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Important Information

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

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Form 33
Rule 16.32

Filed pursuant to Order of Thawley J dated 21 July 2026

Defence to Tenth Amended Statement of Claim

No. NSD 110 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

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

Applicant

INSURANCE AUSTRALIA LIMITED (ACN 000 016 722) and others named in the Schedule

First Respondent

In response to the Tenth Amended Statement of Claim filed on 2 July 2026 (**ASOC**) on behalf of the Applicant, Credit Suisse Virtuoso SICAV-SIF in respect of the Sub–Fund Credit Suisse (Lux) Supply Chain Finance Fund (**Credit Suisse Virtuoso**), the Sixth Respondent, Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291) (**TMNF**), says as follows.

Preliminary matters

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

B. Nothing in this pleading should be understood as an affirmation of any of the documents referred to herein, or as a waiver of any rights to argue that those documents are void or voidable. In particular, and without limiting the generality of the foregoing, all references

Filed on behalf of (name & role of party) Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291), Sixth Respondent
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in this pleading to Policy 3088 and to any purported endorsement thereto should be read, where applicable, as though it was followed by the words 'if valid' in parentheses.

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

A. NATURE OF DISPUTE

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

B. ISSUES LIKELY TO ARISE

2. In addition to the issues identified at paragraphs 2 to 2E of the ASOC, to the extent used, the following issues are likely to arise:

   a. whether execution of the Policy 3088 and its endorsements was within the ostensible authority of BCC and Brereton;

   b. whether Policy 3088 and its endorsements are binding on IAL by operation of section 917B or 917C of the *Corporations Act 2001* (Cth) (**Corporations Act**) even if execution of those documents was not within the actual authority of BCC and Brereton; and

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

C. THE PARTIES AND OTHER RELEVANT ENTITIES

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

   a1. admits paragraph 3(a);

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

Particulars

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

b. otherwise does not know and therefore cannot admit paragraph 3(b); and

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

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

5. TMNF admits paragraph 5 of the ASOC.

6. TMNF admits paragraph 6 of the ASOC.

7. TMNF admits paragraph 7 of the ASOC.

8. TMNF admits paragraph 8 of the ASOC.

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

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

a. says that on 28 July 2016, BCC entered into an Agency & Authorised Representative Agreement (**CGU AAR Agreement**) with CGU Insurance Limited ACN 004 478 371 (**CGU**), by virtue of which it became an authorised representative of CGU;

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

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

d. says that BCC never entered into any Agency & Authorised Representative Agreement with IAG Agencies;

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

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

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

h. otherwise denies the paragraph.

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

a. says that, on or around 9 April 2019, IAL, Tokio Marine Management (Australasia) Pty Ltd ACN 001 488 455 (**Tokio**) and Bond & Credit Company Pty Ltd ACN 609 018 840 (**Bond**) entered into an agreement styled the 'Policy and Claims Administration Outsourcing Deed' (**PACAO**), and the PACAO described Tokio and Bond together as Administrator;

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

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

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

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

iv. preparing management reports;

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

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

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

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

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

e. says that BCC only acted as IAL's agent from 1 July 2019 in relation to the administration of trade credit insurance policies issued by IAL on or before 30 June 2019 to the extent it provided "Services" under the PACAO; and

f. otherwise denies the paragraph.

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

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

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

c. otherwise admits the paragraph.

10B. [NOT USED]

10C. In response to paragraph 10C of the ASOC, TMNF:

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

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

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

d. otherwise admits the paragraph.

10D. TMNF admits paragraph 10D of the ASOC.

D. OTHER RELEVANT ENTITIES

D.2. Greensill group of companies

11. TMNF admits paragraph 11 of the ASOC.

12. TMNF admits paragraph 12 of the ASOC.

13. TMNF admits paragraph 13 of the ASOC.

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

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

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

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

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

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

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

D.3 Lagoon Park

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

D.4 NMC Health

17. TMNF does not know and therefore cannot admit paragraph 17 of the ASOC.

17A. In response to paragraph 17A of the ASOC, TMNF:

    a. admits subparagraph (a); and

    b. does not know and therefore cannot admit subparagraph (b).

D.5 Demica

18. In response to paragraph 18 of the ASOC, TMNF:

    a. admits subparagraph (a);

    b. admits that at least part of the business conducted by Demica at the material times answered the description given in subparagraph (b) of the ASOC; and

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

E. EXECUTION AGREEMENTS AND THE BUYER TRACKING AND SETTLEMENT SERVICES AGREEMENT

E.1 The NMC Health Execution Agreement

19A. In respect of paragraphs 19 to 35 of the ASOC, TMNF says generally that:

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

b. Credit Suisse Virtuoso does not allege (and TMNF would not be in a position to admit, in any event) that paragraphs 19 to 35 of the ASOC exhaustively identify the documents that govern the relationship that exists between the parties to those documents;

c. TMNF will seek disclosure in relation to the matters the subject of paragraphs 19 to 35 of the ASOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced; and

d. any admissions by TMNF as to the existence and terms of the agreements and other documents alleged in paragraphs 19 to 35 are made subject to the reservation in the preceding paragraph.

19. TMNF admits paragraph 19 of the ASOC.

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

a. says that paragraph 20 is a paraphrase of cl 6.1.2 of the Demica Platform Agreement;

b. repeats the terms of the agreement as if set out in full in this Defence; and

c. otherwise admits the paragraph.

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

a. says that paragraph 21 is a paraphrase of cl 2.1, cl 2.2 and cl 5 of the Member Access Agreement;

b. relies on the terms of the Member Access Agreement for their full force and effect and repeats the terms of the agreement as if set out in full in this Defence; and

c. otherwise admits the paragraph.

E.2 The Buyer Tracking and Settlement Services Agreement

22. TMNF admits paragraph 22 of the ASOC.

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

a. says that paragraph 23 is a paraphrase of cl 2.1, 2.3, 6.1, 6.2, 7.1, 7.7 and 8 of the BTSSA;

b. in response to paragraph 23(c), says that the terms "Supplier" and "Advanced Payment Request" are not defined in the BTSSA, and while cl 1.1 of the BTSSA refers to a "Common Definitions and Interpretation Schedule" the BTSSA does not include such a Schedule;

c. relies on the terms of the BTSSA for their full force and effect and repeats the terms of the agreement as if set out in full in this Defence; and

d. otherwise admits the paragraph.

E.3 The GCUK Execution Agreement

24. TMNF admits paragraph 24 of the ASOC.

25. In response to paragraph 25 of the ASOC, TMNF:

a. says that paragraph 25 is a paraphrase of clauses of the Demica Platform Agreement at Appendix 1 of the GCUK Execution Agreement;

b. relies on the terms of the Demica Platform Agreement for their full force and effect and repeats the terms of the agreement as if set out in full in this Defence; and

c. otherwise admits the paragraph.

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

a. says that paragraph 26 is a paraphrase of certain clauses of the Member Access Agreement at Appendix 2 of GCUK Execution Agreement;

b. in response to paragraph 26(c), says that cl 5.2 provides that pursuant to the terms and conditions set out in the agreement having been satisfied in full, all rights, title, and interests to Approved Payables purchased by GCUK in accordance therewith shall be Transferred to GCUK as a matter of law;

c. relies on the terms of the Member Access Agreement for their full force and effect and repeats the terms of the agreement as if set out in full in this Defence; and

d. otherwise admits the paragraph.

