NOTICE OF FILING

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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

Defence to ~~Ninth~~ Tenth Amended Statement of Claim

No. NSD110/2022

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations National Practice Area

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
Respondents

To the Applicant's ~~Ninth~~ Tenth Amended Statement of Claim filed ~~7 January~~ 2 July 2026 (**SOC**), the First Respondent (**IAL**) says as follows:

SUMMARY

A1 The Applicant (**Credit Suisse Virtuoso**) alleges that Greg Brereton (**Brereton**) and BCC Trade Credit Pty Ltd (**BCC**) purported to act~~ed~~ on behalf of IAL in issuing a "trade credit" insurance policy (referred to as **Policy TS-03088**) and related endorsements to Greensill Bank AG (**Greensill Bank**). Credit Suisse Virtuoso ~~claims that it is a "loss payee" under Policy TS-03088 and~~ accepts that it is not entitled to indemnity from IAL under Policy TS-03088.

A2 A total of 113 endorsements are or have been relied upon by the **Greensill Applicants**[1] in the various Greensill Proceedings[2] in respect of Policy TS-03088 and a similar policy referred to as the **2019 Policy**. There are seven (7) endorsements specifically relied on in this proceeding in respect of Policy TS-03088, which is in substantially similar terms to

[1] The applicants in the various "Greensill Proceedings" (as defined in footnote 2).
[2] NSD1039 of 2021 (White Oak Proceeding), NSD1216 of 2021 (EHG Proceeding), NSD106 of 2022 (Catfoss Renewables Proceeding), NSD110 of 2022 (NMC Health Proceeding), NSD169 of 2023 (Credit Suisse Global Proceedings), NSD173 of 2023 (Atlantic 57 Proceeding), NSD174 of 2023 (Bluestone Proceeding), NSD175 of 2023 (LCL Proceeding) and NSD177 of 2023 (Simec Proceeding).

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the 2019 Policy. The SOC refers to these endorsements as "debt endorsements", "customer endorsements" and "loss payee endorsements". These endorsements were written by BCC and Brereton between 13 March 2019 and 2 July 2020. ~~The Greensill Applicants allege that the claims made in the Greensill Proceedings fall within the scope of the 2019 Policy and/or Policy TS-03088 (the latter being the policy relied upon in this proceeding) and endorsements pleaded~~. The Applicant accepts that the claims made in these proceedings do not fall within the scope of Policy TS-03088 and endorsements, but have not identified the reason/s why that is so.

A3 Notably, in light of the acquisition of BCC by Tokio Marine Management (Australasia) Pty Ltd (**TMMA**), which was completed on 9 April 2019, there was a transitional period between 9 April and 30 June 2019 during which the authority given by IAL to BCC and Brereton was more limited than the immediately preceding period. TMMA and Bond & Credit Company Pty Ltd (**Bond**) issued public statements about the acquisition in mid-April 2019. BCC provided a copy of these statements to the insurance broker of the **Greensill Group** (being, Greensill Bank, Greensill Capital Pty Ltd (**GCPL**) and Greensill Capital (UK) Pty Ltd (**GCUK**)), Marsh Pty Limited and/or Marsh Limited (collectively, **Marsh**), on 15 April 2019. Accordingly, the public, and specifically the Greensill Group, were on notice of the impending change in the licensee on whose behalf BCC and Brereton could act in issuing trade credit insurance.

A4 Across the various Greensill Proceedings (including proceedings not concerned with Credit Suisse Virtuoso), IAL denies liability on numerous bases. It was not a party to the policies and endorsements, and cannot be sued on them. The policies and endorsements were not issued with the authority of IAL. Further and as the Applicants accept, e~~E~~ven if the policies and endorsements were issued with the authority of IAL, they would not have responded to the losses claimed in these proceedings. ~~are binding, the SOC does not plead the facts necessary for there to be coverage, and in any event, even on Credit Suisse Virtuoso's pleaded case, its claims fail to meet multiple necessary conditions~~. On these, and other bases, liability is denied.

A5 The core bases upon which IAL denies liability in this proceeding are set out below.

No authority

A6 *First,* it is uncontroversial that BCC and Brereton did not have any authority – actual or ostensible – from IAL to write the risks the subject of claims in the Greensill Proceedings. BCC and Brereton's authority was, at all relevant times, limited by specific written authorities and underwriting manuals. The only policies they could enter into on behalf of IAL were true trade credit policies using prescribed wording of three kinds – "Trade Credit Insurance Whole of Turnover", "Trade Credit Insurance Multi Buyer" and "Trade Credit

Insurance Single Risks" (**Approved Wording**). The endorsements that BCC and Brereton could issue on behalf of IAL were also prescribed and in set terms (**Approved Endorsements**). BCC and Brereton could not issue trade credit policies and endorsements that were not in accordance with the prescribed terms without approval from IAL and its reinsurers (in particular, lead reinsurer Scor Reinsurance Asia-Pacific Pte Ltd (**Scor Re**)). This was known to the entities in the Greensill Group (consisting of Greensill Bank, GCPL and GCUK) purportedly insured under the policies entered into by BCC and Brereton (as explained in paragraph A10 below).

A7 [not used] ~~Policy TS-03088 (pursuant to which the claim is made in this proceeding) was outside the scope of BCC and Brereton's written authority in numerous respects (as with the 2019 Policy), including as follows, such that the policy is not binding on IAL:~~

~~(a) Policy TS-03088 was not Approved Wording. IAL and Scor Re had not approved its terms, as was required under the relevant authorities.~~

~~(b) The risks were not trade credit risks.~~

~~(c) BCC and Brereton could only write policies for insureds domiciled in Australia, but Greensill Bank was not so domiciled.~~

~~(d) The premium for Policy TS-03088 was specified as $1, less than the minimum authorised premium of $10,000. $1 was in any event entirely uncommercial and disproportionate to the risks sought to be purportedly insured.~~

~~(e) It permitted credit terms for insured debts which exceeded the maximum authorised credit term of 180 days.~~

~~(f) Policy TS-03088 did not have a minimum excess, when the minimum required was 0.75%.~~

~~(g) Policies could not exceed a policy term of 12 months, but by Endorsements 11 and 12, the Policy Period for Policy TS-03088 was purportedly extended to 15 June 2020, and 30 June 2020 respectively.~~

~~(h) Policy TS-03088 was in breach of BCC's and Brereton's contractual obligation to act efficiently, honestly and fairly.~~

A8 [not used] ~~Moreover, the purported insureds failed to pay any consideration/premium for Policy TS-03088, such that it is not valid or binding.~~

A9 [not used] ~~The endorsements pleaded and purportedly issued by BCC/Brereton on behalf of IAL pursuant to Policy TS-03088 were outside the scope of their authorities and are~~

~~therefore invalid, of no effect and not binding or enforceable against IAL because, *inter alia*:~~

~~(a) They were not Approved Endorsements.~~

~~(b) As BCC and Brereton lacked authority to enter into Policy TS-03088, they also lacked authority to enter into the endorsements.~~

~~(c) The endorsements (including Customer Endorsement 4, Endorsement 9, Endorsement 10, Endorsement 11, Endorsement 12, and Debt Endorsement 1) purported to operate in favour of an insured not domiciled in Australia, which their authorities did not permit, and/or purported to vastly increase the exposure of IAL beyond the limits as stipulated in the applicable Underwriting Manuals.~~

(d) ~~Many of the endorsements (including Endorsement 9, Endorsement 10, Endorsement 11 and Endorsement 12) were entered into after 30 June 2019, after BCC and Brereton's appointment as authorised representatives of IAL had ceased. Moreover, as was publicly available, the register maintained by ASIC under section 922A of the *Corporations Act 2001* (Cth) (**Corporations Act**) was updated to record that BCC's and Brereton's status as authorised representatives of IAGA had ceased with effect on 30 June 2019, and that BCC was the authorised representative of Tokio Marine & Nichido Fire Insurance Co Ltd (**TMNF**) from 1 July 2019 onwards. On and from 1 July 2019, TMNF was responsible for the conduct of BCC and Brereton for the purposes of section 917B of the *Corporations Act*.~~

A10 The Greensill Group knew or ought to have known that BCC and Brereton lacked authority to enter into Policy TS-03088 on behalf of IAL. In particular, in late 2017, the Greensill Group (through its insurance broker Marsh) and Alexander 'Lex' Greensill (**Lex Greensill**) sought to negotiate (through BCC) the terms of a policy prepared by the Greensill Group or Marsh with IAL and reinsurer Scor Re. Those terms deviated from the Approved Wording. IAL and Scor Re informed BCC that they disagreed in numerous respects and BCC communicated this to the Greensill Group. In the result, agreement was not reached, and BCC informed IAL that it would proceed only using Approved Wording. Through this, the Greensill Group knew that policy wordings which deviated from Approved Wording required approval from IAL and Scor Re, and that no such approval had been given. At no point did the Greensill Group seek approval for Policy TS-03088, or any of its purported endorsements, from IAL or Scor Re as required, and at no point did IAL or Scor Re give approval for Policy TS-03088 and or any endorsements.

A11 Even if BCC/Brereton had authority to write the endorsements (which the Applicants accept was not the case ~~IAL denies~~), those endorsements were inconsistent with numerous terms of Policy TS-03088, and were not of a kind contemplated by it, i.e., they

were not permitted by the terms of Policy TS-03088, and are therefore invalid, of no effect and not binding or enforceable against IAL.

IAL is not responsible for the conduct of BCC/Brereton under the Corporations Act

A12 *Second,* Division 6 of Part 7.6 of the *Corporations Act* does not apply to make IAL responsible for the conduct of BCC/Brereton, including their conduct in entering into Policy TS-03088 and endorsements. This is so because, *inter alia*:

(a) Credit Suisse Virtuoso (as a purported loss payee) was not a "client" with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act*.

(b) The conduct of BCC and Brereton in purportedly entering into Policy TS-03088 and endorsements, was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* nor did they in fact rely on it, or rely on it reasonably and in good faith, as to which IAL repeats paragraph A10.

(c) If Credit Suisse Virtuoso was a "client" with respect to Policy TS-03088 and endorsements for the purpose of section 917A(1)(b) of the *Corporations Act* (which IAL denies), then the purported entry into Policy TS-03088 was not conduct on which it could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* ~~for the reasons given in paragraph A13 below~~.

(d) Moreover, Credit Suisse Virtuoso has not pleaded the facts, matters and circumstances said to constitute actual good faith reliance for the purpose of section 917A(1)(c) of the *Corporations Act*. Credit Suisse Virtuoso did not in fact rely ~~and it is not known whether it in fact relied~~ *in good faith or reasonably* on the purported entry into Policy TS-03088 and endorsements. IAL relies on the absence of any pleading by Credit Suisse Virtuoso as to the facts, matters and circumstances said to constitute actual good faith reliance, and the matters set out in Annexure C to this Defence.

A13 IAL was not informed that BCC and Brereton were issuing policies and endorsements using non-approved wording and non-approved endorsements. In fact:

(a) BCC informed IAL on 2 November 2017 that "We are only going to use our approved wording in accordance with our approved Underwriting Guidelines" [~~TOK.001.00145983~~IAL.500.011.0555].

(b) The bordereaux provided by BCC to IAL at all relevant times failed to disclose material information and contained substantial inaccuracies, including by failing to

disclose the existence of Policy TS-03088 and endorsements and multiple other policies purportedly written by BCC/Brereton on behalf of IAL in favour of Greensill entities, and by failing to disclose that BCC/Brereton had purported to write policies with entities domiciled outside Australia as insureds. In particular, Greensill Bank, which was domiciled in Germany, was not disclosed as an insured. The bordereaux did not disclose that non-approved wording and endorsements were being written. On the contrary, the denominations of the policies identified in the bordereaux were consistent with Approved Wording being used.

A14 The Greensill Group (including its agent, Marsh) knew or ought to have known that BCC and Brereton did not have authority to write the risks the subject of this proceeding.

No coverage under Policy TS-03088

A15 *Third,* any assessment of Credit Suisse Virtuoso's claims must occur in a context where, as is now accepted by Credit Suisse Virtuoso, ~~even if Credit Suisse Virtuoso can establish that IAL is bound by (or otherwise responsible for) Policy TS-03088 and the endorsements to it, it faces several insurmountable obstacles in showing that~~ Policy TS-03088 would never have covered the claims it now makes~~.~~, even if it were valid and binding on IAL. While Credit Suisse Virtuoso now accepts that Policy TS 03088 would not have responded to the losses claimed, it does not concede any one of the many grounds advanced by IAL for which coverage was not, and would never have been, available.

A16 To the extent that this Defence sets out coverage defences that are based on the wording of Policy TS-03088 and its endorsements, those defences arise ~~only in the alternative to IAL's primary position that Policy TS-03088 and its endorsements are not valid and binding~~ in a context in which Credit Suisse Virtuoso accepts that there was and is no authority to enter into Policy TS 03088 and endorsements. While Credit Suisse Virtuoso accepts that the policies and endorsements would not in any event have responded to their claims, they have specifically declined to identify or accept any particular reason for the unavailability of coverage. Credit Suisse Virtuoso's concession that there was or would have been no coverage, and the reasons set out in this Defence as to why there was or would have been no coverage, remain of relevance. The absence of coverage and the reasons for it bear on, for example, whether the Applicants can make out causation and reliance, and IAL's concurrent wrongdoer and contributory negligence defences. ~~The policy, at a high level, purports to insure "**Loss**" in respect of "**Assets**" caused by a failure to pay "**Eligible Debts**". There are numerous necessary conditions which must exist before each of those three key concepts – "Loss", "Asset" and "Eligible Debt" – can be said to exist~~.

A17 ~~For example, before there can be an "Eligible Debt" there must be a debt which meets the six criteria in Schedule 7 of Policy TS-03088 at the time the relevant "Asset" derived from one or more Eligible Debts is acquired by the Insured. One of those criteria is that the debt meets the criteria in a "Debt Endorsement". Various "Debt Endorsements" (and parts of "Debt Endorsements") are relied on in the claims. Each "Debt Endorsement" brings with it a host of additional conditions which a debt must meet in order to qualify as an "Eligible Debt". IAL denies that the Debt Endorsements bind it, but Credit Suisse Virtuoso's case depends on the Debt Endorsements.~~

A18 ~~There are numerous intersections between IAL's defence of lack of authority and the case advanced by Credit Suisse Virtuoso on coverage. Credit Suisse Virtuoso's case on coverage depends on establishing that various "Customer Endorsements" and "Debt Endorsements" were valid, binding on and enforceable against IAL. For example, there is no "Eligible Debt" unless it is owed by a "Customer" which, in turn, is a person endorsed to the policy under a "Customer Endorsement". If there is no valid or effective "Customer Endorsement", there is no "Customer" and no "Eligible Debt".~~

A19 ~~IAL anticipates that, if Policy TS-03088 is (contrary to IAL's position) valid and/or binding on it, in order to resolve the case on coverage, it will be necessary: first, to identify which endorsements to the policy were valid, binding and enforceable; secondly, to construe the policy and endorsements to identify the conditions necessary for coverage; and, thirdly, to identify and understand the underlying transactions to establish whether the conditions are met. The alleged underlying transactions appear to involve the following parties and transactions:~~

(a) ~~a supply or possible supply of goods or services from a supplier (A) to a purchaser (B, here NMC Health Care LLC (**NMC Health**));~~

(b) ~~the provision of finance from C (here, GCUK) to B (i.e. NMC Health), as purported supply chain finance, to allow NMC Health to meet its payable to A;~~

(c) ~~the assumption of payment obligations by B to C in consideration for the supply of finance by C. B is then the "Customer" relied on by Credit Suisse Virtuoso, and the payment obligations of B (called the "NMC Health Payment Obligations") are then the obligations which give rise to the asserted "Eligible Debts";~~

(d) ~~the entry into a guarantee by D (here, NMC Health Plc) of B's payment obligations. D is also alleged to be a "Customer" and obligations under the guarantee are also alleged to be "Eligible Debts";~~

(e) ~~the declaration of a trust by C in favour of E (here, Citibank N.A. London Branch), with the trust property including amounts payable by B or D;~~

(f) the declaration of a second trust (called the "Citi Trust") by E in favour of C and F, a foreign special purpose vehicle (here, Lagoon Park Capital SA (**Lagoon Park**)), the trust property of which included certain rights of E in the first trust;

(g) the issuing of a financial instrument by F to G (here, Credit Suisse Virtuoso), with the financial instrument being the "NMC Notes", allegedly secured by F's interest in the Citi Trust;

(h) the assignment of the NMC Notes from F to the alleged Insured, H (here Greensill Bank) in order to found a claim under Policy TS-03088.

A20 IAL contends that the SOC falls well short of pleading material facts capable of establishing the multiple steps in the transactional chain which could ground indemnity under Policy TS-03088, even assuming that it, and relevant endorsements, are valid and binding on IAL.

A21 Further, Credit Suisse Virtuoso's pleaded case (as in the other Greensill Proceedings) largely does not address, or address adequately, the conditions necessary for there to be coverage. IAL has done its best in the Defence to expose the propositions which are either implicit in Credit Suisse Virtuoso's case or, if not implicit, are missing and must be established. IAL anticipates that the resolution of the case on coverage will call for a measure of "box-ticking", a task in which IAL says Credit Suisse Virtuoso will fail at multiple levels on the case as pleaded.

A22 The complexity of the endorsements, and the related multiplicity of conditions necessary for there to be coverage, are not matters for which IAL is responsible: IAL did not draft Policy TS-03088 or the endorsements; they bear no resemblance to the Approved Wording or the Approved Endorsements; and the policy and endorsements were in fact drafted by the purported "Insureds" themselves without approval by or even recourse to IAL.

A23 Once the propositions, implicit in or necessary to Credit Suisse Virtuoso's case, are exposed (as they are in other Greensill Proceedings), it is apparent that there are significant gaps throughout Credit Suisse Virtuoso's case. These are identified throughout the Defence. By way of example only:

(a) The "Assets" relied on by Credit Suisse Virtuoso (being, the NMC Notes) were first acquired by the purported Insured (Greensill Bank) after the underlying debt was already in default. The policy, both in its terms and as a matter of commercial common-sense, does not extend coverage to "Assets" acquired in those circumstances. Nor is a debt an "Eligible Debt" if the related "Asset" was acquired when the debt was outstanding.

(b) The "Assets" relied on were first acquired by Greensill Bank after the policy period. Again, that is sufficient to deny coverage.

(c) The finance was structured such that finance could be provided by C (GCUK) to B (NMC Health) *irrespective* of whether there was, or even necessarily would be, an underlying account receivable as between A and B. There can be no "Eligible Debt" without an actual underlying account receivable.

A24 Examples could be multiplied. Many of the problems in Credit Suisse Virtuoso's case arises because the "Asset" in respect of which it seeks indemnity is many steps removed from an underlying, real-world transaction (between A and B) and, in fact, the transactions were financially engineered in such a way that there often need never be any real-world transaction at all. Policy TS-03088 and related debt endorsements ultimately require there to be some real-world root to the "Assets" and "Eligible Debts" the subject of the claim.

A25 There are further coverage defences in this case and in other cases. By way of example:

(a) The policy requires Insureds to mitigate loss and to act in good faith. In many cases, the pleaded case shows that the purported Insured acquired the insured "Asset" *for free* and *after the underlying debt was already in default* (and sometimes just days before lodging the claim), and in a manner calculated to create an alleged right to indemnity (because the insured "Asset" must be held by an "Insured") where none would otherwise exist. To take a step with no commercial justification other than to create a right to claim on insurance is not mitigation; nor is it in good faith.

(b) The policy provides for an *indemnity*. It does not provide for windfall gains. In many cases, on the pleaded case, the purported Insured has suffered no loss at all because it did not pay for the "Asset" it now says is impaired by a default.

(c) The policy provides that "Assets" acquired after the delivery of a "Stop Asset Acquisition Instruction" are not covered. There is a deemed delivery of such an instruction 10 Business Days after an underlying debt goes into default. In many cases, the underlying debts were well in default at the time that the "Assets" were acquired by the purported Insured and Stop Asset Acquisition Instructions had issued, with the result that "Assets" thereafter acquired are not covered.

Fraudulent Misrepresentations and Non-Disclosures

A26 Further to paragraph A15 above, for the reasons set out in Annexure A to IAL's Defence, the purported Insureds made fraudulent misrepresentations and non-disclosures relating to (inter alia) the true nature of the arrangements between GCUK and the purported Customers and the character of the risk being insured. As a result, if IAL is bound by

Policy TS-03088 (which is denied and not asserted by Credit Suisse Virtuoso), Policy TS-03088 should be avoided in whole or, alternatively, IAL's liability (if any) should be reduced to nil.

Credit Suisse Virtuoso's case fails against IAL at every stage

A27 IAL says that Credit Suisse Virtuoso's case fails at multiple stages. IAL was not a party to Policy TS-03088 or the endorsements (as Credit Suisse Virtuoso now accepts), and it is not attributed with responsibility for the conduct of BCC and Brereton in relation to them. As pleaded by IAL, the conduct of the Greensill Group would in any event allow Policy TS-03088 and endorsements to be avoided. And, even if the policies and endorsements (or some of them) ~~are~~ were valid and binding, there ~~is~~ was no coverage – again, as Credit Suisse Virtuoso now accepts. The claim is denied, in whole and at each stage.

Credit Suisse Virtuoso and others have caused the damage or loss (if any) the subject of the claim, not IAL

A28 Finally, IAL also advances a concurrent wrongdoer/apportionment defence so far as Credit Suisse Virtuoso asserts an indirect claim against IAL via a deemed responsibility under Division 6 of Part 7.6 of the *Corporations Act* for contraventions of the *Corporations Act*, the ACL and the ASIC Act. The basis of the defence to this indirect claim is the proposition that IAL's deemed responsibility is not, and cannot be, greater than that of BCC or Brereton, being the persons for whom IAL is said to be responsible – so, if a concurrent wrongdoer defence is available to BCC or Brereton, it is also available to IAL.

A28A A concurrent wrongdoer is a person whose acts or omissions (whether wrongful at law or not) caused the loss the subject of the claim. Here, there were multiple concurrent wrongdoers, including the numerous participants in the transactional chain relied upon as the factual foundation for Credit Suisse Virtuoso's pleaded case, and there is contributory negligence of Credit Suisse Virtuoso. IAL's responsibility and/or liability, if any, is reduced to the extent appropriate in all the circumstances.

Reservation and other preliminary matters

A29 Given the nature of the matters in which issue is joined between the parties, discovery and compulsory disclosure will be sought by IAL. In addition, IAL continues to investigate the circumstances in which Policy TS-03088 came to be issued by the fifth respondent, Brereton, and/or the fourth respondent, BCC. Additional issues may come to light as a result of discovery, disclosure and further investigation, in which case an amended Defence will be filed at an appropriate future time.

A30 Save where expressly stated to the contrary, this pleading adopts the sub-headings and definitions used in the SOC where appropriate and for convenience only.

A31 Save where expressly stated to the contrary, IAL pleads only to the paragraphs pleaded in the SOC, not to the particulars of the paragraphs pleaded in the SOC.

A NATURE OF THE DISPUTE

1 Paragraph 1 of the SOC broadly identifies the nature of the dispute.~~, save that~~ IAL denies that Credit Suisse Virtuoso is a Loss Payee or otherwise would have been entitled to coverage under any of the policies and endorsements in respect of which this proceeding is brought, for the reasons set out in this Defence. ~~and third-party beneficiary and does not know and cannot admit that the alleged unpaid debts accrued from around March 2020.~~

1A Paragraph 1A of the SOC identifies a further dispute raised by Credit Suisse Virtuoso, being claims against BCC and Brereton, not against IAL. Credit Suisse Virtuoso accepts that the policies and endorsements were issued without the authority of the Insurer, and that they would not in any event have responded to the claims brought by Credit Suisse Virtuoso in this proceeding.

1B [Not used]

1C Paragraph 1C of the SOC references a further dispute that IAL and TMNF are responsible for the conduct of BCC and Brereton under sections 917B and 917C of the *Corporations Act*. IAL disputes that it is liable for that conduct.

1D Paragraph 1D of the SOC identifies a dispute raised by Credit Suisse Virtuoso, being a claim against Marsh, not against IAL.

1E IAL understands that Credit Suisse Virtuoso does not press the matters in paragraph 1E of the SOC.

B ISSUES LIKELY TO ARISE

2-2E The issues identified in paragraphs 2 to 2E (inclusive) of the SOC are issues which are likely to arise, save for those raised in paragraphs 2DA which are no longer pressed. There are other issues which are likely to arise, namely:

(a) [Not used] ~~the existence and scope of the authority (if any) of BCC and Brereton to act on behalf of IAL in the various respects alleged by Credit Suisse Virtuoso, including in relation to the issue of Policy TS-03088 and the endorsements pleaded in the SOC~~;

(b) whether Division 6 of Part 7.6 of the *Corporations Act* applies;

(c) [Not used] ~~the validity of Policy TS-03088 and the endorsements purportedly issued under or in relation to it~~;

(d) [Not used] ~~the scope of the coverage under Policy TS-03088 (if valid and effective, which is denied), if any;~~

(e) [Not used] ~~the duty of the Greensill Bank to mitigate under Policy TS-03088 (if valid and effective, which is denied);~~

(f) [Not used] ~~whether Policy TS-03088 (if valid and effective, which is denied) can be avoided~~;

(g) whether there were misrepresentations or non-disclosures which would have entitled IAL to avoid Policy TS-03088 or otherwise resist an obligation to indemnify;

(h) [Not used] ~~whether Credit Suisse Virtuoso has standing~~;

(i) whether Credit Suisse Virtuoso is contributorily negligent for its conduct in entering into the transactions pleaded in the SOC; and

(j) whether the amendments made by Applicant in the Fifth Amended Originating Application and SOC filed on 21 August 2024, which change the identity of the Applicant, should take effect from the date of the amendment (rather than from the date of the commencement of the proceeding).

C THE PARTIES

3 As to paragraph 3 of the SOC, IAL:

(a) admits paragraph 3(a) of the SOC;

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

Particulars

Credit Suisse Notice to Shareholders styled, "Information to the Shareholders of Credit Suisse (Lux) Supply Chain Finance Fund" dated 5 March 2021 (CSA.5000.0003.9453).

(c) says that it is unclear to IAL whether the Credit Suisse (Lux) Supply Chain Finance Fund has legal personality to enter legal contracts under the law of a relevant jurisdiction;

Particulars

Briefing Note prepared by the European Securities and Markets Authority dated 9 October 2017 (IAL.500.020.0007).

(d) says that the Legal Entity Identifier (LEI) number in Endorsement 3 to Policy TS-03088 (CSA.0001.0006.0561) is not the LEI of Credit Suisse Virtuoso, but rather the LEI of the Credit Suisse (Lux) Supply Chain Finance Fund; and

Particulars

Global Legal Entity Identifier Foundation LEI Search for Credit Suisse Virtuoso (IAL.500.020.0005).

(e) in the premises, says it does not know and cannot admit whether Credit Suisse Virtuoso was acting on its own behalf or not in respect of the matters alleged in the SOC; and

(f) otherwise does not know and cannot admit paragraph 3(b) of the SOC.

4 IAL does not know and cannot admit paragraph 4 of the SOC.

5 IAL admits paragraph 5 of the SOC.

6 IAL admits paragraph 6 of the SOC.

7 IAL admits paragraph 7 of the SOC.

8 IAL admits paragraph 8 of the SOC.

D OTHER RELEVANT ENTITIES

D.1 Agent of the Insurer

8A IAL admits paragraph 8A of the SOC.

9 As to paragraph 9 of the SOC, IAL:

(a) admits that from 1 August 2017 until 30 June 2019 each of IAL and IAGA was a subsidiary of IAG;

(b) says that on or about 28 July 2016, CGU Insurance Limited (**CGU**) and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (**CGU AAR Agreement**), and says further that:

(i) the CGU AAR Agreement described BCC as "Agent" (IAL.500.009.1141);

(ii) the CGU AAR Agreement included (inter alia) the following defined terms (clause 23.1):

(A) **Applicable Laws**, meaning: (a) all laws (including acts, regulations and instruments); (b) all policies, guidelines, standards and requirements issued or imposed by a Regulator; (c) any conditions imposed on CGU's AFSL which are notified by CGU to BCC; and (d) all industry codes of

practice including the general insurance code of practice, to the extent that they relate to the conduct of the relevant party;

(B) **Approved Products**, meaning contracts of insurance issued or to be issued by CGU of the classes and types: (a) identified in the Commission Schedule to the CGU AAR Agreement; and (b) otherwise agreed between the parties in writing;

(C) **Authorisation Agreement**, meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as CGU's authorised representative;

(D) **Authorisation Notice**, meaning, relevantly, an instrument in the form of the "Authorisation Notice Schedule which appoints [BCC] as CGU's authorised representative";

(E) **Authorised Individual**, meaning an employee, officer or representative of BCC who has been appointed as an authorised representative of CGU by BCC or CGU in accordance with a duly executed Authorisation Agreement and whose appointment has not been terminated;

(F) **Authorised Services**, meaning the services which BCC is authorised by CGU to perform as specified in the "Authorisation Notice" and, if applicable, any claims handling services delegated to BCC in accordance with clause 9;

(G) **Client**, meaning any person to whom BCC has provided any of the "Authorised Services" on behalf of CGU or any person whom BCC has dealt with in connection with the possible provision of any of the "Authorised Services" to the person by BCC on behalf of CGU;

(H) **Commencement Date**, meaning, relevantly, 1 July 2016;

(I) **Guidelines**, meaning the written authorisations, procedures, guidelines (including any claims handling guidelines issued pursuant to clause 9), directions and requirements notified or provided by CGU to BCC from time to time in relation to the provision of the Authorised Services by BCC or BCC’s obligations under the CGU AAR Agreement and including the compliance manual;

(J) **Insurer**, meaning the insurer of an "Insurance Policy";

(K) **Insurance Policy**, meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by CGU or a

related body corporate of CGU to a "Client" from time to time under the terms of the CGU AAR Agreement;

(L) **Term**, meaning, relevantly, the period from the "Commencement Date" until terminated under clause 17;

(M) **Underwriting Manual**, meaning, the underwriting manual agreed between the Parties, as varied from time to time in accordance with the CGU AAR Agreement, which may include procedures in relation to: (a) the pricing of the Approved Products, subject to underwriting variants in relation to individual Approved Products; (b) the provision of services by BCC in relation to the Approved Products including service level requirements; (c) BCC's performance of its other obligations under the CGU AAR Agreement; and (d) BCC's compliance with applicable laws;

(c) says that the CGU AAR Agreement also included the following express terms:

(i) the Commission Schedule identified a single Approved Product, namely, "Trade Credit Products";

(ii) CGU authorised BCC, from the Commencement Date:

(A) as an authorised representative of CGU in accordance with the CGU AAR Agreement, by giving BCC an "Authorisation Notice";

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the "Underwriting Manual" (clause 2.1);

(iii) BCC must carry out the "Authorised Services" only through an "Authorised Individual" as set out in clause 5.4 (clause 2.2);

(iv) BCC was not authorised to do anything on behalf of CGU that was not expressly authorised under the CGU AAR Agreement (clause 2.3);

(v) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, enter into any contract or arrangement, do any acts, make any representations or incur any obligation (including accepting any risk) on behalf of CGU or the Insurer (clause 2.3 (a));

(vi) BCC must not, except to the extent expressly permitted by the CGU AAR Agreement or authorised in writing by CGU, vary or waive:

(A) any term or requirement of any Insurance Policy;

(B) any duty of a Client or any third party imposed by an Applicable Law relating to any Insurance Policy or proposed Insurance Policy, including the statutory duty of disclosure; or

(C) any legal requirement relating to any Insurance Application, any Claim or the administration, variation or cancellation of any Insurance Policy (clause 2.3(b));

(vii) the relationship between CGU and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership (clause 2.6);

(viii) BCC must comply with all reasonable written Guidelines given to BCC by CGU at any time in relation to (inter alia):

(A) the provision of the Authorised Services (clause 4.1(a)); and

(B) compliance with the Applicable Laws by BCC or CGU (clause 4.1(b));

(ix) the Guidelines (being Underwriting Manual Version 1.0, and Underwriting Manual Version 2.0 referred to in paragraphs 9(h) and 9(p) of this Defence respectively) were taken to be incorporated into and form part of the CGU AAR Agreement (clause 4.2);

(x) BCC was to perform the Authorised Services and its obligations under the CGU AAR Agreement in accordance with the Applicable Laws, in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly (clause 4.3);

(xi) BCC may from time to time appoint one or more individuals as "Authorised Individuals" to provide the "Authorised Services" on the conditions set out in clause 5.4 (clause 5.4);

(xii) BCC would perform its obligations under the CGU AAR Agreement in accordance with the Underwriting Manual (clause 7.1); and

(xiii) BCC would collect a premium for the risks underwritten within authority (clause 8.1);

(d) says that the CGU AAR Agreement included a schedule constituting the "Authorisation Notice Schedule", being the **BCC Authorisation Notice** referred to in paragraph 35C of the SOC, which:

(i) stated and had the effect that CGU authorised BCC to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed BCC as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 28 July 2016;

(ii) defined the "Authorised Financial Services" to mean that BCC was authorised, in accordance with the CGU AAR Agreement, to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of "Approved Products", with that term bearing its meaning set out in the CGU AAR Agreement;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for Approved Products; and

(D) issue, negotiate and agree the terms of Insurance Policies for Approved Products as agent of CGU;

(iii) defined the “Approved Products” to have the meaning given to that term in the CGU AAR Agreement such that the only "Approved Products" were "Trade Credit Products" and “Trade Credit Products”;

(e) says that the BCC Authorisation Notice was a written notice for the purposes of section 916A of the *Corporations Act*, and, in accordance with section 916A(1) of the *Corporations Act*, did not and could not give authority to BCC to provide any service on behalf of CGU that was not specified in the notice;

(f) says that on 8 July 2016, CGU and Brereton entered into the **CGU/Brereton Authorisation Agreement** (IAL.500.005.0827) referred to in paragraph 35H of the SOC, to which was attached an “Individual Authorisation Notice” (**CGU/Brereton Authorisation Notice**) also referred to in paragraph 35I of the SOC;

(g) the CGU/Brereton Authorisation Agreement (which included the CGU/Brereton Authorisation Notice on page 3 of 3) included the following express terms:

(i) CGU authorised Brereton to provide and perform the "Authorised Financial Services" in relation to the "Approved Products" only on behalf of CGU, and for that purpose appointed Brereton as its authorised representative for the purposes of Chapter 7 of the *Corporations Act* from the "Effective Date", being 8 July 2016 (pages 1 and 3);

(ii) Brereton was only authorised to perform the Authorised Services on behalf of CGU (page 1);

(iii) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement (page 3), such that the only "Approved Products" were "Trade Credit Products" and “Trade Credit Products” could only be written using Approved Wording 1.3 (referred to in paragraph 9(j) of this Defence) or Approved Wording 1.4 (referred to in paragraph 9(k) of this Defence);

(iv) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement to:

(A) provide general advice (but not personal advice);

(B) deal in, arrange, acquire, issue, vary and dispose of Approved Products;

(C) collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for Approved Products; and

(D) issue, negotiate and agree the terms of Insurance Policies for Approved Products as agent of CGU (page 3);

(v) Brereton must comply with and provide the Authorised Services in accordance with, the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were BCC (page 1); and

(vi) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement (page 1);

(h) says that, in or around June 2016, a document entitled "BCC Trade Credit Pty Ltd Underwriting Manual … (Version 1.0)” (**Underwriting Manual Version 1.0**) (IAL.500.007.1510) was issued, being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement, and which (inter alia) set out the following:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid as a result of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to

insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in "2 – Trade Credit Insurance Products", and not for other product lines or risk categories (page 8);

(vi) BCC must always act within the authority and terms of the applicable agency agreement in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 1.0 (page 8);

(vii) the "Maximum Limits" that may be underwritten and accepted by BCC are (page 9):

(A) Whole of Turnover Limit: AUD 50 million, subject to the special acceptance stipulation in paragraph 9(h)(viii) of this Defence;

(B) Major Debtors / Multi Buyer Limit: AUD 40 million, subject to the special acceptance stipulation in paragraph 9(h)(viii) of this Defence; and

(C) Single Risks Limit: AUD 35 million;

(viii) BCC’s authority is up to AUD 35 million, with policies and buyers with limits up to AUD 50 million for Whole of Turnover policies and up to AUD 40 million for Major Debtors / Multi Buyer policies considered by Special Acceptance by CGU and its reinsurers (page 9);

(ix) BCC was authorised only to issue policies to Australian customers in Australia (page 9);

(x) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xi) the maximum indemnity limit BCC must set for each policy written within authority is 90% of Debt, being accounts receivable of the insured (page 9);

(xii) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to CGU for approval, but in any case would be no longer than twenty-four months (page 11);

(xiii) there was authority only to use authorised endorsement clauses (pages 12, 14, and 16);

(xiv) BCC was authorised to provide three types of trade credit insurance products for Australian clients that were transacting domestically or overseas, being Comprehensive / Whole of Turnover, Major Debtors / Multi Buyer and Single Risks cover, and to do so using the same core base wording (as recorded in Appendix 2 of the Underwriting Manual Version 1.0) (IAL.500.007.1510) with the application of select mandatory endorsements (page 16);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

(xvi) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority (page 28);

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29) (IAL.500.007.1510); and

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany sales" (page 31);

(i) says that, on or around 22 July 2016, CGU approved a set of "Policy Endorsement Clauses" (**Approved Endorsements**) (IAL.500.009.0276) for use by BCC in accordance with the terms of the Underwriting Manual Version 1.0 and subsequent versions as referred to below, and says further that:

(i) at all material times thereafter, CGU and IAL did not approve any additional endorsement clauses for use by BCC; and

(ii) at all material times thereafter, BCC did not have authority to issue endorsements that were not Approved Endorsements;

Particulars

The Approved Endorsements are in writing. A copy is available for inspection at the offices of IAL's solicitors (IAL.500.009.0276).

(j) says that, in or around October 2016, CGU issued the following approved wording (**Approved Wording 1.3**), being the “core base wording” for the purposes of Underwriting Manual Version 1.0 and the "Trade Credit Products” listed in the Commission Schedule to the CGU AAR Agreement;

(i) “Trade Credit Insurance Whole of Turnover” dated October 2016 (Version WOT 1.3);

Particulars

Trade Credit Insurance Whole of Turnover dated October 2016 (Version WOT 1.3) (~~IAG.0001809750.0001.0004~~IAL.500.011.1310).

(ii) “Trade Credit Insurance Multi Buyer” dated October 2016 (Version MB 1.3);

Particulars

Trade Credit Insurance Multi Buyer dated October 2016 (Version MB 1.3) (~~IAG.0001809750.0001.0003~~IAL.500.011.1309).

(iii) “Trade Credit Insurance Single Risk” dated October 2016 (Version SR 1.3);

Particulars

Trade Credit Insurance Single Risk dated October 2016 (Version SR 1.3) (~~IAG.0001809750.0001.0002~~IAL.500.011.1308).

(k) says that, in or around August 2017, IAL issued the following approved wording (**Approved Wording 1.4**), which came into effect on 1 August 2017, being the “core base wording” for the purposes of Underwriting Manual Version 1.0 and the "Trade Credit Products” listed in the Commission Schedule to the CGU AAR Agreement:

(i) “Trade Credit Insurance Whole of Turnover” dated August 2017 (Version WOT 1.4);

Particulars

Trade Credit Insurance Whole of Turnover dated August 2017 (Version WOT 1.4) (~~IAG.0000022998.0003~~IAL.500.011.0475).

(ii) "Trade Credit Insurance Multi Buyer" dated August 2017 (Version MB 1.4);

Particulars

Trade Credit Insurance Multi Buyer dated August 2017 (Version MB 1.4) (~~IAG.0000022998.0002~~IAL.500.011.0474).

