representations were false in a material particular or materially misleading?

519 Did VAH offer securities under a disclosure document which contained a misleading or deceptive statement in contravention of s 728(1)(a) of the Corporations Act?

520 Did VAH make a statement or disseminate information which was false in a material particular or materially misleading within the meaning of s 1041E(1) of the Corporations Act?

521 In preparing and disseminating the Offering Circular, did VAH engage in conduct in this jurisdiction or in trade or commerce, in relation to financial products or financial services, which was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act?

522 Are the Second and Third Respondents liable for VAH's contraventions of s 728(1)(a) and/or (b) of the Corporations by reason of being directors of VAH, pursuant to s 729(1) of the Corporations Act?

523 Were each of the Second and Third Respondents involved in VAH's contraventions of s 1041E(1) and/or s 1041H(1) of the Corporations Act and/or s 12DA(1) of the ASIC Act and therefore liable to the Applicant and Group Members pursuant to s 1041I(1)

and/or s 1325 of the Corporations Act and/or s 12GF(1) and/or s 12GM of the ASIC Act?

524 Was VRPL involved in VAH's contraventions of:

(a) s 728(1)(a) and/or (b) of the Corporations Act;

(a) s 1041E(1) and/or s 1041H(1) of the Corporations Act; and/or

(b) s 12DA(1),

and therefore liable to the Applicant and Group Members pursuant to, respectively:

(c) s 729(1) of the Corporations Act;

(d) s 1041I(1) and/or s 1325 of the Corporations Act; and/or

(e) s 12GF(1) and/or s 12GM of the ASIC Act?

VAH's continuous disclosure obligations

525 Was VAH required to comply with ASX Listing Rule 3.1 and s 674(2) of the Corporations Act?

526 Was VAH required to disclose the Cash Position Information pursuant to s 674(2) of the Corporations Act?

527 [Not used] ~~Was VAH required to disclose the Alternative Cash Position Information pursuant to s 674(2) of the Corporations Act?~~

528 Did VAH fail to disclose the Cash Position Information in contravention of s 674(2) of the Corporations Act?

529 [Not used] ~~Did VAH fail to disclose the Alternative Cash Position Information pursuant to s 674(2) of the Corporations Act?~~

530 Was VAH required to disclose the Viability Information pursuant to s 674(2) of the Corporations Act?

531 Did VAH fail to disclose the Viability Information in contravention of s 674(2) of the Corporations Act?

532 Was VAH required to disclose the Velocity Loan Reliance Information pursuant to s 674(2) of the Corporations Act?

533 Did VAH fail to disclose the Velocity Loan Reliance Information in contravention of s 674(2) of the Corporations Act?

534 Was VAH required to disclose the Velocity Acquisition Rationale Information pursuant to s 674(2) of the Corporations Act?

535 Did VAH fail to disclose the Velocity Acquisition Rationale Information in contravention of s 674(2) of the Corporations Act?

536 Were the Second and Third Respondents involved in VAH's contraventions of s 674(2) of the Corporations Act and therefore liable to the Applicant and Group Members pursuant to s 674(2A) of the Corporations Act?

537 Was VRPL involved in VAH's contravention of s 674(2) of the Corporations Act (with respect to the Cash Position Information ~~or, alternatively, the Alternative Cash Position Information~~ and/or the Velocity Acquisition Rationale Information) and therefore liable to the Applicant and Group Members pursuant to s 674(2A) of the Corporations Act?

Loss and damage

538 What are the principles governing the quantification of loss or damage suffered by the Applicant and Group Members by reason of any of the contraventions of the Corporations Act alleged in the FASOC which have been established?

539 Are the Applicant and Group Members entitled to recover the following losses from VAH, the Second Respondent and the Third Respondent by reason of VAH's contraventions of ss 728(1), 1041E(1) and/or 674(2) of the Corporations Act:

(a) for Notes and/or US Notes acquired on the date of issue, the difference between the face value of the Notes and/or US Notes paid on the date of issue and the dividend received pursuant to the Bain DOCAs;

(b) for Notes and/or US Notes subsequently acquired on the open market, the difference between the price prevailing on the ASX (for the Notes) or the price on the market made by the Initial Purchasers (for the US Notes) at which the Notes and/or US Notes were acquired respectively and the dividend received pursuant to the Bain DOCAs; and

(c) for Notes and/or US Notes that were acquired on the date of issue or on the open market but then sold either prior to or following VAH's entry into voluntary administration, the difference between the price for which the Notes and/or US Notes were acquired and the price at which the Notes and/or US Notes were disposed?