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

a. admits that the terms set out in paragraph 27 were defined in the manner therein alleged in the Common Definitions and Interpretations Schedule annexed to the Demica Platform Agreements and the Member Access Agreements;

b. repeats paragraph 23(b) of this Defence; and

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

28. TMNF does not admit paragraph 28 of the ASOC, there being no allegation against it.

E.4 NMC Health Plc Guarantee

29. TMNF admits paragraph 29 of the ASOC.

F. NMC HEALTH NOTE PROGRAMME

F.1 Supply Chain Finance Trust Deed

30. TMNF admits paragraph 30 of the ASOC.

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

a. says that paragraphs 31(a) and (c) paraphrase various clauses of the Supply Chain Finance Trust Deed;

b. relies on the terms of the Supply Chain Finance Trust Deed for their full force and effect and repeats the terms of the agreement as if set out in full in this Defence; and

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

F.2 Master Finance Trust Deed

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

a. admits that Lagoon Park and Citi entered into a document styled Master Trust Deed dated 19 October 2015 and Supplemental Trust Deeds dated 20 September 2016, 5 December 2016 and 26 November 2018; and

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

33. In answer to paragraph 33 of the ASOC, TMNF:

a. repeats paragraph 32 of this Defence; and

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

33A. TMNF does not know and therefore cannot admit paragraph 33A of the ASOC.

34. TMNF admits paragraph 34 of the ASOC.

35. TMNF does not know and therefore cannot admit paragraph 35 of the ASOC.

FA AGENT OF THE INSURER

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

35A. TMNF admits paragraph 35A of the ASOC.

35B. TMNF admits paragraph 35B of the ASOC.

35C. In response to paragraph 35C of the ASOC, TMNF:

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

b. says that subparagraph (b) is a paraphrase of cl 2.1(a) of the CGU AAR Agreement;

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

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

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

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

g. says that paragraphs 35C(g)-(bb) are a paraphrase of the provisions of the CGU AAR Agreement to which they refer;

h. relies on and refers to the terms of the CGU AAR Agreement and the BCC Authorisation Notice (as defined in subparagraph 35C(b) of the ASOC) for their full terms and effect; and

i. otherwise admits the paragraph.

35D. TMNF admits paragraph 35D of the ASOC.

35E. In response to paragraph 35E of the ASOC, TMNF:

a. repeats paragraph 35B of this Defence;

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

c. otherwise admits the paragraph.

35F. TMNF admits paragraph 35F of the ASOC.

35G. In response to paragraph 35G of the ASOC, TMNF:

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

b. otherwise admits the paragraph.

35H. TMNF admits paragraph 35H of the ASOC.

35I. TMNF admits paragraph 35I of the ASOC.

35J. In response to paragraph 35J of the ASOC, TMNF:

a. says that pursuant to the Brereton Authorisation Notice (as defined at ASOC paragraph 35I), CGU authorised Mr Brereton to provide and perform the Authorised Financial Services in relation to the Approved Products on behalf of

CGU and for that purpose it appointed Mr Brereton as its authorised representative for the purposes of Chapter 7 of the Corporations Act from the Effective Date (being 8 July 2016);

b. relies on the CGU AAR Agreement, Brereton Authorisation Agreement (as defined at ASOC paragraph 35H) and Brereton Authorisation Notice for their full force and effect; and

c. otherwise admits the paragraph.

35JA. In response to paragraph 35JA of the ASOC, TMNF:

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

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

c. otherwise admits the paragraph.

35JB. In response to paragraph 35JB of the ASOC, TMNF:

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

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

35JC. TMNF admits paragraph 35JC.

35JD. TMNF admits paragraph 35JD.

35JE. In response to paragraph 35JE of the ASOC, TMNF:

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

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

c. otherwise admits the paragraph.

35K. TMNF admits paragraph 35K of the ASOC.

35L. In response to paragraph 35L of the ASOC:

a. repeats paragraph 35J(a)-(b) of this Defence;

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

c. otherwise admits the paragraph.

FA.2 The CGU Scheme

35M. In response to paragraph 35M of the ASOC, TMNF:

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

b. otherwise admits the paragraph.

35N. In response to paragraph 35N of the ASOC, TMNF:

a. refers to and repeats paragraph 35M of this Defence; and

b. otherwise admits the paragraph.

35O. TMNF admits paragraph 35O of the ASOC.

35P. In response to paragraph 35P of the ASOC, TMNF:

a. refers to and repeats paragraphs 35E and 35G of this Defence; and

b. otherwise admits the paragraph.

35Q. TMNF admits paragraph 35Q of the ASOC.

35R. TMNF admits paragraph 35R of the ASOC.

35S. TMNF admits paragraph 35S of the ASOC.

35T. In response to paragraph 35T of the ASOC, TMNF:

a. refers to and repeats paragraphs 35J and 35L of this Defence; and

b. otherwise admits the paragraph.

35U. TMNF admits paragraph 35U of the ASOC.

35V. TMNF admits paragraph 35V of the ASOC.

35W. [NOT USED]

35X. [NOT USED]

35Y. [NOT USED]

FA.3 IAL Agencies Agreements

35ZZ. In response to paragraph 35ZZ of the ASOC, TMNF:

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

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

c. otherwise admits the paragraph.

35ZA. TMNF does not know and therefore cannot admit paragraph 35ZA of the ASOC.

35ZB. TMNF admits paragraph 35ZB of the ASOC.

35ZC. In response to paragraph 35ZC of the ASOC, TMNF:

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

b. says further that:

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

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

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

c. otherwise denies the paragraph.

35ZD. In response to paragraph 35ZD of the ASOC, TMNF:

a. refers to and repeats paragraph 35ZC of this Defence;

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

c. otherwise denies the paragraph.

35ZDA. In response to paragraph 35ZDA of the ASOC, TMNF:

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

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

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

d. otherwise denies the paragraph.

35ZDB. In response to paragraph 35ZDB of the ASOC, TMNF:

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

b. otherwise admits the paragraph.

35ZE. [NOT USED]

35ZF. TMNF admits paragraph 35ZF of the ASOC.

35ZG. TMNF admits paragraph 35ZG of the ASOC.

35ZH. In response to paragraph 35ZH of the ASOC, TMNF:

a. refers to and repeats paragraph 35ZC of this Defence;

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

c. otherwise denies the paragraph.

35ZI. TMNF admits paragraph 35ZI of the ASOC.

35ZJ. TMNF admits paragraph 35ZJ of the ASOC.

35ZK. TMNF admits paragraph 35ZK of the ASOC.

35ZL. TMNF admits paragraph 35ZL of the ASOC.

35ZM. In response to paragraph 35ZM of the ASOC, TMNF:

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

b. otherwise does not admit the paragraph.

FA.4 Administration of the policies

35ZN. TMNF admits paragraph 35ZN of the ASOC.

35ZO. In response to paragraph 35ZO of the ASOC, TMNF:

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

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

c. otherwise admits the paragraph.

35ZP. TMNF admits paragraph 35ZP of the ASOC.

35ZQ. In answer to paragraph 35ZQ of the ASOC, TMNF:

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

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

c. otherwise admits the paragraph.

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

35ZR. [NOT USED]

35ZS. In response to paragraph 35ZS of the ASOC, TMNF:

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

b. otherwise denies the paragraph.

35ZT. In response to paragraph 35ZT of the ASOC, TMNF:

a. admits that the Bordereaux from time to time:

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

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

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

c. otherwise denies the paragraph.

35ZU. [NOT USED]

35ZV. [NOT USED]

35ZW. [NOT USED]

35ZX. [NOT USED]

35ZY. In response to paragraph 35ZY of the ASOC, TMNF:

a. admits the paragraph; and

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

35ZZAA. [NOT USED]

35ZZAAA. In answer to paragraph 35ZZAAA of the ASOC, TMNF:

a. admits the paragraph; and

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

35ZZAAB. [NOT USED]

35ZZAAC. In answer to paragraph 35ZZAAC of the ASOC, TMNF:

a. admits the paragraph; and

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

35ZZBD. [NOT USED]

35ZZA. In answer to paragraph 35ZZA of the ASOC, TMNF:

a. admits the paragraph; and

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

35ZZB. [NOT USED]

35ZZC. In answer to paragraph 35ZZC of the ASOC, TMNF:

a. admits the paragraph; and

b. says, by reason of the matters referred to in paragraph 47A below, Policy TS-03088 (as defined in paragraph 36 of this Defence) was (subject to any valid avoidance) binding on IAL.