(iii) "Trade Credit Insurance Single Risk" dated August 2017 (Version SR 1.4);

Particulars

Trade Credit Insurance Single Risk dated August 2017 (Version SR 1.4) (~~IAG.0000022998.0001~~IAL.500.011.0473).

(l) says that:

(i) on and from 1 August 2017, CGU transferred to IAL (inter alia) its "Insurance Contracts" and its "Business" within the meaning of the Scheme for the Transfer of the Insurance Business of CGU Insurance Limited to Insurance Australia Limited confirmed by the Federal Court of Australia on 20 July 2017;

Particulars

Orders made by Gleeson J on 20 July 2017 in NSD1739/2016, and Annexure A to those orders.

(ii) CGU thereby transferred to IAL (inter alia) CGU's rights in relation to the CGU AAR Agreement;

(iii) BCC's authority to act as IAL's agent under and pursuant to the terms of the CGU AAR Agreement was confirmed by letter issued by IAL dated 1 August 2017; and

Particulars

Letter issued by IAL dated 1 August 2017 (~~IAG.0000030235.0001~~IAL.500.005.0103).

(iv) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that BCC's status as authorised representative of CGU had ceased with effect on 1 August 2017;

(m) says that:

(i) on or around 28 July 2017, IAG Agencies Pty Ltd (**IAGA**) issued an "Individual Authorisation Agreement and Authorisation Notice" in respect of Brereton (**IAGA/IAL Brereton Authorisation Agreement**) (PLE.3000.0001.0678).;

(ii) says that the IAGA/IAL Brereton Authorisation Agreement attached an "Individual Authorisation Notice";

(iii) by necessary implication, upon the coming into effect of the IAGA/IAL Brereton Authorisation Agreement (and therefore also the attached Individual Authorisation Notice) on 1 August 2017, the CGU/Brereton Authorisation Agreement (and therefore also the CGU/Brereton Authorisation Notice) came to an end;

(iv) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton's status as authorised representative of CGU had ceased with effect on 1 August 2017;

(v) the IAGA/IAL Brereton Authorisation Agreement was an authorisation notice for the purposes of the CGU AAR Agreement and subsequently the IAL AAR Agreement (defined in paragraph 9(q) of this Defence);

(vi) the IAGA/IAL Brereton Authorisation Agreement included, inter alia, the following express terms:

(A) Brereton was authorised personally to provide the financial and other services specified in the form of the "Authorisation Notice" attached to the letter as "Authorised Representative" (page 1);

(B) Brereton was obliged to comply with the terms of the IAGA/IAL Brereton Authorisation Agreement (page 1);

(C) Brereton was only authorised to perform the Authorised Services (page 1);

(D) "Approved Products" was defined to have the same meaning given to that term in the CGU AAR Agreement and subsequently the IAL AAR Agreement, such that the only "Approved Products" were "Trade Credit Products" (page 3);

(E) "Authorised Financial Services" was defined to mean that Brereton was authorised in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement to:

a. provide general advice (but not personal advice);

b. deal in, arrange, acquire, issue, vary and dispose of Approved Products;

c. collect and deal with client moneys, issue receipts and/or confirmations where a client acquires, varies or cancels an Insurance Policy for Approved Products; and

d. issue, negotiate and agree the terms of Insurance Policies for Approved Products (page 3);

(F) Brereton must comply with and provide the Authorised Services in accordance with the CGU AAR Agreement and subsequently the IAL AAR Agreement as if Brereton were the Intermediary (that is, BCC) (page 1);

(G) Brereton must not cause BCC to breach any terms and conditions of the CGU AAR Agreement and subsequently the IAL AAR Agreement (page 1);

(H) Brereton must comply with the CGU AAR Agreement and subsequently the IAL AAR Agreement and all policies, procedures and compliance guidelines as provided by IAGA and IAL and any reasonable directions of IAGA and IAL (page 1); and

(I) Brereton must act efficiently, honestly and fairly (page 2);

(n) says that IAGA and IAL terminated the IAGA/IAL Brereton Authorisation Agreement with effect from 30 June 2019 and the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that Brereton's status as authorised representative had ceased with effect from 30 June 2019.

Particulars

Letter from Brad Robson to Greg Brereton dated 1 July 2019 and entitled "Termination of Individual Authorisation Agreement and Authorisation Notice" ~~(CTRL.0000018972)~~ (IAL.500.009.0270).

The register maintained under section 922A of the *Corporations Act* is a publicly-available record.

(o) Brereton did not have any authority to act on behalf of IAL or IAGA pursuant to the IAGA/IAL Brereton Authorisation Agreement on and from 30 June 2019;

(p) says that, in or around July 2018, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 2.0)" was issued (**Underwriting Manual**

Version 2.0) (IAL.500.009.1513), being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the CGU AAR Agreement and which inter alia set out the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid because of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 13);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in "2 – Trade Credit Insurance Products", and not for other product lines or risk categories (page 8);

(vi) BCC must at all times act within the authority and terms of the applicable agency agreement (being, relevantly, the CGU AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 2.0 (page 8);

(vii) BCC is authorised to write three Trade Credit Insurance Products, only, being Approved Wording 1.4, described as follows:

"BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(page 9);

(viii) the "Maximum Limits" that may be underwritten and accepted by BCC are:

(A) Whole of Turnover Limit: AUD 50 million;

(B) Major Debtors / Multi Buyer Limit: AUD 50 million; and

(C) Single Risks Limit: AUD 50 million (page 9);

(ix) BCC's binding authority is up to AUD 50 million, with policies and buyers with limits up to AUD 75 million considered by Special Acceptance (page 9);

(x) BCC's authority in paragraphs 9(o)(viii) and 9(o)(ix) above was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities or natural persons (page 9, page 56) (the **Buyer Group limit v 2.0**);

(xi) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 9);

(xii) the maximum credit limit / credit term BCC must set for each policy written within authority is 180 days (page 9);

(xiii) the maximum indemnity limit BCC must set for each policy written within authority is 95% of Debt, being accounts receivable of the insured (page 9);

(xiv) the standard policy term would be twelve months, and policy periods beyond fifteen months must be referred to IAL for approval, but in any case would be no longer than twenty-four months (page 11);

(xv) the minimum premium BCC must set for each policy written within authority is $10,000 (page 26);

(xvi) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for each loss or series of losses, must be set for each policy written within authority (page 28);

(xvii) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29);

(xviii) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 31).

(q) says that, on 9 April 2019, IAL and BCC entered into an agreement styled an "Agency & Authorised Representative Agreement" (**IAL AAR Agreement**) (IAL.500.007.1367);

(r) says that, on 9 April 2019, IAL terminated the CGU AAR Agreement (and therefore also the BCC Authorisation Notice) by notice to BCC;

Particulars

Letter from IAL to the Directors of BCC Trade Credit Pty Ltd sent by email on 9 April 2019 (~~CTRL.0000018982~~IAL.500.011.0572).

IAL further relies on clause 6.2(a)(i) of the Share Sale Deed dated 3 April 2019 to which IAGA was a party (~~CTRL0000001568~~ IAL.500.011.0014 and ~~CTRL0000001782~~ IAL.500.011.0015).

(s) says further or alternatively, that BCC and IAL conducted themselves in a manner consistent with:

(i) the termination of the CGU AAR Agreement as from 9 April 2019, which implicitly brought the CGU AAR Agreement to an end if not expressly terminated; and

(ii) their relationship being governed by the IAL AAR Agreement (defined in paragraph 9(q) of this Defence) on and from 9 April 2019;

Particulars

(a) BCC and IAL entered into the IAL AAR Agreement which commenced on 9 April 2019 (IAL.500.007.1367); and

(b) The IAL AAR Agreement contained clause 20.9(a);

(c) BCC and IAL treated the IAL AAR Agreement as governing their relationship from 9 April 2019; and

(d) IAL alleges the matters in paragraph 9(r)(i) and (ii) having regard to: (a) the commercial unlikelihood that the parties would have intended the IAL AAR

Agreement to operate concurrently with the CGU AAR Agreement; and (b) the circumstances of the transfer of CGU's business to IAL as referred to in paragraph 9(l)(i) of this Defence. IAL also relies on the matters alleged in paragraphs 9(q) to 9(bb) of this Defence.

(t) further, or alternatively, by no later than 9 September 2019, IAL and BCC agreed to terminate the CGU AAR Agreement (and therefore also the BCC Authorisation Notice), with effect on and from "Completion", being relevantly 9 April 2019.

Particulars

Letter from IAL to the Directors of BCC Trade Credit Pty Ltd signed by a duly authorised signatory of BCC ~~(CTRL.0000019011)~~ IAL.500.005.0124~~.~~

(u) says that:

(i) by necessary implication, legacy references to "CGU" in the IAL AAR Agreement were intended by the parties to be read and understood as references to IAL;

(ii) the IAL AAR Agreement described BCC as "Agent";

(iii) the IAL AAR Agreement included (inter alia) the following defined terms (clause 21.1):

(A) **Approved Products**, meaning contracts of insurance issued or to be issued by IAL of the classes and types: (a) identified in the Commission Schedule to the agreement; and (b) otherwise agreed between the parties in writing;

(B) **Authorisation Agreement**, meaning the agreement between BCC and an Authorised Individual appointing the Authorised Individual as IAL's authorised representative;

(C) **Authorisation Notice**, meaning, relevantly, an instrument in the form of the "Authorisation Notice Schedule which appoints [BCC] as IAL's authorised representative";

(D) **Authorised Individual**, meaning an employee, officer or representative of BCC who has been appointed as an authorised representative of IAL by BCC or IAL in accordance with a duly executed Authorisation Agreement and whose appointment has not been terminated;

(E) **Authorised Services**, meaning the services which BCC is authorised by IAL to perform as specified in the "Authorisation Notice" and, if

applicable, any claims handling services delegated to BCC in accordance with clause 9;

(F) **Client**, meaning any person to whom BCC has provided any of the Authorised Services on behalf of IAL or any person whom BCC has dealt with in connection with the possible provision of any of the "Authorised Services" to the person by BCC on behalf of IAL;

(G) **Commencement Date**, meaning the date that completion occurs under the Share Sale Deed between IAGA and others (as vendors) and TMMA, referred to in paragraph 35ZN of the SOC as “Tokio”) (as purchaser) in relation to BCC, or such other date as may be agreed in writing by IAL and BCC, being, relevantly 9 April 2019;

(H) **Guidelines,** meaning the written authorisations, procedures, guidelines, directions and requirements notified or provided by IAL to BCC from time to time in relation to the provision of the Authorised Services by BCC or BCC's obligations under the IAL AAR Agreement and including the compliance manual;

(I) **Insurer**, meaning the insurer of an "Insurance Policy";

(J) **Insurance Policy**, meaning a policy of general insurance, including an interim insurance policy arranged by BCC and issued by IAL or a related body corporate of IAL to a "Client" from time to time under the terms of the IAL AAR Agreement;

(K) **Term**, meaning the term of the IAL AAR Agreement which, in accordance with clause 1 of the IAL AAR Agreement, came to an end on 30 June 2019; and

(L) **Underwriting Manual**, meaning the underwriting manual agreed between the Parties, as varied from time to time in accordance with the IAL AAR Agreement, which may include procedures in relation to: (a) the pricing of the Approved Products, subject to underwriting variants in relation to individual Approved Products; (b) the provision of services by BCC in relation to the Approved Products including service level requirements; (c) BCC's performance of its other obligations under the IAL AAR Agreement; and (d) BCC's compliance with applicable laws;

(v) the Commission Schedule of the IAL AAR Agreement identified a single Approved Product, namely, "Trade credit insurance products";

(w) says that the IAL AAR Agreement included, inter alia, the following express terms:

(i) IAL authorised BCC, from the Commencement Date and for the Term of the agreement:

(A) as an authorised representative of IAL in accordance with the IAL AAR Agreement, by giving BCC an "Authorisation Notice";

(B) to provide the "Authorised Services"; and

(C) to deal in, arrange and issue "Approved Products" in accordance with the applicable "Underwriting Manual" and specifically as follows:

"New Business: [BCC] is not permitted to bind new Insurance Policies on behalf of IAL after 30 June 2019.

New Insurance Policies issued prior to that date must not exceed a policy term of 12 months.

Renewal Business: [BCC] is not permitted to bind renewal Insurance Policies on behalf of IAL with renewal inception dates after 30 June 2019. This also includes:

a. any Insurance Policies issued as a conditional 2-year contract. Second year renewal must not be written with IAL as the insurer; and

b. any extensions of policy due date.

Renewal Insurance Policies due prior to the inception date stated must not exceed 12 months.

[BCC] may, unless IAL notifies [BCC] otherwise, provide cover under a cover note upon the expiry of an Insurance Policy for policies where a renewal offer has been made. The interim cover will be on the same terms and conditions as the renewal offer for a maximum period of 30 days starting on the expiry date of the Insurance Policy, but in any event must not extend beyond 30 June 2019.

Mid-Term Policy Alterations: [BCC] is authorised to bind mid-term Insurance Policy alterations where IAL is the insurer provided that such changes are permitted within the Underwriting Manual Version 3 after prudent underwriting judgment is applied.

No extensions of due date are permitted." (clause 2.1)

(ii) BCC was obliged to carry out the "Authorised Services" only through an "Authorised Individual" (clause 2.2);

(iii) BCC was not authorised to do anything on behalf of IAL that was not expressly authorised under the IAL AAR Agreement (clause 2.3);

(iv) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by IAL, from entering into any contract or arrangement, doing any acts, making any representations or incurring any obligations (including accepting any risk) on behalf of IAL or the Insurer (clause 2.3 (a));

(v) BCC was prohibited, except to the extent expressly permitted by the IAL AAR Agreement or authorised in writing by IAL from varying or waiving:

(A) any term or requirement of any Insurance Policy;

(B) any duty of a Client or any third party imposed by an Applicable Law relating to any Insurance Policy or proposed Insurance Policy, including the statutory duty of disclosure; or

(C) any legal requirement relating to any Insurance Application, any Claim or the administration, variation or cancellation of any Insurance Policy (clause 2.3(b));

(vi) the relationship between IAL and BCC created by the agreement was one of principal and agent for the purposes expressly permitted by the agreement only, and otherwise principal and independent contractor, and not one of employer and employee, joint venture or partnership (clause 2.5);

(vii) BCC must comply with all reasonable written Guidelines given to BCC by IAL at any time in relation to the provision of the Authorised Services (clause 4.1(a));

(viii) the Guidelines above (being Underwriting Manual Version 3.0 referred to in paragraph 9(y) of this Defence) were taken to be incorporated into and form part of the IAL AAR Agreement (clause 4.2);

(ix) BCC was to perform the Authorised Services and its obligations under this Agreement in accordance with the Applicable Laws, in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly (clause 4.3);

(x) IAL could in its complete discretion appoint or refuse to appoint a person as an authorised representative (clause 5.2), and that BCC was prohibited from authorising any person to provide any Authorised Services on its behalf or on behalf of IAL (clause 5.1);

(xi) BCC would perform its obligations under the IAL AAR Agreement in accordance with the Underwriting Manual (clause 7.1); and

(xii) BCC would collect a premium for risks written within authority (clause 8.1);

(x) says that on a proper construction of the IAL AAR Agreement, the Mid-Term Policy Alterations that BCC was authorised to bind under the IAL AAR Agreement comprised changes to existing policies written by BCC on behalf of IAL which:

(i) reduced or did not alter, alternatively did not materially alter, the scope of IAL's risk under existing policies issued by BCC on behalf of IAL; and

(ii) were of a kind contemplated by the existing terms of the existing policies issued by BCC on behalf of IAL;

(y) says that, on and from 9 April 2019, a document entitled "BCC Trade Credit Pty Ltd Underwriting Guidelines … (Version 3.0)" (**Underwriting Manual Version 3.0**) (IAL.500.011.0867), being the "Underwriting Manual", further or alternatively "Guidelines", for the purposes of the IAL AAR Agreement, came into effect and limited BCC's acceptance authority for IAL business effective from that date;

(z) says that the Underwriting Manual Version 3.0 contained (inter alia) the following express terms:

(i) trade credit insurance is a general insurance policy and risk management product that covers the payment risk of corporate entities, resulting from the delivery of goods or services (page 7);

(ii) trade credit insurance pays an agreed percentage of an invoice or receivable that remains unpaid because of protracted default, insolvency or bankruptcy, and trade credit insurance is purchased by business entities to insure their accounts receivable from loss due to the non-payment by applicable debtors (page 7);

(iii) the insurance protection afforded under a trade credit transaction involved (page 7):

(A) a “Buyer”, who receives goods/services from and trade credit (from a “Seller”) and who makes payments for goods and services (to a “Seller”);

(B) a “Seller”, who supplies goods/services and trade credit (to a “Buyer”) and who receives payments for goods and services (from a “Buyer”);

(C) a “Credit Insurer”, who provides insurance to the “Seller”, receives premiums from the “Seller” and who has a right of subrogation in respect of the “Buyer”;

(iv) trade credit insurance is a business insurance product that indemnifies a seller against losses from non-payment of a commercial trade debt (page 14);

(v) BCC is authorised to bind insurance policies only in the nature of the product listed in "2 – Trade Credit Insurance Products", and not for other product lines or risk categories (page 8);

(vi) BCC must always act within the authority and terms of the applicable agency agreement (being, the IAL AAR Agreement) in the conduct of its business and underwrite business within the scope and limits in accordance with Underwriting Manual Version 3.0 (page 8);

(vii) BCC is not permitted to quote or bind new business on behalf of IAL after the Effective Date, being 30 June 2019 (page 8);

(viii) any new insurance policies issued prior to 30 June 2019 must not exceed a policy term of 12 months (page 8);

(ix) any new business issued prior to 30 June 2019 must adhere to the Underwriting Manual Version 3.0 (page 8);

(x) BCC is not permitted to bind renewal business on behalf of IAL with renewal inception after the Effective Date, being 30 June 2019 (page 8);

(xi) any renewal business due prior to the inception date stated must not exceed 12 months (page 8);

(xii) BCC was authorised to bind mid-term policy alterations where IAL is the insurer provided such changes are permitted within Underwriting Manual Version 3.0 after prudent underwriting judgment is applied, with no extensions of due date permitted (pages 8, 9);

(xiii) the "Maximum Limits" that may be underwritten and accepted by BCC are (page 10):

(A) Whole of Turnover Limit: AUD 50 million;

(B) Major Debtors / Multi Buyer Limit: AUD 50 million;

(C) Single Risks Limit: AUD 50 million;

(xiv) maximum Limits of AUD 75 million per Buyer or Buyer Group, with Limits above AUD 50 million and below AUD 75 million referred to the lead Reinsurer, and with IAL having final acceptance authority on those risks (page 9);

(xv) BCC's authority in paragraphs 9(w)(xiii) and 9(w)(xiv) above was a maximum sum which applied to each buyer or group of companies owned or controlled (more than 50%) by a legal entity or natural person or a group of legal entities of natural persons (page 9, page 57) (the **Buyer Group limit v 3.0**);

(xvi) BCC was authorised to write three Trade Credit Insurance Products only, being Approved Wording 1.4, described as follows (page 10):

"BCC Trade Credit will underwrite and is authorised by IAL to write three Trade Credit Insurance Products. These are:

Whole of Turnover approved wording Version WOT 1.4 August 2017

Multi Buyers approved wording Version MB 1.4 August 2017

Single Risks approved wording Version SR 1.4 August 2017"

(xvii) BCC was authorised only to issue policies for Australian customers domiciled in Australia (page 10);

(xviii) the maximum credit limit / credit term BCC must set for each policy written within authority was 180 days (page 10);

(xix) the maximum indemnity limit BCC must set for each policy written within authority was 95% of Debt, being accounts receivable of the insured (page 10);

(xx) the Maximum Policy Period for all policies was 24 months (page 10);

(xxi) there was authority only to use authorised endorsement clauses (page 13);

(xxii) the minimum premium BCC must set for each policy written within authority is $10,000 (page 27);

(xxiii) a recommended excess of 1% of the policy limit, but in any event no less than 0.75% of the policy limit, comprising the amount the insured must bear for

each loss or series of losses, must be set for each policy written within authority (page 29);

(xxiv) where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 30);

(xxv) various "exclusions" from the risks BCC was authorised to write, including any "financial guarantees that cover a purely monetary debt", "Insolvent risks" and "Intercompany transactions unless said transactions are on a commercial 'arm's length' basis" (page 32); and

(xxvi) BCC will continue to manage claims on behalf of IAL under management of TMMA via the Policy & Claims Administration Outsourcing Deed dated 9 April 2019 (**PACAO**) (IAL.500.011.0603) (as referred to in paragraph 35ZN of the SOC) (page 9);

(aa) says that, on its proper construction, the phrase "mid-term policy alterations" in Underwriting Manual Version 3.0 has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement referred to in paragraph 9(x) of this Defence;

(bb) says that, on 30 June 2019, pursuant to its terms, the IAL AAR Agreement came to an end;

Particulars

Clause 1, IAL AAR Agreement (IAL.500.007.1367).

(cc) says that, the register maintained by ASIC under section 922A of the *Corporations Act* was updated to indicate that BCC's status as an authorised representative had ceased with effect on 30 June 2019;

(dd) says that, at all material times, IAL did not authorise BCC or Brereton to represent:

(i) that BCC had authority to enter into Policy TS-03088, or policies akin to Policy TS-03088; and

(ii) that BCC was IAL's corporate authorised representative in relation to Policy TS-03088 or akin policies;

(ee) says that at all material times prior to 21 July 2020, IAL did not know that BCC and Brereton had purported to enter into Policy TS-03088 or policies akin to Policy TS-03088; and

(ff) otherwise denies paragraph 9 of the SOC.

10 As to paragraph 10 of the SOC, IAL:

(a) says that, on or around 9 April 2019, IAL, TMMA and Bond entered into the PACAO, and the PACAO described TTMA and Bond together as Administrator;

(b) says that, for the purposes of the PACAO, "Services" was defined to mean (clause 1.1):

(i) customer service (including service availability, customer contact 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 that the PACAO also included the following defined terms (clause 1.1):

(i) **Agency Agreements** means: (a) the Bond Agency Agreement between BCC Surety and IAL dated 5 June 2013 (IAL.500.011.0892); (b) the Agency and Authorised Representative Agreement between BCC and CGU dated 28 July 2016 (namely, the CGU AAR Agreement) (IAL.500.009.1141); (c) the Agency & Authorised Representative Extension Agreement between IAL and BCC (namely, the IAL AAR Agreement) (IAL.500.007.1367); and (d) the Bond Agency Extension Agreement (IAL.500.011.0893);

(i) **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;

(ii) **Contentious Claim** means “any Claim where a customer raises concerns that have the potential to impact IAL’s reputation, such as: high value claims; high profile claimants; claims about a significant business matter; threats to go to the media; any complaint has been made by a third party in relation to the Claims Management Services” (Schedule 4, clause 3.1); 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 that the PACAO described each of TMMA and Bond as the "Administrator";

(e) says 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 clause 5.1(a)(i) to (v) (clause 5.1(a));

(f) says that the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019;

(g) says that it was a term of the PACAO that Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Schedule 5, clause 2);

(h) repeats paragraphs 9(z) to 9(dd) of this Defence; and

(i) otherwise denies paragraph 10 of the SOC.

10A IAL does not know and therefore cannot admit paragraph 10A of the SOC.

10B [not used]

10C IAL admits paragraph 10C of the SOC.

10D As to paragraph 10D of the SOC, IAL:

(a) admits sub-paragraph (a); and

(b) does not know and cannot admit sub-paragraphs (b) and (c).

D.2 Greensill group of companies

11 IAL admits paragraph 11 of the SOC.

12 IAL admits paragraph 12 of the SOC.

13 IAL admits paragraph 13 of the SOC.

14 As to paragraph 14 of the SOC, IAL:

(a) says that on or around 8 March 2021, GCUK applied under section 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 section 122(1)(f) of the *Insolvency Act 1986* (UK);

(b) admits that there exists a notice of administrator's appointment in respect of GCUK dated 10 March 2021 (BCC.0001.0013.002453); and

(c) does not know and cannot admit that the notice of administrator's appointment dated 10 March 2021 was filed on or about 22 March 2021.

15 IAL admits paragraph 15 of the SOC.

D.3 Lagoon Park

16 As to paragraph 16 of the SOC, IAL:

(a) admits paragraph 16(a) of the SOC; and

(b) does not know and cannot admit paragraph 16(b) of the SOC.

D.4 NMC Health

17 IAL does not know and cannot admit paragraph 17 of the SOC.

17A As to paragraph 17A of the SOC:

(a) admits paragraph 17A(a) of the SOC; and

(b) does not know and cannot admit paragraph 17A(b) of the SOC.

D.5 Demica

18 As to paragraph 18 of the SOC IAL:

(a) admits paragraph 18(a) of the SOC; and

(b) does not know and cannot admit paragraph 18(b) of the SOC.

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

18A [Not used]

18B In respect of paragraphs 19 to 35, and 65 to 66 of the SOC, IAL says generally that:

(a) IAL was not, and is not alleged to be, a party to the documents identified in paragraphs 19 to 35, or 65 to 66;

(b) Greensill Bank was not, and is not alleged to be, a party to the documents identified in paragraphs 19 to 33A of the SOC;

(c) Credit Suisse Virtuoso does not allege (and IAL would not be in a position to admit, in any event) that paragraphs 19 to 35 of the SOC exhaustively identify the

documents or terms that govern the relationship that exists between the parties to those documents;

(d) ~~IAL will seek disclosure in relation to the matters the subject of paragraphs 19 to 35 and 65 to 66 of the SOC at an appropriate point in the proceedings and reserves its right to amend its Defence upon a review of any documents produced;~~ and

(e) admissions by IAL as to the existence and terms of agreements and other documents alleged in those paragraphs of the SOC are made subject to the reservation referred to in the preceding subparagraphs and paragraph 18D below.

E.0 Introduction to coverage issues

18C Paragraphs 19 to 35, ~~52 to 54,~~ 65 to 67 and 70 ~~79~~ of the SOC are directed to issues of "coverage", that is, whether Policy TS-03088 (and endorsements), if valid and effective (which is denied and no longer asserted by Credit Suisse Virtuoso), respond to the claim.

18D In response to the whole of paragraphs 19 to 35, ~~52 to 54,~~ 65 to 67 and 70 ~~79~~ of the SOC, IAL says:

(a) ~~Credit Suisse Virtuoso's case on~~ coverage depends on propositions as to the proper construction of Policy TS-03088, endorsements (or purported endorsements) thereto and underlying instruments and agreements as between (inter alia) GCUK, NMC Health, NMC Health Plc, Demica, and others;

(b) the SOC largely does not articulate with precision, or at all, the constructional propositions which underpin Credit Suisse Virtuoso's case and, to a large extent, Credit Suisse Virtuoso's case pleads ultimate conclusions, rather than the material facts warranting such conclusions;

(c) in pleading this Defence, IAL has, where possible, sought to expose the underlying and implicit constructional propositions which underpin Credit Suisse Virtuoso's case;

(d) further, in pleading this Defence, IAL has, where possible, sought to identify possible constructions of Policy TS-03088, the endorsements relied on and the underlying instruments, with a view to alleging in each case that, on the hypothesised construction, there is no coverage;

(e) IAL was not a party to Policy TS-03088, the endorsements or any of the underlying instruments pleaded by Credit Suisse Virtuoso's, does not know the circumstances in which they were entered into (if at all), does not know all of the facts comprising the factual matrix in which they are to be construed and does not know whether the

instruments relied on by Credit Suisse Virtuoso's identify, or identify exhaustively, the legal relations of the parties to them;

(f) in the circumstances, where IAL asserts below a construction of Policy TS-03088, an endorsement or an underlying instrument, it does so on the basis that it does not admit that construction or that the relevant document is what it is alleged to be by Credit Suisse Virtuoso's, but is instead identified for the purposes of advancing an argument to the effect that if the instrument was valid and effective and bore the alleged construction (which is not admitted), then the pleaded consequences follow;

(g) for the avoidance of doubt, where it advances a construction below, that construction is not admitted, but is instead advanced for the purposes of identifying why, on the hypothesised construction, there is no coverage;

(h) [not used] ~~IAL will seek disclosure in relation to the matters the subject of paragraphs 19 to 35, 52 to 54, 65 to 79 of the SOC at an appropriate point in the proceeding and reserves its right to amend its Defence upon a review of any documents produced; and~~

(i) admissions by IAL as to the existence and terms of agreements and other documents alleged in paragraphs 19 to 35, ~~52 to 54,~~ 65 to 67 and 70 ~~79~~ of the SOC are made subject to the reservation referred to in the preceding subparagraphs.

18E Except where identified otherwise, the responses given in this Defence to the allegations in paragraphs 19 to 35, ~~52 to 54, and~~ 65 to 67 and 70 ~~79~~ of the SOC proceed on the assumption (which is denied) that Policy TS-03088 (and alleged endorsements thereto) are valid, effective and binding and enforceable against IAL.

18F In response to the whole of paragraphs 19 to 35, ~~52 to 54, and~~ 65 to 67 and 70 ~~79~~ of the SOC, IAL says that the following are necessary conditions of Credit Suisse Virtuoso's entitlement (if any) to indemnity:

(a) there must be an "Asset" or "Assets" (Policy TS-03088 clause 1.1, clause 3.1; definition of "Loss");

(b) there must be an "Eligible Debt" (Policy TS-03088 clause 1.1, clause 3.1; definition of "Insured Cause");

(c) there must be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date" (Policy TS-03088 clause 1.1, clause 3.1; definition of "Insured Cause");

(d) there must be a "Loss" or "Losses" suffered by the Insured, which are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date" (Policy TS-03088 clause 1.1);

(e) the "Loss" or "Losses" must be quantified in accordance with the Policy TS-03088; and

(f) so far as indemnity is sought by Credit Suisse Virtuoso, Credit Suisse Virtuoso must be a "Loss Payee" and the conditions under Endorsement 3 (the **Loss Payee Endorsement**) (if valid and effective, which is denied) must be met (Policy TS-03088 clause 1.1; Loss Payee Endorsement).

E.0.1 "Asset"

18G In respect of the condition that there be an "Asset" or "Assets", IAL says the following:

(a) [not used] ~~Credit Suisse Virtuoso alleges that Greensill Bank, or alternatively Credit Suisse Virtuoso, suffered a Loss within the meaning of Policy TS-03088 by reference to the singular NMC Note identified in Annexure A to the SOC (SOC, paragraph 71) and described below as the "relevant NMC Note", but also asserts loss under general law and statutory causes of action against BCC, Brereton and IAL in respect of a wider class of NMC Notes (see for example SOC, paragraphs 94, 104 and 108). In respect of at least one of the latter claims, Credit Suisse Virtuoso references multiple unidentified "claims" on Policy TS-03088 (SOC, paragraph 94). It is presently unclear to what extent (if at all) Credit Suisse Virtuoso seeks to allege that the NMC Notes in their totality fell within Policy TS-03088 in order to found the non-indemnity claims advanced in the SOC;~~

(b) if and to the extent that Credit Suisse Virtuoso alleges that the NMC Notes defined at paragraph 33 of the SOC are "Assets", IAL pleads as set out in paragraphs 18G(c) to 18G(u) of this defence;

(c) Policy TS-03088 provides for three, and only three, kinds of "Assets" (Schedule 1, definition of "Asset");

(d) if an asset does not meet the description of one or more of the kinds of "Assets" identified in Schedule 1, then it is not an "Asset";

(e) one of the kinds of "Asset" provided in Schedule 1 is a "Note";

(f) Credit Suisse Virtuoso does not identify the kind of "Asset" (if any) that they assert that the NMC Notes were, but having regard to the calculation of "Loss" in paragraph 71 of the SOC, the implicit allegation is that the NMC Notes were "Notes", and there is no allegation that the NMC Notes were "Assets" for any other reason;

(g) an Asset is a "Note" only if (inter alia):

(i) it is a "Note relating to Eligible Debt(s)" (Policy TS-03088 Schedule 1, definition of "Asset");

(ii) it is a Note issued by the SPV in order to raise funds (Policy TS-03088 Schedule 1, definition of "Asset");

(iii) it is a Note issued by the SPV to allow the SPV to purchase either a participation in the relevant "Participant Trust" or, alternatively, "Eligible Debts" (Policy TS-03088 Schedule 1 definition of "Asset");

(iv) it is a note (Policy TS-03088 Schedule 1, definition of "Note");

(v) it is constituted by the "Master Trust Deed", being a master trust deed:

(A) entered into by an "SPV" (as defined, and which includes Lagoon Park), TMF Luxembourg SA and Citibank N.A., London Branch; and

(B) which sets out the form and terms and conditions of the Notes issued by the SPV and by which the Notes issued by the SPV are constituted,

(Policy TS-03088 Schedule 1, definitions of "Note" and "Master Trust Deed");

(vi) the note is for the time being outstanding (Policy TS-03088 Schedule 1, definition of "Note"); and

(vii) the note was issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed" (Policy TS-03088 Schedule 1, definition of "Note");

(h) a "Participant Trust" is a trust created by the "Servicer" (being GCUK) as grantor by virtue of a trust deed in favour of the "Trustee" (being Citibank N.A., London Branch in its capacity as the trustee of a Participant Trust) in respect of "Trust Property" (Policy TS-03088 Schedule 1, definition of "Participant Trust");

(i) Credit Suisse Virtuoso does not make any allegation as to the existence of a "Participant Trust";

(j) Credit Suisse Virtuoso implicitly alleges that the applicable "SPV" is Lagoon Park because it alleges that Lagoon Park issued the NMC Notes (SOC, paragraph 33);

(k) an asset is an "Asset" only if it is derived from an "Eligible Debt" (Policy TS-03088 clause 3.1; Schedule 7);

(l) Credit Suisse Virtuoso does not plead any material facts establishing that the NMC Notes were:

(i) issued by Lagoon Park in order to raise funds;

(ii) issued by Lagoon Park to allow it to purchase a participation in a relevant "Participant Trust" or "Eligible Debts";

(iii) notes constituted by a "Master Trust Deed" (as defined);

(iv) notes issued pursuant to the "Issue Documents" as defined in the "Master Trust Deed"; and

(v) at material times outstanding;

(m) for reasons set out in paragraph 18H of this Defence, Credit Suisse Virtuoso does not plead material facts capable of establishing that the NMC Notes:

(i) related to an "Eligible Debt";

(ii) derived from an "Eligible Debt"; and

(iii) derived from a debt owed by an "Eligible Customer";

(n) there can be an entitlement to an indemnity in respect of a "Loss" suffered in relation to an "Asset" only if the "Asset" was:

(i) owned by the "Insured" at the time "Loss" was suffered (Policy TS-03088 clause 3.1; definition of "Claim"; Schedule 1; Schedule 7);

(ii) owned by the "Insured" at the time of the "Insured Cause" during the "Policy Period" (Policy TS-03088 clause 3.1; Schedule 7);

(iii) owned by the "Insured" during the "Policy Period" or, alternatively, by the "Insured" or a "Loss Payee" during the "Policy Period" (Policy TS-03088 clause 4.1); and

(iv) owned by the "Insured":

(A) immediately prior to the making of a "Claim" (Policy TS-03088 clause 3.1; definition of "Claim", Schedule 1; definition of "Loss"); or

(B) alternatively, prior to the payment of a "Claim" (Policy TS-03088, definition of "Loss");

(o) ~~the alleged~~ <u>any</u> "Policy Period" started no earlier than 1 March 2019 (Policy TS-03088 page 1) and ended on 22 February 2020 or, alternatively, 1 March 2020 or, alternatively, no later than 30 June 2020 (Endorsement 12) and, thus, there can be

an entitlement to an indemnity in respect of an "Asset" only if the "Asset" was owned by an "Insured" (or alternatively by an "Insured" or a "Loss Payee") during the relevant "Policy Period";

(p) IAL denies that Endorsements 10, 11 and/or 12 were valid and effective to bind IAL or extend the Policy Period of Policy TS-03088 (if valid and effective, which is denied and not asserted by Credit Suisse Virtuoso) to 30 June 2020 (as to which, IAL refers to and repeats paragraphs 40A to 43 of this Defence);

(q) Credit Suisse Virtuoso alleges (which is not admitted) that:

(i) Credit Suisse Virtuoso (which is an alleged Loss Payee) acquired the relevant NMC Note (with the ISIN of XS1994338819) (in respect of which the "Insured", or alternatively Credit Suisse Virtuoso, has suffered an alleged "Loss") on 7 January 2020 (SOC, paragraph 33A; Annexure A, "First Transfer Date"); and

(ii) Greensill Bank (which is an alleged Insured) acquired the relevant NMC Note on or around 25 February 2021 (SOC, Annexure A, "First Date transferred to Greensill Bank by Loss Payee") or on or around 9 July 2021 (SOC, paragraph 35);

(r) in the event that the relevant NMC Note was (as alleged) acquired by Greensill Bank no earlier than 25 February 2021 then:

(i) the alleged "Asset" was acquired by the "Insured" after some or all of the "Insured Causes" (which are alleged to have occurred from 3 March 2020) (SOC, paragraphs 66), and were not held by the "Insured" at the time of the "Insured Cause", and there is no coverage;

(ii) the "Loss" was, in whole or in part, suffered prior to the acquisition of the "Assets" by the "Insured" as:

(A) the "Loss" was suffered on or around the time of the "Insured Cause" (alleged to be 3 March 2020) or a reasonable time thereafter; and

(B) the "Insured" did not acquire the "Assets" until (at the earliest) February 2021;

(iii) there is no coverage in respect of notes acquired after the expiry of the "Policy Period" on 1 March 2020 or, alternatively, no later than 30 June 2020 (if validly extended, which is denied) and which were not owned by Credit Suisse Virtuoso or Greensill Bank before then, or alternatively, not acquired during the "Policy Period" as found by the Court;

(iv) there is no coverage in respect of any notes because the "Policy Period" expired on 1 March 2020 or, alternatively, no later than 30 June 2020, which was prior to 25 February (and 9 July) 2021 when the "Assets" are alleged to have been acquired by Greensill Bank; and

(v) there is no coverage in respect of notes acquired by an "Insured" only after the expiry of the "Policy Period";

(s) the NMC Notes are not "Assets" and Credit Suisse Virtuoso has not pleaded material facts capable of establishing that they are "Assets";

(t) it puts Credit Suisse Virtuoso to proof on each element necessary for the NMC Notes to be "Assets"; and

(u) it denies that the NMC Notes are "Assets".