540 Whether an award of damages in an aggregate amount pursuant to s 33Z(1)(e) or s 33Z(1)(f) of the *Federal Court of Australia Act 1976* (Cth) ought to be made and, If so, in what amount?

541 Whether the damages and/or compensation claimed by the Applicant and Group Members are amounts due to the Applicant and Group Members in respect of an Insured Claim within the meaning of the Primary DOCA on the basis that the First

Respondent is indemnified by:

(a) the Fourth Respondent pursuant to the Primary Policy?

(b) the Fifth Respondent pursuant to the First Excess Policy?

(c) the Sixth Respondent pursuant to the Second Excess Policy?

(d) the Seventh Respondent pursuant to the Second Excess Policy?

(e) the Eighth Respondent pursuant to the Second Excess Policy and/or Third Excess Policy and/or Fifth Excess Policy?

(f) the Ninth Respondent pursuant to the Third Excess Policy?

(g) the Tenth Respondent pursuant to the Fourth Excess Policy?

(h) the Eleventh Respondent pursuant to the Fourth Excess Policy?

(i) the Twelfth Respondent pursuant to the Fifth Excess Policy?

(j) the Thirteenth Respondent pursuant to the Fifth Excess Policy?

(k) the Fourteenth Respondent pursuant to the Sixth Excess Policy?

(l) the Fifteenth Respondent pursuant to the Sixth Excess Policy?

(m) the Sixteenth Respondent pursuant to the Seventh Excess Policy?

(n) the Seventeenth Respondent pursuant to the Eighth Excess Policy?

(o) the Eighteenth Respondent pursuant to the Eighth Excess Policy?

542 Whether the Applicant and Group Members are entitled to obtain payment from the Fourth to Eighteenth Respondents directly on account of the Insured Claim(s)?

Date: ~~20 September 2024~~ 24 December 2025



Signed by Michael Catchpoole

Lawyer for the Applicant

This further amended pleading was prepared by Corrs Chambers Westgarth and settled by ~~Robert Craig~~ Wendy Harris KC, Kane Loxley ~~and~~, Robert Pietriche and Haiqiu Zhu of counsel.

Certificate of lawyer

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

Date: ~~20 September 2024~~ 24 December 2025



Signed by Michael Catchpoole

Lawyer for the Applicant

Schedule

No. NSD346 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Respondents

Second Respondent:	Elizabeth Bryan AM
Third Respondent:	Paul Scurrah
Fourth Respondent:	Liberty Mutual Insurance Company, Australian Branch (ARBN 086 083 605) trading as Liberty Specialty Markets
Fifth Respondent:	HDI Global Specialty SE (ARBN 129 395 544)
Sixth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "Beazley Lloyd's Syndicate 2623 / 623" in Insurance Policy FSASA1901030
Seventh Respondent:	Endurance Worldwide Insurance Limited (a company registered in England and Wales having Registration Number 04413524)
Eighth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate and/or consortium described as "ACT Lloyd's Syndicate 9554" in Insurance Policy FSASA1901030 and FSASA1901280 and "ACT Lloyd's Consortium 9554" in Insurance Policy FSASA1901267
Ninth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "Hiscox Lloyd's Syndicate 0033" in Insurance Policy FSASA1901280
Tenth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "Everest Re Lloyd's Syndicate 2786" in Insurance Policy FSASA1901031
Eleventh Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "CV Starr Lloyd's" Syndicate 1919" in Insurance Policy FSASA1901031

Twelfth Respondent:	HCC International Insurance Company PLC (a company registered in England and Wales having Registration Number 01575839)
Thirteenth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "Aspen Lloyd's Syndicate 4711" in Insurance Policy FSASA1901267
Fourteenth Respondent:	Assicurazioni Generali S.p.A. UK Branch (a company registered in Italy having fiscal code and Venezia Giulia Companies' Register No. 00079760328 and registered as a UK establishment in England and Wales having registration number BR1185)
Fifteenth Respondent:	Aviva Insurance Limited (a company registered in England and Wales having Registration Number SC002116)
Sixteenth Respondent:	Berkshire Hathaway Specialty Insurance Company (ARBN 600 643 034)
Seventeenth Respondent:	Certain underwriters at Lloyd's of London comprising the syndicate described as "Travelers Lloyd's Syndicate 5000" in Insurance Policy FSASA1901268
Eighteenth Respondent:	Ryan Specialty International Limited trading as StartPoint Executive Risks (a company registered in England and Wales having Registration Number 07164987)
Nineteenth Respondent	Velocity Rewards Pty Limited (ACN 116 089 448) as trustee for the Loyalty Trust

Date: ~~20 September 2024~~ 24 December 2025