35ZZD. [NOT USED]

35ZZE. In answer to paragraph 35ZZE of the ASOC, TMNF:

a. refers to and repeats paragraphs 35ZY, 35ZZAAA, 35ZZAAC, 35ZZA, 35ZZC of this Defence;

b. says that Mr Brereton's actual authority as Head of Trade Credit allowed him to execute policies on behalf of BCC (including the LOS Policy, the 2018 Policy, the 2019 Policy, the 2018 Policy TS-03088, and Policy TS-03088); and

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

35ZZF. In answer to paragraph 35ZZF of the ASOC, TMNF:

a. refers to and repeats paragraph 35ZZE of this Defence; and

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

35ZZG. In response to paragraph 35ZZG of the ASOC, TMNF:

a. refers to and repeats paragraph 35ZZE of this Defence; and

b. otherwise denies the paragraph.

35ZZH. [NOT USED]

35ZZHA. [NOT USED]

35ZZHB. [NOT USED]

35ZZHC. [NOT USED]

35ZZI. [NOT USED]

35ZZJ. [NOT USED]

35ZZK. [NOT USED]

35ZZL. [NOT USED]

35ZZM. [NOT USED]

35ZZN. [NOT USED]

35ZZO. [NOT USED]

35ZZP. TMNF admits paragraph 35ZZP of the ASOC.

35ZZQ. TMNF admits paragraph 35ZZQ of the ASOC.

35ZZR. TMNF admits paragraph 35ZZR of the ASOC.

35ZZS. TMNF admits paragraph 35ZZS of the ASOC.

35ZZT. TMNF denies paragraph 35ZZT of the ASOC.

35ZZU. In response to paragraph 35ZZU of the ASOC, TMNF:

a. repeats paragraph 10C of this Defence; and

b. otherwise admits the paragraph.

35ZZV. TMNF admits paragraph 35ZZV of the ASOC.

G. THE INSURANCE POLICY

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

a. admits the paragraph; and

b. says that, by reason of the matters referred to in paragraph 47A below, Policy 3088 was (subject to any valid avoidance) binding on IAL.

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

a. repeats paragraph 36 of this Defence;

b. says that on the proper construction of Policy 3088, IAL agreed, subject to the terms, conditions and limitations of the policy, to indemnify the Insured for the Insured Percentage of all Losses suffered by the Insured and caused by or resulting from the occurrence of an Insured Cause (cl 1.1);

c. says that paragraph 37 is otherwise a paraphrase of the definitions in Policy 3088 to which it refers;

d. says, in response to subparagraph (g):

i. **Eligible Debt** has the meaning given in Schedule 7 of Policy 3088, which provides that all Eligible Debts from which are derived Assets owned by the Insured must satisfy the criteria listed at paragraph 37(g)(i) to (v) of the ASOC at the time of acquisition of the relevant Asset by the Insured;

ii. **Debt Endorsement** was defined to mean an endorsement to Policy 3088 that is substantially in the form of Appendix 2 or such other form as the Insured and Insurer may agree from time to time and that describes the nature of a debt that is after the date of such endorsement able to be a 'Debt' for the purpose of the policy, and which may contain amendments to the terms of Policy 3088 in so far as the policy relates to such 'Debts' and 'Assets' derived therefrom; and

iii. the Debt Endorsement appended to Policy 3088 (and incorporated in debt endorsements including Debt Endorsement 1) further required that the Eligible Debt arises under a Customer Agreement that is in full force and effect and to the best of the Insured's knowledge, after reasonable due diligence, constitutes the legal, valid and binding obligation of the Customer enforceable against such Customer in accordance with its terms, subject to no offset, counterclaim, defence or other adverse claim;

e. says that Policy 3088 also contained the following express written terms:

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

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

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

iv. that the Insured acknowledges and agrees that it has a duty to IAL of fair presentation in respect of Policy 3088 and the risks insured thereunder (cl 7.1);

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

vi. that without prejudice to the other provisions of cl 10, the Insured shall ensure that, following the occurrence of an event that may reasonably be expected to result in a Loss under Policy 3088, it shall by exercising the Insured's rights under the Transaction Documents, act reasonably and prudently to prevent, mitigate and minimise Losses at all times, and that in doing so, the Insured shall act as would a reasonable and prudent owner of the Eligible Debt(s) in question without assuming that any Loss may be covered under Policy 3088 (cl 10.7(a));

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

viii. that any variation of Policy 3088 (except by way of Endorsement as provided in Policy 3088) may only be effected in writing signed by or on behalf of each party (cl 15.3(a)); and

ix. that if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, the

policy may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (cl 15.4);

f. refers to the full terms of Policy 3088 for their full force and effect; and

g. otherwise admits the paragraph.

38. TMNF does not admit paragraph 38 of the ASOC, there being no allegation against it.

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

a. admits that Debt Endorsement 1 to Policy 3088, dated 6 March 2019 (**Debt Endorsement 1**), contained terms as defined in paragraph 39;

b. refers to the terms of Debt Endorsement 1 for their full force and effect; and

c. says that Debt Endorsement 1 was not a valid 'Debt Endorsement' under Policy 3088 because, on the proper construction of that policy:

i. Policy 3088 did not authorise the issue of a 'Debt Endorsement' that purported to operate retrospectively, and Debt Endorsement 1 did so; and

ii. Policy 3088, Appendix 2, required the Debt Endorsement to specify a premium rate in an associated Customer Endorsement, which in turn was required to express a percentage premium rate (of greater than nil), and the relevant Customer Endorsement here, Customer Endorsement 4, expressed a percentage premium rate of nil; and

d. otherwise denies the paragraph.

40. In response to paragraph 40 of the ASOC, TMNF:

a. admits that Customer Endorsement 4 to Policy 3088, dated 6 March 2019 (**Customer Endorsement 4**), purported to operate from 1 March 2019; purported to endorse NMC Health Plc as a Customer with a Customer Limit of USD 25,000,000 and a Maximum Tenor of 180 days from the date that GCUK acquires the Debt; and purported to provide an extension of cover for the Insured against 'the Customer and its Affiliates: N.M.C Health Care L.L.C (DUNS 85-110-7651)';

b. refers to the terms of Debt Endorsement 1 for their full force and effect;

c. says that Customer Endorsement 4 was not a valid 'Customer Endorsement' under Policy 3088, because Policy 3088, Appendix 2, required the Customer

Endorsement to express a percentage premium rate (of greater than nil) and Customer Endorsement 4 expressed a percentage premium rate of nil;

d. further or alternatively says that if Customer Endorsement 4 is valid (which is denied) then, upon the issue of Customer Endorsement 4(i) dated 4 March 2020, with effect from 9 February 2020:

i. Customer Endorsement 4 expired;

ii. the customer limit for NMC Health Plc and NMC Health was reduced to nil; and

iii. all liabilities incurred by or with respect to NMC Health Plc and NMC Health from 9 February 2020 ceased to be covered under Policy 3088; and

e. otherwise denies the paragraph.