E.0.2 "Eligible Debt"

18H In respect of the condition that there be an "Eligible Debt", IAL says the following:

(a) Credit Suisse Virtuoso uses the following ~~defined~~ terms ~~of~~:

(i) **NMC Health Payment Obligations** to refer compendiously to the payment obligations of NMC Health under the BTSSA (as defined in the SOC at paragraph 22) (SOC, paragraphs 23 and 67 ~~54~~); and

(ii) **NMC Plc Payment Obligations** to refer compendiously to the payment obligations of NMC Health Plc under the NMC Plc Guarantee (as defined in the SOC at paragraph 29) (SOC, paragraphs 26 and 67 ~~54~~):

(b) ~~Credit Suisse Virtuoso alleges that the NMC Health Payment Obligations and NMC Plc Payment Obligations were "Eligible Debts" within the meaning of Part A of the Debt Endorsement 1 (SOC, paragraph 54), and does not allege that the relevant obligations were "Eligible Debts" for any other reason;~~

(c) ~~Credit Suisse Virtuoso alleges, or implicitly alleges, that the NMC Health Payment Obligations comprise obligations:~~

~~(i) owed by NMC Health (SOC, paragraphs 23, 54 and 66); and~~

~~(ii) owed to GCUK (SOC, paragraphs 23, 54 and 66);~~

~~(iii) owed by NMC Health under the BTSSA (SOC, paragraphs 23, 54 and 66); and~~

~~(iv) to pay the "Certified Amount" under clause 6.1 of the BTSSA (SOC, paragraphs 23, 29, 54, 66 and 67); and~~

(d) ~~Credit Suisse Virtuoso alleges, or implicitly alleges, that the NMC Plc Payment Obligations comprise obligations:~~

~~(i) owed by NMC Health Plc (SOC, paragraphs 29, 54 and 67);~~

~~(ii) owed to GCUK (SOC, paragraphs 29, 54 and 67);~~

~~(iii) owed by NMC Health Plc under the NMC Plc Guarantee (SOC, paragraphs 29, 54 and 67);~~

~~(iv) to guarantee the obligations of NMC Health under the BTSSA (SOC, paragraphs 23, 29, 54, 66 and 67);~~

(e) in order for a debt to be an "Eligible Debt", the following conditions must be satisfied under Schedule 7 of Policy TS-03088, and must be satisfied at the time the "Asset" is acquired by the "Insured" or, alternatively, by the "Insured" or a "Loss Payee" (which, here, is alleged to be between 23 October 2020 and 9 July 2021 ("Insured": SOC, paragraphs 34 and 35) and between October 2019 and January 2020 ("Loss Payee": SOC, paragraph 33A):

(i) the obligor must be a "Customer", being a "Customer" endorsed to Policy TS-03088 under a "Customer Endorsement", who is a debtor in respect of a "Debt" (Policy TS-03088 Schedule 7, definition of "Customer");

(ii) the obligor must be an "Eligible Customer" (Policy TS-03088, clause 3.1);

(iii) the obligor must be not an "Affiliate" of any of the parties to the "Transaction Documents" (other than any "Origination Documentation") (Policy TS-03088 Schedule 7);

(iv) the obligor must be a "corporate entity" (Policy TS-03088 Schedule 7);

(v) the obligor must be not "Insolvent" (Policy TS-03088 Schedule 7), which includes circumstances in which any corporate action, legal proceedings or other procedure or step is taken for (inter alia) winding up, administration or reorganisation;

(vi) the obligor must have a "Customer Limit" (Policy TS-03088 Schedule 7);

(vii) the "Customer Limit" must be established in accordance with the terms of Policy TS-03088 (Policy TS-03088 Schedule 7);

(viii) the debt must have a "Due Date", being, a date stated in the "Platform" (being an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related

information is recorded) as the date by which payment of the "Debt" by the "Customer is required to be made (Policy TS-03088 Schedule 7; definition of "Due Date" and definition of "Platform");

(ix) the "Due Date" must not exceed the "Maximum Tenor", being a period set out in a relevant "Debt Endorsement" or "Customer Endorsement" (Policy TS-03088 Schedule 7; definition of "Maximum Tenor");

(x) the debt must not be outstanding after its "Due Date" (Policy TS-03088 Schedule 7);

(xi) there must (on the proper construction of Policy TS-03088 and, in particular, Schedule 7) be in place a "Debt Endorsement" or "Customer Endorsement" which stipulates, in respect of the "debt", a "Maximum Tenor";

(xii) the debt must be denominated and payable only in an "Approved Currency" (Policy TS-03088 Schedule 7); and

(xiii) the debt must satisfy any further criteria set out in the relevant Debt Endorsement relating to the Debt (Policy TS-03088 Schedule 7), with the relevant Debt Endorsement here being Debt Endorsement 1;

(f) IAL denies that Debt Endorsement 1 is valid and effective to bind IAL (as to which it refers to and repeats paragraph 39 of this Defence);

(g) if Debt Endorsement 1 is valid and effective (which is denied and not asserted by Credit Suisse Virtuoso), the following are necessary conditions for a debt to satisfy the criteria in Part A of Debt Endorsement 1:

(i) there must be a debt, being an obligation to pay a sum of money;

(ii) the debt must be "originated" in the course of "Supply Chain Finance";

(iii) there must be a "Supplier", being a person who:

(A) supplies goods and/or services to the "Customer" or its "Affiliate" and

(B) has executed a receivables purchase agreement with the "Servicer" (or an "Affiliate" of the "Servicer" or a third party);

(iv) there must be a "Customer", being a "Customer" who:

(A) is a "Customer" within the meaning of Policy TS-03088;

(B) is endorsed to Policy TS-03088 under a "Customer Endorsement";

(C) is a debtor in respect of a “Debt” within the meaning of Policy TS-03088 (Policy TS-03088, definition of “Customer);

(D) has a right to receive goods or services from the "Supplier”; and

(E) has undertaken to make payment to the “Servicer” as a consequence of the acquisition by the “Servicer” directly or indirectly from a “Supplier’ of one or more accounts receivables relating to the supply of the goods or services provided by the “Supplier” to the “Customer” or its “Affiliate”;

(v) there must be a “Servicer” (here, GCUK) who acquires directly, or indirectly, from a “Supplier” one or more account receivables relating to the supply of goods and/or services by such “Supplier” to a “Customer” or its “Affiliate”;

(vi) there must be a “Contract”, being a written agreement, order form, invoice or other written document customarily used or accepted by the relevant “Supplier” to evidence an agreement between the “Customer” or an “Affiliate” of the Customer relating to or for the sale of goods and/or the rendering of services by the “Supplier” (Policy TS-03088, definition of “Contract”);

(vii) the debt must relate to goods and/or services supplied under the “Contract”;

(viii) there must be a “Customer Agreement”, being an agreement between the “Servicer” (GCUK) and the “Customer” under which the “Customer” has an irrevocable and unconditional obligation to pay “Eligible Debts” to the “Servicer” as a consequence of the acquisition by the “Servicer” directly from a “Supplier” (or indirectly from a “Supplier” via an “Affiliate” of the “Servicer” or a third party) of one or more account receivables relating to the supply of goods and/or services provided by such “Suppler” to each “Customer” or its “Affiliate”;

(ix) there must be an underlying account receivable, being the right of the “Supplier” to receive a future payment from the “Customer” under the “Contract”;

(x) the debt must be an obligation to pay, or cause to be paid, an amount of any receivables payable by the “Customer” (or by an “Affiliate” approved by GCUK under the “Origination Documentation”) to the “Supplier” in respect of goods or services provided by the “Supplier”;

(xi) there must be “Origination Documentation”, being all and any documentation relating to “supply chain financing” between the “Servicer” or an “Affiliate” of the “Servicer” or a third party and, among others, a “Customer” and a

"Relevant Supplier" including: (1) an agreement for the transfer of receivables by such "Supplier" to the "Servicer" or an "Affiliate" of the "Servicer" or a third party and (2) the "Customer Agreement";

(xii) the goods and/or services provided by the "Supplier" to the "Customer" (or "Affiliate") must be acceptable to GCUK pursuant to the "Origination Documentation";

(xiii) there must be a "Platform", being, relevantly, an electronic platform used by GCUK from time to time into which details of "Suppliers" and/or "Customers", "Debts", "Due Dates" and other related information is recorded; and

(xiv) the payment details of the unconditional undertaking must be evidenced by payment details loaded onto the "Platform" by the "Customer" or by any "Affiliate" as agent for the "Customer" and for which receivables have been transferred or have been purportedly transferred to the "Servicer";

(h) on the proper construction of Debt Endorsement 1 (if valid and effective, which is denied and which Credit Suisse Virtuoso does not assert), the following are necessary characteristics of "Supply Chain Finance" as therein referred to:

(i) the finance must be provided by a third-party financer to a trade debtor not a trade creditor;

(ii) the underlying trade debt must have arisen by reason of a transaction for the supply of goods or services in the ordinary course of trade giving rise to a current expense, rather than a transaction giving rise to a capital expense;

(iii) the trade debt must be owing at the time finance is provided; and

(iv) the finance must be provided in settlement of, or in order to settle, the trade debt;

(i) on the proper construction of Policy TS-03088 and Debt Endorsement 1:

(i) there must be a tripartite relationship, involving (at least) three distinct and arms-length parties, namely, the "Supplier", the "Customer" and the "Servicer" and two distinct agreements, the "Contract" and the "Customer Agreement";

(ii) accordingly, the "Servicer" (being GCUK) and the "Supplier" cannot be the same person;

(iii) the "Customer Agreement" and the "Contract" cannot be the same instrument; and

(iv) any "services" supplied under the relevant "Contract" and alleged to give rise to a "Debt":

(A) do not include the supply of finance; and

(B) are distinct from and cannot include the supply of finance by the "Servicer" under a "Customer Agreement";

(j) ~~Credit Suisse Virtuoso has not identified the basis on which it is said that the NMC Health Payment Obligations or the NMC Plc Payment Obligations meet the description in Part A of Debt Endorsement 1;~~

(k) ~~as best IAL understands Credit Suisse Virtuoso's case, it is that:~~

~~(i) the "Customer" was NMC Health and NMC Health Plc;~~

~~(ii) the "Servicer" was GCUK;~~

~~(iii) the "Customer Agreement" was:~~

~~(A) the BTSSA (SOC, paragraphs 22 and 53); or~~

~~(B) alternatively, all of the NMC Health Execution Agreement, the BTSSA and the GCUK Execution Agreement together (SOC, paragraphs 19, 22, 24, 53 and 54);~~

~~(C) the NMC Plc Guarantee (SOC, paragraphs 29 and 52);~~

~~(iv) the source of the asserted respective obligations to pay "Eligible Debts" is clause 6.1 of the BTSSA, and clause 3.1 of the NMC Plc Guarantee;~~

~~however:~~

~~(v) the "Contract" is not defined;~~

~~(vi) the "Supplier" is not defined;~~

~~(vii) the services supplied under the "Contract" is not defined; and~~

~~(viii) the "Supply Chain Finance" is not defined;~~

(l) Credit Suisse Virtuoso does not plead material facts capable of establishing that, at material times (inter alia):

(i) the debt was originated in the course of "Supply Chain Finance";

(ii) there was a "Supplier" or "Suppliers";

(iii) there was a "Contract" or "Contracts";

(iv) goods and/or services were supplied under a “Contract”;

(v) there were underlying “account receivables”;

(vi) the underlying account receivables related to the supply of goods and/or services by a “Supplier”;

(vii) the payment obligations of NMC Health were evidenced by payment details loaded onto the “Platform” by NMC Health;

(viii) GCUK settled or agreed to settle the underlying account receivables;

(ix) the amount the subject of the unconditional undertaking given by NMC Health was equal to the amount of the receivables which GCUK settled or agreed to settle;

(x) the payment details of the unconditional undertakings are set out in the “Customer Agreement” or otherwise evidenced through written payment details provided by or written records held for or with respect to NMC Health;

(xi) any of the conditions in Schedule 7 of Policy TS-03088 was met, including that:

(A) the debts had a “Due Date”;

(B) the debts were not outstanding after the “Due Date”; and

(C) the debs were denominated and payable only in “Approved Currency”;

(xii) there is no articulation of the circumstances which indicate that the goods and/or services supplied under the “Contract” were acceptable to the “Servicer” pursuant to the “Origination Documentation”;

(xiii) there is no articulation of the circumstances which indicate that the unconditional undertaking was evidenced by payment details loaded onto the “Platform” by the “Customer” (or by any “Affiliate” as agent for the “Customer”); and

(xiv) the asserted payment obligations were for obligators which were not affiliates for NMC Health;

(m) says that the NMC Health Payment Obligations and NMC Plc Payment Obligations were not “Eligible Debts” under Schedule 7 of Policy TS-03088 because:

(i) in order to be an “Eligible Debt” the debt must meet the description in Schedule 7 of Policy TS-03088 at the time the relevant “Asset” is acquired by the “Insured”;

(ii) one of the conditions in Schedule 7 is that the debt must not be outstanding after its "Due Date";

(iii) on Credit Suisse Virtuoso's pleaded case (the truth of which is not admitted), the relevant NMC Note ~~(i.e. what IAL understands to be the "Asset")~~ was acquired by the Insured, Greensill Bank no earlier than 25 February 2021;

(iv) although Credit Suisse Virtuoso does not plead the "Due Date", as IAL best understands it from Annexure A to the SOC, ~~Credit Suisse Virtuoso alleges that~~ the putative "Due Date" for the NMC Payment Obligations was 30 June 2020 ("Maturity Date" column);

(A) further, as best IAL understands Credit Suisse Virtuoso's pleaded case, the NMC Health Payment Obligations and NMC Plc Payment Obligations, in respect of the alleged debt in Annexure A, were outstanding from 3 March 2020 (see SOC, paragraph~~s~~ 66 ~~and 71~~);

(B) in the premises, the NMC Health Payment Obligations and NMC Plc Payment Obligations, did not meet the description of an "Eligible Debt" at the critical time;

(n) it denies that the asserted payment obligations (if any) of NMC Health and NMC Health Plc were "Debts" under Part A of Debt Endorsement 1 because:

(i) it is a necessary condition of a debt being an "Eligible Debt" that the obligor is a "Customer" and for reasons set out in paragraph 40 of this Defence, each of NMC Health and/or NMC Health Plc was not a "Customer";

(ii) it is a necessary condition of a debt being an "Eligible Debt" that the obligor has a "Customer Limit" established in accordance with the terms of Policy TS-03088, and for the reasons set out in paragraphs 18H(o) and 40(m)(ii) of this Defence NMC Health and/or NMC Health Plc did not have a "Customer Limit"; and

(iii) it is a necessary condition of a debt being an "Eligible Debt" that there in fact be an extant obligation to pay an amount and, as best IAL understand Credit Suisse Virtuoso's case, the "debts" relied on by Credit Suisse Virtuoso, in whole or in part, concerned possible future obligations, rather than extant obligations;

(o) says further that the NMC Health Payment Obligations and NMC Plc Payment Obligations were not "Debts" under Part A of Debt Endorsement 1 because:

(i) Customer Endorsement 4 (which is the endorsement relied on by Credit Suisse Virtuoso, see SOC, paragraph 40) was not valid or effective and/or binding on IAL; and

(ii) in the premises:

(A) NMC Health and NMC Health Plc was not a "Customer"; and

(B) NMC Health and NMC Health Plc did not have a "Customer Limit" established in accordance with the terms of Policy TS-03088;

(p) it denies that the asserted payment obligations of NMC Health under the BTSSA, or alternatively the NMC Health Execution Agreement, the BTSSA and the GCUK Execution Agreement together, and the asserted payment obligations of NMC Health Plc under the NMC Plc Guarantee were "Debts" under Part A of Debt Endorsement 1 because:

(i) it was a necessary condition of a debt falling within Part A that there be a "Customer Agreement" within the meaning of that Part;

(ii) says that the BTSSA, or alternatively the NMC Health Execution Agreement, the BTSSA and the GCUK Execution Agreement together, or the NMC Plc Guarantee each was not a "Customer Agreement" because:

(A) NMC Health and NMC Health Plc were each not a "Customer" within the meaning of Part A of Debt Endorsement 1;

(B) under the BTSSA, or alternatively the NMC Health Execution Agreement, the BTSSA and the GCUK Execution Agreement together, or the NMC Plc Guarantee, NMC Health and NMC Health Plc did not have an obligation to pay "Eligible Debts";

(C) the obligation (if any) of NMC Health and NMC Health Plc did not arise as a consequence of the acquisition by GCUK of one or more account receivables, but instead:

a. the obligation created by clause 6.1 of the BTSSA arose upon Demica extracting and uploading NMC Health's "Payables" onto the "Platform" / the submission of an Advanced Payment Request (undefined);

b. the obligation created by clause 6.1 of the BTSSA arose irrespective of whether GCUK acquired any account receivable; and

c. the obligation created by clause 6.1 arose irrespective of any non-performance or partial performance by Demica of any obligation on the part of Demica to transfer account receivables to GCUK (clause 2.2);

(q) says that:

(i) the "warranties" referred to in the definition of "Eligible" included the warranties given by the "Insured" in the "Proposal" (Policy TS-03088, clause 7.3);

(ii) the "Proposal" is the document in the form contained in Schedule 2 and submitted by the "Insured" to the "Insurer" in order to obtain the insurance (Policy TS-03088, definition of "Proposal", Sch 1);

(iii) the "Proposal" form in Schedule 2 contains two warranties which are an integral part of the "Proposal" and, on the proper construction of Policy TS-03088, must be given by the "Insured" to the "Insurer"; and

(iv) on the proper construction of Policy TS-03088 and/or in order to give business efficacy to Policy TS-03088, if there was no "Proposal" submitted by the "Insured" to the "Insurer", then (relevantly) there was and could be no "Eligible Customer" in respect of the Policy;

(r) it denies that the NMC Health Payment Obligations and/or NMC Plc Payment Obligations were capable of being "Eligible Debts" and/or otherwise the subject of coverage under Policy TS-03088 because:

(i) it is a condition of a debt being an "Eligible Debt" or, further or alternatively, there being coverage in respect of the debt, that it is owed by an "Eligible Customer";

(ii) the "Eligible Customer" relied on by Credit Suisse Virtuoso is NMC Health and/or NMC Health Plc; and

(iii) NMC Health and/or NMC Health Plc was not an "Eligible Customer" because, at all material times, no "Proposal" at all, or no "Proposal" containing the required warranties, was submitted to the "Insurer";

(s) it puts Credit Suisse Virtuoso to proof on each condition necessary for the NMC Health Payment Obligations and NMC Plc Payment Obligations to be "Eligible Debts"; and

(t) it denies that the NMC Health Payment Obligations and NMC Plc Payment Obligations were "Eligible Debts".

E.0.3 Failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date"

18I In respect of the condition that there be a failure by a "Customer" to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) Credit Suisse Virtuoso alleges, or implicitly alleges, that ~~this condition is satisfied because,~~ since approximately 3 March 2020, NMC Health, and NMC Health Plc, failed to make payments in accordance with the NMC Health Payment Obligations and NMC Plc Payment Obligations (SOC, paragraph 67);

(b) it puts Credit Suisse Virtuoso to proof of the failure to pay, including the existence of the obligation to pay, the alleged "Backstop Date" and the asserted failure to pay by the "Backstop Date"; and

(c) it denies that there was a relevant failure to pay an "Eligible Debt", including because:

(i) NMC Health and NMC Health Plc was not a "Customer"; and

(ii) the NMC Health Payment Obligations and NMC Plc Payment Obligations were not "Eligible Debts".

E.0.4 "Loss" caused by "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date"

18J In respect of the condition that there must be a "Loss" or "Losses" suffered by the "Insured", which is or are caused by or result from the occurrence of the "Customer's" failure to make payment of the "Eligible Debt" on or before the "Backstop Date", IAL says the following:

(a) ~~Credit Suisse Virtuoso alleges or implicitly alleges:~~

(i) ~~each of the "Assets" (as best IAL understands Credit Suisse Virtuoso's case, the NMC Notes) was a "Note";~~

(ii) ~~"Loss" (if any) is assessed under paragraph (iii) of the definition of "Loss" in Policy TS-03088 (if valid and effective, which is denied);~~

(iii) ~~"Loss" is therefore the amount equal to the difference between: (a) the "Expected Allocation" of the "Insured" in respect of each of the NMC Notes; and (b) Greensill Bank's entitlement under the "Master Trust Deed" (SOC, paragraph 71);~~

(iv) ~~the "Expected Allocation" of the NMC Notes was the amount set out in the "Balance of the Expected Allocation" column in Annexure A (SOC, paragraph 71);~~

(v) ~~the "Loss" is said to be the "Balance" of the "Expected Allocation" (being an amount of 4,752,442 (SOC Annexure A; SOC 71);~~

(b) where the "Asset" is a "Note", each of the following is a necessary condition of there being a "Loss" suffered by the Insured which is caused by or results from the failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date":

(i) each of the conditions identified in paragraph 18G(n) of this Defence;

(ii) the "Asset" must be owned by the Insured at the time:

(A) of the "Insured Cause"; and

(B) the "Loss" was suffered;

(iii) the "Asset" must be owned by the "Insured":

(A) immediately prior to the making of a "Claim" (Policy TS-03088, clause 3.1; definition of "Claim", Schedule 1; definition of "Loss''); and

(B) alternatively, immediately prior to the payment of a Claim (Policy TS-03088 definition of "Loss");

(iv) the "Asset" must be owned by the "Insured", alternatively by the "Insured" or a "Loss Payee", during the "Policy Period";

(v) the "Insured" must have an "Expected Allocation" in respect of the Note (Policy TS-03088 definition of "Loss");

(vi) the Note must have a "Final Redemption Amount" or "Instalment Amounts", as set out in a "Pricing Supplement" as defined in the "Master Trust Deed" (Policy TS-03088 definition of "Expected Allocation");

(vii) the "Insured" must have a potential entitlement under the "Master Trust Deed" in respect of the Note (Policy TS-03088 definition of "Loss"); and

(viii) the cause of the "Insured's" potential entitlement under the "Master Trust Deed" being less than the "Expected Allocation" of the "Insured" in respect of such "Asset" is the failure of the "Customer" to pay the "Eligible Debt" on or before the "Backstop Date" (rather than some other cause) (Policy TS-03088 clause 1.1);

(c) Credit Suisse Virtuoso does not plead any material facts capable of establishing:

(i) the matters in paragraph 18G(n) of this Defence;

(ii) the asserted “Loss” (being the difference between the “Expected Allocation” and the value of Greensill Bank’s entitlements under the Master Trust Deed) was caused by or resulted from the occurrence of the NMC Insured Causes (as defined at paragraph 68 of the SOC);

(iii) in the counterfactual where the NMC Insured Causes did not occur, the “Loss” would not have been suffered;

(iv) the NMC Notes had a “Final Redemption Amount” or “Instalment Amounts”;

(v) there was a “Pricing Supplement” in respect of the NMC Notes; and

(vi) GCUK’s entitlements under the “Master Trust Deed”, whether in respect of the NMC Notes or otherwise, were zero; and

(vii) the cause of Greensill Bank’s entitlements under the “Master Trust Deed”, in respect of the NMC Notes (or otherwise) being less than the “Expected Allocation” was the failure of NMC to pay the “NMC Payment Obligations” on or before the “Backstop Date”;

(d) it says:

(i) it is a necessary condition of an indemnity that the indemnified party in fact have suffered a loss;

(ii) under Policy TS-03088, there is an obligation to indemnify only if there is a loss in fact suffered by the “Insured" arising from the occurrence of an “Insured Cause” (clause 1.1, “Indemnity”);

(iii) on the pleaded case:

(A) Greensill Bank, as the “Insured”, obtained the NMC Notes “free of payment” (SOC, paragraphs 34 and 35); and

(B) Greensill Bank did not suffer any loss arising from the occurrence of an “Insured Cause” or otherwise;

(iv) on the pleaded case, any loss on the part of Credit Suisse Virtuoso does not exceed the amount (if any) actually paid by Credit Suisse Virtuoso to acquire the NMC Notes; and

(v) in the premises, there is no coverage or, alternatively, if there is coverage (which is denied), it is confined to the actual loss (if any) suffered by Greensill Bank or, alternatively, Credit Suisse Virtuoso;

(e) it puts Credit Suisse Virtuoso to proof of all material facts necessary for the arising of a "Loss" and for the arising of an indemnity under clause 1.1 or otherwise;

(f) it puts Credit Suisse Virtuoso to proof of all material facts necessary for the arising of a "Loss";

(g) it says that the "Loss" of Greensill Bank as alleged, if and to the extent it arose upon or by reason of the acquisition of the NMC Notes by Greensill Bank, was not caused by and did not result from the occurrence of the alleged NMC Insured Causes because the "Loss" was caused by or resulted from the independent decision of Greensill Bank to acquire the NMC Notes, thus (on Credit Suisse Virtuoso's case) creating a "Loss" which otherwise did not or could not exist; and

(h) it denies that there was a "Loss" or "Losses" because of the matters pleaded in paragraphs 18F to 18I of this Defence.

E.0.5 "Loss" quantified in accordance with Policy TS-03088

18K In respect of the condition that the "Loss" or "Losses" must be quantified in accordance with Policy TS-03088 (if valid and effective, which is denied and is not asserted by Credit Suisse Virtuoso), IAL repeats paragraph 18J of this Defence.

***E.0.6* "Loss Payees"**

18L In respect of the condition that Credit Suisse Virtuoso be a "Loss Payee" and the conditions under the Loss Payee Endorsement must be met, IAL says:

(a) IAL denies that the Loss Payee Endorsement is valid or effective to bind IAL (as to which it refers to and repeats paragraph 44 of this Defence);

(b) if valid and effective, which is denied, the conditions in the Loss Payee Endorsement are not met unless:

(i) there is a "Loss" within the meaning of Policy TS-03088;

(ii) the "Loss" is suffered by the "Insured";

(iii) the "Loss" arises out of "Assets"; and

(iv) the "Loss" arises out of "Assets" acquired by the "Insured" from the "Loss Payee";

(c) it puts Credit Suisse Virtuoso to proof of all material facts necessary for Credit Suisse Virtuoso being a "Loss Payee", including as to the validity and efficacy of the Loss Payee Endorsement.

E.1 The NMC Health Execution Agreement

19 As to paragraph 19 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence;

(b) admits that on 24 May 2018, NMC Health and Demica appear to have entered into an Execution Agreement (**NMC Health Execution Agreement**) which governed, at least in part, the terms on which NMC Health could use the Platform;

(c) admits that the NMC Health Execution Agreement included at Appendix 1 a "Demica Platform Agreement", at Appendix 2 a "Member Access Agreement – Buyer" (**Member Access Agreement – Buyer**) and at Appendix 3 a "Common Definitions and Interpretation Schedule";

(d) says that the BTSSA (defined in paragraph 22 of the SOC) also contained terms on which NMC Health could use the Platform; and

(e) does not know and cannot admit whether the NMC Health Execution Agreement and BTSSA comprised all of the terms on which NMC Health could use the Platform.

20 IAL admits paragraph 20 of the SOC and refers to the terms of the NMC Health Execution Agreement for their full force and effect.

21 IAL admits paragraph 21 of the SOC and refers to the terms of the NMC Health Execution Agreement for their full force and effect.

E.2 The Buyer Tracking and Settlement Services Agreement

22 As to paragraph 22 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence;

(b) says that, on or around 24 May 2018, a representative of NMC Health and a representative of Demica appear to have signed a document entitled "Buyer Tracking and Settlement Service Agreement"; and

(c) otherwise does not know and cannot admit paragraph 22 of the SOC.

23 As to paragraph 23 of the SOC, IAL:

(a) admits that the chapeau to paragraph 23 of the SOC describes at a general level some of the effects of the BTSSA;

(b) admits that the BTSSA contains the terms pleaded in paragraphs 23(a), (b), and (d) to (h) of the SOC;

(c) as to paragraph 23(c) of the SOC, says that:

(i) the terms "Supplier" and "Advanced Payment Request" are not defined in the BTSSA; and

(ii) clause 1.1 of the BTSSA refers to a "Common Definitions and Interpretation Schedule" but the BTSSA does not include such a Schedule; and

(iii) therefore cannot admit paragraph 23(c) of the SOC; and

(d) otherwise refers to the terms of the BTSSA for their full force and effect.

E.3 The GCUK Execution Agreement

24 As to paragraph 24 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence;

(b) admits that on around 1 June 2018, GCUK and Demica appear to have entered into an Execution Agreement (**GCUK Execution Agreement**) which governed, at least in part, the terms on which GCUK could use the Platform;

(c) admits that the GCUK Execution Agreement included at Appendix 1 a "Demica Platform Agreement", at Appendix 2 a "Member Access Agreement – Funder" and at Appendix 3 a "Common Definitions and Interpretation Schedule"; and

(d) does not know and cannot admit whether the GCUK Execution Agreement comprised all of the terms on which GCUK could use the Platform.

25 IAL admits paragraph 25 of the SOC and refers to the terms of the GCUK Execution Agreement for their full force and effect.

26 As to paragraph 26 of the SOC, IAL:

(a) admits that the "Member Access Agreement – Funder" at Appendix 2 of the GCUK Execution Agreement (**Member Access Agreement – Funder**) contains the terms pleaded in paragraphs 26(a), (b), and (d) to (h) of the SOC;

(b) as to paragraph 26(c) of the SOC, says that:

(i) clause 5.2 of the Member Access Agreement – Funder provides that pursuant to the terms and conditions set out in the Member Access Agreement – Funder 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;

(ii) otherwise denies paragraph 26(c) of the SOC;

(c) says further that the Member Access Agreement – Funder:

(i) refers to "Eligibility Criteria" set by GCUK for Buyers (clause 8.1), and IAL does not know and has not been given a copy of any documents containing such criteria, and IAL therefore does not know:

(A) what the Eligibility Criteria were; and

(B) whether NMC Health as Buyer met the Eligibility Criteria;

(ii) contains a term that an Advance Payment Request may be approved by GCUK on an Automatic Basis or a Manual Basis (clause 8.4);

(iii) provides that GCUK was not obliged to provide services to NMC Health on the Platform regardless of whether NMC Health met the Eligibility Criteria (clause 8.3); and

(d) otherwise refers to the terms of the Member Access Agreement – Funder for their full force and effect.

27 As to paragraph 27 of the SOC, IAL:

(a) repeats paragraph 23(c)(ii) of this Defence;

(b) says that the terms in the Demica Platform Agreement and Member Access Agreement – Buyer at Appendices 1 and 2 respectively of the NMC Health Execution Agreement were defined in the Common Definitions and Interpretation Schedule at Appendix 3 of the NMC Health Execution Agreement;

(c) says that the terms in the Demica Platform Agreement and Member Access Agreement – Funder at Appendices 1 and 2 respectively of the GCUK Execution Agreement were defined in the Common Definitions and Interpretation Schedule at Appendix 3 of the GCUK Execution Agreement;

(d) says that the terms referred to in paragraphs 27(a) to (r) of the SOC were defined in the Common Definitions and Interpretations Schedule in Appendix 3 of each of the NMC Health Execution Agreement and the GCUK Execution Agreement; and

(e) otherwise does not know and cannot admit paragraph 27 of the SOC.

28 As to paragraph 28 of the SOC, IAL:

(a) refers to the terms of the BTSSA, the Demica Platform Agreement in Appendix 1 of each of the NMC Health Execution Agreement and the GCUK Execution Agreement and the Member Access Agreements in Appendix 2 of each of the NMC Health Execution Agreement and the GCUK Execution Agreement, upon which it will also rely for their full force and effect (if any); and

(b) otherwise does not plead to paragraph 28 of the SOC, which makes no allegation against it.

E.4 NMC Health Plc Guarantee

29 As to paragraph 29 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence; and

(b) otherwise, on the basis that the NMC Plc Guarantee referred to is the "Company Guarantee" dated 11 June 2018 between NMC Health Plc and GCUK, admits paragraph 29 of the SOC.

F NMC HEALTH NOTE PROGRAMME

F.1 Supply Chain Finance Trust Deed

30 As to paragraph 30 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence; and

(b) otherwise admits paragraph 30 of the SOC.

31 As to paragraph 31 of the SOC, IAL:

(a) repeats paragraphs 18B and 30 of this Defence;

(b) says that, under the Supply Chain Finance Trust Deed, GCUK (as "Grantor") declared that it will hold the "Grantor Trust Property" on bare trust for the benefit of Citibank N.A., London Branch (as "Trustee") absolutely (clause 3(a));

(c) says that, under the Supply Chain Finance Trust Deed, Citibank N.A, London Branch (as "Trustee") declared that it will hold the "Trust Property" on bare trust for GCUK (as "Grantor") and Lagoon Park (as "Participant") on the terms of the deed and in the shares determined in accordance with clause 8 of the deed (clause 3(b));

(d) says that "Trust Property" was defined to mean Citibank N.A., London Branch's (as "Trustee") interest as beneficiary of the trust created in its favour over the "Grantor Trust Property" and the balance from time to time standing to the credit of the "Trust Account" and the "Proceeds" provided that, save for an interest in the "Eligible Accounts Receivable", the "Trust Property" shall not include any investment within

the meaning specified in Articles 74 to 89 of the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (UK) (the ***RAO***) (clause 1.1);

(e) says that the "Grantor Trust Property" was defined to mean all "Eligible Accounts Receivable" as they arise from time to time and any interest (clause 1.1);

(f) says that SOC, paragraph 31(c) describes, in part, the general effect of the definition of "Eligible Accounts Receivable";

(g) says that an instrument was "an instrument acknowledging indebtedness within Article 77 of the *RAO*" only if it was an instrument acknowledging (as distinct from creating) indebtedness for the consideration payable under a contract for the supply of goods or services;

(h) says that "Proceeds" were defined to mean all receipts, revenues and/or recoveries (including for the avoidance of doubt and without limitation, interest) received by Citibank N.A, London Branch pursuant to the deed in respect of the "Grantor Trust Property" after deducting (to the extent not already deducted) all sums which Citibank N.A London Branch was required by applicable law or regulation to pay to any other person before distributing any such receipts or recoveries in accordance with the deed (clause 1.1);

(i) says that the proper analysis of the arrangements established by the Supply Chain Finance Trust Deed was as follows:

  (i) GCUK was trustee of a trust (the "GCUK Trust");

  (ii) Citibank N.A., London Branch was beneficiary of the GCUK Trust;

  (iii) the trust property of the GCUK Trust comprised all "Eligible Accounts Receivable" as they arise from time to time and any interest (the "GCUK Trust Property");

  (iv) a right was an "Eligible Account Receivable" only if it met the description of "Eligible Account Receivable" in clause 1.1 of the Supply Chain Finance Trust Deed, including that it was included in an instrument acknowledging indebtedness under Article 77 of the *RAO*;

(j) as beneficiary of the GCUK Trust, Citibank N.A., London Branch:

  (i) did not have an interest in the GCUK Trust Property; and

  (ii) instead, Citibank N.A., London Branch had equitable rights to the proper administration of the GCUK Trust;

(k) Citibank N.A., London Branch was trustee of a second trust (the "Citi Trust");

(l) Lagoon Park and GCUK were beneficiaries of the Citi Trust;

(m) the trust property of the Citi Trust comprised (the "Citi Trust Property") comprised:

(i) Citibank N.A., London Branch's rights as beneficiary of the GCUK Trust;

(ii) the balance from time to time standing to the credit of the "Trust Account"; and

(iii) the "Proceeds", being certain receipts, revenues or recoveries received by Citibank N.A., London Branch under the deed in respect of the GCUK Trust Property;

(n) the respective proportionate rights of Lagoon Park and GCUK as beneficiaries of the Citi Trust were determined accordance with clause 8 of the Supply Chain Finance Trust Deed; and

(o) as beneficiaries of the Citi Trust, Lagoon Park and GCUK:

(i) did not have an interest in the Citi Trust Property; and

(ii) had equitable rights to the proper administration of the Citi Trust;

(p) says that Credit Suisse Virtuoso does not articulate material facts establishing that, at material times:

(i) there was "Grantor Trust Property" (including "Grantor Trust Property" of a particular quantum);

(ii) there were "Eligible Accounts Receivable", including relevantly that there was a payment undertaking included in an instrument acknowledging indebtedness within the meaning of Article 77 of the *RAO*; and

(iii) there was "Trust Property" (including "Trust Property" of a particular quantum, accompanied by certain proportionate rights of Lagoon Park and GCUK);

(q) refers to all of the terms of the Supply Chain Finance Trust Deed for their full force and effect; and

(r) otherwise does not know and cannot admit paragraph 31 of the SOC.

F.2 Master Trust Deed

32 As to paragraph 32 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence;

(b) admits that on 19 October 2015 Lagoon Park, TMF Luxembourg SA and Citibank N.A., London Branch entered into a "Master Trust Deed" dated 19 October 2015 (CSA.0001.0008.2619) which was supplemented on 20 September 2016 (CSA.0001.0001.3245), 5 December 2016 (CSA.0023.0002.9850) and 26 November 2018 (CSA.0001.0001.3223);

(c) relies on the terms of the Master Trust Deed and the supplements of 20 September 2016, 5 December 2016 and 26 November 2018 for their full force and effect; and

(d) otherwise does not know and cannot admit paragraph 32 of the SOC.

33 As to paragraph 33 of the SOC, IAL:

(a) repeats paragraphs 18B, 31 and 32 of this Defence;

(b) says that, as best IAL understands Credit Suisse Virtuoso's case, the only relevant "Note" in this proceeding is the note with Securities Identification Number XS1994338819 (SOC, Annexure A);

(c) says that Credit Suisse Virtuoso has not articulated any proper case establishing:

(i) that the notes, or the note relevant to this proceeding, were issued pursuant to the Master Trust Deed;

(ii) the basis (if any) upon which the notes were secured by Lagoon Park's beneficial interest in the trust property being the subject of the Citi Trust (defined at paragraph 31(b) of the SOC); and

(iii) that any of the conditions necessary for the NMC Notes to be "Notes" within the meaning of Policy TS-03088 were met;

(d) says that Credit Suisse Virtuoso does not plead any material facts capable of establishing the security referred to in paragraph 33 of the SOC;

(e) says that Credit Suisse Virtuoso alleges, or implicitly alleges that the "beneficial interest in the trust property the subject of the Citi Trust" is the rights (or interest) referred to in SOC, paragraph 31(b);

(f) says that:

(i) Lagoon Park's rights (if any) as beneficiary of the Citi Trust were equitable rights to the proper administration of the trust, and did not include an interest in the trust property;

(ii) legal title to the trust property (if any) remained, at all times, with the trustee, Citi;

(iii) an asset "secured" over Lagoon Park's rights as beneficiary was an asset "secured over" Lagoon Park's equitable rights as beneficiary to enforce the proper administration of the trust;

(iv) the holder of an asset "secured over" Lagoon Park's equitable rights did not have an interest in the trust property of the Citi Trust;

(v) the trust property (as alleged by Credit Suisse Virtuoso) is not the chose in action comprising the right of a person to enforce the payment of moneys owing by a debtor, but was instead the proceeds of such a payment if and when made;

(vi) the trust property was not a "debt", but was instead (at most) the fruits of the discharge of a debt;

(vii) there is no pleading of material fact capable of establishing that the "Eligible Accounts Receivable" referred to at paragraph 31 of the SOC comprised amounts payable pursuant to obligations meeting the description of being an "Eligible Debt";

(viii) the NMC Notes were, if derived from anything at all "derived from" the equitable rights of Lagoon Park as beneficiary of the Citi Trust, being an equitable right to enforce the proper administration of a trust, the trust property of which included proceeds arising from the performance of obligations;

(ix) the NMC Notes were not "derived from" any underlying debts (whether "Eligible Debts" or otherwise) the discharge of which resulted in the proceeds becoming trust property of the Citi Trust; and

(x) the NMC Notes were not, and could not be, secured over Lagoon Park's beneficial interest in the trust property of the Citi Trust because Lagoon Park did not have a beneficial interest in the trust property of the Citi Trust, but instead had no more than equitable rights to the proper administration of the Citi Trust;

(g) otherwise does not know and cannot admit paragraph 33 of the SOC.

33A As to paragraph 33A of the SOC, IAL:

(a) repeats paragraphs 18B and 33 of this Defence:

(b) says that the SOC does not identify:

(i) whether there was an agreement providing for the acquisition by Credit Suisse Virtuoso of the NMC Notes;

(ii) if so, the particulars of that agreement and who the parties to the agreement were; and

(iii) the meaning of notes being transferred to a person (being Credit Suisse Luxembourg SA) as "custodian" for a person (being Credit Suisse Virtuoso);

(c) says that, in the event (which is unclear from the SOC) that Credit Suisse Virtuoso did not acquire legal title to the NMC Notes, but had a relationship to or in respect of those notes only via the "custodianship" of a third party (being Credit Suisse (Luxembourg) SA), then Credit Suisse Virtuoso did not "own" the NMC Notes for the purposes of Policy TS-03088;

(d) otherwise does not know and cannot admit paragraph 33A of the SOC.