40A. In response to paragraph 40A of the ASOC, TMNF:

a. admits that Endorsement 9 to Policy 3088, dated 26 February 2020 (**Endorsement 9**), purported to be effective from 28 February 2020 and purported to extend the Policy Period to 15 April 2020;

b. refers to the terms of Endorsement 9 for their full force and effect;

c. repeats paragraph 41(c) of this Defence, which applies mutatis mutandis to Endorsement 9; and

d. otherwise denies the paragraph.

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

a. admits that Endorsement 10 to Policy 3088, dated 15 April 2020 (**Endorsement 10**), purported to be effective from 9 April 2020 and purported to extend the Policy Period to 15 May 2020;

b. refers to the terms of Endorsement 10 for their full force and effect;

c. says that the document was not an ‘Endorsement’ within the meaning of Policy 3088 and did not vary the Policy validly as:

i. the policy permitted only three types of endorsement (Customer Endorsements, Debt Endorsements, and Loss Payee Endorsements), and

this document did not purport to be and was not a Customer Endorsement, Debt Endorsement or Loss Payee Endorsement;

ii. further and alternatively, cl 15.3(a) of Policy 3088 provided that any variation of the policy could only be effected in writing signed by or on behalf of each party, and the document signed on 15 April 2020 was not signed on behalf of GCPL or Greensill Bank;

d. further or alternatively, says that Endorsement 10 was not a valid endorsement under Policy 3088, because Policy 3088 had expired on 1 March 2020, before Endorsement 10 was executed (on 15 April 2020) and expressed to take effect (on 9 April 2020);

e. says further that Policy 3088 expired on 1 March 2020; and

f. otherwise denies the paragraph.

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

a. admits that Endorsement 11, dated 15 May 2020 (**Endorsement 11**), purported to be effective from 7 May 2020 and purported to extend the Policy Period to 15 June 2020;

b. refers to the terms of Endorsement 11 for their full force and effect;

c. further or alternatively, repeats paragraph 41(c) of this Defence, which applies mutatis mutandis to Endorsement 11;

d. further or alternatively, says that Endorsement 11 was not a valid endorsement under Policy 3088, because Policy 3088 had expired on 1 March 2020, before Endorsement 11 was executed (on 15 May 2020) and expressed to take effect (on 7 May 2020); and

e. otherwise denies the paragraph.

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

a. admits that Endorsement 12, dated 16 June 2020 (**Endorsement 12**), purported to be effective from 9 June 2020 and purported to extend the Policy Period to 30 June 2020;

b. refers to the terms of Endorsement 12 for their full force and effect;

c. repeats paragraph 41(c) of this Defence, which applies mutatis mutandis to Endorsement 12;

d. further or alternatively, says that Endorsement 12 was not a valid endorsement under Policy 3088, because Policy 3088 had expired on 1 March 2020, before Endorsement 12 was executed (on 16 June 2020) and expressed to take effect (on 9 June 2020); and

e. otherwise denies the paragraph.

G.1. Loss Payee Endorsement

44. In response to paragraph 44 of the ASOC, TMNF:

a. admits that the "Loss Payee Endorsement" endorsed Credit Suisse (Lux) Supply Chain Finance Fund as a Loss Payee for the purposes of Policy 3088 (**Loss Payee Endorsement**);

b. further says that the Loss Payee Endorsement is not valid :

i. to the extent that it purported to vary the terms of Policy 3088 or prescribe new terms inconsistent with those in Policy 3088; and

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

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

d. otherwise denies the paragraph.

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

a. repeats paragraph 44 of this Defence;

b. admits that the Loss Payee Endorsement included terms broadly to the effect pleaded in sub-paragraphs 45(a) and (b), save that the relevant obligation in sub-paragraph 45(a) was expressed as being an instruction by the Insured (Greensill Bank and GCPL) to the Insurer;

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

i. the Loss Payee declared that it is fully aware of the terms of Policy 3088, and that it was the Insured's obligation to communicate any relevant information and/or contractual amendments to the Loss Payee;

ii. it was understood that the Loss Payee Endorsement does not modify any rights and obligations defined in relation to Policy 3088 other than as stated therein; and

iii. the Loss Payee acknowledges that it does not have any rights under Policy 3088 except the payment by the Insurer of any Claim payment payable under Policy 3088 in accordance with the Loss Payee Endorsement; and

d. otherwise denies the paragraph.

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

a. admits that on 6 March 2019, Mr Brereton signed 'Limit Endorsement 8', which purported to be effective from 1 March 2019 and purported to specify that the maximum pay out to a Loss Payee in respect of NMC Health Plc was USD 25,000,000;

b. repeats paragraph 44 of this Defence;

c. further or alternatively says the Limit Endorsement was not valid to the extent it sought to supplement an endorsement (in this case, Endorsement 3), which was itself not a valid endorsement for the reasons pleaded at paragraph 44 of this Defence; and

d. otherwise denies the paragraph.

47. TMNF does not know and therefore cannot admit paragraph 47.

G.2A Other Endorsements

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

47BB. TMNF admits paragraph 47BB of the ASOC.

47CC. TMNF admits paragraph 47CC of the ASOC.

47DD. TMNF admits paragraph 47DD of the ASOC.

47EE. TMNF admits paragraph 47EE of the ASOC.

G.2 BCC as agent of the Insurer

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

a. admits the paragraph;

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

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

Particulars

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

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

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

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

(v) The To Whom It May Concern Letter did not qualify the representation of BCC's authority or otherwise disclose any

limitation on BCC's authority to write trade credit insurance on IAL's behalf;

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

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

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

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

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

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

c. for a premium of $1;

d. with no excess payable by GBAG;

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

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

d. says that, as between IAL and GBAG, IAL is bound (subject to any valid avoidance) by each of the documents referred to in paragraph 47A of the ASOC by operation of section 917B or 917C of the *Corporations Act* even if BCC and Brereton acted outside their actual authority in executing those documents; and

e. says that if, which is not admitted, Credit Suisse relied in good faith on the conduct alleged at paragraph 47A of the ASOC, IAL would be bound, as between IAL and GBAG, to the Policy and endorsements by operation of section 917B or 917C of the *Corporations Act* even if BCC and Brereton acted outside their actual authority in executing those documents;

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

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

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

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

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

Particulars

Letter dated 30 June 2026 from Gilbert +Tobin to Kennedys

47B. In response to paragraph 47B of the ASOC, TMNF:

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

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

47C. [NOT USED].

47D. [NOT USED]

48. [NOT USED]

49. [NOT USED]

50. [NOT USED]

51. [NOT USED]

G.3 [NOT USED]

52. [NOT USED]

53. [NOT USED]

54. [NOT USED]

55. [NOT USED]

56. [NOT USED]

57. [NOT USED]

58. [NOT USED]

59. [NOT USED]

60. [NOT USED]

61. [NOT USED]

62. [NOT USED]

63. [NOT USED]

H POWER OF ATTORNEY

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

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

b. says that the paragraph is a paraphrase of the provisions of the power of attorney to which it refers; refers to the relevant terms of the power of attorney for their full force and effect;

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

d. otherwise denies the paragraph.

I NMC HEALTH'S FAILURE TO PAY

65. TMNF does not know and therefore cannot admit paragraph 65 of the ASOC.

66. TMNF does not know and therefore cannot admit paragraph 66 of the ASOC.

67. In response to paragraph 67 of the ASOC, TMNF:

a. says that the payment failures referred to in the particulars to paragraph 67 were not covered by Policy 3088; and

Particulars

Letter dated 30 June 2026 from Gilbert + Tobin to Kennedys

b. otherwise does not know and therefore cannot admit paragraph 67 of the ASOC.

68. [NOT USED]

69. [NOT USED]

J CLAIMS ON THE POLICY

70. TMNF admits paragraph 70 of the ASOC.

71. [NOT USED]

72. [NOT USED]

73. [NOT USED]

74. [NOT USED]

75. [NOT USED]

76. [NOT USED]

76A. TMNF admits paragraph 76A of the ASOC.

77. [NOT USED]

78. [NOT USED]

79. [NOT USED]

L. CLAIMS AGAINST BCC AND BRERETON

80. [NOT USED]

81. [NOT USED]

82. [NOT USED]

L.1 Knowledge of BCC and Brereton

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

    a. repeats paragraph 83 of BCC's Defence in this proceeding; and

    b. otherwise denies the paragraph.

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

    a. repeats paragraph 84 of BCC's Defence in this proceeding; and

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

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

    a. repeats paragraph 85 of BCC's Defence in this proceeding; and

    b. otherwise admits the paragraph.

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

a. repeats paragraph 86 of BCC's Defence in this proceeding; and

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

87. In response to paragraph 87 of the ASOC, TMNF:

a. repeats paragraph 87 of BCC's Defence in this proceeding; and

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

87A. In response to paragraph 87A of the ASOC, TMNF:

a. repeats paragraph 87A of BCC's Defence in this proceeding; and

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

87B. In response to paragraph 87B of the ASOC, TMNF:

a. repeats paragraph 87B of BCC's Defence in this proceeding; and

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

87C. In response to paragraph 87C of the ASOC, TMNF:

a. repeats paragraph 87C of BCC's Defence in this proceeding; and

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

L.2 BCC/Brereton Conduct

88. In response to paragraph 88 of the ASOC, TMNF:

a. repeats paragraph 88 of BCC's Defence in these proceedings; and

b. otherwise admits the paragraph.

89. [NOT USED]

90. [NOT USED]

91. [NOT USED]

92. [NOT USED]

93. [NOT USED]

94. [NOT USED]

94A. [NOT USED]

94B. [NOT USED]

L.3 Misleading or deceptive conduct

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

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

b. otherwise denies the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

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

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

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

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

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

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

b. otherwise denies the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

b. otherwise denies the paragraph.

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

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

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

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

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

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

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

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

b. otherwise denies the paragraph.

104A. In response to paragraph 104A of the ASOC, TMNF:

a. admits that the conduct alleged at paragraphs 95 to 102 of the ASOC related to the provision of a financial service within the meaning of s 917A(1) of the Corporations Act;

b. does not know and therefore cannot admit subparagraphs (b) to (d); and

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

i. says that some of the alleged conduct of BCC and Brereton referred to in paragraphs 95 to 102 of the ASOC occurred prior to 1 July 2019 and in BCC's capacity as the corporate authorised representative of IAL, not TMNF; and

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

104B. In response to paragraph 104B of the ASOC, TMNF:

a. does not plead to the paragraph insofar as it contains allegations against IAL; and

b. otherwise denies the paragraph.

Contributory negligence

104AA. The loss or damage the subject of Credit Suisse Virtuoso's claim (if any) was at least partly a result of Credit Suisse Virtuoso's own failure to take reasonable care, with the result that, pursuant to s 1041I(1B) of the Corporations Act, s 12GF of the ASIC Act and s 137B of the Competition and Consumer Act, Part 1A, Division 8 of the *Civil Liability Act 2002* (NSW) (**Civil Liability Act**) and at common law, the damages payable by TMNF (if any) should be reduced to the extent to which the court thinks just and equitable having regard to Credit Suisse Virtuoso's share in the responsibility for the alleged loss and damage, on the following grounds:

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

Particulars

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

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

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

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

Particulars

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

B. Under the Service Level Agreement:

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

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

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

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

ii. the purported insurance arrangements (including Policy TS-03088 and its purported endorsements);

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

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

Particulars

A. In or about late February 2023, the Swiss regulator FINMA concluded its enforcement proceedings against Credit Suisse "in connection with its business relationship with financier Lex Greensill and his companies" and found that Credit Suisse (which included entities to whom Credit Suisse Virtuoso had delegated responsibility for its investment in the NMC Notes and acted with or through, as alleged in this paragraph 104AA) "seriously breached" their supervisory duties as asset manager imposed by Swiss banking law as identified in the FINMA Ruling (see below) to adequately identify, limit and monitor risks in the context of their business relationships with Lex Greensill and his companies (including Greensill Bank and GCPL) over a period of years. TMNF refers to and relies upon the investigations and findings as to the conduct of the CSAM, CSFM, and CSFS recorded in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MB. The conduct of CSAM and CSFM (including by its agent, CSFS) and their employees in relation to the NMC Notes was the conduct of CSAM and CSFM and its agent, CSFS as agents for Credit Suisse Virtuoso.

MC. Credit Suisse Virtuoso, by letter from its solicitors dated 30 January 2025, has undertaken not to contend to the contrary of the position described in particular MB above as it relates to CSAM and CSFM. Further, and for the reasons identified in paragraph 104AA(0b) above and in particulars (a) to (d) of paragraph 104AA(a1) below, TMNF contends that the undertaking extends to CSFM's delegation to CSFS.

MD. TMNF further and otherwise relies upon and repeats the matters set out in the particulars to paragraph 104C(k) of IAL's defence in these proceedings.

N. Further particulars may be provided following discovery.

a1. in addition to the matters alleged in subparagraph 104AA(0b) above, and without limiting the allegations in that subparagraph, Credit Suisse Virtuoso also relied on, or delegated responsibilities and functions to, CSFS through CSFM (for whom, at all material times, CSFS acted as agent as pleaded in subparagraph (0b) above) with respect to its investment in the NMC notes, namely:

i. the function of fund administrator;

ii. the function of central administrator;

iii. responsibility for monitoring:

a. investment policy limits and restrictions;

b. regulatory investment compliance;

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

d. compliance with internal investment guidelines;

iv. responsibility for internal auditing;

v. from around 1 July 2019 onwards, post-trade controls and independent cross-checking and confirmation on insurance coverage of notes as required

by updates to internal investment guidelines issued by Credit Suisse Virtuoso;

vi. fund administration core services, including:

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

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

Particulars

"Rely" means to depend on or put trust in, and "delegate" means to commit powers or functions to others including agents by way of a formal contractual delegation. In the present case, they include the matters identified in these particulars and those to paragraph 104AA(0b) above.

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

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

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

c. Clause IX of the SIF Management Agreement between CSFM and Credit Suisse Virtuoso [CSA.5000.0006.0829] provided that CSFM could only delegate responsibilities

with the consent of Credit Suisse Virtuoso. It should be inferred that, consistently with that clause, Credit Suisse Virtuoso consented to CSFM's delegations to CSFS and so those delegations are attributable to Credit Suisse Virtuoso.

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

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

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

g. TMNF further and otherwise relies upon and repeats the matters set out in the particulars to paragraph 104C(k) and (ka) of IAL's defence in these proceedings.

b. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to identify, limit and monitor risks in the context

of their business relationships with Lex Greensill and his companies (including Greensill Bank and GCPL) over a period of years by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Particulars

TMNF repeats the particulars to paragraph 104AA(a) of this Defence, including the investigations and findings recorded in the FINMA Press Release, the FINMA Ruling, the Wenger Plattner Report (both in its own right and in support of the matters in the FINMA Ruling), the CG&R Report, the FINMA CG&R Response, and the CSSF Sanction with respect to each of the above matters.

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon the specific findings recorded in the FINMA Ruling at section 5.1.4.

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon:

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

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

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

Particulars

TMNF repeats the particulars to paragraph 104AA(a) of this Defence including the findings recorded in the FINMA Press Release, the FINMA Ruling, the Wenger Plattner Report, the CG&R Report, the FINMA CG&R Response, and the CSSF Sanction.