34 As to paragraph 34 of the SOC, IAL:

(a) repeats paragraphs 18B, 33 and 33A of this Defence;

(b) says that the SOC does not identify:

(i) whether there was an agreement providing for the acquisition by Greensill Bank of the NMC Notes;

(ii) if there was such an agreement, the particulars of that agreement and who the parties to the agreement were;

(iii) the identity (or identities) of the "counterparty" referred to in the particulars; and

(iv) the basis (if any) for the entry of "instructions" by a "counterparty" effecting an acquisition or transfer of notes

(c) says that if the 23 NMC Notes were transferred to Greensill Bank on or about 23 October 2020 (which is not admitted), Greensill Bank did not own the NMC Notes during the Policy Period which expired no later than:

(i) 1 March 2020; or

(ii) 15 April 2020; or

(iii) 15 May 2020; or

(iv) alternatively, 30 June 2020 (as purportedly extended as pleaded in paragraphs 40A to 43 of the SOC),

(if, which is denied, Policy TS-03088 or any extension was valid and effective to bind IAL, as to which IAL refers to and repeats paragraphs 40A to 43 of this Defence); and

(d) does not know and cannot admit paragraph 34 of the SOC.

35 As to paragraph 35 of the SOC, IAL:

(a) repeats paragraph 34 of this Defence;

(b) says further that if the last of the NMC Notes (being the relevant NMC Note for this proceeding) was transferred to Greensill Bank no earlier than 25 February 2021 (which is not admitted), Greensill Bank did not own that NMC Note during the Policy Period which expired no later than:

(i) 1 March 2020; or

(ii) 15 April 2020; or

(iii) 15 May 2020; or

(iv) alternatively, 30 June 2020 (as purportedly extended as pleaded in paragraphs 40A to 43 of the SOC),

(if, which is denied, Policy TS-03088 or any extension was valid and effective to bind IAL, as to which IAL refers to and repeats paragraphs 40A to 43 of this Defence); and

(c) otherwise does not know and cannot admit paragraph 35 of the SOC.

FA AGENT OF THE INSURER

FA.1 AGENCY ARRANGEMENTS BETWEEN CGU AND BCC AND BRERETON PRIOR TO THE CGU SCHEME

35A IAL admits paragraph 35A of the SOC.

35B As to paragraph 35B of the SOC, IAL:

(a) repeats paragraphs 9(a) to 9(k), and 9(p) of this Defence; and

(b) otherwise admits paragraph 35B of the SOC.

35C As to paragraph 35C of the SOC, IAL:

(a) repeats paragraphs 9(c)(ii) and 9(c)(vii) of this Defence and otherwise denies paragraph 35C(a) of the SOC;

(b) repeats paragraphs 9(c)(ii), 9(d) and 9(e) of this Defence and otherwise denies paragraph 35C(b) of the SOC;

(c) as to paragraph 35C(c) of the SOC:

(i) says that it was a term of the CGU AAR Agreement that CGU will pay to BCC commission for providing the "Authorised Services" (as defined in paragraph 9(b)(ii)(F) of this Defence) under the CGU AAR Agreement for the "Trade Credit Products" issued by BCC as agent for CGU (clause 3.1(a) and the Commission Schedule);

(ii) says that the "Trade Credit Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, could only be written using Approved Wording 1.3; and

(iii) otherwise denies paragraph 35C(c) of the SOC;

(d) as to paragraph 35C(d) of the SOC:

(i) says that it was a term of the CGU AAR Agreement that BCC would collect and remit to CGU (net of commission) premiums received by BCC on account of contracts of "Approved Products" issued by BCC as agent for CGU, net of BCC's commission (clauses 3.1, 3.3, 8.1);

(ii) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(iii) otherwise denies paragraph 35C(d) of the SOC;

(e) as to paragraph 35C(e) of the SOC:

(i) says that it was a term of the CGU AAR Agreement that BCC will maintain a bordereau of all "Approved Products" issued by BCC on behalf of CGU (clause 4.5(a));

(ii) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies using Approved Wording 1.3; and

(iii) otherwise denies paragraph 35C(e) of the SOC;

(f) as to paragraph 35C(f) of the SOC:

(i) admits that it was a term of the CGU AAR Agreement that BCC would provide a copy of the bordereau referred to in paragraph 35C(e)(i) of this Amended

Defence to CGU within 7 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to Approved Products issued by BCC as agent for CGU (clause 4.5(b));

(ii) says that it was a term of the CGU AAR Agreement that each monthly bordereaux must include details of all transactions undertaken and monies outstanding, received, refunded or paid during that particular month in relation to Insurance including in respect of each Insurance Policy issued or arranged by BCC on behalf of CGU;

(iii) says that the only "Approved Products" that BCC was authorised to issue as agent for CGU under the CGU AAR Agreement, between October 2016 and July 2017, were trade credit insurance policies written using Approved Wording 1.3; and

(iv) otherwise denies paragraph 35C(f) of the SOC;

(g) admits paragraph 35C(g) of the SOC;

(h) admits paragraph 35C(h) of the SOC and says further that the "Authorised Services" were to be carried out through an "Authorised Individual" in accordance with clause 5.4;

(i) admits paragraph 35C(i) of the SOC;

(j) admits paragraph 35C(j) of the SOC;

(k) admits paragraph 35C(k) of the SOC;

(l) admits paragraph 35C(l) of the SOC;

(m) admits paragraph 35C(m) of the SOC;

(n) as to paragraph 35C(n) of the SOC:

(A) refers to and repeats paragraph 35JE of this Defence and, in those premises, denies that the Underwriting Manual Version 2.0 was as pleaded in paragraph 36E of the SOC;

(B) otherwise admits the paragraph;

(o) admits paragraph 35C(o) of the SOC;

(p) admits paragraph 35C(p) of the SOC;

(q) admits paragraph 35C(q) of the SOC;

(r) admits paragraph 35C(r) of the SOC;

(s) admits paragraph 35C(s) of the SOC;

(t) admits paragraph 35C(t) of the SOC;

(u) admits paragraph 35C(u) of the SOC;

(v) admits paragraph 35C(v) of the SOC;

(w) admits paragraph 35C(w) of the SOC;

(x) admits paragraph 35C(x) of the SOC;

(y) admits paragraph 35C(y) of the SOC;

(z) admits paragraph 35C(z) of the SOC;

(aa) admits paragraph 35C(aa) of the SOC; and

(bb) admits paragraph 35C(bb) of the SOC.

35D IAL admits paragraph 35D of the SOC.

35E As to paragraph 35E of the SOC, IAL:

(a) says that by the CGU AAR Agreement and the BCC Authorisation Notice, CGU appointed BCC as its agent to issue and vary "Approved Products", being trade credit insurance policies written using Approved Wording 1.3 and, subsequently, Approved Wording 1.4, on behalf of CGU;

(b) repeats paragraphs 9(a) to 9(k), and 9(p) of this Defence; and

(c) otherwise admits ~~denies~~ paragraph 35E of the SOC.

35F As to paragraph 35F of the SOC, IAL:

(a) repeats paragraphs 9(d) and 9(e) of this Defence; and

(b) otherwise admits paragraph 35F of the SOC.

35G As to paragraph 35G of the SOC, IAL:

(a) repeats paragraphs 9(a) to 9(k), and 9(p) of this Defence;

(b) says that BCC was an authorised representative of CGU for the purposes of Division 6 of Part 7.6 of the *Corporations Act* between 28 July 2016 and 31 July 2017; and

(c) otherwise denies paragraph 35G of the SOC.

35H As to paragraph 35H of the SOC, IAL:

(a) says that on or around 8 July 2016, CGU and Brereton entered into the CGU/Brereton Authorisation Agreement, which was titled "Individual Authorisation Agreement and Authorisation Notice for Greg Brereton", rather than "Individual Authorisation Agreement" (IAL.500.005.0827);

(b) says that the CGU/Brereton Authorisation Agreement attached the CGU/Brereton Authorisation Notice, being the same document as the "Brereton Authorisation Notice" referred to in paragraph 35I of the SOC; and

(c) otherwise admits paragraph 35H of the SOC.

35I As to paragraph 35I of the SOC, IAL:

(a) repeats paragraph 35H of this Defence; and

(b) otherwise admits paragraph 35I of the SOC.

Particulars

Email from CGU to Toby Guy of BCC sent on 8 July 2016 (~~TOK.018.00034735~~IAL.500.011.0594).

35J As to paragraph 35J of the SOC, IAL:

(a) repeats paragraphs 9(f), 9(g) and 35H of this Defence; and

(b) otherwise admits ~~denies~~ paragraph 35J of the SOC.

35JA As to paragraph 35JA of the SOC, IAL:

(a) admits the paragraph; and

(b) says further that Underwriting Manual Version 1.0 also provided that where a policy is issued in a foreign currency the maximum limit must be no more than 95% of the AUD Binder Limit BCC is authorised to transact at the time cover is arranged (page 29) (IAL.500.007.1510).

35JB IAL admits paragraph 35JB of the SOC.

35JC IAL admits paragraph 35JC of the SOC.

35JD IAL admits paragraph 35JD of the SOC.

35JE As to paragraph 35JE of the SOC, IAL:

(a) refers to and repeats paragraph 9(p)(xiii) of this Defence;

(b) denies that the Underwriting Manual Version 2.0 set out again the matter pleaded in paragraph 35JE of the SOC; and

(c) otherwise admits paragraph 35JE of the SOC.

35K As to paragraph 35K of the SOC, IAL:

(a) repeats paragraph 9(g)(i) of this Defence; and

(b) otherwise admits paragraph 35K of the SOC.

35L As to paragraph 35L of the SOC, IAL:

(a) says that Brereton was an authorised representative of CGU for the purposes of Division 6 of Part 7.6 of the *Corporations Act* between 8 July 2016 and 31 July 2017;

(b) repeats paragraph 9(m)(iii) of this Defence; and

(c) otherwise denies paragraph 35L of the SOC.

FA.2 The CGU Scheme

35M IAL admits that the order made by the Federal Court on 20 July 2017 had the effect substantially alleged in paragraph 35M of the SOC and relies on the terms of the order for their full force and effect.

35N IAL admits paragraph 35N of the SOC.

35O As to paragraph 35O of the SOC, IAL:

(a) admits that the order referred to in paragraph 35M of the SOC had the effect substantially alleged in paragraph 35O of the SOC and relies on the terms of the order for their full force and effect; and

(b) repeats paragraph 9(l) of this Defence.

35P As to paragraph 35P of the SOC, IAL:

(a) repeats paragraphs 9(a) to 9(l), 9(p), and 35E of this Defence; and

(b) otherwise denies paragraph 35P of the SOC.

35Q As to paragraph 35Q of the SOC, IAL:

(a) repeats paragraphs 9(q) to 9(t) of this Defence; and

(b) otherwise denies paragraph 35Q of the SOC;

35R As to paragraph 35R of the SOC, IAL:

(a) repeats paragraphs 9(d), 9(l) and 35Q of this Defence; and

(b) otherwise denies paragraph 35R of the SOC.

35S As to paragraph 35S of the SOC, IAL:

(a) repeats paragraphs 9(m) to 9(o), 35H and 35I of this Defence; and

(b) otherwise admits paragraph 35S of the SOC.

35T As to paragraph 35T of the SOC, IAL:

(a) repeats paragraph 35S of this Defence; and

(b) otherwise denies paragraph 35T of the SOC.

35U As to paragraph 35U of the SOC, IAL:

(a) repeats paragraph 9(m)(iii) of this Defence; and

(b) otherwise denies paragraph 35U of the SOC.

35V As to paragraph 35V of the SOC, IAL:

(a) repeats paragraph 9(m)(iii) of this Defence; and

(b) otherwise denies paragraph 35V of the SOC.

35W [Not used] ~~As to paragraph 35W of the SOC, IAL:~~

(a) ~~admits that it provided BCC with a letter dated 1 August 2017 stating that BCC was acting on behalf of IAL in relation to the issue of "Trade Credit Insurance";~~

(b) ~~says that the letter was provided to BCC for the purpose of providing confirmation of BCC's authority following the transfer of CGU's insurance business to IAL as pleaded in paragraph 35M of this Defence; and~~

(c) ~~otherwise denies paragraph 35W of the SOC.~~

35X [Not used] ~~As to paragraph 35X of the SOC, IAL:~~

(a) ~~says that the To Whom it May Concern Letter stated that BCC was arranging "Trade Credit Insurance" under an authority provided by IAL and acts as an Authorised Representative of IAGA;~~

(b) ~~relies on the terms of the letter for their full force and effect; and~~

(c) ~~otherwise denies paragraph 35X of the SOC.~~

35Y [Not used] ~~As to paragraph 35Y of the SOC, IAL:~~

~~(a) repeats paragraphs 35W and 35X of this Defence; and~~

~~(b) otherwise denies paragraph 35Y of the SOC.~~

FA.3 IAL Agencies Agreements

35ZZ IAL admits paragraph 35ZZ of the SOC.

35ZA IAL denies paragraph 35ZA of the SOC.

35ZB IAL denies paragraph 35ZB of the SOC and says that Bond, Tomsebed Pty Ltd, Newland Risk Solutions Pty Ltd and IAGA were shareholders of BCC from time to time and says further that IAGA transferred its shareholding in BCC to TMMA effective 9 April 2019.

35ZC IAL denies paragraph 35ZC of the SOC and repeats paragraphs 9(m) to 9(o) and 9(q) to 9(ee) of this Defence.

35ZD As to paragraph 35ZD of the SOC, IAL:

(a) repeats paragraphs 9(w)(i) and 9(w)(vi) of this Defence and otherwise denies paragraph 35ZD(a) of the SOC;

(b) repeats paragraph 9(w)(i) of this Defence and otherwise denies paragraph 35ZD(b) of the SOC;

(c) as to paragraph 35ZD(c) of the SOC:

(i) says that it was a term of the IAL AAR Agreement that IAL will pay to BCC commission for providing the "Authorised Services" (as defined in paragraph 9(u)(iii)(E) of this Defence) under the IAL AAR Agreement for the "Trade credit insurance products" issued by BCC as agent for IAL (clause 3.1(a) and the Commission Schedule);

(ii) says that the "Trade credit insurance products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement could only be written using Approved Wording 1.4; and

(iii) otherwise denies paragraph 35ZD(c) of the SOC;

(d) as to paragraph 35ZD(d) of the SOC:

(i) says that it was a term of the IAL AAR Agreement that BCC would collect and remit to IAL (net of commission) premiums received by BCC on account of contracts of "Approved Products" issued by BCC as agent for CGU, net of BCC's commission (clauses 3.1, 3.3, 8.1);

(ii) says that the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies written using Approved Wording 1.4; and

(iii) otherwise denies paragraph 35ZD(d) of the SOC;

(e) as to paragraph 35ZD(e) of the SOC:

(i) says that it was a term of the IAL AAR Agreement that BCC will maintain a bordereau of all "Approved Products" issued by BCC on behalf of IAL (clause 4.5(a));

(ii) says that the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies written using Approved Wording 1.4;

(iii) otherwise denies paragraph 35ZD(e) of the SOC;

(f) as to paragraph 35ZD(f) of the SOC:

(i) admits that it was a term of the IAL AAR Agreement that BCC would provide a copy of the bordereau referred to in paragraph 35ZD(e)(i) of this Defence to IAL within 14 business days of the close of each month during which any transactions were undertaken or moneys received, refunded or paid in relation to "Approved Products" issued by BCC as agent for IAL (clause 4.5(b));

(ii) says that the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies written using Approved Wording 1.4;

(iii) repeats paragraph 35ZS(c) of this Defence; and

(iv) otherwise denies paragraph 35ZD(f) of the SOC;~~.~~

(g) admits paragraph 35ZD(g) of the SOC;

(h) admits paragraph 35ZD(h) of the SOC;

(i) admits paragraph 35ZD(i) of the SOC;

(j) admits paragraph 35ZD(j) of the SOC;

(k) admits paragraph 35ZD(k) of the SOC;

(l) admits paragraph 35ZD(l) of the SOC;

(m) admits paragraph 35ZD(m) of the SOC;

(n) admits paragraph 35ZD(n) of the SOC;

(o) admits paragraph 35ZD(o) of the SOC;

(p) admits paragraph 35ZD(p) of the SOC;

(q) admits paragraph 35ZD(q) of the SOC; and

(r) admits paragraph 35ZD(r) of the SOC.

35ZDA IAL admits paragraph 35ZDA of the SOC.

35ZDB As to paragraph 35ZDB of the SOC, IAL:

(a) refers to and repeats paragraph 9(z)(ix) of this Defence;

(b) denies that the Underwriting Manual Version 3.0 contained the express term pleaded in paragraph 35JA(k) of the SOC;

(c) refers to and repeats paragraph 9(z)(xxv) of this Defence;

(d) denies that the Underwriting Manual Version 3.0 contained the express term pleaded in paragraph 35JA(q) of the SOC; and

(e) otherwise admits paragraph 35ZDB of the SOC.

35ZE [Not used] ~~IAL denies paragraph 35ZE of the SOC and says further that:~~

(a) ~~the "BCC/IAL Authorisation Notice" referred to in paragraph 35ZE of the SOC is the same as the BCC Authorisation Notice dated 28 July 2016 referred to in paragraph 35D of the SOC;~~

(b) ~~the BCC Authorisation Notice was a schedule and formed a part of the CGU AAR Agreement;~~

(c) ~~by reason of the matters in paragraph 9(r) of this Defence, the CGU AAR Agreement including the BCC Authorisation Notice was terminated on 9 April 2019; and~~

(d) ~~from 9 April 2019, the BCC Authorisation Notice ceased to have effect.~~

35ZF IAL repeats paragraphs 9(m) to 9(o), 9(q) to 9(cc), 35S, 35ZC and 35ZE of this Defence and otherwise denies paragraph 35ZF of the SOC.

35ZG IAL repeats paragraph 35ZE of this Defence and otherwise denies paragraph 35ZG.

35ZH As to paragraph 35ZH of the SOC, IAL:

(a) says that BCC was an authorised representative of CGU for the purposes of Division 6 of Part 7.6 of the *Corporations Act* between 28 July 2016 and 31 July 2017;

(b) repeats paragraphs 9(e) and 35ZE of this Defence;

(c) says that between 1 August 2017 and 9 April 2019, by reason of the CGU AAR Agreement including the BCC Authorisation Notice and the order referred to in paragraph 35M of the SOC:

(i) IAL appointed BCC as IAL's agent to perform "Authorised Financial Services" in relation to the "Approved Products" on behalf of IAL, subject to the limitations imposed by the CGU AAR Agreement and Underwriting Manual Versions 1.0 and 2.0;

(ii) the only "Approved Products" that BCC was authorised to issue as agent for IAL under the CGU AAR Agreement were trade credit insurance policies using Approved Wording 1.4; and

(iii) IAL appointed BCC as an authorised representative of IAL for the purposes of Chapter 7.6 of the *Corporations Act* on the terms set out in the CGU AAR Agreement;

(d) says that between 9 April 2019 and 30 June 2019, by reason of the IAL AAR Agreement:

(i) IAL appointed BCC as IAL's agent to perform "Authorised Financial Services" in relation to the "Approved Products" on behalf of IAL, subject to the limitations imposed by the IAL AAR Agreement and Underwriting Manual Version 3.0;

(ii) the only "Approved Products" that BCC was authorised to issue as agent for IAL under the IAL AAR Agreement were trade credit insurance policies using Approved Wording 1.4;

(iii) IAL appointed BCC as an authorised representative of IAL for the purposes of Chapter 7.6 of the *Corporations Act* on the terms set out in the IAL AAR Agreement; and

(e) otherwise denies paragraph 35ZH of the SOC.

35ZI IAL admits ~~As to~~ paragraph 35ZI of the SOC~~, IAL~~:

(a) ~~says that the IAGA/IAL Brereton Authorisation Agreement referred to in paragraph 9(m) of this Defence was entered into by IAGA in its own right and on behalf of IAL;~~

(b) ~~IAL did not otherwise enter into any agreement titled "Individual Authorisation Agreement" with Brereton on or around 28 July 2017; and~~

(c) ~~otherwise denies paragraph 35ZI of the SOC.~~

35ZJ IAL admits ~~As to~~ paragraph 35ZJ of the SOC.~~, IAL:~~

(a) ~~repeats paragraphs 9(m) to 9(o) and 35ZI of this Defence;~~

(b) ~~says that the "Individual Authorisation Notice" which was attached to the IAGA/IAL Brereton Authorisation Agreement was provided by IAGA on its own behalf and on behalf of IAL, and IAL did not otherwise provide to Brereton any other document titled "Individual Authorisation Notice; and~~

(c) ~~otherwise denies paragraph 35ZJ of the SOC.~~

35ZK IAL repeats paragraphs 9(m) to 9(o), 35ZI and 35ZJ of this Defence and otherwise denies paragraph 35ZK of the SOC.

35ZL IAL repeats paragraphs 9(m) to 9(o), 35ZI and 35ZJ of this Defence and otherwise admits paragraph 35ZL of the SOC.

35ZM As to paragraph 35ZM of the SOC, IAL:

(a) repeats paragraphs 9(f), 9(g) and 35ZJ of this Defence;

(b) says that Brereton was an authorised representative of CGU for the purposes of Division 6 of Part 7.6 of the *Corporations Act* between 28 July 2017 and 31 July 2017;

(c) admits that Brereton was an authorised representative of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* between 1 August 2017 and 30 June 2019; and

(d) otherwise denies paragraph 35ZM of the SOC.

FA.4 Administration of the policies

35ZN IAL admits paragraph 35ZN of the SOC and says further that:

(a) it relies on the entire terms of the PACAO for their full meaning and effect (IAL.500.011.0603); and

(b) repeats paragraphs 10(b) to 10(g) of this Defence.

35ZO IAL admits paragraph 35ZO of the SOC and:

(a) repeats paragraphs 9(z)(xxvi) and 35ZN of this Defence;

(b) says that it assumes that the authority alleged is actual authority, as distinct from ostensible or apparent authority;

(c) says that:

(i) it was an express term of the PACAO that the relationship between IAL and "the Administrator" was that of contractor and not that of principal and agent, except to the extent otherwise expressly provided in the PACAO (clause 29.2);

(ii) there were no terms of the PACAO expressly providing for "the Administrator" to act as agent of IAL;

(iii) the PACAO did not create a principal-agent relationship between IAL (as principal) and "the Administrator" (as agent);

(d) says that:

(i) Schedule 5 of the PACAO refers to "mid-term alterations";

(ii) on its proper construction, the phrase "mid-term alterations" in the PACAO has the same meaning as "Mid-Term Policy Alterations" referred to in the IAL AAR Agreement, which also came into effect on 9 April 2019, as to which IAL repeats paragraph 9(x) of this Defence;

(e) says that, in the event (which is denied) that the PACAO created a relationship of principal-agent as between IAL (as principal) and "the Administrator" (as agent), any actual authority held by "the Administrator" was subject (inter alia) to:

(i) the Administrator's compliance with Underwriting Manual Version 3.0 for "Trade Credit policies" written on IAL paper on or before 30 June 2019 (clause 5.1; Schedule 5);

(ii) the limitations set out in Schedule 5 in respect of the processing of "mid-term alterations", including:

(A) the Administrator is not permitted to extend policy due dates or enforce year 2 auto renewals on IAL paper;

(B) the Administrator is not permitted to write new business or renewals on IAL paper;

(C) the Administrator is to handle all claims for the life of the run off policies (written on IAL paper) as prescribed in Schedule 3 of the PACAO;

(D) the finance/administration activities that the Administrator was permitted to undertake for mid-term alterations were limited to:

a. issuing premium invoices;

b. following up and collecting of outstanding Debtor invoices;

c. allocating of cash receipts in the financial systems;

d. reconciling Trust bank accounts daily;

e. preparing and disseminating monthly Written Bordereaux;

f. preparing and disseminating monthly Payment Bordereaux and make appropriate distributions;

g. investigating and responding to ad hoc queries from the IAL finance team;

h. reconciling reporting systems to bank and Bordereau reports;

(f) says that, on 3 September 2020, IAL issued a notice under clause 21.1(a) of the PACAO which restricted the Administrator's authority (if any) under the PACAO (BCC.0001.0005.5871); and

Particulars

The notice revoked the power of the Administrator in relation to Claims arising under Trade Credit Policies to:

(a) accept indemnity on behalf of IAL in connection with Claims;

(b) authorise any payments in connection with Claims;

(c) defend, negotiate or settle any Claims on behalf of IAL;

(d) implement strategies for defending Claims;

(e) engage appropriate Third-Party Service Providers to establish entitlement and quantification of the Claim; and

(f) make or pursue on behalf of IAL recovery action against third parties who have contributed to the Claim.

(g) says that IAL is unaware of the terms of any delegation made by Bond to BCC.

35ZP As to paragraph 35ZP of the SOC, IAL:

(a) repeats paragraphs 35ZN and 35ZO of this Defence;

(b) says that the "Services" that IAL permitted the Administrator to provide were defined as set out in paragraph 10(b) of this Defence; and

(c) otherwise denies paragraph 35ZP of the SOC.

35ZQ As to paragraph 35ZQ of the SOC, IAL:

(a) repeats paragraphs 35ZN and 35ZO of this Defence; and

(b) otherwise denies paragraph 35ZQ of the SOC.

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

35ZR [Not used] ~~As to paragraph 35ZR of the SOC, IAL:~~

(a) ~~says that Credit Suisse Virtuoso has failed to plead the alleged legal effect of the conduct referred to in the paragraph; and~~

(b) ~~otherwise denies paragraph 35ZR of the SOC.~~

35ZS As to paragraph 35ZS of the SOC, IAL:

(a) says that the allegation does not identify the bordereaux to which it pleaded;

(b) under cover of that objection, admits that BCC provided bordereaux to IAL from 1 August 2017;

(c) says that the bordereaux provided by BCC to IAL in the period January 2018 to the date of this Defence:

(i) did not disclose the existence of Policy TS-03088 or any endorsements purportedly issued pursuant to Policy TS-03088, including that Policy TS-03088 or any endorsements had been purportedly issued by BCC;

(ii) only disclosed (relevantly) that "Approved Products", being trade credit insurance policies, had been issued by BCC to GCPL;

Particulars

The bordereaux that BCC provided to IAL identified the policies issued by BCC as being "Trade Credit" Products with policy numbers that in each case contained the prefix "TB", "TW" or "TS" representing multi-buyer policies, whole of turnover policies, and single risks policies written using Approved Wording respectively.

(iii) did not disclose that such policies had not been written using Approved Wording 1.3 and Approved Wording 1.4;

(iv) disclosed only one Greensill entity to be an insured under policies written by BCC purportedly on behalf of IAL, being GCPL;

(v) did not disclose that Greensill Bank was an insured;

(vi) did not disclose GCUK to be an insured;

(vii) did not disclose non-Australian domiciled insureds;

(viii) did not disclose that insurance policies which did not constitute trade credit insurance policies, or which used non-approved wording, including Policy TS-03088, had been issued by BCC to any Greensill entity;

(ix) did not disclose that any policies purportedly issued by BCC on behalf of IAL had an insured percentage of 100%;

(x) did not disclose that BCC had issued endorsements that had not been approved by CGU or IAL and/or were not in the form of the Approved Endorsements;

(xi) failed to disclose 10 policies (including Policy TS-03088) purportedly issued by BCC on behalf of IAL with GCPL and either Greensill Bank or GCUK as named insureds; and

Particulars

The 10 policies that BCC failed to disclose are:

(a) TW-03137 with an inception date of 15 December 2017;

(b) TW-03547 with an inception date of 25 May 2018;

(c) TB-04271 with an inception date of 8 October 2018;

(d) TB-04278 with an inception date of 8 October 2018;

(e) TB-04585 with an inception date of 28 December 2018;

(f) TB-03690 (being the 2019 Policy) with an inception date of 22 February 2019, or any earlier incepted policy of which the 2019 Policy was a purported renewal;

(g) TS-03088 with an inception date of 1 March 2019;

(h) the Parallel Policy to Master Policy TB-04917 with an inception date of 1 March 2019, the policy number of which is not currently known to IAL;

(i) TB-05369 with an inception date of 26 June 2019;

(j) TW-05412 with an inception date of 30 June 2019;

(xii) contained other inaccuracies or omissions; and

Particulars

The inaccuracies or omissions included:

(a) inaccurate or omitted recording of written premium on Greensill risks;

(b) inaccurate or omitted recording of payment frequency of premium on Greensill risks;

(c) inaccurate or omitted recording of inception and expiry dates of policies concerning Greensill risks;

Further particulars will be provided after discovery, compulsory production and evidence.

(d) otherwise denies paragraph 35ZS of the SOC.

35ZT ~~As to~~ IAL admits paragraph 35ZT, ~~IAL:~~

(a) ~~repeats paragraphs 35C and 35ZS of this Defence;~~

(b) ~~says that the bordereaux that BCC provided to IAL:~~

(i) ~~did not refer to Policy TS-03088 or any endorsements purportedly issued pursuant to Policy TS-03088;~~

(ii) ~~did not refer to policy TB-03690 (also referred to in this Defence as the 2019 Policy) or any endorsements purportedly issued pursuant to those policies;~~

(iii) ~~as to policy TB-03691:~~

~~(A) the bordereaux provided by BCC to IAL on 19 July 2018 first disclosed that a policy identified as "TB-03691" had been issued by BCC on behalf of IAL with an inception date of 1 June 2018 and expiry date of 31 May 2019 (**First TB-03691 Policy**);~~

~~(B) the information disclosed regarding the First TB-03691 Policy referred to in the preceding sub-paragraph was inaccurate because the relevant policy wording provided for a policy period of 27 December 2017 to 27 December 2018;~~

~~(C) by reason of the matters in paragraphs 35ZT(b)(iii)(A) and 35ZT(b)(iii)(B) of this Defence, disclosure of the First TB-03691 Policy in bordereaux provided by BCC to IAL was first made more than 6 months after the purported commencement of the First TB-03691 Policy (if valid and effective, which is denied);~~

(D) the bordereaux provided by BCC to IAL on 11 September 2019 first disclosed that policy TB-03691 had been "renewed" for the period 1 June 2019 to 31 May 2020 (**Second TB-03691 Policy**);

(E) the information disclosed regarding the Second TB-03691 Policy referred to in the preceding sub-paragraph was inaccurate because the relevant policy wording provided that the policy (if valid and effective, which is denied) was made and commenced on 1 March 2019 and was for a policy period of 12 months;

(F) by reason of the matters in paragraphs 35ZT(b)(iii)(D) and 35ZT(b)(iii)(E) of this Defence, disclosure of the Second TB-03691 Policy in bordereaux provided by BCC to IAL was first made approximately 7 months after the purported commencement of the Second TB-03691 Policy (if valid and effective, which is denied);

(G) the bordereaux provided by BCC to IAL:

a. did not disclose that BCC had issued the First TB-03691 Policy and Second TB-03691 Policy using non-approved wording;

b. disclosed that there was only one insured under the First TB 03691 Policy and Second TB-03691 Policy, being GCPL, which is and was a company domiciled in Australia;

c. did not disclose that GCUK was a named insured under the First TB-03691 Policy and Second TB-03691 Policy; and

d. did not disclose that any overseas entity was a named insured under the First TB-03691 Policy and Second TB-03691 Policy;

(H) prior to April 2021, the bordereaux provided by BCC to IAL:

a. did not disclose foreign exchange adjustments to premium for the First TB-03691 Policy and Second TB-03691 Policy, and thereby failed to disclose information that would indicate that the insured was not an Australian domiciled company;

b. did not disclose the extent of the risks purportedly underwritten by BCC on behalf of IAL under the First TB-03691 Policy and Second TB-03691 Policy;

Particulars

(a) The amount of premium payable to or collected by BCC was understated by approximately $23 million.

(b) The number of endorsements purportedly written pursuant to these policies was understated by approximately 640.

(c) The Maximum Policy Limit was understated and or misstated.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) as to policy TS-03087, the bordereaux that BCC provided to IAL:

(A) disclosed that a policy identified as "TS-03087" had been issued by BCC on behalf of IAL;

(B) did not disclose that BCC had issued policy TS-03087 using non-approved wording;

(C) did not, until 9 June 2021, disclose that BCC had purported to renew TS-03087 (if valid and effective, which is denied), with such renewal to apply for the period 1 March 2019 to 29 February 2020 (the original policy period purportedly being 9 February 2018 to 1 March 2019) by which time the renewed policy period had passed;

(D) did not, until 9 June 2021, disclose that BCC had purported to extend the due date of policy TS-03087 as renewed (if valid and effective, which is denied) from 29 February 2020 to 15 May 2020, and then to 15 June 2020 and then to 30 June 2020 by which time the policy expiry date (as purportedly extended) had passed;

(E) did not, until 11 June 2021, disclose that BCC had received premium for policy TS-03087 as purportedly renewed and extended;

(F) disclosed that there was only one insured under policy TS-03087, being GCPL, which is and was a company domiciled in Australia;

(G) did not disclose that GCUK was a named insured under policy TS-03087;

~~(H) contained other inaccuracies and omissions; and~~

~~**Particulars**~~

~~The inaccuracies included:~~

~~(a) inaccurate or omitted recording of written premium for policy TS-03087;~~

~~(b) inaccurate or omitted recording of payment frequency of premium for policy TS-03087;~~

~~(c) inaccurate or omitted recording of the inception and expiry date for policy TS-03087.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(c) ~~otherwise denies paragraph 35ZT of the SOC.~~

35ZU [Not used] ~~As to paragraph 35ZU of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZT of this Defence;~~

(b) ~~says that the SOC does not identify:~~

(i) ~~what is meant by the allegation that IAL "permitted" BCC to collect certain premiums; or~~

(ii) ~~the premiums alleged;~~

(c) ~~says that, if and to the extent that the allegation is that IAL permitted BCC to collect premiums in respect of Policy TS-03088 in circumstances where IAL knew of the existence and terms of the Policy TS-03088 or endorsements thereto:~~

(i) ~~that allegation is denied; and~~

(ii) ~~IAL says further that no premiums were remitted by BCC to IAL in respect of Policy TS-03088 or endorsements;~~

(d) ~~admits that from 1 August 2017, IAL permitted BCC to collect premiums for policies which BCC represented in iterations of the bordereaux as conforming with Approved Products;~~

(e) ~~says that the premiums that BCC collected for all policies that it purportedly issued on behalf of IAL to GCPL, GCUK and Greensill Bank were omitted or not accurately recorded and did not reflect policies purportedly issued at specific points in time in the iterations of the bordereaux it submitted to IAL; and~~

(f) ~~otherwise does not know and cannot admit paragraph 35ZU of the SOC.~~

35ZV [Not used] ~~As to paragraph 35ZV of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZU of this Defence;~~

(b) ~~says that the SOC does not identify the premiums referred to;~~

(c) ~~says that, if and to the extent it is alleged that BCC remitted premiums to IAL in respect of Policy TS-03088 or any of the endorsements purportedly issued pursuant to Policy TS-03088, that allegation is denied;~~

(d) ~~says that BCC remitted some premiums to IAL in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and~~

(e) ~~otherwise does not know and cannot admit paragraph 35ZV of the SOC.~~

35ZW [Not used] ~~As to paragraph 35ZW of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZU(a) and 35ZV of this Defence;~~

(b) ~~says that the SOC does not identify the commission referred to;~~

(c) ~~says that, if and to the extent it is alleged that IAL paid commission to BCC in respect of Policy TS-03088 or any of the endorsements purportedly issued pursuant to Policy TS-03088, that allegation is denied;~~

(d) ~~says that IAL paid commission to BCC in respect of policies which BCC represented in iterations of the bordereaux as conforming with Approved Products; and~~

(e) ~~otherwise does not know and cannot admit paragraph 35ZW of the SOC.~~

35ZX [Not used] ~~As to paragraph 35ZX of the SOC, IAL:~~

(a) ~~repeats paragraphs 9(a) to 9(k), and 9(p), 9(q) to 9(ee), 35A and 35ZC of this Defence;~~

(b) ~~says that the paragraph does not identify:~~

(i) ~~what is meant by the allegation that IAL "permitted" BCC to engage in the identified conduct;~~

(ii) ~~with any particularity, the conduct the subject of the alleged permission;~~

(c) ~~says that, if and to the extent it is alleged that IAL "permitted" BCC to act as its agent in respect of Policy TS-03088 and/or purported endorsements thereto, that allegation is denied;~~

(d) ~~says that BCC's authority to act on behalf of IAL between 1 August 2017 and 30 June 2019 was limited in accordance with the terms of the:~~

(i) ~~CGU AAR Agreement between 1 August 2017 and 9 April 2019;~~

(ii) ~~IAL AAR Agreement between 9 April 2019 and 30 June 2019;~~

(iii) ~~Underwriting Manual Version 1.0 between 1 August 2017 and 11 July 2018;~~

(iv) ~~Underwriting Manual Version 2.0 between 12 July 2018 and 8 April 2019; and~~

(v) ~~Underwriting Manual Version 3.0 between 9 April 2019 and 30 June 2019;~~

(e) ~~says that from 1 July 2019 BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;~~

(f) ~~says that the register maintained by ASIC under section 922A of the *Corporations Act* was updated to record that:~~

(i) ~~BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019; and~~

(ii) ~~BCC was the authorised representative of only TMNF from 1 July 2019 onwards; and~~

(g) ~~otherwise denies paragraph 35ZX of the SOC.~~

35ZY IAL denies paragraph 35ZY of the SOC and says further that:

(aa) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ab) in those premises, BCC did not act "purportedly" as agent and corporate authorised representative of IAL;

(a) on or about 15 December 2017, Brereton signed a policy which stated on the cover page: "Comprehensive Trade Credit Insurance Policy … made on 15 December 2017" which did not contain any contract number;

Particulars

In response to IAL's request for a copy of the "LOS Policy" referred to in paragraphs 35ZY and 35ZZ of the SOC, Credit Suisse Virtuoso produced a document with identification number CMS.007.001.1542. Though the document produced does not contain any contract number, IAL proceeds in pleading this Defence on the basis that

the document with identification number CMS.007.001.1542 is the **LOS Policy**, pleaded in paragraph 35ZY of the SOC as being policy TW-02924.

(b) the terms of the LOS Policy were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the LOS Policy;

(c) in December 2017, and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" which, in or around December 2017, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(vii) relevantly extended only to arranging and issuing policies with limits of AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into the LOS Policy because:

(i) the LOS Policy was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of the LOS Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the LOS Policy was not written on Approved Wording 1.4;

(B) the wording of the LOS Policy had not otherwise been approved by IAL or its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the LOS Policy was $1 (Schedule 5 of the LOS Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the LOS Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the LOS Policy was AUD600 million, in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the LOS Policy did not have any minimum excess;

(iii) entering into the LOS Policy was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The LOS Policy was not a "Trade Credit Product". The LOS Policy was not written using "approved wording". Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The LOS Policy did not specify any indemnity limit as a proportion of Debt. The policy limit of the LOS Policy was not AUD 50 million or less. The LOS Policy did not have any minimum excess.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into the LOS Policy because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting

Manual Version 1.0, but failed to do so when he caused BCC to purportedly enter into the LOS Policy in the circumstances referred to in paragraphs 35ZY(a) to 35ZY(d) of this Defence;

(ii) the LOS Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the LOS Policy was not "approved wording" for the purposes of the applicable Underwriting Manual, in that the LOS Policy was not written on Approved Wording 1.4;

(B) the wording of the LOS Policy had not otherwise been approved by IAL and its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC authority's pursuant to the applicable Underwriting Manual, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the LOS Policy was $1 (Schedule 5 of the LOS Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the LOS Policy did not specify any indemnity limit as a proportion of Debt;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the LOS Policy was AUD600 million, in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the LOS Policy did not have any minimum excess;

(iv) entering into the LOS Policy was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 35ZY(d)(iii) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) at all material times from at least September 2017 onwards, Lex Greensill was:

(i) the co-founder and CEO of the group of companies that included Greensill Bank, GCPL and GCUK (collectively, the Greensill Group);

(ii) a director of GCPL (of which GCUK and Greensill Bank were wholly owned subsidiaries);

(iii) a director of GCUK;

(iv) the ultimate controlling party of GCUK; and

(v) the beneficial owner of Greensill Bank.

Particulars

IAL relies on GCUK's financial statements for the 12 months to 31 December 2019, signed by Lex Greensill on or about 22 May 2020, and Greensill Bank's filings from the German Transparency Register for the period 5 April 2017 to 15 March 2021 (IAL.500.011.1061; IAL.500.011.1062).