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

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

ii. otherwise sufficiently perform as asset managers or fund managers, by reason of failing to obtain and review valuation reports for the underlying claims in cases where the transaction documentation provided for such reports to be prepared as a precondition to the purchase of a receivable;

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon:

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

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

iii. TMNF relies upon the breach of supervisory duties articulated in the first paragraph of the particulars to paragraph 104C(k)(i) of IAL's defence in these proceedings; and

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

g. Credit Suisse Virtuoso delegated the matters described in f above to an asset management company, namely CSAM, where:

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) of this Defence.

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

h. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS did not themselves select or review the specific

investments entered into with the Greensill Group, but allowed the Greensill Group to select and review these on their behalf;

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(h) above.

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

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

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

Particulars

TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

Particulars

A. The breaches of which TMNF is presently aware are those recorded in the FINMA Ruling and FINMA Press Release (and as supported by the

investigations comprised in the Wenger Plattner Report) and the FINMA CG&R Response;

B. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

k1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, or alternatively CSFM, engaged in conduct or omissions amounting to breaches of Luxembourg supervisory law;

Particulars

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

B. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

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

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

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

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

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

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

C. TMNF further relies upon the findings recorded in the FINMA Ruling at Section Fb.

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

a. taking the actions which it is alleged in this paragraph 104AA they failed to do, and in the case of actions which it is alleged they did do but should not have done, not doing so;

b. not purchasing any NMC Notes, or purchasing fewer NMC Notes (so that, as distributions on the notes were paid over time, the overall exposure would have decreased);

c. investing in non-Greensill investments;

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

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon:

i. the specific finding recorded in the FINMA Press Release (under the heading “Many critical observations, too few appropriate reactions”) that, when Greensill sought a bridging loan from

Credit Suisse, "[t]he Credit Suisse risk manager responsible for the loan identified a number of risks in Greensill's business model. He therefore recommended internally at the bank not to grant the loan. A senior manager overruled this recommendation"; and

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon:

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

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

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

Particulars

A. TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

B. TMNF further relies upon the findings recorded in the FINMA Press Release (under the heading "Many critical observations, too few

appropriate reactions") that, when responding to questions and warnings by making statements to FINMA, "Credit Suisse even repeatedly asked Lex Greensill himself and relied on his answers for its own statements".

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

Particulars

TMNF repeats the particulars to paragraph 104AA(a) and (b) of this Defence.

r1. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM:

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

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

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

Particulars

TMNF repeats the particulars to paragraph 104AA(a) above, and specifically particular LB.

r2. CSAM:

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

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

Particulars

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

s. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, failed to enforce its rights to recover the amounts due from NMC Health (as seller) and NMC Health plc (as guarantor), as pleaded at paragraphs 104D and 104E below.

Particulars

A. The rights arose as described in paragraph 104D(a) to (d) and paragraph 104E(a) to (c) below.

B. Credit Suisse Virtuoso, either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS, could have taken the steps described in paragraph 104D(c) and 104E(b) below (that is, enforcing payment of the debts there described in an action for debt) but have not done so (whether by Credit Suisse Virtuoso itself, or by steps taken by each of CSAM, CSFM, or CSFS acting for Credit Suisse Virtuoso).

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

t. further or alternatively, if one or more of the grounds alleged by IAL at paragraph 104C(k)(i) of its defence in these proceedings is established with respect to Credit Suisse Virtuoso (either by itself or alternatively through its agents CSAM or CSFM and its agent CSFS) Credit Suisse Virtuoso was contributorily negligent for the reasons alleged by IAL in that paragraph; and

u. further or alternatively, TMNF refers to and relies on BCC/TM's Annexure C.

Proportionate liability defences

104AB In further response to paragraphs 95 to 104B of the ASOC, TMNF says that to the extent that Credit Suisse Virtuoso has suffered loss by reason of any alleged contravening conduct (which is denied), the claims are apportionable claims for the purposes of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the Competition and Consumer Act or s 34 of the Civil Liability Act.

104C Without admission and for the purposes only of this Defence, TMNF refers to and repeats the matters pleaded in the following paragraphs 19 to 27, 29 to 33A and 65 to 67 of the ASOC.

104D By virtue of the matters pleaded in paragraph 104C of this Defence, NMC Health is a concurrent wrongdoer, as its acts or omissions in failing to repay the debts owed by it to GCUK caused the damage or loss the subject of the claim:

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

b. the Applicant was a beneficiary of the trust over the rights to enforce each such debt constituted by the Supply Chain Finance Trust Deed and/or the Master Trust Deed;

c. by virtue of its status as a beneficiary of such trust, the Applicant was and is entitled to enforce payment of those debts in an action for debt against NMC Health; and

d. NMC Health is liable to the Applicant in an action for debt in respect of each unpaid debt owed by NMC Health as pleaded in the ASOC.

104E By virtue of the matters pleaded in paragraph 104C of this Defence, NMC Health plc (as guarantor) is a concurrent wrongdoer, as its acts or omissions in failing to make payment of the debts owed by NMC Health to GCUK caused the damage or loss the subject of the claim:

a. NMC Health plc was and is liable, upon non-payment by NMC Health, to make payment of the debt that was owed to, or had been assigned to, GCUK;

b. by virtue of its status as beneficiary of the trusts constituted by the Supply Chain Finance Trust Deed and/or the Master Trust Deed, the Applicant was and is entitled to enforce payment of those debts in an action for debt against NMC Health plc; and

c. NMC Health plc is liable to the Applicant in an action for debt in respect of each unpaid debt owed by NMC Health as pleaded in the ASOC.

104F Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they breached a duty of care owed to the Applicant to exercise reasonable skill and care to ensure that the Applicant was not misled into believing that the notes which the

Applicant acquired as pleaded in the ASOC were supported by insurance cover for the debts underlying the notes:

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

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

c. by reason of their role in procuring, encouraging, promoting and facilitating the abovementioned investments by the Applicant in the Notes, Lex Greensill, Greensill Bank, GCPL and GCUK owed a duty of care to take reasonable care to ensure that the information they provided to the Applicant in connection with those investments was accurate and complete;

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

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

f. in the premises, Lex Greensill, Greensill Bank, GCPL and GCUK are liable to the Applicant in the tort of negligence.

Particulars

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

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

iii. Further particulars may be provided following discovery.

104G Lex Greensill, Greensill Bank, GCPL and GCUK are concurrent wrongdoers on the basis that they misled the Applicant (in contravention of s 1041H of the *Corporations Act*, s 18 of the *Australian Consumer Law* and/or s 12DA of the *ASIC Act*) and breached a duty to the Applicant to exercise reasonable care and skill by failing to disclose to the Applicant that:

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

Particulars

A. TMNF refers to and repeats the allegations in Annexure A to this Defence;

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

b. they had received (either directly or through their agent, Marsh) the correspondence from BCC, TMMA and/or TMNF pleaded or particularised at paragraphs 86 to 87B of the ASOC and had not disclosed that correspondence to Credit Suisse Virtuoso, in circumstances where Credit Suisse Virtuoso alleges that it had a reasonable expectation that the matters addressed in that correspondence would be disclosed, that the failure to disclose those matters was misleading or deceptive or likely to mislead and that, but for the non-disclosure of those matters, it would not have purchased the NMC Notes.

Particulars

TMNF refers to and repeats paragraphs 83 to 104B of the ASOC.

104GA If the matters alleged by the Applicant at paragraphs 108BB to 108CCCC of its ASOC are established, then Marsh Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs.

104GB Further or alternatively, if the matters alleged by IAL at paragraph 104C(s) of its Defence are established, then Marsh Ltd and/or Marsh Pty Ltd is a concurrent wrongdoer for the reasons alleged in those paragraphs.

104H IAL is a concurrent wrongdoer, on the basis that if (which is not admitted) BCC and Brereton were not authorised by IAL to enter into the policies and endorsements the subject of this proceeding, at all material times up to 30 June 2019:

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

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

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

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

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

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

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

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

f. in the premises, IAL is liable to the Applicant for the loss suffered by it by reason of the contravening conduct of its representatives.

104HA Each of CSAM, CSFM and CSFS is a concurrent wrongdoer, on the basis that:

a. in the case of CSAM and CSFM, it voluntarily assumed a responsibility to Credit Suisse Virtuoso to manage the investment in the NMC Notes and, in the case of CSFS, it assumed the responsibilities delegated to it as pleaded and particularised in paragraph 104AA(a1) above;

Particulars

TMNF relies upon and repeats the matters set out in the particulars to paragraph 104C(ka)(i)(A) of IAL's defence in these proceedings.

b. it knew, or ought to have known, that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the NMC Notes or, in the case of CSFS, if it did not take reasonable precautions in relation to the responsibilities delegated to it as pleaded and particularised in paragraph 104AA(a1) above, Credit Suisse Virtuoso would suffer loss or damage;

Particulars

A. With respect to CSFS:

i. its actual knowledge may be reasonably inferred on the basis that an entity assuming or exercising responsibilities of the kind in paragraph 104AA(a1) above would be aware that that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the NMC Notes, Credit Suisse Virtuoso would suffer loss or damage; and

ii. its constructive knowledge arises because a reasonable entity delegated responsibilities of the kind in paragraph 104AA(a1) above would be aware that that there was a material risk that, if it did not take reasonable precautions in relation to the management of Credit Suisse Virtuoso's investment in the NMC Notes, Credit Suisse Virtuoso would suffer loss or damage.

B. TMNF repeats what is said at particular MA1 to paragraph 104AA(a) above, as well as the fifth paragraph of the particulars to paragraph 104C(k)(i)(C) and in paragraph 104C(ka)(i)(D)-(H) of IAL's defence in these proceedings, and says subject to that qualification, that the precautions that a reasonable person or entity in the position of each of the CSAM, CSFM, and CSFS would have taken include:

i. undertaking adequate investigations and/or due diligence of the kind pleaded in paragraph 104AA(a) of this Defence and paragraph 104C(k)(i) of IAL's defence (as referred to in paragraph 104AA(t) of this Defence);

ii. identifying, limiting, and monitoring risks of the kind pleaded in paragraph 104AA(b) of this Defence, by doing things including the things which it is alleged CSAM, CSFM, and CSFS failed to

do in paragraph 104AA(b)(i) to (xiii) and (xvi) to (xviii), and not doing the things which it is alleged they did do in paragraph 104AA(b)(xiv) and (xv).

iii. having in place a system for the periodic review at the executive board level of the most important business relationships of the group, in particular for counterparty risks (which it is alleged in paragraph 104AA(c) of this Defence they did not do);

iv. having in place adequate organisation structures for the identification, review and management of investment risks (which it is alleged in paragraph 104AA(d) of this Defence they did not do);

v. having in place adequate systems for the identification and recording of the responsibilities of its highest-ranking employees (which it is alleged in paragraph 104AA(e) of this Defence they did not do);

vi. obtaining and reviewing valuation reports for the underlying claims in cases where the transaction documentation provided for such reports to be prepared as a precondition to the purchase of a receivable (which it is alleged in paragraph 104AA(f) of this Defence they did not do in the sufficient performance of their role as asset managers or fund managers);

vii. not accepting responsibility for delegate supervisory duties as an asset manager without (a) having sufficient knowledge about and control over the specific claims that had been securitised and transferred to Credit Suisse Virtuoso or (b) being subject to adequate monitoring (as is alleged in paragraph 104AA(g) of this Defence was the case in respect of CSAM);

viii. selecting or reviewing themselves the specific investments entered into with the Greensill Group (which it is alleged in paragraph 104AA(h) of this Defence they did not do) rather than allowing the Greensill Group to do so on their behalf (as is alleged in the same that they did);

ix. not delegating all (or all material) decisions related to their investments in the NMC Notes to the Greensill Group itself (as is alleged in paragraph 104AA(i) of this Defence they did);

x. arrange their own insurance cover (which it is alleged in paragraph 104AA(j) of this Defence they did not do), rather than leave it to the Greensill Group to do so for their benefit (as is alleged in the same that they did);

xi. not engage in breaches of Swiss supervisory law (as is alleged in paragraph 104AA(k) of this Defence they did);

xii. not engage in breaches of Luxembourg supervisory law (as is alleged in paragraph 104AA(k1) of this Defence they did);

xiii. realising (including by having in place adequate systems to enable them to realise) that the Greensill Group was financing companies whose creditworthiness was doubtful (which it is alleged in paragraph 104AA(l) of this Defence they did not do);

xiv. obtaining knowledge of, and exercising control over, how many accounts receivable in which they were investing were actually contractually owed (which it is alleged in paragraph 104AA(m) of this Defence they did not do);

xv. acting to reduce exposure to the Greensill Group related risks after being questioned and warned about those matters (which it is alleged in paragraph 104AA(n) of this Defence they did not do);

xvi. giving effect to the assessment of their own risk manager (which it is alleged in paragraph 104AA(o) of this Defence they did not do);

xvii. not delegating decision-making authority in relation to the management of relevant risks to employees who were themselves responsible for the business relationship with the Greensill Group and were not sufficiently independent to be able to respond appropriately to critical questions or warnings (which it is alleged in paragraph 104AA(p) of this Defence they did);

xviii. not deferring to Lex Greensill (as is alleged in paragraph 104AA(q) of this Defence they did);

xix. ensuring that there was regular, consistent engagement with the risks associated with the Greensill Group at the highest level within their organisation (which it is alleged in paragraph 104AA(r) of this Defence they did not do);

xx. not stopping investments in the Greensill Group in light of the risks identified in paragraph 104AA(r1) of this Defence; and

xxi. enforcing their rights to recover the amounts due from NMC Health and NMC Health plc (which it is alleged in paragraph 104AA(s) of this Defence they did not do).

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

D. TMNF further and otherwise relies upon and repeats the matters set out in the particulars to paragraph 104C(k)(i)(B) of IAL's defence in these proceedings.

b1 further or alternatively, TMNF refers to and relies on the matters set out in BCC/TM's Annexure C;

c. in the premises, it owed a duty to Credit Suisse Virtuoso to exercise reasonable care in relation to the management of Credit Suisse Virtuoso's investment in the NMC Notes or, in the case of CSFS, in relation to the responsibilities delegated to it as pleaded and particularised in paragraph 104AA(a1) above;

Particulars

i. With respect to CSFS, the premises include those set out in paragraphs 104AA(a1) and 104HA(a) to (b1) of this Defence.

ii. TMNF repeats paragraphs 104AA(k), 104AA(k1) and 104AA(n) of this Defence.

d. by reason of the acts and omissions pleaded in paragraphs 104AA(a) to (s) of this Defence, it breached that duty to Credit Suisse Virtuoso;

Particulars

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

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

i. with respect to CSAM, CSFM, and CSFS in paragraph 104C(ka)(i)(I) of IAL's defence (including as subject to the qualifications stated at paragraph 104C(ka)(i)(D)-(H) of the same);

ii. with respect to CSAM, in paragraph 104C(kb)-(kf) of IAL's defence;

iii. with respect to CSFM (including CSFS acting as its agent), in paragraph 104C(kg)-(kk) of IAL's defence;

iv. with respect to CSFS, in paragraph 104C(kl) of IAL's defence.