Further particulars will be provided after discovery, compulsory production and evidence.

(fa) Greensill Bank:

(i) was previously known as NordFinanz Bank and was founded in 1927;

(ii) NordFinanz Bank was acquired by the Greensill Group in 2014, with Lex Greensill changing its name to Greensill Bank AG to include prominently his own name;

(iii) had GCUK as its majority shareholder (85% or greater) at all material times from no later than 30 October 2014 until approximately 31 December 2018;

(iv) was wholly owned by GCUK at all material times no later than 31 December 2017 until approximately 31 December 2018;

(v) was wholly owned by GCPL on and from approximately 31 December 2018;

(vi) was at all material times part of the Greensill Group set up by Lex Greensill;

(vii) was, at all material times, a bank regulated by BaFin;

(viii) entered "*Insolvenzverfahren"* on 16 March 2021 which in Germany is a form of court appointed external administration on insolvency and is equivalent to having administrators appointed under Australian law;

(fb) GCUK:

(i) was another company within the Greensill Group;

(ii) was incorporated in England and Wales on 2 July 2012 under the name Greensill Capital Management Company (UK) Limited before changing to its current name on 18 July 2012;

(iii) was upon incorporation and at all material times thereafter, 100% owned by GCPL;

(iv) had, as one of its directors, Lex Greensill, who was appointed from 2 July 2012;

(v) is recorded at UK Companies House as having one active person with significant control: Lex Greensill, who is said to have "*significant influence or control over the trustees of a trust";*

(vi) was in the business of originating supply chain finance programmes and other financing programmes for companies, and obtaining sources of funding for those programmes (one of those sources being Greensill Bank); and

(vii) entered administration in England and Wales on 8 March 2021;

(fc) GCPL:

(i) was, at all material times, ultimately controlled by Lex Greensill;

(ii) was, at all material times in the period 5 April 2017 to 15 March 2021 beneficially owned by Lex Greensill;

(iii) had as shareholders of its ordinary shares:

(A) the Greensill Corporation Pty Ltd (360,000 shares); and

(B) Peter Greensill Family Co Pty Ltd (168,046 shares),

who were, at all material times, the trustees of the AD Greensill Family Trust (which was named after Lex Greensill, and had as a beneficiary, Lex Greensill) and the Peter Greensill Family Trust respectively. Therefore, at all material times, Lex Greensill had significant influence or control over one or both of the family trusts, and through that had significant influence or control over GCPL (and GCUK);

(iv) had, as one of its directors, Lex Greensill, who was appointed from 4 November 2011;

(fd) at all material times Lex Greensill (through his control of GCPL) exercised controlling influence over the management of Greensill Bank:

(i) at all material times from approximately 30 October 2014, GCPL was the ultimate owner of Greensill Bank (initially, through GCPL's shareholding of GCUK and then, from approximately 31 December 2018, directly);

(ii) from no later than 31 December 2018, GCPL was the sole shareholder of Greensill Bank;

(iii) according to Greensill Bank's own financial statements, GCPL and Greensill Bank (as well as GCUK) formed part of a *Konzern* as a matter of German law (which refers to related or combined enterprises where one or more dependent enterprises are grouped under a controlling enterprise, with control being directly or indirectly exercised by way of greater than 50% of the shares or votes, or any other form of control such as uniform management);

(fe) further GCUK and Greensill Bank's senior management overlapped with each other:

(i) Lex Greensill:

(A) was the CEO of GCUK and a director from the date of incorporation;

(B) exercised and was capable of exercising effective control over both GCUK and Greensill Bank at least because each of those entities was, at all material times, directly or indirectly owned by GCPL, and Lex Greensill beneficially owned and/or controlled GCPL;

(ii) Maurice Thompson:

(A) was both chairman of Greensill Bank's Supervisory Board (from June 2014 to March 2021) and director/chairman of GCUK (from September 2014 to January 2018));

(B) was described by GCUK as part of GCCUK's senior management team (according to a GCUK presentation from 2016);

Particulars

Email dated 15 April 2016 from Ewan Berkemeier to Greg Brereton (IAL.500.011.0589) with attached presentation (IAL.500.011.0591).

(iii) Jason Austin:

(A) was a co-founder of Greensill Group;

(B) was both a member of Greensill Bank's Supervisory Board (from March 2014 to June 2019) and a director of GCUK (from July 2012 to June 2019);

(iv) Greensill Bank's core function was or included to provide funds for GCUK's financing programmes;

(g) between 5 September 2017 and 13 December 2017, there was a series of communications involving (inter alia) the Greensill Group, Lex Greensill, Marsh (being Greensill Group's insurance broker), and BCC, and between BCC, IAL and Scor Re, in the context of negotiating a proposed insurance policy in 2017, in the course of which GCUK, Marsh (as agent for Greensill Group), and Lex Greensill were informed that:

(i) before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL);

(ii) the insurance policy wording proposed by GCUK was not approved by IAL and Scor Re, and in fact IAL and Scor Re disagreed in numerous respects with the wording proposed by or on behalf of the Greensill Group;

Particulars

Emails with the following document IDs, copies of which are available from the offices of IAL's solicitors:

~~TOK.001.00150008~~ IAL.500.011.0521,	~~TOK.001.00149926~~ IAL.500.011.0486,	~~TOK.001.00055991~~ IAL.500.011.0504,
~~TOK.001.00149658~~ IAL.500.011.0514,	~~TOK.001.00055764,~~ IAL.500.011.0483	~~TOK.001.00055641~~ IAL.500.011.0505,
~~TOK.001.00055635~~ IAL.500.011.0523,	~~TOK.001.00148965~~ IAL.500.011.0536,	~~TOK.001.00148360~~ IAL.500.011.0488,
~~TOK.001.00148301~~ IAL.500.011.0523,	~~TOK.001.00148243~~ IAL.500.011.0519,	~~TOK.001.00055234~~ IAL.500.011.0498,
~~TOK.001.00148148~~ IAL.500.011.0489,	~~TOK.001.00148076~~ IAL.500.011.0490,	~~CTRL000000201~~ IAL.500.011.0016,
~~TOK.001.00147819~~ IAL.500.011.0556,	~~TOK.001.00147840~~ IAL.500.011.0501,	~~TOK.001.00147725~~ IAL.500.011.0553,
~~TOK.001.00147624~~ IAL.500.011.0540,	~~TOK.001.00147584~~ IAL.500.011.0502,	~~TOK.001.00147557~~ IAL.500.011.0517,
~~TOK.001.00147276~~ IAL.500.011.0526,	~~TOK.001.00146906~~ IAL.500.011.0513,	~~TOK.001.00146518~~ IAL.500.011.0497,
~~TOK.001.00071342~~ IAL.500.011.0500,	~~TOK.001.00146111~~ IAL.500.011.0551,	~~TOK.001.00146082~~ IAL.500.011.0552,
~~TOK.001.00054324~~ IAL.500.011.0557,	~~TOK.001.00145983~~ IAL.500.011.0555,	~~TOK.001.00054310~~ IAL.500.011.0567,

~~TOK.001.00145977~~ IAL.500.011.0562, ~~TMDR.0000001161~~ IAL.500.011.0263, ~~TMDR.0000001187~~ IAL.500.011.0274,

~~TMDR.0000001333~~ IAL.500.011.0431, ~~TOK.001.00143552~~ IAL.500.011.0527, ~~TMDR.0000001304~~ IAL.500.011.0275,

~~TMDR.0000001159~~ IAL.500.011.0277, ~~TMDR.0000001186~~ IAL.500.011.0266, ~~TMDR.0000001135~~ IAL.500.011.0021,

~~TOK.001.00147722~~ IAL.500.011.0491, ~~TOK.001.00147721~~ IAL.500.011.0495.

(h) since September 2017, IAL and Scor Re have not communicated to the Greensill Group, Lex Greensill or Marsh Group that the matters referred to in paragraph 35ZY(g) of this Defence had changed;

(i) in the premises, as at 15 December 2017 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the LOS Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the LOS Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the LOS Policy;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the LOS Policy;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in paragraphs 35ZY(f) to 35ZY(h) of this Defence. Insofar as the emails referred to in the particulars under paragraph 35ZY(g) were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

(j) even if, which is denied by IAL and not asserted by Credit Suisse Virtuoso, it was otherwise within BCC's and Brereton's authority to enter into the LOS Policy:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of the LOS Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the LOS Policy; and

(iii) by reason of the matters in paragraphs 35ZY(j)(i) and 35ZY(j)(ii) of this Defence, the LOS Policy is not valid and binding;

(k) at all material times, BCC and Brereton had not informed IAL and IAL did not know that the LOS Policy had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual Version 1.0.

(l) the meaning of "purportedly" is not identified, including, for example, whether the allegation is that the document was issued in the course of BCC's agency;

(m) the meaning of "issued" is not identified, and there is no identification of the person (or persons) to whom the document was issued or if it was issued to anyone at all;

(n) there is no allegation that BCC engaged in conduct that carried any particular representation/s.

35ZZAA [Not used] ~~IAL denies paragraph 35ZZAA of the SOC and says further that:~~

(a) ~~it repeats paragraphs 9(a) to 9(k), 9(m) to 9(o), 35A, 35H, 35S and 35ZY of this Defence;~~

(b) ~~the LOS Policy was signed by Brereton on or about 15 December 2017; and~~

(c) ~~BCC and Brereton did not have authority to enter into the LOS Policy.~~

35ZZAAA IAL denies paragraph 35ZZAAA of the SOC and says further that:

(aa) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ab) in those premises, BCC did not act "purportedly" as agent and corporate authorised representative of the Insurer;

(a) on 20 April 2018, Brereton signed 2018 Policy TS-03088 but 2018 Policy TS-03088 is stated to have taken effect from 9 February 2018;

(b) the terms of 2018 Policy TS-03088 were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of 2018 Policy TS-03088;

(c) on 20 April 2018, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" and the Manual which, in or around April 2018, comprised Underwriting Manual Version 1.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018; and

(vii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into 2018 Policy TS-03088 because:

(i) 2018 Policy TS-03088 was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of 2018 Policy TS-03088 was not an "approved wording" for the purposes of the applicable Underwriting Manual, in that 2018 Policy TS 03088 was not written on Approved Wording 1.4; and

(B) the wording of 2018 Policy TS-03088 had not otherwise been approved by IAL or its reinsurers;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for 2018 Policy TS-03088 was $1 (Schedule 5 of 2018 Policy TS-03088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in 2018 Policy TS-03088 of 100% exceeded that limitation;

(D) issue policies which did not have a minimum excess of 0.75% of the policy limit and 2018 Policy TS-03088 did not have any minimum excess;

(iii) entering into 2018 Policy TS-03088 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

2018 Policy TS-03088 was not written on Approved Wording 1.4. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of 2018 Policy TS-03088 exceeded 95% of Debt. The policy limit of 2018 Policy TS-03088 was not AUD50 million or less. 2018 Policy TS-03088 did not have any minimum excess.

Further, the obligation referred to in paragraph 35ZZAAA(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where 2018 Policy TS-03088 was to take effect 70 days prior to its purported entry.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into 2018 Policy TS-03088 because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into 2018 Policy TS-03088 in the circumstances referred to in paragraph 35ZZAAA(d) of this Defence;

(ii) 2018 Policy TS-03088 was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of 2018 Policy TS-03088 was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that 2018 Policy TS 03088 was not written on Approved Wording 1.4; and

(B) the wording of 2018 Policy TS-03088 had not otherwise been approved by IAL and its reinsurers;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for 2018 Policy TS-03088 was $1 (Schedule 5 of 2018 Policy TS-03088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 90% of Debt, and the indemnity limit in 2018 Policy TS-03088 of 100% exceeded that limitation;

(D) issue policies which did not have a minimum excess of 0.75% of the policy limit and 2018 Policy TS-03088 did not have any minimum excess;

(iv) entering into 2018 Policy TS-03088 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 35ZZAAA(d)(iii) of this Defence. Further, the obligation referred to in paragraph 35ZZAAA(e)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where 2018 Policy TS-03088 was to take effect 70 days prior to its purported entry.

(f) by reason of the matters in paragraphs 35ZY(f) to 35ZY(h) of this Defence, as at April 2018 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to 2018 Policy TS-03088, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of 2018 Policy TS 03088; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into 2018 Policy TS-03088;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of 2018 Policy TS-03088;

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

(g) even if, which is denied by IAL and not asserted by Credit Suisse Virtuoso, it was otherwise within BCC's and Brereton's authority to enter into 2018 Policy TS-03088:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of 2018 Policy TS-03088;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for 2018 Policy TS-03088;

(iii) by reason of the matters in paragraphs 35ZZAAA(g)(i) and 35ZZAAA(g)(ii) of this Defence, Policy TS-03088 is not valid and binding;

(h) [not used] ~~if, which is denied, BCC and/or Brereton entered into 2018 Policy TS-03088:~~

(i) ~~Credit Suisse Virtuoso was not a "client" with respect to 2018 Policy TS-03088 for the purpose of section 917A(1)(b) of the Corporations Act;~~

(ii) ~~the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported Insured (being Greensill Bank and GCPL);~~

(iii) ~~by reason of the matters in paragraphs 35ZY(f) and 35ZY(h) of this Defence, the purported entry by BCC and Brereton into 2018 Policy TS-03088 was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into 2018 Policy TS-03088;~~

(iv) ~~further, IAL reserves the right to rely on section 917D of the Corporations Act that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);~~

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

(v) alternatively to paragraphs 35ZZAAA(h)(i) to 35ZZAAA(h)(iii) of this Defence, if Credit Suisse Virtuoso was a "client" with respect to 2018 Policy TS-03088 for the purpose of section 917A(1)(b) of the Corporations Act (which is denied), then the purported entry into 2018 Policy TS-03088 was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the Corporations Act;

Particulars

Credit Suisse Virtuoso failed to make inquiries, alternatively failed to make adequate inquiries, about the 2018 TS-03088 Policy and circumstances in which it was purportedly entered into by the named Insureds.

Credit Suisse Virtuoso failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the transactions referred to in the SOC and endorsements thereto. IAL refers to the press release issued by Swiss Financial Market Supervisory Authority (**FINMA**) on 28 February 2023 titled "FINMA concludes "Greensill" proceedings against Credit Suisse".

(vi) further to 35ZZAAA(h)(v), Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct of BCC and/or Brereton regarding 2018 Policy TS-03088, at all or in any relevant respect, and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing.

Particulars

IAL refers to and repeats Annexure C to this Defence.

(i) further to 35ZZAAA(h)(v), in respect of the question of whether there is conduct "on which a third person (the ***client***) could reasonably be expected to rely" for the purposes of s 917A(1)(b) of the Corporations Act:

(i) the question is whether there is conduct on which the client could reasonably be expected to rely by engaging in the actual reliance (or alleged actual reliance) the subject of s 917A(1)(c);

(ii) the question of whether the client could reasonably be expected to rely on conduct is to be assessed having regard to:

(A) the actual circumstances of the client at the time of the reliance (or alleged reliance), including the knowledge held by the client; or

(B) alternatively, the actual circumstances of a person in the client's position at the time of the reliance (or alleged reliance), including the knowledge held by that person;

(iii) the reliance, for the purposes of s 917A(1)(c), alleged by the Applicant is:

(A) entering into the Loss Payee Endorsements; and

(B) acquiring the Notes;

(iv) the question is therefore whether, at the time the Applicant engaged in the conduct constituting that reliance (or alternatively at the time in which the "conduct" referred to in the chapeau of s 917A(1) was engaged in) and having regard to the matters in 35ZZAAA(i)(ii), it could have reasonably been expected that the Applicant would engage in that conduct in reliance on the alleged conduct of BCC and/or Brereton;

(v) insofar as the alleged reliance is the acquisition of a Note (or Notes) because of conduct of BCC and/or Brereton (including an alleged representation that BCC and/or Brereton had authority to enter into an insurance policy on behalf of IAL):

(A) it is incumbent on the Applicant to establish that it could reasonably be expected to rely on that conduct when acquiring the Note (or Notes);

(B) in the circumstances of this case, it is incumbent on the Applicant to establish that, as at the time it acquired each Note, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the Note and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Note (or Notes);

(C) it is not sufficient for the Applicant to establish that it was reasonable to expect that the Applicant would form the view that BCC and/or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(vi) further, or alternatively:

(A) the relevant "conduct" is not confined to the matters alleged in paragraph 47A of the SOC and also includes any agreement by Brereton or BCC to the terms of the insurance policy;

(B) it is incumbent on the Applicant to establish that it could reasonably be expected to rely on that conduct when acquiring the Note;

(C) in the circumstances of this case, it is incumbent on the Applicant to establish that, as at the time it acquired each Note, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the Note and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Note (or Notes);

(D) it is not sufficient for the Applicant to establish that it was reasonable to expect that the Applicant would form the view that BCC or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(vii) as at the time of the alleged "conduct" referred to in the chapeau to s 917A(1), the actual circumstances of the Applicant or, alternatively, a person in the Applicant's position included the matters set out in paragraph 104C(k) of IAL's Defence and Annexure C to IAL's Defence;

(viii) as at the time the Applicant allegedly:

(A) entered into the Loss Payee Endorsements; and

(B) acquired the Notes,

the actual circumstances of the Applicant or, alternatively, a person in the Applicant's position included the matters set out in paragraphs 104C(k) of IAL's Defence and Annexure C to IAL's Defence;

(ix) at all material times, the Applicant or, alternatively, a person in the Applicant's position, would reasonably, ought reasonably or might reasonably have formed the view that the purported insurance arrangements (including the 2018 Policy, the 2019 Policy (as applicable) and their purported endorsements) did not, or were not reasonably likely to, cover foreseeable loss to the Applicant arising from acquisition of the Notes;

(x) at all material times, having regard to the matters referred to in sub-paragraphs 35ZZAAA(i)(i) to 35ZZAAA(i)(viii) above, for the purposes of s 917A(1)(b), "a third person" could "not reasonably be expected to rely" on the alleged conduct of BCC and/or Brereton relied on by the Applicant by, in fact:

(A) entering into the Loss Payee Endorsement; and/or

(B) acquiring the Notes or, alternatively, each Note.

~~in the premises, at all material times, the condition in s 917A(1)(b) was not met;~~

(j) at all material times, BCC had not informed IAL and IAL did not know that:

(i) 2018 Policy TS-03088 had been issued; and

(ii) 2018 Policy TS-03088 had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual Version 1.0;~~.~~

(k) the meaning of "purportedly" is not identified, including, for example, whether the allegation is that the document was issued in the course of BCC's agency;

(l) the meaning of "issued" is not identified, and there is no identification of the person (or persons) to whom the document was issued or if it was issued to anyone at all;

(m) there is no allegation that BCC engaged in conduct that carried any particular representation/s.

35ZZAAB [Not used] ~~IAL denies paragraph 35ZZAAB of the SOC and says further that:~~

(a) ~~it repeats paragraphs 9 and 35ZZAAA of this Defence;~~

(b) ~~2018 Policy TS-03088 was signed by Brereton on or about 20 April 2018; and~~

(c) ~~BCC and Brereton did not have authority to enter into 2018 Policy TS-03088.~~

35ZZAAC IAL denies paragraph 35ZZAA~~A~~C of the SOC and says further that:

(aa) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ab) in those premises, BCC did not act "purportedly" as agent and corporate authorised representative of the Insurer;

(a) it repeats paragraphs 9(b) to 9(k) and 9(o) of this Defence;

(b) on or about 15 June 2018, Brereton signed the 2018 Policy and backdated the document to 27 December 2017;

(c) the terms of the 2018 Policy were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2018 Policy;

(d) on 27 December 2017 and 15 June 2018, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the “Underwriting Manual” and the Manual which, between 1 August 2017 and 11 July 2018 (including on 27 December 2017 and 15 June 2018, and at all material times in between), comprised Underwriting Manual Version 1.0 and, between 12 July 2018 to 8 April 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;d

(vii) relevantly extended only to arranging and issuing policies with limits of AUD50 million or less;

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(ix) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(e) the authority given by IAL to BCC did not include an authority to enter into the 2018 Policy because:

(i) the 2018 Policy was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 1.0 because:

(A) the wording of the 2018 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2018 Policy was not based on Approved Wording 1.4;

(B) the wording of the 2018 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Policy was $1 (Schedule 5 of the 2018 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2018 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the 2018 Policy did not have a limit of AUD50 million or less;

(E) insure credit terms in excess of 180 days and the 2018 Policy did not stipulate maximum credit terms;

(F) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Policy did not have any minimum excess;

(iii) entering into the 2018 Policy was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2018 Policy was not a "Trade Credit Product". The 2018 Policy was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2018 Policy exceeded 95% of Debt. The policy limit of the 2018 Policy was not AUD50 million or less. There were no maximum credit terms. There was no minimum excess.

Further the obligation referred to in paragraph 35ZZAAC(e)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here, where the 2018 Policy was to take effect more than six months prior to its purported entry.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(f) the authority given by IAL to Brereton did not include an authority to enter into the 2018 Policy because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 1.0, but failed to do so when he caused BCC to enter into the 2018 Policy in the circumstances referred to in paragraph 35ZZAAC(e) of this Defence;

(ii) the 2018 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2018 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 1.0, in that the 2018 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2018 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 1.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2018 Policy was $1 (Schedule 5 of the 2018 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt and the indemnity limit in the 2018 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the 2018 Policy did not have a limit of AUD50 million or less;

(E) insure credit terms in excess of 180 days and the 2018 Policy did not stipulate maximum credit terms;

(F) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2018 Policy did not have any minimum excess;

(iv) entering into the 2018 Policy was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 35ZZAAC(e)(iii) of this Defence.

Further, the obligation referred to in paragraph 35ZZAAC(f)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here, where the 2018 Policy was to take effect more than six months prior to its purported entry.

(g) by reason of the matters in paragraphs 35ZY(f) to 35ZY(h) of this Defence, as at 27 December 2017 and 15 June 2018 and at all material times, GCPL and Greensill Bank knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2018 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2018 Policy;

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2018 Policy;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2018 Policy;

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

(h) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2018 Policy:

(i) the purported insured, Greensill Bank and GCPL failed to pay any premium in respect of the 2018 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the 2018 Policy; and

(iii) by reason of the matters in paragraphs 35ZZAAC(h)(i) and 35ZZAAC(h)(ii) of this Defence, the 2018 Policy is not valid and binding;

(i) if, which is denied, Greensill Bank and GCPL entered into the 2018 Policy as at 27 December 2017, the 2018 Policy expired on 27 December 2018 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL;

(j) if, which is denied, BCC and/or Brereton entered into the 2018 Policy:

(i) Credit Suisse Virtuoso was not a "client" with respect to the 2018 Policy for the purpose of section 917A(1)(b) of the Corporations Act;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the Corporations Act (which is denied), was the purported "Insured" (being Greensill Bank and GCPL);

(iii) ~~by reason of the matters in paragraphs 35ZZAAC(i), 35ZZAAC(j)(i) and 35ZZAAC(j)(ii) of this Defence, the purported entry by BCC and Brereton into the 2018 Policy was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the Corporations Act and they did not in fact rely in good faith on the conduct of BCC or Brereton in the purported entry into the 2018 Policy;~~

(iv) further, repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~IAL reserves the right to rely on section 917D of the Corporations Act that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~;

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

(v) alternatively to paragraph 35ZZAAC(j)(i) to 35ZZAAC(j)(iii) of this Defence, if Credit Suisse Virtuoso was a "client" with respect to the 2018 Policy for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into the 2018 Policy was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act,* and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into the 2018 Policy.

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to the 2018 Policy (GBA.0004.0004.0301).

IAL refers to and repeats paragraphs 6 to 16 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

(ja) further to paragraph 35ZZAAC(j)(v) of this Defence, in respect of the question of whether there is conduct "on which a third person (the client) could reasonably be expected to rely" for the purposes of s 917A(1)(b) of the Corporations Act;

(i) the question is whether there is conduct on which the client could reasonably be expected to rely by engaging in the actual reliance (or alleged actual reliance) the subject of s 917A(1)(c);

(A) the question of whether the client could reasonably be expected to rely on conduct is to be assessed having regard to:

a. the actual circumstances of the client at the time of the reliance (or alleged reliance), including the knowledge held by the client; or

b. alternatively, the actual circumstances of a person in the client's position at the time of the reliance (or alleged reliance), including the knowledge held by that person;

(B) the reliance, for the purposes of s 917A(1)(c), alleged by Credit Suisse Virtuoso is:

a. entering into the Loss Payee Endorsements; and

b. acquiring the Notes;

(C) the question is therefore whether, at the time the Applicants engaged in the conduct constituting that reliance (or alternatively at the time in which the "conduct" referred to in the chapeau of s 917A(1) was engaged in) and having regard to the matters in 35ZZAAC(ja)(ii), it could have reasonably been expected that the Applicants would engage in that conduct in reliance on the alleged conduct of BCC and/or Brereton;

(D) insofar as the alleged reliance is the acquisition of a Note (or Notes) because of conduct of BCC and/or Brereton (including an alleged representation that BCC and/or Brereton had authority to enter into an insurance policy on behalf of IAL):

a. it is incumbent on each Applicant to establish that it could reasonably be expected to rely on that conduct when acquiring the Note (or Notes);

b. in the circumstances of this case, it is incumbent on each Applicant to establish that, as at the time it acquired each Note, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the Note and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Note (or Notes);

c. it is not sufficient for an Applicant to establish that it was reasonable to expect that the Applicant would form the view that BCC and/or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(E) further, or alternatively:

a. the relevant "conduct" is not confined to the matters alleged in paragraphs 47A and 47B of the SOC and also includes any agreement by Brereton or BCC to the terms of the insurance policy;

b. it is incumbent on each Applicant to establish that it could reasonably be expected to rely on that conduct when acquiring the Note;

c. in the circumstances of this case, it is incumbent on each Applicant to establish that, as at the time it acquired each Note, it could reasonably be expected to form the view that the insurance policy was reasonably likely to cover the Note and, in particular, reasonably likely to cover foreseeable loss arising from the acquisition of the Note (or Notes);

d. it is not sufficient for an Applicant to establish that it was reasonable to expect that the Applicant would form the view that BCC or Brereton was an agent of IAL and/or that the policy would be binding on IAL;

(F) as at the time of the alleged "conduct" referred to in the chapeau to s 917A(1), the actual circumstances of the Applicants or, alternatively, a person in the Applicants' position included the matters set out in paragraphs 189A(m) of IAL's Defence and Annexure C;

(G) as at the time the Applicants allegedly:

a. entered into the Loss Payee Endorsements; and

b. acquired the Notes,

the actual circumstances of the Applicants or, alternatively, a person in the Applicants' position included the matters set out in paragraphs 104C(k) of IAL's Defence and Annexure C;

(H) at all material times, the Applicants or, alternatively, a person in the Applicants' position, would reasonably, ought reasonably or might reasonably have formed the view that the purported insurance arrangements (including the 2018 Policy, the 2019 Policy (as applicable) and their purported endorsements) did not, or were not reasonably likely to, cover foreseeable loss to the Applicants arising from acquisition of the Notes;

(I) at all material times, having regard to the matters referred to in sub-paragraphs 35ZZAAC(ja)(i) to 35ZZAAC(ja)(viii) above, for the purposes of s 917A(1)(b), "a third person" could "not reasonably be expected to rely" on the alleged conduct of BCC and/or Brereton relied on by Credit Suisse Virtuoso by, in fact:

a. entering into the Loss Payee Endorsement; and/or

b. acquiring the Notes or, alternatively, each Note;

(J) in the premises, at all material times, the condition in s 917A(1)(b) was not met;

(k) at all material times, BCC had not informed IAL and IAL did not know that:

(i) the 2018 Policy had been issued; and

(ii) the 2018 Policy had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual Version 1.0.

(l) the meaning of "purportedly" is not identified, including, for example, whether the allegation is that the document was issued in the course of BCC's agency;

(m) the meaning of "issued" is not identified, and there is no identification of the person (or persons) to whom the document was issued or if it was issued to anyone at all;

(n) there is no allegation that BCC engaged in conduct that carried any particular representation/s.

35ZZBD [Not used] ~~IAL denies paragraph 35ZZBD of the SOC and repeats paragraph 35ZZAAC of this Defence.~~

35ZZA IAL denies paragraph 35ZZA of the SOC and says further that:

(aa) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ab) in those premises, BCC did not act "purportedly" as agent and corporate authorised representative of the Insurer;

(a) in March 2019, Brereton signed the 2019 Policy and backdated it to 22 February 2019;

(b) the terms of the 2019 Policy were authored by or on behalf of the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of the 2019 Policy;

(c) on 22 February 2019 and in March 2019 and at all material times, including between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(vii) relevantly extended only to arranging and issuing policies with limits of AUD50 million or less;

(viii) relevantly extended only to arranging and issuing policies with a maximum credit limit / credit term of 180 days; and

(ix) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit;

(d) the authority given by IAL to BCC did not include an authority to enter into the 2019 Policy because:

(i) the 2019 Policy was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual Version 2.0, including because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(D) the "Insured" under the policy need not be a "Seller" for the purposes of each applicable Underwriting Manual and could, for example, be the owner of a "Note";

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2019 Policy was in excess of that limitation;

(E) insure credit terms in excess of 180 days and the 2019 Policy credit terms exceeded that limitation;

(F) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(G) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months;

(iii) entering into the 2019 Policy was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The 2019 Policy was not a "Trade Credit Product". The 2019 Policy was not written on Approved Wording. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of the 2019 Policy exceeded 95% of Debt. The policy limit of the 2019 Policy was not AUD 50 million or less. The Policy Period exceeded 12 months. The credit terms were in excess of 180 days. There was no minimum excess.

Further, the obligation referred to in paragraph 33ZZA(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into the 2019 Policy and/or to renew or extend the 2019 Policy, because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into the 2019 Policy in the circumstances referred to in paragraph 33ZZA(d) of this Defence;

(ii) the 2019 Policy was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of the 2019 Policy was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that the 2019 Policy was not written on Approved Wording 1.4;

(B) the wording of the 2019 Policy had not otherwise been approved by IAL and its reinsurers;

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC authority's pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for the 2019 Policy was $1 (Schedule 5 of the 2019 Policy), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in the 2019 Policy of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of the 2019 Policy was in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and the 2019 Policy did not have any minimum excess;

(F) issue any new insurance policy prior to 30 June 2019 with a policy term in excess of 12 months, and the Policy Period of the 2019 Policy exceeded 12 months; and

(G) insure credit limits / terms in excess of 180 days and the 2019 Policy credit limits exceeded that limitation;

(iv) entering into the 2019 Policy was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 33ZZA(d)(iii) of this Defence. Further, the obligation referred to in paragraph 33ZZA(e)(iv) did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate

commercial reason where the 2019 Policy was to take effect by almost a month prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) by reason of the matters in paragraphs 35ZY(f) to 35ZY(h) of this Defence, as at 22 February 2019 and March 2019 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to the 2019 Policy, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of the 2019 Policy; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into the 2019 Policy;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of the 2019 Policy;

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

(g) if, which is denied, it was otherwise within BCC's and Brereton's authority to enter into the 2019 Policy:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of the 2019 Policy;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for the 2019 Policy;

(iii) by reason of the matters in paragraphs 35ZZ(g)(i) and 35ZZ(g)(ii) of this Defence, the 2019 Policy is not valid and binding;

(h) if, which is denied, Greensill Bank and GCPL entered into the 2019 Policy on 22 February 2019, the 2019 Policy expired on 1 March 2020 and was not validly renewed or extended after that date by BCC and Brereton on behalf of IAL;

(i) if, which is denied, BCC and/or Brereton entered into the 2019 Policy:

(i) Credit Suisse Virtuoso was not a "client" with respect to the 2019 Policy for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported "Insured" (being Greensill Bank and GCPL);

(iii) by reason of the matters in paragraphs 35ZZA(f), 35ZZA(i)(i) and 35ZZA(i)(ii) of this Defence, the purported entry by BCC and Brereton into the 2019 Policy was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into the 2019 Policy;

(iv) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of *the Corporations Act* that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~;

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(v) alternatively to paragraph 35ZZA(i)(i) to 35ZZA(i)(iii) of this Defence, if Credit Suisse Virtuoso was a "client" with respect to the 2019 Policy for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into the 2019 Policy was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*, and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into the 2019 Policy;

Particulars

Credit Suisse Virtuoso failed to make inquiries, alternatively failed to make adequate inquiries, about the 2019 Policy and circumstances in which it was purportedly entered into by the named Insureds. IAL will seek discovery of the communications between Credit Suisse Virtuoso and the representatives of the named Insureds in relation to insurance cover allegedly obtained for the benefit of Credit Suisse Virtuoso.

Credit Suisse Virtuoso failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the transactions referred to in the SOC thereto. IAL refers to the press release issued by Swiss Financial Market Supervisory Authority (**FINMA**) on 28 February 2023 titled "FINMA concludes "Greensill" proceedings against Credit Suisse". IAL will seek discovery of the communications between Credit Suisse Virtuoso and the representatives of the Greensill Group, including the named "Insureds", in relation to the circumstances in which Credit Suisse Virtuoso took on the risks for transactions pleaded in the SOC, related due diligence (if any) undertaken by Credit Suisse Virtuoso and Credit Suisse Virtuoso's own checks and balances (if any) in relation to the risks they took on.

IAL refers to and repeats paragraphs 6 to 16 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(vi) IAL repeats paragraph 35ZZAAC(ja) of this Defence.

(j) at all material times, BCC had not informed IAL and IAL did not know that:

(i) the 2019 Policy had been issued; and

(ii) the 2019 Policy had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual Version 2.0.

(l) the meaning of "purportedly" is not identified, including, for example, whether the allegation is that the document was issued in the course of BCC's agency;

(m) the meaning of "issued" is not identified, and there is no identification of the person (or persons) to whom the document was issued or if it was issued to anyone at all;

(n) there is no allegation that BCC engaged in conduct that carried any particular representation/s.

35ZZB [Not used] ~~IAL denies paragraph 35ZZB of the SOC and says further that:~~

(a) ~~it repeats paragraphs 9, 35A, 35S, 35ZC, 35ZZA and 36 of this Defence;~~

(b) ~~the 2019 Policy was signed by Brereton on or about 13 March 2019; and~~

(c) ~~BCC and Brereton did not have authority to enter into the 2019 Policy.~~

35ZZC IAL denies paragraph 35ZZC of the SOC and says further that:

(aa) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (AL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ab) in those premises, BCC did not act "purportedly" as agent and corporate authorised representative of the Insurer;

(a) on 6 March 2019, Brereton signed Policy TS-03088 but Policy TS-03088 is stated to have taken effect from 1 March 2019;

(b) the terms of Policy TS-03088 were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, the wording of Policy TS-03088;

(c) on 6 March 2019, and at all material times between 1 August 2017 and 9 April 2019, the authority given by IAL to BCC:

(i) was confined in accordance with the terms of the CGU AAR Agreement;

(ii) relevantly extended only to arranging and issuing "Approved Products", being relevantly "Trade Credit Products", using Approved Wording 1.4;

(iii) relevantly extended only to arranging and issuing products "in accordance with the 'Underwriting Manual'" which, in or around March 2019, comprised Underwriting Manual Version 2.0;

(iv) relevantly extended only to arranging and issuing policies for Australian customers domiciled in Australia;

(v) relevantly extended only to arranging and issuing policies with a minimum premium of $10,000;

(vi) relevantly extended only to arranging and issuing policies with an indemnity limit of a maximum of 90% of Debt before 12 July 2018 and 95% of Debt from 12 July 2018;

(vii) relevantly extended only to arranging and issuing policies with limits of AUD50 million or less; and

(viii) relevantly extended only to arranging and issuing policies with a minimum excess of 0.75% of the policy limit; and

(ix) relevantly extended only to arranging and issuing policies which, if issued in a foreign currency, did not exceed 95% of the AUD Binder Limit BCC was authorised to transact at the time cover is arranged;

(d) the authority given by IAL to BCC did not include an authority to enter into Policy TS-03088 and/or to renew or extend Policy TS-03088 because:

(i) Policy TS-03088 was not a "Trade Credit Product" within the meaning of the CGU AAR Agreement and the applicable Underwriting Manual because:

(A) the wording of Policy TS-03088 was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that Policy TS-03088 was not written on Approved Wording 1.4;

(B) the wording of Policy TS-03088 had not otherwise been approved by IAL or its reinsurers;

(C) the risks purportedly insured were not trade credit risks; and

(D) the "Insured" under the policy need not be a "Seller" for the purposes of each applicable Underwriting Manual and could, for example, be the owner of a "Note";

(ii) it was beyond BCC's authority pursuant to the applicable Underwriting Manual Version 2.0, and therefore the CGU AAR Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy TS-03088 was $1 (Schedule 5 of Policy TS-03088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy TS-03088 of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of Policy TS-03088, in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy TS-03088 did not have any minimum excess; and

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy TS-03088 exceeded that limit;

(iii) entering into Policy TS-03088 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

Policy TS-03088 was not a "Trade Credit Product". Policy TS-03088 was not written on Approved Wording 1.4. Greensill Bank, the insured, was not domiciled in Australia. The premium payable was $1. The indemnity limit of Policy TS-03088 exceeded 95% of Debt. The policy limit of Policy TS-03088 was not AUD 50 million or less. Policy TS-03088 did not have any minimum excess.

Further, the obligation referred to in paragraph 35ZZC(d)(iii) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where Policy TS-03088 was to take effect five days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(iv) it was otherwise beyond BCC's authority under the CGU AAR Agreement;

(e) the authority given by IAL to Brereton did not include an authority to enter into Policy TS-03088 because:

(i) pursuant to the IAGA/IAL Brereton Authorisation Agreement, Brereton was obliged to comply with the CGU AAR Agreement and applicable Underwriting Manual Version 2.0, but failed to do so when he caused BCC to enter into Policy TS-03088 in the circumstances referred to in paragraph 35ZZC(d) of this Defence;

(ii) Policy TS-03088 was not a "Trade Credit Product" within the meaning of the IAGA/IAL Brereton Authorisation Agreement because:

(A) the wording of Policy TS-03088 was not "approved wording" for the purposes of the applicable Underwriting Manual Version 2.0, in that Policy TS-03088 was not written on Approved Wording 1.4;

(B) the wording of Policy TS-03088 had not otherwise been approved by IAL and its reinsurers; and

(C) the risks purportedly insured were not trade credit risks;

(iii) it was beyond BCC authority's pursuant to the applicable Underwriting Manual Version 2.0, and therefore Brereton's authority pursuant to the IAGA/IAL Brereton Authorisation Agreement, to:

(A) issue policies for insureds who were not domiciled in Australia and Greensill Bank was not so domiciled;

(B) issue policies with a premium of less than $10,000 and the premium for Policy TS-03088 was $1 (Schedule 5 of Policy TS-03088), less than the minimum premium;

(C) agree to an indemnity limit beyond a maximum 95% of Debt, and the indemnity limit in Policy TS-03088 of 100% exceeded that limitation;

(D) issue policies with limits in excess of AUD50 million and the policy limit of Policy TS-03088 was in excess of that limitation;

(E) issue policies which did not have a minimum excess of 0.75% of the policy limit and Policy TS-03088 did not have any minimum excess; and

(F) issue policies in a foreign currency which exceed 95% of the AUD Binder Limit which BCC was authorised to transact at the time cover is arranged and Policy TS-03088 exceeded that limit;

(iv) entering into Policy TS-03088 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly;

Particulars

IAL repeats the particulars at paragraph 35ZZC(d)(iii) of this Defence. Further, the obligation referred to in paragraph 35ZZC(e)(iv) of this Defence did not permit documents to be backdated, absent a legitimate commercial reason, and there was no legitimate commercial reason here where Policy TS-03088 was to take effect five days prior to its purported entry.

Further particulars will be provided after discovery, compulsory production and evidence.