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

i. in respect of paragraphs 104AA(a) to (r2) and (t), would not have purchased the NMC Notes either at all or to the same extent that it did; and

ii. in respect of paragraph 104AA(s), would have avoided or reduced the loss by enforcing the debts owed by NMC and Guarantor; and

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

104I In the premises, the liability of TMNF to the Applicant in relation to its claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of TMNF's responsibility for the damage or loss, and the court may give judgment against TMNF for not more than that amount, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act, s 87CD of the Competition and Consumer Act and/or s 35 of the Civil Liability Act.

L.4 Section 1041E Claim

105. As to paragraph 105 of the ASOC, TMNF:

a. repeats paragraph 105 of BCC's Defence in this proceeding; and

b. otherwise denies the paragraph.

106. As to paragraph 106 of the ASOC, TMNF:

a. repeats paragraph 106 of BCC's Defence in this proceeding; and

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

107A. As to paragraph 107A of the ASOC, TMNF:

a. repeats paragraph 107A of BCC's Defence in this proceeding; and

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

107B. As to paragraph 107B of the ASOC, TMNF:

a. repeats paragraph 107B of BCC's Defence in this proceeding; and

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

107. As to paragraph 107 of the ASOC, TMNF:

a. repeats paragraph 107 of BCC's Defence in this proceeding; and

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

108. As to paragraph 108 of the ASOC:

a. repeats paragraph 108 of BCC's Defence in this proceeding; and

b. otherwise denies the paragraph.

108A. In response to paragraph 108A of the ASOC, TMNF:

a. admits that the conduct alleged at paragraphs 95, 97, 105 and 106 to 107B of the ASOC related to the provision of a financial service within the meaning of s 917A(1) of the Corporations Act;

b. denies subparagraphs (b) to (e);

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

i. says that some of the alleged conduct of BCC and Brereton referred to in paragraphs 95, 97, 105 and 106 to 107B of the ASOC (which arises from the

execution of the documents pleaded at paragraph 88 of the ASOC) occurred prior to 1 July 2019 and in BCC's capacity as the corporate authorised representative of IAL, not TMNF; and

ii. repeats paragraph 104A(c)(ii) of this Defence, which applies mutatis mutandis to the conduct.

108B. In response to paragraph 108B of the ASOC, TMNF:

a. does not plead to the paragraph insofar as it makes allegations against IAL; and

b. otherwise denies the paragraph.

108C-108AA [NOT USED]

L.5 Deceit

108ZA. In response to paragraph 108ZA of the ASOC, TMNF:

a. repeats paragraph 108ZA of BCC's Defence in this proceeding; and

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

108ZB. In response to paragraph 108ZB of the ASOC, TMNF:

a. repeats paragraph 108ZB of BCC's Defence in this proceeding; and

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

108ZC. In response to paragraph 108ZC of the ASOC, TMNF:

a. repeats paragraph 108ZC of BCC's Defence in this proceeding; and

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

108ZD. In response to paragraph 108ZD of the ASOC, TMNF:

a. repeats paragraph 108ZD of BCC's Defence in this proceeding; and

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

108ZE. In response to paragraph 108ZE of the ASOC, TMNF:

a. repeats paragraph 108ZE of BCC's Defence in this proceeding; and

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

108ZF. In response to paragraph 108ZF of the ASOC, TMNF:

a. repeats paragraph 108ZF of BCC's Defence in this proceeding; and

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

108ZG. In response to paragraph 108ZG of the ASOC, TMNF:

a. repeats paragraph 108ZG of BCC's Defence in this proceeding; and

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

Particulars

TMNF refers to and relies on the matters set out in BCC/TM's Annexure C.

108ZH. In response to paragraph 108ZH of the ASOC, TMNF:

a. repeats paragraph 108ZH of BCC's Defence in this proceeding; and

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

Particulars

TMNF refers to and relies on the matters set out in BCC/TM's Annexure C.

108ZI. In response to paragraph 108ZI of the ASOC, TMNF:

a. repeats paragraph 108ZI of BCC's Defence in this proceeding; and

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

108ZJ. In response to paragraph 108ZJ of the ASOC, TMNF:

a. repeats paragraph 108ZJ of BCC's Defence in this proceeding; and

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

108ZK. In response to paragraph 108ZK of the ASOC, TMNF:

a. repeats paragraph 108ZK of BCC's Defence in this proceeding; and

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

N CLAIMS AGAINST MARSH

108BB-108ZZZZ. TMNF does not plead to paragraphs 108BB to 108ZZZZ of the ASOC, there being no allegations against it.

O THE RELIEF SOUGHT

109. As to paragraph 109 of the ASOC, TMNF admits that Credit Suisse Virtuoso seeks the relief referred to but denies that it is entitled to that relief.

Date: 31 July 2026



……

Signed by Raylee Joy Hartwell
as partner of Matt James Andrews
Lawyer for the Sixth Respondent

This pleading was prepared by Peter Braham SC, Justin Williams SC, James Hutton SC, Julie Granger, Jerome Entwisle, Daniel Reynolds, Christopher Beshara and Stephen Thomson of counsel.

Certificate of lawyer

I, Raylee Joy Hartwell, certify to the Court that, in relation to the defence filed on behalf of the Sixth Respondent, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 31 July 2026



Signed by Raylee Joy Hartwell
as partner of Matt James Andrews,
Lawyer for the Sixth Respondent

Schedule

No. NSD 110 of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Respondents

Greensill Bank AG
Second Respondent

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Third Respondent

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Fourth Respondent

Greg Brereton
Fifth Respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Sixth Respondent

Marsh Limited
Seventh Respondent

GREENSILL BANK CROSS-CLAIM

Greensill Bank AG
First Cross-Claimant

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Second Cross-Claimant

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

BCC CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross-Claimant

Greensill Capital (UK) Ltd
First Cross-Respondent

Greensill Bank AG
Second Cross-Respondent

Greensill Capital Pty Ltd (in liquidation)
Third Cross-Respondent

BCC/TMMA/TMNF FIRST CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

Marsh Limited
First Cross-Respondent

Marsh Pty Ltd (ACN 004 651 512)
Second Cross-respondent

BCC/TMMA/TMNF SECOND CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

Insurance Australia Limited (ACN 000 016 722)
Cross-Respondent

BCC/TMMA/TMNF THIRD CROSS-CLAIM

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-claimant

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Second Cross-claimant

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Third Cross-claimant

UBS Asset Management (Europe) S.A.
First Cross-Respondent

UBS Asset Management Switzerland AG
Second Cross-Respondent

UBS Fund Administration Services Luxembourg S.A.
Third Cross-Respondent

MARSH LIMITED'S FIRST CROSS-CLAIM

Marsh Limited
Cross-claimant

UBS Asset Management (Europe) S.A
First Cross-respondent

UBS Asset Management Switzerland AG
Second Cross-respondent

MARSH LIMITED'S SECOND CROSS-CLAIM

Marsh Limited
Cross-claimant

BCC Trade Credit Pty Ltd (ACN 608 296 233)
First Cross-respondent

Greg Brereton
Second Cross-respondent

Insurance Australia Limited (ACN 000 016 722)
Third Cross-respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd. (ARBN 000 438 291)
Fourth Cross-respondent

Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Fifth Cross-respondent

IAL CROSS-CLAIM

Insurance Australia Limited (ACN 000 016 722)
Cross-claimant

Marsh Limited
First Cross-respondent

Marsh Pty Ltd
Second Cross-respondent

UBS Asset Management (Europe) S.A.
Third Cross-respondent

UBS Asset Management Switzerland AG
Fourth Cross-respondent

UBS Fund Administration Services Luxembourg S.A.
Fifth Cross-respondent

Tokio Marine & Nichido Fire Insurance Co., Ltd (ACN 000 438 291)
Sixth Cross-respondent