(f) by reason of the matters in paragraphs 35ZY(f) to 35ZY(h) of this Defence, as at March 2019 and at all material times, Greensill Bank and GCPL knew, or ought reasonably to have known, that:

(i) before BCC and Brereton could agree to Policy TS-03088, it was necessary for IAL and Scor Re to agree to its terms and structure;

(ii) IAL and Scor Re did not approve of the wording and structure of Policy TS-03088; and

(iii) IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy TS-03088;

(iv) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of Policy TS-03088;

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

(g) even if, which is denied by IAL and not asserted by Credit Suisse Virtuoso, it was otherwise within BCC's and Brereton's authority to enter into Policy TS-03088:

(i) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Policy TS-03088;

(ii) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Policy TS-03088; and

(iii) by reason of the matters in paragraphs 35ZZC(g)(i) and 35ZZC(g)(ii) of this Defence, Policy TS-03088 is not valid and binding;

(h) if, which is denied, BCC and/or Brereton entered into Policy TS-03088:

(i) Credit Suisse Virtuoso was not a "client" with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported "Insured" (being Greensill Bank and GCPL);

(iii) by reason of the matters in paragraphs 35ZZ(f), 35ZZ(h)(i) and 35ZZ(h)(iii) of this Defence, the purported entry by BCC and Brereton into Policy TS-03088 was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Policy TS-03088;

(iv) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC's lack of authority was disclosed to~~

~~the "client", being Greensill Bank and GCPL if they were the "client" (which is denied);~~

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(v) alternatively to paragraph 35ZZ(h)(i) to 35ZZ(h)(iii) of this Defence, if Credit Suisse Virtuoso was a "client" with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into Policy TS-03088 was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*, and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Policy TS-03088;

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to Policy TS-03088 (CSA.0001.0001.3228).

IAL refers to and repeats Annexure C to this Defence.

(i) at all material times, BCC had not informed IAL and IAL did not know that:

(i) Policy TS-03088 had been issued; and

(ii) Policy TS-03088 had been issued in breach of the CGU AAR Agreement, and on terms which departed from and were inconsistent with Approved Wording 1.4 and the requirements of the applicable Underwriting Manual Version 2.0.

(j) the meaning of "purportedly" is not identified, including, for example, whether the allegation is that the document was issued in the course of BCC's agency;

(k) the meaning of "issued" is not identified, and there is no identification of the person (or persons) to whom the document was issued or if it was issued to anyone at all;

(l) there is no allegation that BCC engaged in conduct that carried any particular representation/s.

35ZZD [Not used] ~~IAL denies paragraph 35ZZD of the SOC and says further that:~~

(a) ~~it repeats paragraphs 9, 35A, 35H, 35S, 35ZC and 35ZZC of this Defence;~~

(b) ~~Policy TS-03088 was signed by Brereton on or about 6 March 2019; and~~

(c) ~~BCC and Brereton did not have authority to enter into Policy TS-03088.~~

35ZZE IAL admits ~~As to~~ paragraph 35ZZE of the SOC.~~, IAL~~:

(a) ~~repeats paragraph 35ZZD of this Defence; and~~

(b) ~~otherwise denies paragraph 35ZZE of the SOC.~~

~~Particulars~~

~~No inference of the kind relied upon by Credit Suisse Virtuoso arises. Any such inference (even if otherwise available) is negatived by IAL's denial of BCC's authority.~~

~~Further:~~

~~(a) Policy TS-03088 is a different alleged contract to the 2019 Policy and no inference could arise with respect to the 2019 Policy by reason of conduct of IAL in relation to Policy TS-03088; and~~

~~(b) IAL will also rely, to the extent necessary, on clauses 10.6(c) and 15.3(b) of Policy TS-03088 and clause 15.3(b) of the 2019 Policy.~~

35ZZF IAL admits ~~As to~~ paragraph 35ZZF of the SOC.~~, IAL:~~

(a) ~~repeats paragraphs 9, 35A, 35H, 35S, 35ZC and 35ZZC to 35ZZE of this Defence; and~~

(a) ~~otherwise denies paragraph 35ZZF of the SOC.~~

35ZZG IAL admits ~~As to~~ paragraph 35ZZG of the SOC.~~, IAL:~~

(a) ~~repeats paragraph 35ZZF of this Defence; and~~

(b) ~~otherwise denies paragraph 35ZZG of the SOC.~~

35ZZH [Not used] ~~As to paragraph 35ZZH of the SOC, IAL:~~

(a) ~~says that on 3 June 2020, Greensill Bank submitted a document styled "Claim Form" dated 2 June 2020 (**NMC Claim Form**); and~~

~~Particulars~~

~~Email from Julia Michaelis of Greensill Bank to Mr Brereton dated 3 June 2020 with attachments including a document styled "Claim Form" dated 2 June 2020.~~

(b) ~~denies that Policy TS-03088 was valid or binding upon IAL; and~~

(c) ~~otherwise admits that if Policy TS-03088 was valid (which is denied), the NMC Claim Form was a claim made by Greensill Bank on or around 3 June 2020 under Policy TS-03088.~~

35ZZHA [Not used] ~~As to paragraph 35ZZHA of the SOC, IAL:~~

(a) ~~says that on about 18 June 2020, Leadenhall, on behalf of various excess underwriters including the underwriters of Policy TS-03088, sent a request for information in relation to the NMC Claim to Marsh; and~~

~~**Particulars**~~

~~Email from Lucy Vernon (Leadenhall) to Edward Smith (Marsh) on 18 June 2020 [IAL.500.011.1297].~~

(b) ~~otherwise, does not know and cannot admit paragraph 35ZZHA of the SOC.~~

35ZZHB [Not used] ~~As to paragraph 35ZZHB of the SOC, IAL:~~

~~(a) repeats paragraphs 35ZZC and 35ZZH of this Defence;~~

~~(b) refers to the full text of the email sent by Clyde & Co to Herbert Smith Freehills on 25 September 2020 (**25 September 2020 Email**) for its full force and effect; and~~

~~(c) otherwise admits paragraph 35ZZHB of the SOC.~~

35ZZHC [Not used] ~~As to paragraph 35ZZHC of the SOC, IAL:~~

~~(a) repeats paragraphs 35ZZHB of this Defence;~~

~~(b) admits that the 25 September 2020 Email was sent with the authority and knowledge of IAL; and~~

~~(c) otherwise denies paragraph 35ZZHC of the SOC.~~

35ZZI [Not used] ~~As to paragraph 35ZZI of the SOC, IAL:~~

(a) ~~admits that a letter dated 8 October 2020 was sent by Kennedys to Greensill Bank;~~

(b) ~~admits that the letter pleaded in paragraph 35ZZI of the SOC was a "Claim Offer Letter" under clause 10.6 of Policy TS-03088 (if valid and effective, which is denied);~~

(c) ~~denies that Policy TS-03088 was valid or binding upon IAL;~~

(d) ~~says that the letter dated 8 October 2020 offered to pay USD 14,733,471.04 in part settlement of Greensill Bank's claim;~~

(e) ~~admits that on or about 3 November 2020, USD 14,733,471.04 was paid in respect of the claim referred to in paragraph 35ZZH of the SOC; and~~

(f) ~~otherwise denies paragraph 35ZZI of the SOC.~~

35ZZJ [Not used] ~~As to paragraph 35ZZJ of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZZI of this Defence; and~~

(b) ~~otherwise admits paragraph 35ZZJ of the SOC.~~

35ZZK [Not used] ~~As to paragraph 35ZZK of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZZI of this Defence; and~~

(b) ~~otherwise admits paragraph 35ZZK of the SOC.~~

35ZZL [Not used] ~~As to paragraph 35ZZL of the SOC, IAL:~~

(a) ~~repeats paragraphs 9, 35A, 35H, 35S, 35ZC and 35ZZC of this Defence;~~

(b) ~~admits that Clyde & Co sent a letter dated 26 February 2021 to Herbert Smith Freehills (**HSF**) (**26 February 2021 Letter**);~~

(c) ~~denies that the 26 February 2021 Letter contained any representation "that the Insurer had entered into Policy TS-03088 by the Insurer's authorised representative BCC";~~

(d) ~~denies that IAL authorised BCC to enter into Policy TS-03088;~~

(e) ~~says that paragraph 35ZZL of the SOC does not identify to whom the alleged representation was made;~~

(f) ~~says further that the alleged representation, if made (which is denied) was confined to Policy TS-03088 (if valid and effective, which is denied); and~~

(g) ~~otherwise denies paragraph 35ZZL of the SOC.~~

35ZZM [Not used] ~~As to paragraph 35ZZM of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZZL of this Defence;~~

(b) ~~admits that the 26 February 2021 Letter was sent with the authority and knowledge of IAL; and~~

(c) ~~otherwise denies paragraph 35ZZM of the SOC.~~

35ZZN [Not used] ~~As to paragraph 35ZZN of the SOC, IAL:~~

(a) ~~repeats paragraphs 9, 35A, 35H, 35S, 35ZC and 35ZZC of this Defence;~~

(b) ~~admits that Clyde & Co sent a letter dated 6 July 2021 to HSF (**6 July 2021 Letter**);~~

(c) ~~denies that the 6 July 2021 Letter contained any representation "that the Insurer had entered into Policy TS-03088 by the Insurer's authorised representative BCC";~~

(d) ~~denies that IAL authorised BCC to enter into Policy TS-03088;~~

(e) ~~says that paragraph 35ZZN of the SOC does not identify to whom the alleged representation was made;~~

(f) ~~says that the alleged representation, if made (which is denied) was confined to Policy TS-03088 (if valid and effective, which is denied); and~~

(g) ~~otherwise denies paragraph 35ZZN of the SOC.~~

35ZZO [Not used] ~~As to paragraph 35ZZO of the SOC, IAL:~~

(a) ~~repeats paragraph 35ZZN of this Defence;~~

(b) ~~admits that the 6 July 2021 Letter was sent with the knowledge and authority of IAL; and~~

(c) ~~otherwise denies paragraph 35ZZO of the SOC.~~

35ZZP As to paragraph 35ZZP of the SOC, IAL:

(a) repeats paragraphs 9, 35A, 35H, 35S and 35ZC of this Defence;

(b) says that there is no identification of the paragraph or paragraphs of the definition of "representative" in section 910A of the *Corporations Act* in which BCC is said to fall; and

(c) otherwise denies paragraph 35ZZP of the SOC.

35ZZQ As to paragraph 35ZZQ of the SOC, IAL:

(a) repeats paragraphs 9, 35A, 35H, 35S and 35ZC of this Defence;

(b) says that there is no identification of the paragraph or paragraphs of the definition of "representative" in section 910A of the *Corporations Act* in which Brereton is said to fall; and

(c) otherwise denies paragraph 35ZZQ of the SOC.

35ZZR IAL admits paragraph 35ZZR of the SOC.

35ZZS IAL admits paragraph 35ZZS of the SOC.

35ZZT IAL admits that, pursuant to section 917A(2)(a) of the *Corporations Act,* Brereton was a representative of TMNF, and otherwise does not know and cannot admit paragraph 35ZZT of the SOC.

35ZZU IAL admits paragraph 35ZZU of the SOC.

35ZZV IAL admits paragraph 35ZZV of the SOC.

G THE INSURANCE POLICY

36 As to paragraph 36 of the SOC, IAL:

(a) repeats paragraph 35ZZC of this Defence; and

(b) otherwise denies paragraph 36 of the SOC.

37 As to paragraph 37 of the SOC, IAL:

(a) repeats paragraph 36 of this Defence;

(b) as to the chapeau to paragraph 37 of the SOC:

(i) says the indemnity in clause 1.1 of Policy TS-03088 requires that the claimed "Losses" were suffered by the "Insured"; and

(ii) otherwise says that the chapeau generally describes the text of clause 1.1 of Policy TS-03088 but will rely as necessary on the text of clause 1.1 of Policy TS-03088 for its full force and effect (if any);

(c) admits, subject to the matters set out in paragraph 37(b) of this Defence and the following paragraphs, that the definitions set out in paragraphs 37(a), (b) and (d) to (o) of the SOC reflect the text of Policy TS-03088;

(d) admits paragraph 37(c) of the SOC;

(e) as to the definition of "Eligible Debt" in paragraph 37(g) of the SOC, says further that:

(i) a debt would only constitute an "Eligible Debt" if it satisfied the eligibility criteria referred to in Schedule 7 of Policy TS-03088 at the time the relevant Asset derived from such debt was acquired by the Insured;

(ii) "Debt Endorsement" was defined to mean an endorsement to Policy TS-03088 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 TS-03088 in so far as the policy relates to such "Debts" and "Assets" derived therefrom;

(iii) the Debt Endorsement at Appendix 2 to Policy TS-03088 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;

(f) as to the definition of "Expected Allocation" in paragraph 37(i) of the SOC, says further that there was only an "Expected Allocation" if there was in existence an "Asset";

(g) as to the definition of "Asset" in paragraph 37(l) of the SOC, says further that:

(i) as is clear from both the definition of the term and Schedule 7 of Policy TS-03088, the only Assets covered by Policy TS-03088 were those derived from Eligible Debts and the existence of an Asset was therefore dependent upon the antecedent existence of an "Eligible Debt"; and

(ii) any Asset said to be derived from an "Eligible Debt" had to be owned by the Insured during the Policy Period (as defined);

(h) says that:

(i) the nature of "Loss" covered by Policy TS-03088 was a Loss in respect of an Asset owned by the Insured (here, Greensill Bank) and derived from an Eligible Debt owed by an Eligible Customer in the event that, by reason of an Insured Cause, the Insured had failed to receive its Expected Allocation on its Due Date (clause 3.1);

(ii) on the proper construction of Policy TS-03088 (if valid and effective, which is denied), the Insured may only make a claim in respect of a Loss suffered by the Insured in respect of an Asset (which is a Note):

(A) owned by the Insured during the Policy Period and owned by the Insured immediately prior to the payment of the claim;

(B) derived from an Eligible Debt, comprising receivables generated by a Supplier referred to in a valid Debt Endorsement, owed by an Eligible Customer;

(C) arising under the Transaction Documents defined in Policy TS-03088; and

(D) where by reason of an Insured Cause, the Insured has failed to receive its Expected Allocation;

(i) says that, insofar as Credit Suisse Virtuoso claims indemnity for losses suffered in respect of Assets which were Notes, including the Notes referred to in paragraph 33 of the SOC:

(i) the only possible loss suffered by Greensill Bank, as purported Insured, in the circumstances pleaded in the SOC would be a loss arising from and limited to the consideration paid by it to Credit Suisse Virtuoso if and when Greensill Bank acquired the NMC Notes, but it is pleaded by Credit Suisse Virtuoso at paragraphs 34 and 35 of the SOC that the NMC Notes were transferred to Greensill Bank "free of payment"; and

(ii) any such loss (the existence of which is not admitted) does not arise under Policy TS-03088 by reason that, due to an Insured Cause, the Insured, Greensill Bank, has failed to receive its Expected Allocation in respect of an Asset and is therefore not a Loss for the purposes of Policy TS-03088 (if valid and effective, which is denied);

(j) says that Policy TS-03088 provided as follows:

(i) 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 Policy TS-03088 where such failure has a "Material Policy Impact" (clause 9.7);

(ii) without prejudice to the other provisions of clause 10 of Policy TS-03088, the Insured shall ensure that, following the occurrence of an event that may reasonably be expected to result in a Loss under Policy TS-03088, 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 TS-03088 (clause 10.7(a));

(iii) in the event of an Insured's failure to mitigate Loss in accordance with clause 10.7 of Policy TS-03088, 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 (clause 10.7(d));

(iv) any variation of Policy TS-03088 (except by way of Endorsement as provided in Policy TS-03088) may only be effected in writing signed by or on behalf of each party (clause 15.3(a));

(v) if the Insured makes any statement, report or Claim, knowing it to be false or fraudulent, or the Insured knowingly conceals any material fact, Policy TS-03088 may be declared void by IAL and all Claims payments hereunder after such false or fraudulent statements reports or Claim shall be forfeited (clause 15.4); and

(k) otherwise denies paragraph 37 of the SOC.

38 IAL does not plead to paragraph 38 of the SOC, which makes no allegation against it.

39 IAL denies paragraph 39 of the SOC and says further that:

(a) it is not pleaded until paragraphs 52 and 54 of the SOC that Credit Suisse Virtuoso relies on Part A of Debt Endorsement 1 to Policy TS-03088;

(b) the pleadings of this Defence are made on the basis that Credit Suisse Virtuoso relies, and relies only, on Part A of Debt Endorsement 1 to Policy TS-03088;

(c) it admits Part A of Debt Endorsement 1 contained the definitions substantially to the effect set out in paragraphs 39(a) to (d) of the SOC;

(d) it relies on the terms of Debt Endorsement 1 (if valid and effective, which is denied) for their full force and effect;

(e) on 6 March 2019, Brereton signed Debt Endorsement 1 and backdated it to 1 March 2019;

(f) it says that, where a chose in action met the description of being a “Debt” in Debt Endorsement 1, that did not have the effect that the chose in action was a “Debt under the Policy [TS-03088]”;

(g) there is no allegation in paragraph 39 of the SOC that Debt Endorsement 1 (or any subsequent endorsement) is binding on IAL by reason of apparent authority and, in particular, there is no allegation:

(i) that IAL made a representation or representations;

(ii) those representations were relied on by Greensill Bank, GCPL and/or Credit Suisse Virtuoso; or

(iii) that reliance was reasonable;

(h) the terms of Debt Endorsement 1 were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(i) as at 1 March 2019, and at all material times between 1 August 2017 and 30 June 2019, BCC and Brereton's authority was confined in the manner described in paragraphs 9, 35A, 35H, 35S and 35ZC of this Defence;

(j) the amendments purportedly made by Debt Endorsement 1 (if valid and effective, which is denied by IAL and not asserted by Credit Suisse Virtuoso):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(k) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Debt Endorsement 1 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Policy TS-03088 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraphs 35ZZC and 36 of this Defence as to why BCC and Brereton did not have authority to enter into Policy TS-03088, BCC and Brereton also did not have authority to issue endorsements under Policy TS-03088; and

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 9(i) of this Defence, and Debt Endorsement 1 was not an Approved Endorsement;

(iv) Debt Endorsement 1 purported to operate in favour of an insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton;

(l) That by reason of the matters in paragraphs 39(e) to 39(k) of this Defence and each of them individually, Debt Endorsement 1 was invalid, of no effect and not binding on or enforceable as against IAL;

(m) that if, which is denied by IAL and not asserted by Credit Suisse Virtuoso, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 1 (CSA.0001.0001.3230):

(i) Debt Endorsement 1 purported to vary the Policy TS-03088;

(ii) clause 15.3(a) of Policy TS-03088 provided that any variation of Policy TS-03088 could only be effected in writing signed by or on behalf of each party;

(iii) Debt Endorsement 1 was not signed by or on behalf of Greensill Bank or GCPL, and was not a valid variation of Policy TS-03088;

(iv) the purported insured, Greensill Bank and GCPL, failed to pay any premium in respect of Debt Endorsement 1;

(v) the purported insured, Greensill Bank and GCPL, failed to provide any consideration for Debt Endorsement 1;

(vi) any power to issue Debt Endorsements under Policy TS-03088 did not authorise the issuing of a "Debt Endorsement" or, alternatively, a unilateral "Debt Endorsement" which purported to expand and/or vary the meaning of "Eligible Debt" whether at all, or in a manner which purported to bring within Policy TS-03088 debts of the kind purportedly covered by Debt Endorsement 1;

(vii) any power to issue Debt Endorsements under Policy TS-03088 only authorised the issuing of Debt Endorsements describing the nature of a debt that "is after the date of such endorsement able to be a Debt for the purposes of th[e] Policy" (definition of “Debt Endorsement” in Policy TS-03088) and, therefore, any such power did not authorise the issuing of Debt Endorsements purporting to operate retrospectively;

(viii) Debt Endorsement 1 purported to operate retrospectively;

(ix) any Debt Endorsements issued under Policy TS-03088 must specify a premium rate in an associated Customer Endorsement, which in turn was required to be ex-pressed as a percentage premium rate (Appendix 1 and Appendix 2 of Policy TS-03088);

(x) Debt Endorsement 1 did not specify a premium rate which was expressed as a per-centage premium rate;

(xi) by reason of the matters in:

(A) paragraphs 39(m)(i) to 39(m)(viii) of this Defence; and/or

(B) paragraphs 39(m)(ix) and 39(m)(x) of this Defence,

Debt Endorsement 1 is invalid, of no effect and not binding on or enforceable as against IAL;

(n) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Debt Endorsement 1 had been issued; and

(ii) Debt Endorsement 1 had been purportedly issued in breach of the CGU AAR Agreement and applicable Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements; and

(o) executing Debt Endorsement 1 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 39(e) to 39(l) of this Defence.

(p) the authority given by IAL to Brereton did not include an authority to enter into Debt Endorsement 1 because entering into Debt Endorsement 1 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 39(e) to 39(m) of this Defence.

(q) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Debt Endorsement 1 on behalf of IAL;

Particulars

The knowledge of Greensill Bank and GCPL can be inferred from the matters pleaded in sub paragraphs 35ZY(f) to 35ZY(h), 35ZZ(f), 36 and 39(j) of this Defence. Insofar as the emails referred to in the particulars under those paragraphs were sent or received by Marsh or Lex Greensill, the knowledge of Marsh and Lex Greensill respectively (as agents for the Greensill Group) is imputed to members of the Greensill Group, including Greensill Bank and GCPL.

Further particulars will be provided after discovery, compulsory production and evidence.

(r) if, which is denied, BCC and/or Brereton entered into Debt Endorsement 1:

(i) Credit Suisse Virtuoso was not a "client" with respect to Debt Endorsement 1 for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported “Insured” (being Greensill Bank and GCPL);

(iii) by reason of the matters in paragraphs 39(q), 39(r)(i) and 39(r)(iii) of this Defence, the purported entry by BCC and Brereton into Debt Endorsement 1 was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act,* and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Debt Endorsement1;

(iv) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC’s lack of authority was disclosed to the “client”, being Greensill Bank and GCPL if they were the “client” (which is denied)~~;

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(v) alternatively to paragraphs 39(r)(i) and 39(r)(iii) of this Defence, if Credit Suisse Virtuoso was a “client” with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into Debt Endorsement 1 was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act,* and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Debt Endorsement 1;

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to Debt Endorsement 1 (CSA.0001.0001.3230).

IAL refers to and repeats Annexure C to this Defence.

(vi) IAL repeats paragraph 35ZZAAA(i) of this Defence.

(s) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Debt Endorsement 1, it operated only prospectively, from the date Brereton signed Debt Endorsement 1, and applied only in relation to "Assets" acquired after that date.

40 IAL denies paragraph 40 of the SOC and says further that:

(a) on 6 March 2019, Brereton signed Customer Endorsement 4 (CSA.0001.0006.2203) referred to in paragraph 40 of the SOC and backdated it to 1 March 2019;

(b) the terms of Customer Endorsement 4 were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(c) in March 2019, and at all material times between 1 August 2017 and 30 June 2019, BCC and Brereton's authority was confined in the manner described in paragraphs 9, 35A, 35H, 35S, and 35ZC of this Defence;

(d) the amendments purportedly made by Customer Endorsement 4 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(e) the authority given by IAL to BCC and Brereton did not include an authority to enter into Customer Endorsement 4 because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Policy TS-03088, and therefore BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraphs 35ZZC and 36 of this Defence as to why BCC and Brereton did not have authority to enter into Policy TS-03088, BCC and Brereton also did not have authority to issue endorsements under Policy TS-03088;

(iii) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 9(i) of this Defence, and Customer Endorsement 4 was not an Approved Endorsement;

(iv) Customer Endorsement 4 purported to operate in favour of an Insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton; and

(v) the indemnity limit in Customer Endorsement 4 was 100%, which was above the maximum indemnity limit of 95% of Debt specified in the applicable Underwriting Manual Version 2.0;

(f) by reason of the matters in paragraphs 40(a) to 40(e) of this Defence and each of them individually, Customer Endorsement 4 was invalid, of no effect and not binding on or enforceable as against IAL;

(g) if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 4:

(i) Customer Endorsement 4 purported to vary Policy TS-03088;

(ii) clause 15.3(a) of Policy TS-03088 provided that any variation of Policy TS-03088 could only be effected in writing signed by or on behalf of each party;

(iii) Customer Endorsement 4 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy TS-03088;

(iv) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Customer Endorsement 4;

(v) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Customer Endorsement 4;

(vi) any power to issue Customer Endorsements under Policy TS-03088 did not authorise the issuing of Customer Endorsements purporting to operate retrospectively;

(vii) Customer Endorsement 4 purported to operate retrospectively;

(viii) any Customer Endorsements issued under Policy TS-03088 must specify a premium rate expressed as a percentage premium rate (Appendix 1 of Policy TS-03088);

(ix) Customer Endorsement 4 did not specify a premium rate expressed as a percentage premium rate, rather was a fixed amount expressed as “$1 (one U.S. dollar)”;

(x) the entity named alongside “Customer Name” was not a “debtor in respect of a Debt” for the purposes of the definition of “Customer” in Policy TS-03088;

(xi) by reason of the matters in:

(A) paragraphs (i) to 40(g)(ix) of this Defence; and/or

(B) paragraph 40(g)(x) of this Defence,

Customer Endorsement 4 is invalid, of no effect and not binding on or enforceable as against IAL;

(h) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Customer Endorsement 4 had been issued;

(ii) Customer Endorsement 4 had been purportedly issued in breach of the CGU AAR Agreement and applicable Underwriting Manual Version 2.0 and was inconsistent with the Approved Endorsements;

(i) executing Customer Endorsement 4 was in breach of BCC's obligation under the CGU AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly;

Particulars

The matters in paragraphs 40(a) to 40(h) of this Defence.

(j) the authority given by IAL to Brereton did not include an authority to enter into Customer Endorsement 4 because entering into Customer Endorsement 4 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 40(a) to 40(i) of this Defence.

(k) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Customer Endorsement 4 on behalf of IAL.

Particulars

The particulars under paragraph 39(q) of this Defence.

(l) if, which is denied, BCC and/or Brereton entered into Customer Endorsement 4:

(i) Credit Suisse Virtuoso was not a "client" with respect to Customer Endorsement 4 for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported “Insured” (being Greensill Bank and GCPL);

(iii) by reason of the matters in paragraphs 40(k), 40(l)(i) and 40(l)(ii) of this Defence, the purported entry by BCC and Brereton into Customer Endorsement 4 was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act* and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Customer Endorsement 4;

(iv) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC’s lack of authority was disclosed to the “client”, being Greensill Bank and GCPL if they were the “client” (which is denied)~~;

~~**Particulars**~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Particulars under paragraph 39(q) of this Defence.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(v) alternatively to paragraph 40(l)(i) to 40(l)(iii) of this Defence, if Credit Suisse Virtuoso was a “client” with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into Customer Endorsement 4 was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act,* and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the

Corporations Act) on the conduct of BCC or Brereton in the purported entry into Customer Endorsement 4;

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to Customer Endorsement 4 (CSA.0001.0006.2203).

IAL refers to and repeats Annexure C to this Defence.

(m) if, which is denied and is not asserted by Credit Suisse Virtuoso, it was otherwise within the authority of BCC and/or Brereton to execute Customer Endorsement 4:

(i) it operated only prospectively, from the date Brereton signed Customer Endorsement 4, and applied only in relation to "Assets" acquired after that date; and

(ii) upon the issue of Customer Endorsement 4(i) dated 4 March 2020 by BCC and Brereton, and with effect from 9 February 2020:

(A) Customer Endorsement 4 expired;

(B) the customer limit for NMC Health Plc and NMC Health was reduced to nil; and

(C) 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

Particulars

Email dated 6 March 2020 from Brereton to Angus Ward and Edward Smith of Marsh attaching Customer Endorsement 4(i) ~~(TOK.001.00027605 and TOK.001.00027606)~~(BCC.0001.0001.5519 and BCC.0001.0001.5520).

40A IAL denies paragraph 40A of the SOC and says further:

(a) the terms of Endorsement 9 (MAR.0003.0002.9129) were authored by the purported Insured and at no stage did IAL agree to, or hold out that it adopted, those words;

(b) on and from 1 July 2019:

(i) BCC did not have any authority from IAL to write new policies or risks, or extend the term or scope of existing policies;

(ii) BCC was authorised to act as the agent and authorised representative of TMNF and provide financial services on behalf of TMNF;

(iii) BCC was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(iv) TMNF was responsible for the conduct of BCC for the purposes of section 917B of the *Corporations Act*;

(v) Brereton was a representative of TMNF, and not IAL or IAGA, for the purposes of Division 6 of Part 7.6 of the *Corporations Act*;

(vi) TMNF was responsible for the conduct of Brereton for the purposes of section 917B of the *Corporations Act*;

(c) the register maintained by ASIC under section 922A of the *Corporations Act* was updated to indicate that:

(i) BCC's status as an authorised representative of IAGA had ceased with effect on 30 June 2019;

(ii) BCC was the authorised representative of only TMNF from 1 July 2019 onwards;

(iii) Brereton's status as authorised representative of IAGA had ceased with effect on 30 June 2019;

(d) on or about 10 April 2019, TMMA issued a media release by which it announced that it had acquired BCC;

(e) on or about 15 April 2019, Bond issued a market announcement by which it announced that TMMA, a wholly owned subsidiary of TMNF, had acquired the "BCC Trade Credit & Surety businesses" and, in respect of trade credit, from 1 July 2019, all new and renewal business will be undertaken by TMNF under its underwriting guidelines;

(f) on 15 April 2019, BCC provided to Marsh, on behalf of the Greensill Group, the media release and market announcement referred to in paragraphs 40A(d) and 40A(e) of this Defence;

Particulars

Email dated 15 April 2019 from Toby Guy on behalf of BCC to Ewan Berkemeier on behalf of the Greensill Group with attachments (~~TMDR.0000037501, TMDR.0000037501.0001 and TMDR.0000037501.0002~~IAL.500.011.0568, IAL.500.011.0569 and IAL.500.011.0570).

(g) the amendments purportedly made by Endorsement 9 (if valid and effective, which is denied):

(i) benefited Greensill Bank;

(ii) gave no benefit, commercial or otherwise, to IAL; and

(iii) had no commercial or other legitimate justification;

(h) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Endorsement 9 on behalf of IAL because:

(i) the authority given by IAL to each of BCC and Brereton did not include an authority to enter into Policy TS-03088 and/or to renew or extend Policy TS-03088 and, therefore, BCC and Brereton lacked authority or power to execute or issue endorsements under it and/or to issue endorsements under it purportedly binding on IAL;

(ii) for each of the reasons referred to in paragraphs 35ZZC and 36 of this Defence as to why BCC and Brereton did not have authority to enter into Policy TS-03088, BCC and Brereton also did not have authority to issue endorsements under Policy TS-03088;

(iii) pursuant to the terms of the IAL AAR Agreement and Underwriting Manual Version 3.0, BCC and Brereton were not authorised to bind mid-term alterations which were not consistent with the application of prudent underwriting judgment, and Endorsement 9:

(A) materially altered the scope of the risk of the Insurer under Policy TS-03088 (if valid and effective, which is denied), and did so in a manner not contemplated by the terms of Policy TS-03088;

(B) was not a mid-term alteration within the scope of the authority from IAL of each of BCC and Brereton; and

Particulars

Endorsement 9 extended the Policy Period beyond the natural expiry date of Policy TS-03088 (MAR.0003.0002.9129).

(C) if it was otherwise capable of constituting a mid-term alteration, such alteration was not consistent with prudent underwriting judgment and was therefore beyond authority;

(iv) insofar as BCC and/or Brereton had any authority to issue endorsements for or on behalf of IAL, that authority was limited to the Approved Endorsements referred to in paragraph 9(i) of this Defence, and Endorsement 9 was not an Approved Endorsement;

(v) the only types of endorsement contemplated or permitted by Policy TS-03088 were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds;

(vi) Endorsement 9 purported to operate in favour of an Insured (i.e. Greensill Bank) that was not an Australian customer domiciled in Australia and was therefore beyond the authority of BCC and Brereton; and

(vii) BCC and Brereton were not authorised to bind renewal insurance policies on behalf of IAL with renewal inception dates after 30 June 2019, including "any extension of policy due date", and Endorsement 9 breached this limit because, prior to Endorsement 9, Policy TS-03088 had a term expiring after 30 June 2019, and Endorsement 9 had the purported effect of extending and/or renewing the term of Policy TS-03088;

(i) that if, which is denied, it was otherwise within the authority of BCC and/or Brereton to execute Endorsement 9:

(i) the only types of endorsement contemplated or permitted by Policy TS-03088 were Customer Endorsements, Debt Endorsements and Loss Payee Endorsements, and Endorsement 9 was not an endorsement of those kinds;

(ii) Endorsement 9 purported to vary Policy TS-03088;

(iii) clause 15.3(a) of Policy TS-03088 provided that any variation of the 2019 Policy could only be effected in writing signed by or on behalf of each party;

(iv) Endorsement 9 was not signed by or on behalf of GCPL or Greensill Bank, and was not a valid variation of Policy TS-03088;

(v) the purported Insured, Greensill Bank and GCPL, failed to pay any premium in respect of Endorsement 9;

(vi) the purported Insured, Greensill Bank and GCPL, failed to provide any consideration for Endorsement 9;

(vii) any power to issue endorsements under Policy TS-03088 did not authorise the issuing of endorsements purporting to operate retrospectively;

(viii) Endorsement 9 purported to operate retrospectively;

(ix) by reason of the matters in:

(A) paragraphs 40A(j)(i) to 40A(j)(vi) of this Defence; and/or

(B) paragraphs 40A(j)(vii) and 40A(j)(viii) of this Defence,

Endorsement 9 is invalid, of no effect and not binding on or enforceable as against IAL;

(j) at all material times, BCC and Brereton had not informed IAL and IAL did not know that:

(i) Endorsement 9 had been issued; and

(ii) Endorsement 9 had been purportedly issued in breach of the IAL AAR Agreement and Underwriting Manual Version 3.0 and was inconsistent with the Approved Endorsements;

(k) further, at all material times, the bordereaux disclosed by BCC identified the expiry of Master Policy TS-03087 as 29 February 2020, rather than the extended or purportedly extended term of 15 April 2020;

(l) executing Endorsement 9 was in breach of BCC's obligation under the IAL AAR Agreement to perform the Authorised Services in a prompt and professional manner, exercising reasonable care and skill, and fairly, efficiently and honestly; and

Particulars

The matters in paragraphs 40A(a) to 40A(l) of this Defence.

(m) the authority given by IAL to Brereton did not include an authority to enter into Endorsement 9 because entering into Endorsement 9 was in breach of Brereton's obligation under the IAGA/IAL Brereton Authorisation Agreement to act efficiently, honestly and fairly; and

Particulars

The matters in paragraphs 40A(a) to 40A(m) of this Defence.

(n) that by reason of the matters in paragraphs 40A(a) to 40A(m) of this Defence, and each of them individually, Endorsement 9 was invalid, of no effect and not binding or enforceable as against IAL;

(o) Greensill Bank and GCPL knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Endorsement 9 on behalf of IAL.

Particulars

The particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 40A(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

(p) If, which is denied, BCC and/or Brereton entered into Endorsement 9:

(i) Credit Suisse Virtuoso was not a “client” with respect to Endorsement 9 for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) the "client", if there was one for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), was the purported “Insured” (being Greensill Bank and GCPL);

(iii) by reason of the matters in paragraphs 40A(o), 40A(p)(i) and 40A(p)(ii) of this Defence, the purported entry by BCC and Brereton into Endorsement 9 was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*, and they did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Endorsement 9;

(iv) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC’s lack of authority was disclosed to the “client”, being Greensill Bank and GCPL if they were the “client” (which is denied)~~;

~~**Particulars**~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 40A(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

(v) alternatively to paragraphs 40A(p)(i) to 40A(p)(iii) of this Defence, if Credit Suisse Virtuoso was a “client” with respect to Policy TS-03088 for the purpose of section 917A(1)(b) of the *Corporations Act* (which is denied), then the purported entry into Endorsement 9 was not conduct on which Credit Suisse Virtuoso could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*, and Credit Suisse Virtuoso did not in fact rely in good faith (for the purposes of section 917A(1)(c) of the *Corporations Act*) on the conduct of BCC or Brereton in the purported entry into Endorsement 9.

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to Endorsement 9 (MAR.0003.0002.9129).

IAL refers to and repeats Annexure C to this Defence.

41 As to paragraph 41 of the SOC, IAL:

(a) repeats the matters in paragraph 40A of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect of Endorsement 10 (BCC.0001.0007.9035), save that the reference to the extended or purportedly extended term in paragraph 40A(k) is 15 May 2020;

(b) says further that Endorsement 10 was not a valid endorsement under Policy TS-03088 (if valid and effective, which is denied) because Policy TS-03088 had expired on 1 March 2020, before Endorsement 10 was executed (on 15 April 2020) and expressed to take effect (9 April 2020); and

(c) otherwise denies the paragraph.

42 As to paragraph 42 of the SOC, IAL:

(a) repeats the matters in paragraphs 40A and 41(b) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect of Endorsement 11 (CSA.0001.0008.0077), save that the reference to the extended or purportedly extended term in paragraph 40A(k) is 15 May 2020; and

(b) otherwise denies the paragraph.

43 As to paragraph 43 of the SOC, IAL:

(a) repeats the matters in paragraph 40A and 41(b) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect of Endorsement 12 (CSA.0001.0006.2200), save that the reference to the extended or purportedly extended term in paragraph 40A(k) is to 30 June 2020; and

(b) otherwise denies the paragraph.

G.1 Loss Payee Endorsement

44 IAL denies paragraph 44 and says further that:

(a) on 6 March 2019, Brereton signed the Loss Payee Endorsement (CSA.0001.0001.3244) and backdated it to 1 March 2019;

(b) on or around 20 March 2019, the Loss Payee Endorsement was executed by representatives of Greensill Bank;

(c) it repeats the matters in paragraphs 39(h) to 39(s) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Loss Payee Endorsement:

(i) save for paragraphs 39(m)(vi), 39(m)(ix) and 39(m)(x) of this Defence; and

(ii) save that paragraph 39(m)(vii) of this Defence is replaced with:

> "any power to issue loss payee endorsements did not authorise the issuing of an endorsement purporting to operate retrospectively, including in respect of Losses not yet suffered;"

(d) if, which is denied and which Credit Suisse Virtuoso does not assert, it was otherwise within the authority of BCC and/or Brereton to execute the Loss Payee Endorsement:

(i) under the terms of the Loss Payee Endorsement, the insurer had to pay a claim in respect of losses suffered on Assets that were not owned by the Insured at the time of the Insured Cause or the making of a Claim, and was there-fore inconsistent with the existing provisions of Policy TS-03088;

(ii) the power under clause 15.3(d) of Policy TS-03088 to issue endorsements naming a loss payee was able to be exercised only in respect of a specific Loss which had arisen at the time of the endorsement;

(iii) the Loss Payee Endorsement purported to name Credit Suisse (Lux) Supply Chain Finance Fund in respect of Losses irrespective of when they arose;

(iv) the effect of the Loss Payee Endorsement (if valid and effective, which is denied) was to stipulate an instruction from the "Insured" to the "Insurer" that Claim payments due under Policy TS-03088 with respect to any Loss suffered by the Insured arising out of Assets acquired by the Insured from the Loss Payee prior to such Claim Payment shall be paid to the Loss Payee to the extent that the Claim has been accepted by the Insurer with respect to such Assets, and up to a maximum of the amount specified as the maximum amount that would be payable to the Loss Payee in respect of the relevant Customer as at the date on which the Loss Payee last acquired any Asset in respect of which such Loss was suffered;

(v) the power under clause 15.3(d) of Policy TS-03088 to issue endorsements naming a loss payee could be exercised only after agreement between the Insured and the Insurer;

(vi) the Loss Payee Endorsement was purportedly issued at the instruction of the Insured, and not in respect of some prior agreement between the Insured and the Insurer and otherwise in the absence of agreement between the Insured and Insurer;

(e) by reason of the matters in paragraph 44(d) of this Defence, the Loss Payee Endorsement was invalid, of no effect and not binding on or enforceable as against IAL;

(f) further or alternatively, in circumstances where the Loss Payee Endorsement was not signed on behalf of Credit Suisse Virtuoso and/or Credit Suisse (Lux) Supply Chain Finance Fund, it was ineffective to confer any rights on Credit Suisse Virtuoso to sue under Policy TS-03088 for any Loss allegedly suffered; and

(g) further or alternatively, in circumstances where the Loss Payee Endorsement recorded the name and LEI registration number of the Credit Suisse (Lux) Supply Chain Finance Fund, and not Credit Suisse Virtuoso, it was ineffective to confer any rights on Credit Suisse Virtuoso to sue under the 2019 Policy for any Loss allegedly suffered.

45 As to paragraph 45 of the SOC, IAL:

(a) repeats paragraph 44 of this Defence;

(b) says that the Loss Payee Endorsement contains the terms described in paragraphs 45(a) and 45(b) of the SOC;

(c) denies that the Loss Payee Endorsement is binding on IAL;

(d) relies on the terms of the Loss Payee Endorsement (if valid and effective, which is denied) for their full force and effect.

(e) says further that:

(i) for the reasons outlined in this Defence, IAL is not bound by Policy TS-03088 to indemnify Credit Suisse Virtuoso or Greensill Bank in respect of the claim made in this proceeding;

(ii) if, however, IAL <u>were</u> ~~is~~ bound and would otherwise be obliged to indemnify Credit Suisse Virtuoso or Greensill Bank in respect of the claim made in this proceeding, and if the matters pleaded by IAL in Annexure A to its Defence to

the SOC are established, IAL hereby relies on those matters and says it is not obliged to indemnify Credit Suisse Virtuoso or Greensill Bank; and

(f) otherwise denies paragraph 45 of the SOC.

46 IAL denies paragraph 46 of the SOC and says further that:

(a) on 6 March 2019, Brereton signed Limit Endorsement 8 (CSA.5000.0001.0509) and backdated it to 1 March 2019;

(b) it repeats the matters in paragraphs 39(h) to 39(s) of this Defence which apply mutatis mutandis to the conduct of BCC and Brereton with respect to the Limit Endorsement 8:

(i) save for paragraphs 39(m)(vi), 39(m)(ix) and 39(m)(x) of this Defence; and

(ii) save that paragraph 39(m)(vii) of this Defence is replaced with:

"any power to issue loss payee endorsements did not authorise the issuing of an endorsement purporting to operate retrospectively, including in respect of Losses not yet suffered;"

(c) if, which is denied and Credit Suisse Virtuoso does not assert, it was otherwise within the authority of BCC and/or Brereton to execute Limit Endorsement 8:

(i) the Loss Payee Endorsement (which Limit Endorsement 8 seeks to supplement) was not a valid endorsement under Policy TS-03088, in respect of which it refers to and repeats paragraph 44 of this Defence;

(i) under clause 15.3(d) of Policy TS-03088, payment to a named loss payee could be exercised only after agreement between the Insured and the Insurer; and

(ii) Limit Endorsement 8 was purportedly issued at the instruction of the Insured, and not in respect of some prior agreement between the Insured and the Insurer and otherwise in the absence of agreement between the Insured and the Insurer;

(d) if, which is denied and Credit Suisse Virtuoso does not assert, BCC and Brereton had authority to issue endorsements on behalf of IAL, that authority did not extend to agreeing to the creation of a Loss Payee and associated limits under clause 15.3(d) of Policy TS-03088;

(e) by reason of paragraphs 46(b) to 46(d) of this Defence, Limit Endorsement 8 was invalid, of no effect and not binding on or enforceable as against IAL; and

(f) if, which is denied, Limit Endorsement 8 was valid, then by reason of paragraphs 18G to 18J and 40(m)(ii) of this Defence, no amount was payable under Policy TS-03088 to Credit Suisse Virtuoso in respect of NMC Health Plc or NMC Health from 9 February 2020 onwards; and

47 As to paragraph 47 of the SOC, IAL:

(a) repeats paragraphs 18L, 35ZZC, 36, and 44 to 46 of this Defence; and

(b) does not know and cannot admit paragraph 47 of the SOC.

47AA Save to repeat that, for the reasons set out in paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, 39 to 47D of this Defence, it denies that BCC or Brereton was authorised by IAL to execute the documents referred to in paragraphs 47AA to 47EE of the SOC, IAL does not know and cannot admit paragraphs 47AA to 47EE of the SOC.

47BB [Blank]

47CC [Blank]

47DD [Blank]

47EE [Blank]

G.2 BCC as agent of the Insurer

47A IAL denies paragraph 47A of the SOC and says further that:

(a) it repeats paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36 to 47EE of this Defence;

(ab) the Applicants accept that BCC did not act with the ostensible authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

(ac) in those premises, BCC and Brereton did not "purport" to act on behalf of the Insurer;

(b) for the reasons outlined in this Defence, IAL did not enter into, and is not bound by, Policy TS-03088 or the endorsements pleaded in paragraph 47A of the SOC; and

(c) if, however, IAL is found to be bound by or otherwise responsible for the conduct of BCC and/or Brereton by entering into Policy TS-03088 or any endorsements, it repeats paragraph 110 of this Defence, and IAL hereby relies on those matters in defence of the claims against it.

47B As to paragraph 47B of the SOC, IAL:

(a) repeats paragraph 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36 and 47A of this Defence;;

(b) refers to and repeats its response to section FA of the SOC, as set out in section FA of this Defence; and

(c) otherwise admits ~~denies~~ paragraph 47B of the SOC.

47C [Not used] ~~As to paragraph 47C of the SOC, IAL:~~

(a) ~~repeats paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, 44, 47A and 47B of this Defence;~~

(b) ~~says further that the particulars to paragraph 151 of the SOC do not establish or evidence the existence of ostensible authority; and~~

(c) ~~otherwise denies paragraph 47C of the SOC.~~

47D [Not used] ~~As to paragraph 47D of the SOC, IAL:~~

(a) ~~says, as to the whole paragraph, that "entry" into a contract is a legal conclusion and not "conduct" to which sections 917A, 917B and 917C of the *Corporations Act* apply;~~

(b) ~~repeats paragraphs 40A(b) to 40A(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019 and denies that BCC and/or Brereton entered into Policy TS-03088 or any of the endorsements referred to in paragraph 47A of the SOC on behalf of IAL;~~

(c) ~~says further, as to the whole paragraph:~~

(i) ~~Division 6 of Part 7.6 of the *Corporations Act* generally, and sections 917A, 917B and 917C in particular, deem a licensee to be responsible for conduct of a representative only if:~~

(A) ~~the conduct is itself a wrong of the representative actionable by the client; and~~

(B) ~~the conduct by itself gives the "client" a remedy against the representative;~~

(ii) ~~mere execution of, or entry into, Policy TS-03088 or any of the endorsements referred to in paragraph 47A of the SOC was not a wrong of BCC and/or Brereton actionable by Greensill Bank or Credit Suisse Virtuoso and did not by itself give Greensill Bank or Credit Suisse Virtuoso a remedy against BCC and/or Brereton;~~

(iii) the conduct relied on in the paragraph is therefore not conduct to which sections 917A, 917B and 917C of the *Corporations Act* apply; and

(iv) in the circumstances, the whole of the paragraph is denied, and the balance of this paragraph is further and in the alternative;

(d) admits, in relation to paragraph 47D(a) of the SOC, that the entry into a policy of general insurance is, subject to paragraphs 47D(a) and 47D(b) of this Defence, conduct that relates to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(e) denies paragraph 47D(b) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 47A of the SOC was conduct on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) of the *Corporations Act* is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading as to the manner of Credit Suisse Virtuoso's alleged reliance, or linking the actual reliance alleged in paragraph 47D(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 47D(b) of the SOC;

(v) the conduct of BCC and/or Brereton referred to in paragraphs 47A of the SOC was not conduct on which a Loss Payee, including Credit Suisse Virtuoso as alleged Loss Payee, could reasonably be expected to rely;

Particulars

Particulars under paragraphs 35ZZA(i)(v), 35ZZ(i)(v), 35ZZ(h)(v), 39(r)(v), 40(l)(v) and 40A(p)(v) of this Defence.

IAL relies on the matters pleaded in Annexure A and Annexure C of IAL's Defence to the SOC.

Further particulars will be provided after discovery, compulsory production and evidence.

(vi) says that any reliance by Credit Suisse Virtuoso on the alleged "conduct" was not reasonable because Credit Suisse Virtuoso failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into:

(A) the transactions pursuant to which Credit Suisse Virtuoso acquired the NMC Notes as pleaded in paragraph 33A of the SOC;

(B) the purported insurance arrangements (Policy TS-03088 and its purported endorsements); and

(C) BCC/Brereton's authority on behalf of IAL as referred to in the SOC;

Particulars

Particulars under paragraph 35ZZA(i)(v) of this Defence.

(vii) IAL repeats paragraph 35ZZAAA(i) of this Defence;

(f) denies paragraph 47D(c) of the SOC and says further that:

(i) there is no pleading as to the manner in which Credit Suisse Virtuoso in fact relied on the conduct referred to in paragraph 47A of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 47D(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 47D(b) of the SOC;

(iii) having regard to the matters in paragraphs 47D(f)(i) and 47D(f)(ii) of this Defence, does not know and therefore cannot admit that Credit Suisse Virtuoso did in fact rely, or rely in good faith, on the conduct referred to in paragraph 47A of the SOC, at all or in any relevant respect; having regard to the matters pleaded in Annexure C to IAL's Defence to the SOC, Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct referred to in paragraphs 47A of the SOC, at all or in any relevant respect and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing;

Particulars

IAL refers to and repeats Annexure C to this Defence.

(g) denies paragraph 47D(d) of the SOC and says further:

(i) that Credit Suisse Virtuoso was not a "client" with respect to Policy TS-03088 for the purpose of section 917A(1) of the *Corporations Act*;

(ii) that the "client", if there was one for the purpose of section 917A(1) of the *Corporations Act* (which is denied), was the purported "Insured" (being Greensill Bank and GCPL);

(iii) that, to the extent that Credit Suisse Virtuoso seeks to rely on Greensill Bank and/or GCPL being the "client" for the purposes of s917A(1) of the *Corporations Act*, by reason of the matters in paragraphs 35ZY(f) to 35ZY(i) of this Defence:

(A) the purported entry by BCC and Brereton into Policy TS-03088 and the endorsements pleaded at paragraph 47A of the SOC was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and

(B) that conduct was not conduct on which Greensill Bank and GCPL in fact relied in good faith for the purposes of section 917A(1)(c) of the *Corporations Act*; and

(C) IAL further reserves the right to rely on section 917D of the *Corporations Act* to the effect that the lack of authority of Brereton and BCC was disclosed to the "client" being Greensill Bank and GCPL if they were the "client" (which is denied); and

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

Further particulars will be provided after discovery, compulsory production and evidence.

IAL also makes this same reservation under section 917D of the *Corporations Act* in relation to Credit Suisse Virtuoso (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.

(h) alternatively to paragraphs 47D(e)(vii) and 47D(g) of this Defence, says that if Credit Suisse Virtuoso was a "client" with respect to Policy TS-03088 for the purpose of section 917A(1) of the *Corporations Act* (which is denied):

(i) then the purported entry into Policy TS-03088 and the endorsements pleaded in paragraph 47A of the SOC was not conduct on which a Loss Payee, including Credit Suisse Virtuoso, could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*;

(ii) does not know and cannot admit that Credit Suisse Virtuoso did in fact rely, or rely in good faith, on the conduct referred to in paragraph 47A of the SOC, at all or in any relevant respect for the purposes of section 917A(1)(c) of the *Corporations Act*; having regard to the matters pleaded in Annexure C to IAL's Defence to the SOC, Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct referred to in paragraphs 47A of the SOC, at all or in any relevant respect and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing;

Particulars

The particulars under paragraph 35ZZA(i)(v) of this Defence apply mutatis mutandis to Policy TS-03088.

IAL refers to and repeats Annexure C to this Defence.

(i) says further that the SOC is deficient in failing to identify, with precision or at all, the content of the "responsib[ility]" alleged in paragraph 47D and, in particular, failing to identify:

(i) whether it is alleged that Credit Suisse Virtuoso has suffered loss and damage, for the purposes of section 917E of the *Corporations Act*, as a result of the conduct of BCC and/or Brereton referred to in paragraphs 47A of the SOC;

(ii) for the purposes of section 917E of the *Corporations Act*, the causal chain between that conduct and any asserted loss and damage, including the counterfactual alleged;

(iii) for the purposes of section 917E of the *Corporations Act*, what "loss and damage" is relied on;

(iv) whether it is alleged that, by reason of section 917F(1) of the *Corporations Act*, Credit Suisse Virtuoso has the same remedies against IAL that it has against BCC and/or Brereton and, if so, what those remedies are; and

(v) for the purposes of section 917F(1) of the *Corporations Act*, the connection between the "remedies" asserted and the "conduct" relied on;

(j) says, in respect of any contention that IAL is responsible for any conduct of BCC and/or Brereton (including any contention that Credit Suisse Virtuoso has remedies against IAL by reason of section 917F(1) of the *Corporations Act*) that:

(i) the responsibility deemed by sections 917B and 917C of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC/Brereton have a defence as between BCC/Brereton and Credit Suisse Virtuoso; and

(ii) IAL's responsibility and/or liability to Credit Suisse Virtuoso is no greater than BCC's responsibility and/or liability to Credit Suisse Virtuoso;

(k) says that, on their proper construction, the responsibility deemed by sections 917B and 917C of the *Corporations Act* to exist is responsibility for contraventions of Part 7.6 of the *Corporations Act* or, alternatively, contraventions of the *Corporations Act*, and is not responsibility for general law wrongs including breaches of contract;

(l) says that IAL was not party to any relevant communications or relations between:

(i) BCC and/or Brereton on the one hand, and Greensill Bank/Marsh and/or Credit Suisse Virtuoso on the other;

(ii) Greensill Bank/Marsh on the one hand, and Credit Suisse Virtuoso on the other; and

IAL intends to seek discovery bearing on the content of those relations and communications and, ultimately, on the potential application of sections 917A to 917E of the *Corporations Act*;

(m) repeats paragraphs 35ZZA(i), 35ZZ(i), 35ZZ(h), 39(r), 40(l), 40A(p), 41, 42, 43, 44(c), 45(a), 46(b) of this Defence; and

(n) ~~otherwise denies paragraph 47D of the SOC.~~

48 [Not used]

49 [Not used]

50 [Not used]

51 [Not used]

G.3 [Not used] ~~Debt Endorsement~~

52 [Not used] ~~As to paragraph 52 of the SOC, IAL:~~

(a) ~~repeats paragraphs 18H, 24 to 26, 35ZZC, 29, 36, 39 and 40 of this Defence; and~~

(b) ~~otherwise denies paragraph 52 of the SOC.~~

53 [Not used] ~~As to paragraph 53 of the SOC, IAL:~~

(a) ~~repeats paragraphs 18H, 19, 22 to 24, 35ZZC, 36, 39 and 40 of this Defence; and~~

(b) ~~otherwise denies paragraph 53 of the SOC.~~

54 [Not used] ~~As to paragraph 54 of the SOC, IAL:~~

(a) ~~repeats paragraphs 22 to 26, 29, 35ZZC, 36, 39 and 40 of this Defence;~~

(b) ~~repeats paragraph 18H of this Defence and says:~~

(i) ~~Credit Suisse Virtuoso does not plead material facts capable of establishing that the NMC Plc Payment Obligations and the NMC Health Payment Obligations were each a "Debt" within the meaning of Part A of Debt Endorsement 1 under Policy TS-03088; and~~

(ii) ~~in any event, the NMC Plc Payment Obligations and the NMC Health Payment Obligations were not "Debts" or "Eligible Debts";~~

(c) ~~it puts Credit Suisse Virtuoso to proof on each condition necessary for the NMC Plc Payment Obligations and the NMC Health Payment Obligations to be "Eligible Debts"; and~~

(d) ~~otherwise denies paragraph 54 of the SOC.~~

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 As to paragraph 64 of the SOC, IAL:

(a) says that by deed of power of attorney dated 31 January 2019 (BCC.0001.0013.001537), in circumstances where Credit Suisse Virtuoso suffered a Loss under a trade credit insurance policy in relation to which Credit Suisse Virtuoso is named as Loss Payee, Greensill Bank appointed Credit Suisse as its attorney to do in Greensill Bank's name any act, matter or thing which Credit Suisse Virtuoso considers necessary or desirable for the protection, preservation or enjoyment of Credit Suisse Virtuoso's interest as a Loss Payee under the policy;

(b) denies that Credit Suisse Virtuoso had any interest as Loss Payee under Policy TS-03088 (if valid and effective, which is denied);

(c) denies that Policy TS-03088 is a trade credit insurance policy because the risks purportedly insured were not trade credit risks;

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

(e) says that for the reasons in the preceding sub-paragraphs, the power of attorney dated 31 January 2019 has no apparent application to the acts taken (or purportedly taken) by Credit Suisse Virtuoso in connection with this proceeding;

(f) relies as necessary on the power of attorney dated 31 January 2019 for its full force and effect (if any); and

(g) otherwise denies paragraph 64 of the SOC.

I NMC HEALTH'S FAILURE TO PAY

65 As to paragraph 65 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence; and

(b) otherwise does not know and cannot admit paragraph 65 of the SOC.

66 As to paragraph 66 of the SOC, IAL:

(a) repeats paragraph 18B of this Defence; and

(b) otherwise does not know and cannot admit paragraph 66 of the SOC.

67 As to paragraph 67 of the SOC, IAL:

(a) repeats paragraphs 18B, 22, 23, 29, and 54 of this Defence;

(b) if and to the extent it is alleged that the obligations referred to in paragraph 67 of the SOC were "Eligible Debts" (which is denied), repeats paragraph 18H above;

(c) says that Credit Suisse Virtuoso alleges, or implicitly alleges, that there was a duty on each of NMC Health and NMC Health Plc to make payments pursuant to the NMC Health Payment Obligations and the NMC Plc Payment Obligations;

(d) says that Credit Suisse Virtuoso does not plead material facts capable of establishing:

(i) the circumstances which gave rise, in each case, to the NMC Health Payment Obligations and the NMC Plc Payment Obligations;

(ii) the time at which each such obligation arose;

(iii) the quantum of each obligation; and

(iv) the circumstances establishing that that obligation was not discharged;

(e) says that, in order for Suisse Virtuoso to establish that, since approximately 3 March 2020, NMC Health and NMC Health Plc have failed to make payments in accordance with such payment obligations, it puts Credit Suisse Virtuoso to proof to establish:

(i) there were in existence NMC Health Payment Obligations and the NMC Plc Payment Obligations;

(ii) those obligations were existing obligations rather than potential future obligations;

(iii) those obligations existed at all material times, including at the time of any purported assignment, at the time at which an "Asset" is said to have been derived from such obligations and at the time each such "Asset" was acquired by an "Insured"; and

(iv) there was a failure to pay in respect of each such obligation; and

(d) otherwise does not know and cannot admit paragraph 67 of the SOC.

68 [Not used] ~~As to paragraph 68 of the SOC, IAL:~~

(a) ~~repeats 18H, 18J, 35ZZC, 36 to 46, 66 and 67 of this Defence;~~

(b) ~~says that there is an "Insured Cause" under Policy TS-03088 only if there is a failure of a "Customer" to make payment of an "Eligible Debt" on or before the "Backstop Date";~~

(c) ~~says that as best it understands Credit Suisse Virtuoso's case, it is that:~~

(i) ~~NMC Health and NMC Health Plc were each a "Customer";~~

(ii) ~~the "Eligible Debts" were the NMC Health Payment Obligations and the NMC Plc Payment Obligations; and~~

(iii) ~~the "Backstop Dates" in respect of the NMC Notes were from approximately April 2020;~~

(d) ~~as to the allegation that NMC Health was a "Customer":~~

(i) ~~IAL denies the allegation for the reasons at paragraphs 18H and 40 and of this Defence; and~~

(ii) ~~IAL otherwise puts Credit Suisse Virtuoso to proof of each condition necessary for NMC Health and NMC Health Plc to each be a "Customer";~~

(e) ~~as to the allegation that the NMC Health Payment Obligations and the NMC Plc Payment Obligations were "Eligible Debts":~~

(i) ~~IAL denies the allegation for the reasons at 18H of this Defence; and~~

(ii) ~~IAL otherwise puts Credit Suisse Virtuoso to proof of every condition necessary for the NMC Health Payment Obligations and the NMC Plc Payment Obligations to be "Eligible Debts";~~

(f) ~~as to the allegation that there was a failure by NMC Health and/or NMC Health Plc to make payment on or before the "Backstop Date", IAL says:~~

(i) ~~Credit Suisse Virtuoso has failed to plead any material facts to establish this allegation, including any material facts establishing that the "Backstop Dates" were as alleged in the Particulars to paragraph 67 of the SOC; and~~

(ii) ~~it puts Credit Suisse Virtuoso to proof of each condition necessary for there to be a failure to pay on or before the "Backstop Date"; and~~

(g) ~~otherwise denies paragraph 68 of the SOC.~~

69 [Not used]

J CLAIMS ON THE POLICY

70 As to paragraph 70 of the SOC, IAL:

(a) repeats paragraphs 9, 35H, 35S, 35ZC, 35ZZC, 35ZZH, 36, 67 and 68 of this Defence; and

(b) otherwise denies ~~admit~~ paragraph 70 of the SOC.

71 [Not used] ~~As to paragraph 71 of the SOC, IAL:~~

(a) ~~repeats paragraphs 18G, 18J to 18K and 68 of this Defence;~~

(b) ~~says that Credit Suisse Virtuoso does not plead any material facts capable of establishing:~~

(i) ~~that the asserted "Loss" (being the difference between the "Expected Allocation" and the value of Greensill Bank's entitlements under the Master Trust Deed) was caused by or resulted from the occurrence of NMC Health's failure to pay NMC Health Payment Obligations by the "Backstop Date" and/or NMC Health Plc's failure to pay NMC Plc Payment Obligations by the "Backstop Date";~~

(ii) ~~that the NMC Notes had a "Final Redemption Amount" or "Instalment Amounts";~~

(iii) ~~that there was a "Pricing Supplement" in respect of the NMC Notes;~~

(iv) ~~Greensill Bank's entitlements under the Master Trust Deed, whether in respect of the NMC Notes (or otherwise), were zero; and~~

(v) ~~that the cause of Greensill Bank's entitlements under the Master Trust Deed in respect of the NMC Notes (or otherwise) being less than the "Expected Allocation" was the failure of NMC Health to pay NMC Health Payment Obligations on or before the Backstop Date and/or NMC Health Plc to pay NMC Plc Payment Obligations on or before the Backstop Date (including any counterfactual in the event that the alleged NMC Insured Causes had not occurred);~~

(c) ~~it puts Credit Suisse Virtuoso to proof of all material facts necessary for the arising of a "Loss";~~

(d) ~~it denies that there was a "Loss", including because there was no "Insured Cause";~~

(e) ~~says further that "Loss" (if any) to Credit Suisse Virtuoso is irrelevant as, on the proper construction of Policy TS-03088, there is an indemnity only if the "Insured" has suffered "Loss" (Policy TS-03088 clauses 1.1, 3.1; definition of "Loss"); and~~

(f) ~~otherwise denies paragraph 71 of the SOC.~~

J.1 [Not used] ~~Insurer's claim decision~~

72 [Not used] ~~As to paragraph 72 of the SOC, IAL:~~

(a) ~~repeats paragraphs 35ZZI to 35ZZO of this Defence;~~

(b) ~~says that on or around 8 October 2020 IAL agreed to pay USD 14,733,471.04 to Credit Suisse Virtuoso and the payment was made on or about 3 November 2020;~~

(c) ~~says that the difference between the amount claimed in the NMC Claim Form and amount paid to Credit Suisse Virtuoso referred to in the preceding sub-paragraph is USD 4,752,442.90 (**Claimed Amount**);~~

(d) ~~says that by its "Claim Offer Letter" dated 8 October 2020, IAL expressly reserved its rights and defences in respect of invoices funded by GCUK after the publication of a report by Muddy Waters Capital LLC in relation to NMC Health Plc dated 17 December 2019 (**MW Report**), which the Claimed Amount relates to; and~~

(e) ~~otherwise denies paragraph 72 of the SOC.~~

73 [Not used] ~~As to paragraph 73 of the SOC, IAL:~~

(a) ~~repeats paragraphs 18L, 26, 35ZZC, 36, 37, 44, 45, 46, 71 and 72 of this Defence;~~

(b) ~~denies that Greensill Bank or Credit Suisse Virtuoso has suffered Loss as alleged in paragraph 71 of the SOC;~~

(c) ~~says that the MW Report included allegations that NMC Health Plc had engaged in fraud and manipulated its balance sheet to understate debt, thereby raising substantial doubt about its ability to pay its liabilities;~~

(d) ~~says, in relation to the agreements pleaded in paragraphs 19 to 33 of the SOC, that:~~

(i) ~~under the terms of the GCUK Execution Agreement, GCUK was not obliged to provide funding on the Platform for invoices that were payable by NMC Health, regardless of whether NMC Health met any Eligibility Criteria set by GCUK; and~~

(ii) ~~IAL does not have GCUK's Eligibility Criteria referred to in the NMC Health Execution Agreement, BTSSA or GCUK Execution Agreement. IAL will seek~~

discovery of such criteria and reserves its right to amend its Defence upon a review of any documents produced;

(e) says further that:

(i) if Greensill Bank, or Credit Suisse Virtuoso, has suffered Loss within the meaning of Policy TS-03088 (which is denied), then:

(A) the MW Report was an event that may reasonably be expected to result in Loss under Policy TS-03088 ;

(B) Greensill Bank's obligation under clause 10.7(a) of Policy TS-03088 extends to ensuring that GCUK exercises its rights under the GCUK Execution Agreement to cease its provision of funding on the Platform of invoices that were payable by NMC Health (and guaranteed by NMC Health Plc) from 17 December 2019 onwards;

(C) by reason of paragraphs 73(e)(i)(A) and 73(e)(i)(B) of this Defence, Greensill Bank failed to act reasonably and prudently to prevent, mitigate and minimise Losses, in breach of its obligation in clause 10.7(a) of Policy TS-03088 (if valid and effective, which is denied);

(D) by reason of paragraphs 73(e)(i)(A) to 73(e)(i)(C) of this Defence, IAL is not obliged to indemnify Greensill Bank or Credit Suisse Virtuoso for the Claimed Amount;

(f) says further that:

(i) Greensill Bank did not own any "Asset" (being the NMC Notes or any of them) during the initial "Policy Period" or before the expiry of the purported extension alleged of Policy TS-03088 (if valid and effective, which is denied) in paragraphs 40A to 43 of the SOC (the effect of which is denied for the reasons set out in paragraph 18G of this Defence);

(ii) by reason of paragraphs 71(a) and 71(b) of this Defence, Greensill Bank and Credit Suisse Virtuoso do not have a right under Policy TS-03088 (if valid and effective, which is denied) to be indemnified by IAL in respect of any alleged NMC Insured Causes and/or any NMC Notes;

(iii) for the reasons outlined in this Defence, IAL is not bound by Policy TS-03088 or any alleged endorsements thereto, including the Loss Payee Endorsement, to indemnify Credit Suisse Virtuoso or Greensill Bank in respect of the claim made in this proceeding; and

(iv) ~~if however, IAL is bound and would otherwise be obliged to indemnify Credit Suisse Virtuoso or Greensill Bank in respect of any "Loss" suffered (which is denied), then that loss is not recoverable by reason of the matters as pleaded in Annexure A of IAL's Defence to the SOC;~~

(v) ~~further or alternatively, IAL does not know what steps each of Greensill Bank or Credit Suisse Virtuoso has taken to mitigate Loss (if any), and reserves its right to allege that any indemnity payment to Greensill Bank or Credit Suisse Virtuoso should be reduced pursuant to clause 10.7 of the 2019 Policy following discovery and disclosure in this proceeding; and~~

(vi) ~~further, or alternatively, IAL does not know what (if any) amounts Greensill Bank or Credit Suisse Virtuoso has recovered in respect of the "Assets" in issue in this proceeding, and if and to the extent any of Greensill Bank or Credit Suisse Virtuoso has recovered amounts in respect of the "Assets", any exposure of IAL is to that extent reduced; and~~

(e) ~~otherwise denies paragraph 73 of the SOC.~~

K [NOT USED] ~~ASSERTED BREACH OF POLICY BY INSURER~~

74 [Not used] ~~IAL admits paragraph 74 of the SOC and refers to the full text of the particularised letters for their full force and effect.~~

75 [Not used] ~~IAL denies paragraph 75 of the SOC and refers to the full text of the particularised letters for their full force and effect.~~

76 [Not used] ~~As to paragraph 76 of the SOC, IAL:~~

(a) ~~admits that it has not indemnified or paid Greensill Bank or Credit Suisse Virtuoso under Policy TS-03088;~~

(b) ~~says that neither Greensill Bank nor Credit Suisse Virtuoso is entitled to indemnity under Policy TS-03088 in respect of the claim referred to in paragraph 70 of the SOC; and~~

(c) ~~otherwise denies paragraph 76 of the SOC.~~

76A IAL admits paragraph 76A of the SOC.

77 [Not used] ~~IAL denies paragraph 77 of the SOC.~~

78 [Not used] ~~IAL denies paragraph 78 of the SOC.~~

79 [Not used] ~~IAL denies paragraph 79 of the SOC.~~

L CLAIMS AGAINST BCC AND BRERETON

80 [Not used]

81 [Not used] ~~[Blank]~~

82 [Not used] ~~[Blank]~~

L.1 Knowledge of BCC and Brereton

83 ~~[Blank]~~ Save to repeat that, for the reasons set out in paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, and 39 to 47D of this Defence, it denies that BCC or Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct, IAL does not know and cannot admit paragraphs 83 to 88 of the SOC, which do not make allegations against it.

84 [Blank]

85 [Blank]

86 [Blank]

87 [Blank]

87A [Blank]

87B [Blank]

87C [Blank]

L.2 BCC/Brereton Conduct ~~Breach of warranties of authority~~

88 [Blank]

89 [Not used] ~~[Blank]~~

90 [Not used] ~~[Blank]~~

91 [Not used] ~~[Blank]~~

92 [Not used] ~~[Blank]~~

93 [Not used] ~~[Blank]~~

94 [Not used] ~~[Blank]~~

94A [Not used] ~~As to paragraph 94A of the SOC, IAL:~~

(a) ~~repeats paragraphs 47D(a) to 47D(k) of this Defence;~~

(b) ~~further repeats paragraphs 40A(b) to 40A(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019;~~

(c) ~~as to paragraph 94A(a) of the SOC:~~

(i) ~~says that the financial service the subject of the allegation in paragraph 94A(a) is not identified;~~

(ii) ~~subject to paragraphs 47D(a) and 47D(b) of this Defence, admits that if the conduct referred to in the chapeau of paragraph 94A of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;~~

(d) ~~denies paragraph 94A(b) of the SOC and says further that:~~

(i) ~~whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;~~

(ii) ~~there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 89, 90, 92 and 93 of the SOC was conduct on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;~~

(iii) ~~the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;~~

(iv) ~~there is no pleading linking the actual reliance alleged in paragraph 92A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 92A(b) of the SOC;~~

(v) ~~the conduct of BCC and/or Brereton referred to in paragraphs 89, 90, 92 and 93 of the SOC was not conduct on which a Loss Payee (including Credit Suisse Virtuoso as an alleged Loss Payee) could reasonably be expected to rely;~~

~~Particulars~~

~~Particulars under paragraph 47D(e)(v) of this Defence.~~

(e) ~~denies paragraph 94A(c) of the SOC and says further that:~~

(i) ~~there is no pleading as to the manner in which Credit Suisse Virtuoso in fact relied on the conduct referred to in paragraphs 89, 90, 92 and 93 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;~~

(ii) ~~there is no pleading linking the actual reliance alleged in paragraph 94A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 94A(b) of the SOC;~~

(f) ~~having regard to the matters in paragraphs 94A(e)(i) and 94A(e)(ii) of this Defence, does not know and therefore cannot admit that Credit Suisse Virtuoso did in fact rely, or rely in good faith, on the conduct referred to in paragraphs 89, 90, 92 and 93 of the SOC, at all or in any relevant respect; further, IAL reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~; and

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 40A(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

~~IAL also makes this same reservation under section 917D of the *Corporations Act* in relation to Credit Suisse Virtuoso (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.~~

(g) ~~otherwise denies paragraph 94A of the SOC.~~

94B [Not used] ~~As to paragraph 94B of the SOC, IAL:~~

(a) ~~repeats paragraph 94A of this Defence;~~

(b) ~~denies the allegations against IAL; and~~

(c) ~~otherwise does not know and cannot admit paragraph 94B of the SOC.~~

L.3 Misleading or deceptive conduct

95 As to paragraph 95 of the SOC, IAL denies the paragraph and further:

(a) ~~Save to~~ repeats that, for the reasons set out in paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, 39 to 47B ~~47D~~ and 83 ~~80~~ to 88 ~~94B~~ of this Defence, ~~it denies that~~ neither BCC nor Brereton was an agent of IAL for the purposes of engaging in the alleged BCC/Brereton conduct;

(b) says that, save as pleaded below, IAL does not know and cannot admit paragraphs 95 and 98 ~~to 104~~ of the SOC, which do not make allegations against it.

96 [Blank]

97 IAL denies paragraph 97 of the SOC. ~~[Blank]~~

98 [Blank]

99 ~~[Blank]~~ As to paragraph 99 of the SOC, IAL:

(a) denies the paragraph; and

(b) says that if (which is denied) BCC represented that it had "actual authority" to execute the 2019 Policy and endorsements on behalf of IAL, any such representation was made to the Insureds and Marsh and was corrected on or after 2 July 2020 by reason of BCC's notifications to Greensill and Marsh of concerns that Brereton had exceeded his delegated authority limits;

Particulars

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

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

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

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

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

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

100 ~~[Blank]~~ As to paragraph 100 of the SOC, IAL:

(a) repeats paragraphs 95 and 99 of this Defence;

(b) says that s 131A of the *Competition and Consumer Act 2010* (Cth) has the effect that the conduct alleged would, even if established, not be regulated by Division 2 of Part XI of that Act and would therefore not be conduct in trade or commerce within the meaning of the Australian consumer law; and

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

101 ~~[Blank]~~ IAL denies paragraph 101 of the SOC

102 ~~[Blank]~~ IAL denies paragraph 102 of the SOC.

103 ~~[Blank]~~As to paragraph 103 of the SOC, IAL:

(a) repeats paragraphs 95, 97 and 99 of this Defence; and

(b) otherwise denies paragraph 103 of the SOC.

104 ~~[Blank]~~IAL denies paragraph 104 of the SOC and:

(a) refers to repeats paragraph 108ZI of this Defence;

(b) says that the conduct alleged (even if established) did not cause the Applicants loss in the requisite normative sense because, having regard to the Applicants' admissions (and to the allegations in Annexure A) as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to the Applicants' claims.

(c) says in the alternative that any award of damages to Credit Suisse Virtuoso must account for:

(i) the payment by IAL of USD 14,733,471.04 to Credit Suisse Virtuoso in respect of the claim pleaded at paragraph 70 of the SOC; and

Particulars

(a) On or around 3 June 2020, Greensill Bank submitted a claim form purportedly under Policy TS-03088, claiming the amount of USD 19,485,913.

(b) On or around 8 October 2020, IAL agreed to pay Credit Suisse Virtuoso an amount of USD 14,733,471.04 in respect of that claim. The payment was made on or around 3 November 2020.

(c) The difference between the amount claimed in the NMC Claim Form and the amount paid to Credit Suisse Virtuoso referred to in the preceding sub-paragraph is USD 4,752,442.90.

(d) Letter from Gilbert + Tobin to Kennedys dated 7 June 2022, [17]

(ii) any recoveries made by Credit Suisse Virtuoso in respect of the NMC Notes.

Particulars

(a) Letter from Gilbert + Tobin to Kennedys dated 7 June 2022, [17]

104A As to paragraph 104A of the SOC, IAL:

(aa) says:

(i) That Credit Suisse Virtuoso was not a "client" with respect to the 2019 Policy for the purpose of section 917A(1) of the *Corporations Act*;

(ii) that the "client", if there was one for the purpose of section 917A(1) of the *Corporations Act* (which is denied), was the purported "Insured" (being Greensill Bank and GCPL);

(iii) that, to the extent that Credit Suisse Virtuoso seeks to rely on Greensill Bank and/or GCPL being the "client" for the purposes of s 917A(1) of the *Corporations Act*, by reason of the matters in paragraphs **Error! Reference source not found.** to 35ZY(i) of this Defence:

(A) the purported entry by BCC and Brereton into Policy TS-03088 and the endorsements pleaded at paragraph 47A of the SOC was not conduct on which Greensill Bank and GCPL could reasonably be expected to rely for the purpose of section 917A(1)(b) of the *Corporations Act*; and

(B) that conduct was not conduct on which Greensill Bank and GCPL in fact relied in good faith for the purposes of section 917A of the *Corporations Act*; and

(C) the exception in section 917D is available because:

a. Brereton disclosed to Greensill Bank and/or GCPL that he did not have authority to execute the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence on behalf of IAL;

b. Brereton disclosed his lack of authority prior to his execution of:

i. Policy TS-03088;

ii. Debt Endorsement 1 to Policy TS-03088;

iii. Customer Endorsement 1 to Policy TS-03088;

iv. Customer Endorsement 4 to Policy TS-03088;

v. Endorsement 9 to Policy TS-03088;

vi. Endorsement 10 to Policy TS-03088;

vii. Endorsement 11 to Policy TS-03088;

viii. Endorsement 12 to Policy TS-03088;

ix. the Loss Payee Endorsement;

x. Limit Endorsement 8 to Policy TS-03088;

xi. Loss Payee Limit Endorsement 5 to the 2019 Policy;

xii. Loss Payee Limit Endorsement 11 to the 2019 Policy;

c. the disclosure by Brereton was of such clarity and prominence as Greensill Bank and/or GCPL would reasonably require for the purposes of deciding whether to acquire the relevant assets;

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

Brereton informed Marsh and GCUK staff that BCC did not have authority to write insurance policies with a maximum limit of liability exceeding A$50 million without express approval of IAL and its reinsurers. Brereton informed Marsh and GCUK staff on at least the following occasions:

(a) Email from Brereton to Edward Smith dated 23 November 2018 with subject 'Re: Greensill/CS request' (GCU.0004.0021.2031);

(b) Verbally at the 'due diligence' meeting held on 13 February 2019.

GCUK and Marsh were informed that, before BCC and Brereton could agree to an insurance policy which departed from approved wording, it was necessary for the departure to be approved by IAL and Scor Re (as a reinsurer of IAL): see paragraph 77(g)(i) of this Defence.

The disclosure by Brereton to Marsh and GCUK is sufficient to act as a disclosure to Greensill Bank and/or GCPL for the purpose of section 917D of the *Corporations Act*, in circumstances where the insurance policies were arranged by Marsh and GCUK.

Greensill Bank and/or GCPL knew that Policy TS-03008, as purportedly amended by the endorsements pleaded in paragraph 104A(aa)(iii)(C)(b)(ii) to (xii) of this Defence, represented a risk that exceeded A$50 million, being the limit of Brereton's authority as

disclosed to Marsh and GCUK staff and was issued without the approval of IAL and Scor Re.

d. further or in the alternative to paragraphs 104A(aa)(iii)(C)(a) to 104A(aa)(iii)(C)(c), BCC disclosed to Greensill Bank and/or GCPL that Brereton did not have authority to execute the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence on behalf of IAL on or after 2 July 2020 by reason of BCC's notifications to Greensill and Marsh of concerns that Brereton had exceeded his delegated authority limits;

e. BCC disclosed the fact in paragraph 104A(aa)(iii)(C)(a) before the client relied on the conduct from 2 July 2020 onwards; and

f. the disclosure by Brereton was of such clarity and prominence as Greensill Bank and/or GCPL would reasonably require for the purposes of deciding whether to acquire the relevant assets;

Particulars

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

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

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

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

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

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

(ab) says further that the SOC is deficient in failing to identify, with precision or at all, the content of the "responsib[ility]" alleged in paragraph 104A and, in particular, failing to identify:

(ii) whether it is alleged that Credit Suisse Virtuoso has suffered loss and damage, for the purposes of section 917E, as a result of the conduct of BCC and/or Brereton referred to in paragraph 47A of the SOC;

(D) for the purposes of section 917E, the causal chain between that conduct and any asserted loss and damage, including the counterfactual alleged;

(E) for the purposes of section 917E, what "loss and damage" is relied on;

(F) whether it is alleged that, by reason of section 917F(1), Credit Suisse Virtuoso has the same remedies against IAL that it has against BCC and/or Brereton and, if so, what those remedies are;

(G) for the purposes of section 917F(1), the connection between the "remedies" asserted and the "conduct" relied on;

(ac) says, in respect of any contention that IAL is responsible for any conduct of BCC and/or Brereton (including any contention that Credit Suisse Virtuoso has remedies against IAL by reason of section 917F(1)) that:

(i) the responsibility deemed by Division 6 of Part 7.6 does not extend to responsibility for conduct and/or causes of action for which BCC/Brereton have a defence as between BCC/Brereton and Credit Suisse Virtuoso;

(H) IAL's responsibility and/or liability to Credit Suisse Virtuoso is no greater than BCC's responsibility and/or liability to Credit Suisse Virtuoso;

(ad) says that, on their proper construction, the responsibility deemed by sections 917B and 917C to exist is responsibility for contraventions of Chapter 7 of the *Corporations Act* or, alternatively, contraventions of the *Corporations Act*, and is not responsibility for general law wrongs, including breaches of contract;

(ae) repeats paragraphs 35ZZA(i), 35ZZ(h), 35ZZ(i), 39(r), 40(l), 40A(p), 41, 42, 43, 44(c), 45(a), 46(b) of this Defence;

(af) says that if, which is denied, the allegation in paragraph 104A(d) of the SOC is true, then:

(i) at all material times:

(A) IAL was "responsible" within the meaning of section 917B of the *Corporations Act 2001* (Cth) for the representations of BCC and Brereton alleged in paragraphs 95 and 97 of the SOC;

(B) on Credit Suisse Virtuoso's case, which is denied, GCPL and/or GBAG relied on those representations when executing or otherwise entering into the instruments referred to at paragraphs 88(aa)-(i) of the SOC;

(C) alternatively, on Credit Suisse Virtuoso's case, which is denied, Credit Suisse relied on those representations when entering into the Loss Payee Endorsement and/or when acquiring the NMC Notes (as alleged in paragraph 104A(c) of the SOC);

(D) IAL was bound by or otherwise responsible for the instruments referred to at paragraphs 88(aa)-(i) of the SOC;

a. any representations in fact made by BCC and/or Brereton to the effect that IAL was bound by, responsible for or otherwise stood behind the instruments referred to at paragraphs 88(aa)-(i) of the SOC were not false, misleading or deceptive;

b. paragraphs 101 and 102 of the SOC are incorrect.

(a) [not used]; ~~repeats paragraphs 47D(a) to 47D(b) 47D(k) of this Defence;~~

(b) repeats paragraphs 40A(b) to 40A(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019;

(ba) says that Credit Suisse Virtuoso has admitted that BCC and/or Brereton did not enter into TS-0388 or any of the endorsements referred to in paragraph 47A of the SOC with the authority of IAL;

Particulars

Letters from Gilbert + Tobin dated 29 (IAL.500.020.0003) and 30 June (IAL.500.021.0001) and 10 July 2026 (IAL.500.020.0004).

(c) as to paragraph 104A(a) of the SOC:

(i) says that the financial service the subject of the allegation in paragraph 104(a) is not identified;

(ii) ~~subject to paragraphs 47D(a) and 47D(b) of this Defence,~~ admits that if the conduct of BCC and Brereton pleaded at paragraphs 95 to 102 of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(d) denies paragraph 104A(b) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) of the *Corporations Act* turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 95 to 102 of the SOC was conduct on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(iii) paragraph 35ZZAAC(ja) of this Defence is repeated;

(iv) the "rel[iance]" referred to in section 917A(1)(b) of the *Corporations Act* is the "rel[iance]" referred to in section 917A(1)(c) of the *Corporations Act*, with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(v) there is no pleading linking the actual reliance alleged in paragraph 104A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 104A(b) of the SOC;

(vi) the conduct of BCC and/or Brereton referred to in paragraphs 95 to 102 of the SOC was not conduct on which a Loss Payee, including Credit Suisse Virtuoso as alleged Loss Payee, could reasonably be expected to rely;

Particulars

~~Particulars under paragraph 47D(e)(v) of this Defence.~~

Particulars under paragraphs 35ZZA(i)(v), 35ZZC(h)(v), **Error! Reference source not found.**, 39(r)(v), 40(l)(v) and 40A(p)(v) of this Defence.

IAL also relies on matters pleaded in Annexure A and Annexure C of IAL's Defence to the SOC.

(A) any reliance by Credit Suisse Virtuoso on the alleged "conduct" (which is denied) was not reasonable because it failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into:

a. the transactions pursuant to which Credit Suisse Virtuoso acquired the NMC Notes as pleaded in paragraph 33A;

b. the purported insurance arrangements (including Policy TS-03008 and the purported endorsements thereto); and

c. BCC/Brereton's authority on behalf of IAL as referred to in the SOC;

in circumstances where it knew, or ought reasonably to have known, that BCC and Brereton did not have authority to enter into Policy TS-03088, and its purported endorsements and, had they done so, the damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

Particulars

Particulars under paragraph 104C(k) of this Defence.

IAL repeats paragraph 35ZZAAC(ja) of this Defence;

IAL also relies on the matters pleaded in Annexure C of this Defence.

(da) says that any reliance by Credit Suisse Virtuoso on the alleged "conduct" (which is denied) was not reasonable in circumstances where, as the Applicants admit, BCC and Brereton did not have ostensible authority to issue any of the policies or endorsements the subject of these proceedings;

Particulars

Letters from Gilbert + Tobin dated 29 June (IAL.500.020.0003) and 10 July 2026 (IAL.500.020.0004).

~~Particulars under paragraph **Error! Reference source not found.** of this Defence.~~

(e) denies paragraph 104A(c) of the SOC and says further that:

(i) there is no pleading as to the manner in which Credit Suisse Virtuoso in fact relied on the conduct referred to in paragraphs 95 to 102 of the SOC or as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 104A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 104A(b) of the SOC;

(iii) ~~having regard to the matters in paragraphs 104A(e)(i) and 104A(e)(ii) of this Defence, does not know and therefore cannot admit that Credit Suisse Virtuoso did in fact rely, or rely in good faith, on the conduct referred to in~~

~~paragraphs 95 to 102 of the SOC, at all or in any relevant respect;~~ having regard to the matters pleaded in Annexure C to IAL's Defence to the SOC, Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct referred to in paragraphs 95 to 102 of the SOC, at all or in any relevant respect and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing;

Particulars

IAL refers to and repeats paragraphs 6 to 16 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

(f) further, ~~IAL reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~ if, which is denied Credit Suisse Virtuoso was a "client" with respect to Policy TS-03088 for the purpose of section 917A(1) of the *Corporations Act*, the exception in section 917D of the Corporations Act is available because:

(i) Brereton disclosed to Credit Suisse Virtuoso that he did not have authority to execute the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence on behalf of IAL;

(ii) Brereton disclosed his lack of authority prior to his execution of the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence;

(iii) the disclosure by Brereton was of such clarity and prominence as Credit Suisse Virtuoso would reasonably require for the purposes of deciding whether to acquire the relevant assets; and

Particulars

IAL refers to and repeats the particulars to paragraph 104A(aa)(iii)(C) above.

The disclosure by Brereton to Marsh and GCUK is sufficient to act as a disclosure to the Applicants for the purpose of section 917D of the Corporations Act, in circumstances where:

(a) the insurance policies were arranged by Marsh and GCUK; and

(b) the Loss Payee Endorsement provided that "[i]t is the Insured's obligation to communicate any relevant information and/or contractual amendments to the Loss Payee".

The Applicants knew that Policy TS-03008, as purportedly amended by the endorsements pleaded in paragraph 104A(aa)(iii)(C)(b) of this Defence, represented a risk that exceeded A$50 million, being the limit of Brereton's authority as disclosed to Marsh and GCUK staff and was issued without the approval of IAL and Scor Re.

Particulars

Particulars under paragraph 35ZY(i) of this Defence.

Particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in 40A(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

~~IAL also makes this same reservation under section 917D of the *Corporations Act* in relation to Credit Suisse Virtuoso (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.~~

(iv) further or in the alternative to paragraphs 104A(f)(i) to 104A (f)(iii), BCC disclosed to the Applicants that Brereton did not have authority to execute the policies and endorsements referred to in paragraph 104(aa)(iii)(C)(b) of this Defence on behalf of IAL on or after 2 July 2020 by reason of BCC's notifications to Greensill and Marsh of concerns that Brereton had exceeded his delegated authority limits;

(v) BCC disclosed the fact in paragraph 104A(f)(iv) before the client relied on the conduct from 2 July 2020 onwards; and

(vi) the disclosure by Brereton was of such clarity and prominence as the Applicants would reasonably require for the purposes of deciding whether to acquire the relevant assets;

Particulars

IAL refers to and repeats the particulars to paragraph 104A(aa)(iii)(C) and 104A(f) above.

(fa) further or in the alternative, the exception in section 917D is available because:

(i) on the proper construction of section 917D:

(A) where a representative of a financial services licensee engages in conduct when dealing with its, his or her client;

(B) the representative disclosed to that client that certain conduct is not within its, his or her authority in relation to the licensee before the client relied on the conduct;

(C) the clarity and the prominence of the disclosure was such as a person would reasonably require for the purpose of deciding whether to acquire the relevant financial service; and

(D) a third party relies on the conduct of the representative, then "the client" within the meaning of section 917D includes the client referred to in paragraph 104A(fa)(i)(A);

(vii) Brereton disclosed to GCUK that he did not have authority to execute the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence;

Particulars

IAL refers to and repeats the particulars to paragraphs 104A(aa)(iii)(C) and 104A(f) above.

(viii) Brereton disclosed his lack of authority prior to his execution of the policies and endorsements referred to in paragraph 104A(aa)(iii)(C)(b) of this Defence;

(ix) the disclosure by Brereton was of such clarity and prominence as GCUK would reasonably require for the purposes of deciding whether to acquire the relevant financial service; and

(x) in the premises, to the extent Credit Suisse Virtuoso relied on "conduct" of BCC or Brereton in relation to its client, GCUK, the disclosure by Brereton to GCUK is sufficient to engage the exception in section 917D;

(g) otherwise denies paragraph 104A of the SOC.

104B As to paragraph 104B of the SOC, IAL:

(a) repeats paragraphs 95 and 104A of this Defence;

(b) denies the allegations against IAL; and

(ba) says that in circumstances where, having regard to Credit Suisse Virtuoso's admissions as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to Credit Suisse Virtuoso's claims, it would be contrary to or otherwise not consistent with policy for IAL to be held liable for the losses claimed and/or for Credit Suisse Virtuoso to be entitled to or otherwise receive compensation for any "loss"; and

(c) otherwise, does not know and cannot admit paragraph 104B of the SOC.

104C In further answer to Credit Suisse Virtuoso's claim, insofar as IAL is liable for any loss and damage suffered by Credit Suisse Virtuoso, which is denied, IAL says:

(a) first, in respect of IAL's alleged responsibility under Division 6 of Part 7.6 of the *Corporations Act*:

(i) Credit Suisse Virtuoso asserts that IAL is responsible for certain conduct of BCC and/or Brereton under Division 6 of Part 7.6 (SOC, paragraphs 47D, 94A, 104A, 104B, 108A and 108B, and 108ZJ (first appearing));

(ii) it repeats paragraphs 47B to 47D of this Defence, including the allegations as to the deficiencies in Credit Suisse Virtuoso's pleading based on Division 6 of Part 7.6;

(iii) the responsibility deemed by Division 6 of Part 7.6 of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and Credit Suisse Virtuoso;

(iv) further, IAL's responsibility and/or liability to Credit Suisse Virtuoso under Division 6 of Part 7.6 is no greater than any responsibility and/or liability of BCC and/or Brereton to Credit Suisse Virtuoso;

(v) the causes of action relevantly alleged against BCC and Brereton include contraventions of:

(A) section 1041H of the *Corporations Act* (SOC, paragraphs 95 to 102), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(B) section 18 of the *ACL* (SOC, paragraphs 95 to 102), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 236 of the *ACL*; and

(C) section 12DA of the *ASIC Act* (SOC, paragraphs 95 to 102), in respect of alleged misleading or deceptive conduct said to give rise to a cause of action for loss or damage under section 12GF of the *ASIC Act*;

(D) section 1041E of the *Corporations Act* (SOC, paragraphs 105 to 108) in respect of alleged false and misleading conduct said to give rise to a cause of action for loss or damage under section 1041I of the *Corporations Act*;

(E) under the general law for breach of the tort of deceit (SOC, paragraphs 108ZA to 108ZI) said to give rise to a cause of action in damages;

(b) secondly, the loss said to have arisen because of the contraventions and breaches referred to in paragraphs 104C(a) of this Defence is the amount (plus interest) that Credit Suisse Virtuoso allegedly paid to acquire the NMC Notes;

(c) thirdly, causes of action under each of section 1041I of the *Corporations Act*, section 236 of the *ACL* and section 12GF of the *ASIC Act* are subject to relevantly analogous proportionate liability regimes, set out in, relevantly, Part 7.10, Division 2A, of the *Corporations Act*, Part IVA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and Part 2, Division 2, Subdivision GA of the *ASIC Act*;

(d) fourthly, in respect of each of the proportionate liability regimes, Credit Suisse Virtuoso's claim is:

(i) a claim for damages (relevantly, under sections 1041I, 236 and/or 12GF) within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act* respectively;

(ii) a claim for "economic loss" within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the *CCA* and section 12GP of the *ASIC Act*; and

(iii) a claim for loss caused by conduct allegedly done in contravention of sections 1041H, section 18 and/or section 12DA, within the meaning of section 1041L of the *Corporations Act*, section 87CB(1) of the CCA and section 12GP of the *ASIC Act* respectively;

(together the "**Apportionable Claims**");

(e) each of the Apportionable Claims is an "apportionable claim" for the purposes of the relevant proportionate liability regimes;

(f) fifthly, under each of the relevant proportionate liability regimes, a "concurrent wrongdoer" in relation to a claim is a person who is one of two or more persons whose acts or omissions (or act or omission) caused independently of each other or jointly, the damage or loss that is the subject of the claim (*Corporations Act* section 1041L(3); *CCA* section 87CB(3); ASIC Act section 12GP(3));

(g) sixthly, under each of the relevant proportionate liability regimes, in any proceedings involving an apportionable claim:

(i) the liability of a defendant who is a concurrent wrongdoer in relation to that 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 the defendant's responsibility for the damage or loss; and

(ii) the Court may give judgment against the defendant for not more than that amount,

(*Corporations Act* section 1041N(1); *CCA* section 87CD(1); *ASIC Act* section 12GR(1));

(h) seventhly, under each of the relevant proportionate liability regimes, in apportioning responsibility between defendants in the proceedings:

(i) the Court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(ii) the Court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings,

(*Corporations Act* section 1041N(3); *CCA* section 87CD(3); *ASIC Act* section 12GR(3));

(i) eighthly, says further that, in respect of each of the Apportionable Claims under the *ASIC Act,* the *CCA* and the *Corporations Act*, in the event that the loss or damage on which Credit Suisse Virtuoso sues was partly a result of Credit Suisse Virtuoso's failure to take reasonable care, the damages that Credit Suisse Virtuoso may recover are to be reduced to the extent that the Court thinks just and equitable having regard to Credit Suisse Virtuoso's share in the responsibility for the loss or damage (*ASIC Act* section 12GF(1B); *Corporations Act* section 1041I(1B); *CCA* section 87CD(1);

Particulars

There is no allegation that there was an intention to cause loss or damage or that the loss or damage was caused fraudulently.

(j) ninthly, says that on the assumption, which is not admitted, that the claimed loss was loss or damage suffered because of the alleged contraventions, then:

(i) Credit Suisse Virtuoso was contributorily negligent as set out in paragraph 104C(k) of this Defence; and

(ii) there were "concurrent wrongdoers" as set out in paragraphs 104C(ka) to 104C(v) of this Defence (**Concurrent Wrongdoers**),

in respect of that loss, such that:

(iii) in the event that the liability of BCC and/or Brereton is, or should be, limited under the relevant proportionate liability regimes, any responsibility of IAL for the conduct of BCC and/or Brereton under sections 917A, 917B or 917C of the *Corporations Act* for the conduct yielding that liability is correspondingly reduced; and

(iv) the direct liability of IAL (if any) should be limited under the relevant proportionate liability regimes;

Credit Suisse Virtuoso

(k) says that:

(i) Credit Suisse Virtuoso was contributorily negligent because:

(A) 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

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

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 (IAL.500.020.0002).

(B) at all material times, Credit Suisse Fund Services (Luxembourg) SA (**CSFS**) was the agent of CSFM;

Particulars

IAL 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**). 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).

(C) Credit Suisse Virtuoso, including acting with or through CSAM, CSFM and CSFS (**CS Entities**) failed to undertake any or adequate investigations and/or due diligence into:

a. the transactions pursuant to which Credit Suisse Virtuoso acquired the NMC Notes as pleaded in paragraph 33A of the SOC;

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

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

d. 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

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 IAL infers includes Credit Suisse Virtuoso and the CS entities,

"seriously breached" their supervisory duty 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. FINMA also found serious deficiencies in their organisation structures, and that the CS entities did not sufficiently fulfil their supervisory duties as asset managers. FINMA concluded that there was a serious breach of Swiss supervisory law by the CS entities.

FINMA found that the CS entities' asset management company had little knowledge and control over specific claims which had been securitised and transferred to the CS entities and Credit Suisse Virtuoso did not select nor review, nor did Credit Suisse Virtuoso arrange, insurance cover: "Credit Suisse also left it to the latter [i.e., Greensill] to arrange the insurance cover in its own name".

IAL refers to the press release issued by FINMA on 28 February 2023 titled "FINMA concludes "Greensill" proceedings against Credit Suisse". IAL refers also to the administrative sanction imposed by the Luxembourg regulator CSSF on Credit Suisse Fund Management S.A. (CSFM) on 5 December 2024, notification of which was published on 20 December 2024: "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 interest and valuation". (CSA.7000.0003.2019).

The entities in the Credit Suisse group to whom Credit Suisse Virtuoso delegated responsibility (directly or indirectly) are: (a) CSAM; (b) CSFM; and (c) CSFS, in the premises of paragraphs 104C(k)(i)(A)-(B) above and the particulars subscribed thereto.

The conduct (including omissions) that IAL 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 the respective CS Entities. The material also indicates that there was or may have been an intermeshing of conduct and responsibility between the various CS Entities. Whether, and the extent to which, a particular CS Entity committed a certain act or omission separately from, or together with, another CS Entity is a matter necessarily and peculiarly within the knowledge of Credit Suisse Virtuoso and the CS Entities.

It is to be inferred from all the circumstances, including the centrality of Series Supplement 2 to the issuing and assignment of notes, that Credit Suisse Virtuoso (and each other relevant Credit Suisse entity) was aware of Series Supplement 2 (and any similar disclosure documents created in the course of the transactions by which notes were created and issued). Series Supplement 2 (and any similar documents) put Credit Suisse Virtuoso on notice that (inter alia): (a) there were clear

and substantial risks in investing in the notes (page 6); (b) Credit Suisse Virtuoso should not rely on advice, recommendations, assurances or guarantees from Hoffman, Greensill, Citibank NA in respect of notes acquired by Credit Suisse Virtuoso (page 7); (c) only very limited information was included in disclosure documents about the underlying account debtors, and no information was included about credit quality or financial performance, or the existence or likely performance of (inter alia) underlying accounts receivable (pages 7-8); (d) Hoffman, Greensill, Citibank NA (amongst others) had not completed any due diligence on the possible risks of being exposed to the account debtors (page 8); (e) noteholders, including Credit Suisse Virtuoso, should make their own enquiries as to (inter alia) the financial position of the entities involved in the underlying transactions and the accounts receivable (if any) (page 8); (f) no representation was made as to the credit quality of entities involved in the alleged underlying transactions and no due diligence had been conducted (pages 8-9); (g) there were significant risks arising because the majority of the "Accounts Receivable" were "Future Accounts Receivable", and that gave rise to significant risks, including because there was or might be no enforceable right and no security (pages 8-12) IAL refers in this respect to the whole of Series Supplement 2. Despite being expressly and clearly informed of these matters, Credit Suisse Virtuoso failed to conduct any, or adequate, enquiries into: (a) the creditworthiness of the underlying supplier and purchaser; (b) the existence or likely future existence of accounts receivables; (c) the risks identified in Series Supplement 2. The risks identified in Series Supplement 2 were the very risks which ultimately led to the alleged losses for which Credit Suisse Virtuoso now claims. It assumed those risks when it acquired the notes.

IAL refers to and repeats paragraphs 6, 7, 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

~~IAL will seek discovery of the communications between Credit Suisse Virtuoso and the representatives of the Greensill Group, including the named "Insureds", in relation to the circumstances in which Credit Suisse Virtuoso took on the risks for transactions pleaded in the SOC including the Annexures thereto, related due diligence (if any) undertaken by Credit Suisse Virtuoso and Credit Suisse Virtuoso's own checks and balances (if any) in relation to the risks it took on and the investments it promoted which resulted in the issue of "Notes".~~

~~IAL may provide further particulars after further discovery.~~

(D) the conduct of, or attributable to, Credit Suisse Virtuoso alleged at paragraphs 104C(k)(i)(C) of this Defence fell below the standard of care required of a reasonable person in its position;

(DA) the Applicants now accept that, at all material times, the NMC Notes were not covered by Policy TS-03088, and that is a matter which would or could with reasonable diligence have been ascertained by Credit Suisse Virtuoso prior to any relevant reliance;

(E) had Credit Suisse Virtuoso's conduct not fallen below the standard of care required of a reasonable person in its position, the harm for which it now sues would have been avoided in whole or in part,

(ii) further or alternatively, if one or more of the grounds alleged by BCC at paragraphs 104A(b) to (s) of its defence to the SOC is established with respect to Credit Suisse Virtuoso, CSFM, CSAM and/or CSFS, then Credit Suisse Virtuoso was contributorily negligent for the reasons alleged by BCC in those paragraphs.

CSAM, CSFM and CSFS

(ka) says that:

(i) Each of CSAM, CSFM and CSFS is a "concurrent wrongdoer" because:

(A) each of CSAM, CSFM and CSFS voluntarily assumed a responsibility to Credit Suisse Virtuoso to manage the investment in the NMC Notes;

Particulars

On 24 March 2017, CSFM and CSAM entered into a 'Portfolio Management Agreement', under which CSFM appointed CSAM as the 'Portfolio Manager' of certain sub-funds of Credit Suisse Virtuoso SICAV-SIF and Credit Suisse Nova (Lux) (including the Credit Suisse (Lux) Supply Chain Finance Fund (**Virtuoso Fund**) and the Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund on 22 May 2017 and 1 April 2018, respectively) (**Portfolio Management Agreement**). Credit Suisse Virtuoso alleges in these proceedings that it is acting in respect of the Virtuoso Fund: SOC [3(b)]. Under the terms of the Portfolio Management Agreement, CSAM was responsible for investing and reinvesting the assets of the Virtuoso Fund and the Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund.

On 31 March 2017, CSFM and Credit Suisse Virtuoso SICAV-SIF entered into a Management Agreement, by which Credit Suisse Virtuoso SICAV-SIF designated CSFM as its Alternative Investment Fund Manager (**AIFM**) (**Management Agreement**). Under the terms of the Management Agreement, CSFM, as the AIFM, was responsible for administering and managing the Virtuoso Fund (as a sub-fund of Credit Suisse Virtuoso SICAV-SIF).

Further, as to the relationship between Credit Suisse Virtuoso and CSAM and CSFM, IAL refers to and relies upon the allegations at paragraph 104C(k)(i)(A) above and the particulars subscribed thereto.

Between 2017 and 2021 (and outside this period), CSFS acted as the 'Central Administrator' for CSFM. Its role included monitoring investment policies and investment policy restrictions, regulatory investment compliance, risk profiles and counterparty risk on a post-trade basis.

Further, as to the relationship between Credit Suisse Virtuoso and CSFS, IAL refers to and relies upon the allegations at paragraphs 104C(k)(i)(A)-(B) above and the particulars subscribed thereto. With respect to the responsibility assumed by CSFS to Credit Suisse Virtuoso, IAL further refers to and relies upon the allegations at paragraphs 104C(kl)(i)-(vi) below.

(B) each of CSAM, CSFM and CSFS 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, Credit Suisse Virtuoso would suffer loss or damage;

Particulars

The precautions that a reasonable person in the position of each CSAM, CSFM and CSFS would have taken are those pleaded in paragraph 104C(k)(i) of this defence and paragraphs 104A(a) to (s) of BCC's defence to the SOC that each of those entities did not take.

(C) in the premises, each of CSAM, CSFM and CSFS 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;

(D) Credit Suisse Virtuoso delegated management of its investment in the NMC Notes to several related entities, including the CS Entities;

(E) the particular functions and responsibilities delegated to the respective CS Entities, including the allocation of those functions and responsibilities amongst the CS Entities, is a matter necessarily and peculiarly within the knowledge of Credit Suisse Virtuoso;

(F) IAL's knowledge and understanding of the allocation of particular functions and responsibilities delegated to the respective CS Entities derives from evidence and documents discovered by Credit Suisse Virtuoso, which material at times fails to distinguish between the acts and omissions of the respective CS Entities;

(G) the material produced by the CS Entities to date indicates that there was or may have been an intermeshing of conduct and responsibility across the various CS Entities;

(H) in the premises, IAL is not in every instance reliably able to identify which of the particular CS Entities is responsible for the particular act or omission complained of;

(I) with those qualifications, IAL says that each of the CS Entities breached its duty to Credit Suisse Virtuoso by failing to undertake any or adequate investigations or due diligence into:

a. the transactions pursuant to which Credit Suisse Virtuoso acquired the NMC Notes as pleaded in paragraph 33A of the SOC;

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

c. BCC/Brereton's authority on behalf of IAL as referred to in the SOC,

Particulars

IAL refers to and repeats the particulars subscribed to paragraph 104C(k)(i)(C) above, and paragraphs 104A(a) to (f) of BCC's defence to the SOC.

IAL refers to and repeats paragraphs 6, 7, 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known in support of the particulars of knowledge in those paragraphs of Annexure C.

(IA) Credit Suisse Virtuoso now accepts that, at all material times, the NMC Notes were not covered by Policy TS-03088, and that is a matter which would or could with reasonable diligence have been ascertained by CSAM, CSFM and CSFS prior to any relevant reliance;

(J) further or alternatively, to the extent IAL is able to identify particular acts and omissions of the respective CS Entities, IAL says as follows with respect to such acts and omissions;

(K) by reason of the acts and omissions pleaded in paragraph 104C(kb) of this Defence CSAM breached its duty to Credit Suisse Virtuoso;

(L) by reason of the acts and omissions pleaded in paragraph 104C(kg) of this Defence, CSFM breached its duty to Credit Suisse Virtuoso;

(M) by reason of the acts and omissions pleaded in paragraph 104C(kl)(vii) of this Defence, CSFS breached its duty to Credit Suisse Virtuoso;

(N) those acts and omissions caused the loss the subject of the claim; and

(O) in the premises, each of CSAM, CSFM and CSFS is liable to Credit Suisse Virtuoso for the loss claimed in this proceeding.

CSAM

(kb) CSAM failed to:

(i) identify, limit and/or otherwise manage (or adequately identify, limit or otherwise manage) the risks associated with alleged supply chain financing (including the risks identified in Series Supplement 2) at the time that the funds were launched or at any time thereafter;

Particulars

The SCF Funds were classified as a "New Product" rather than a "New Business", the latter of which is a more formalised process that placed a strong focus on risk management. When determining which classification applied, various new elements of the SCF funds, such as lack of experience with funds in the area of supply chain financing, the dependencies on Greensill, the high complexity of the SCF funds, the use of insurance as a form of security, and the introduction of multi-obligor programmes were not or not sufficiently taken into account by CSAM, despite there being no other fund which included these features: see written ruling of FINMA dated 9 December 2022 in Credit Suisse matters concerning Greensill Supply Chain Finance Funds (CSA.5000.0007.0715) (**FINMA Order**) [188]; [193].

(ii) ensure that the governance arrangements concerning the New Product Board, which was responsible for assessing the risks of new products, were adequate to identify, limit and/or otherwise manage the risks associated with supply chain financing;

Particulars

The New Product Board Charter did not define a quorum for attendance or a quorum for decision-making. At all meetings which concerned the launch of the funds, more than half of the members were absent and the sponsors of the funds were always absent and were not available to the New Product Board for questions (FINMA Order [192]).

(iii) undertake adequate due diligence with respect to Greensill prior to the launch of the Virtuoso Fund;

Particulars

At the time of the New Product Board meeting with respect to the Virtuoso Fund, the results of the due diligence were not yet available. The review undertaken by CSAM was limited to the completion of an 18-page questionnaire and responding to a few further questions from CSAM to clarify the responses. The due diligence was not tailored to the complexity of the proposed new business and from the outset, CSAM was unable to identify and address the risks in relation to Greensill (FINMA Order [195]-[197]).

IAL refers to and repeats paragraphs 6, 7, 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that CSAM knew or ought to have known in support of the particulars of knowledge in those paragraphs of Annexure C.

(iv) undertake adequate ongoing due diligence with respect to Greensill following the launch of the Virtuoso Fund;

Particulars

Following the launch of the Virtuoso Fund, the launch of three additional funds failed to recognise and correct the shortcomings of the initial due diligence. In view of the development of the business relationship, new due diligence should have been undertaken or the existing due diligence should have been updated, including in view of the:

- numerous information requests from journalists and/or negative press reports (for example, in September 2018 (CSA.5000.0001.0187), November 2018 (CSA.5000.0003.1442), July 2019 (CSA.5000.0002.2811), April 2020 (CSA.5000.0003.4900), May 2020 (CSA.5000.0001.1573) and July 2020 (CSA.5000.0004.2984);
- the enquiries made by the FINMA; and
- fact that the dependence on Greensill had steadily increased with the greater complexity and the strong growth of the funds.

The inadequacy of the initial due diligence should also have been recognised. There was no requirement that provided for a regular review of

Credit Suisse's important business partners (FINMA Order [198], [238]; CSA.5000.0002.3205).

IAL refers to and repeats paragraphs 6, 7, 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that CSAM knew or ought to have known in support of the particulars of knowledge in those paragraphs of Annexure C.

(v) adequately monitor Credit Suisse Virtuoso's business relationship with Greensill;

Particulars

CSAM delegated key tasks to Greensill, including the selection and design of the SCF programmes and taking out insurance in respect of those programmes. The audit and the monitoring of this business relationship with Greensill was deficient in various respects. By failing to undertake due diligence on Greensill, CSAM failed to ensure that the business relationship with Greensill was properly scrutinised internally. Existing alarm signals and warnings were ignored or circumvented (FINMA Order [239]-[241]).

(vi) adequately consult its own in-house lawyers regarding the risks posed by the Virtuoso Fund;

Particulars

Despite the increasing complexity of the SCF programmes and the steadily rising number of obligors, the Operational Memoranda (**OPM**) that regulated the process for including new programmes in the Virtuoso Fund did not include General Counsel in the process for reviewing programme documentation until January 2020 (CSA.5000.0003.4876; FINMA Order [201]).

(vii) ensure that there was appropriate insurance coverage with respect to future receivables, despite CSAM being aware of the potential risks associated with the securitisation of future receivables;

Particulars

CSAM had a limited understanding of how future receivables were monitored (CSA.5000.0001.1514). In June 2020, Lukas Haas (CSAM) raised concerns regarding insurance coverage with respect to future receivables, which were never adequately addressed (CSA.5000.0002.5591, CSA.5000.0002.5721, FINMA Order [88]).

The novelty, importance and subsequent doubts about the insurance urgently required an in-depth analysis and, in view of the role of Greensill Bank, would have made additional clarifications necessary. In particular, it would have been necessary to examine what risks existed in relation to the insurance cover and whether a loss could have been minimised within a reasonable period of time in the event of a claim with regard to the counterparty risk without significant legal risks (FINMA Order [205]).

IAL repeats the particulars to paragraph 104C(k)(i)(C) of this Defence insofar as they relate to the risks of "Future Accounts Receivables" disclosed in Series Supplement 2.

IAL refers to and repeats paragraphs 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that CSAM knew or ought to have known in support of the particulars of knowledge in those paragraphs of Annexure C.

(viii) adequately identify, limit and/or otherwise manage and record conflicts of interest;

Particulars

No potential conflicts of interest were recorded in the CSAM "Conflicts of Interest Register". In particular, CSAM did not identify Greensill's conflict of interest in relation to the financing of Vision Fund portfolios following a side letter agreement between CSFM, Credit Suisse Virtuoso SICAV-SIF and SoftBank and the repayment of Softbank's investment from the Virtuoso Fund. Greensill was still able to sell notes from Vision Fund portfolio companies to the SCF funds on a large scale, albeit with certain restrictions, which was not questioned by CSAM. This conflict of interest materialised to the extent that Greensill put the interests of the Vision Fund and its own shareholder Softbank first in relation to the equity investment in Katerra to the detriment of the SCF fund investors (FINMA Order [237]; CSA.5000.0002.6828).

(ix) adequately identify, limit and/or otherwise manage the risks associated with future receivables in pre-trade monitoring, which comprised around 30% of the total note portfolio calculated over the period from 2017 to closure;

Particulars

CSAM was not in a position to distinguish future receivables from actual receivables and to monitor them due to, among other things, the inadequate

definition of the term "Receivables" and the lack of documentation of the multi-obligor programme. In connection with the two deep dives initiated by Risk in 2019 and 2020 there was no critical examination with respect to the adequate recording of credit risks for multi-obligor programmes or "future receivables" (FINMA Order [97], [121], [217]-[219]).

(x) adequately identify, limit and/or otherwise manage the credit risk associated with multi-obligor programmes, which were monitored solely with regard to the credit risk of the buyer and not also with regard to the credit risk of the supplier or seller;

Particulars

There were no formal processes within CSAM for dealing with changes to the programmes or which provided for a periodic and comprehensive review of the most important funds or business relationships (FINMA Order [211]-[212]).

Since the introduction of the multi-obligor programmes, CSAM was never fully aware of which credit risks existed vis-à-vis which companies. There was no systematic monitoring of this risk. The monitoring of concentration limits was also focused exclusively on the buyer as the relevant obligor for multi-obligor programmes (including those with future receivables) (FINMA Order, [218]).

(xi) adequately identify, limit and/or otherwise manage the exposure to the Gupta Family Group (***GFG***) Alliance, despite the reduction of exposure to the GFG Alliance being an issue since the end of 2018 and despite the repeated critical media coverage of Greensill and persons with whom Greensill had business relationships (including Sanjeev Gupta) since July 2018 onwards;

Particulars

The identification of the GFG nexus of SCF programmes was based on information provided by Greensill and a review of the information provided by Greensill was not documented (FINMA order [209] – [210], [213], [249] – [257]).

The CSAM CEO made concessions to Greensill in cases where other CSAM employees wanted to reject Greensill notes in order to achieve the agreed reduction targets and Greensill escalated the matter to the management (CSA.5000.0002.2835, FINMA Order [209]).

At the beginning of 2021, a target to reduce exposure to the GFG Alliance agreed at the end of 2020 was not met by Greensill and was extended until the end of March 2021 (CSA.5000.0002.7070, FINMA Order [209]).

IAL refers to and repeats paragraphs 6, 7, 8, 9, 10, 11 and 14 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known in support of the particulars of knowledge in those paragraphs of Annexure C.

(xii) adequately identify, limit and/or otherwise manage the exposure to Vision Fund / Softbank or to critically examine the relationship between Greensill and Vision Fund / Softbank;

Particulars

CSAM did not ensure that the complex relationship between Greensill Capital and the Vision Fund / Softbank was adequately or critically examined (FINMA Order [259] – [260]).

(xiii) sufficiently inform investors about the risks associated with the "loss payee" status of Credit Suisse for insurance, thereby failing to fulfil its information obligations adequately;

Particulars

Neither the prospectus of the Virtuoso Fund nor the marketing materials included any reference to the risks associated with the "loss payee" status for the insurance protection. That Tokio Marine and IAL were referred to as two separate insurers in the marketing material after April 2019 gave a false picture of diversification of the insurers (FINMA Order [245]).

(xiv) sufficiently inform investors about the risks associated with multi-obligor programmes with respect to the Virtuoso Fund from the beginning of 2018 until they were disclosed for the first time in an amended prospectus dated 1 July 2019; and

Particulars

Multi-obligor programmes were included in the Virtuoso fund from the beginning of 2018 and corresponding notes were acquired, but only disclosed with the amendment to the prospectus on 1 July 2019. This meant that investors were not informed about specific risks for a long period of time. As a result, investors lacked the basis for deciding on their investment (FINMA Order [248]).

(xv) have in place an adequate risk management system.

Particulars

CSAM's risk management was not organised in such a way that all material risks could be adequately identified, assessed, managed and monitored (FINMA Order [247]).

(kc) By reason of the conduct pleaded in paragraph 104C(kb) above, CSAM breached its duties to Credit Suisse Virtuoso pleaded in paragraph 104C(ka) of this Defence.

(kd) By reason of the conduct pleaded in paragraph 104C(kb) above, CSAM breached legislative duties owed under Swiss law.

Particulars

FINMA made findings that CSAM breached various legislative duties owed by CSAM: FINMA Order [Sections 5.2 and 6].

(ke) The Portfolio Management Agreement contained an express term that required CSAM to comply with applicable laws and regulations and to take reasonable care in the performance of its obligations under the Portfolio Management Agreement.

Particulars

Portfolio Management Agreement (CSA.0001.0011.1292) [3.1].

(kf) By reason of the conduct pleaded in paragraph 104C(kb) above, CSAM breached the contractual obligations pleaded in paragraph 104C(ke) above.

(kfa) Credit Suisse Virtuoso now accepts that, at all material times, the NMC Notes were not covered by Policy TS-03088, and that is a matter which would or could with reasonable diligence have been ascertained by CSAM prior to any relevant reliance;

CSFM

(kg) CSFM failed to:

(i) ensure that the due diligence on Greensill carried out under the direction of CSFM was adequate;

Particulars

The due diligence on Greensill carried out under the direction of CSFM was limited to an 18 page 'Due Diligence Questionnaire' which was completed by Greensill and signed on 5 May 2017 after the launch of the Virtuoso Fund on 24 April 2017 (CSA.0001.0009.0019; Affidavit of Guy Reiter sworn on 25 October 2024 (paragraph 28)).

(ii) verify the existence and nature of the receivables underlying the Notes bought by the delegated portfolio manager;

(iii) verify that the types of Notes in which the delegated portfolio manager invested on behalf of Credit Suisse Virtuoso effectively corresponded to the types of Notes defined in the investment policy and instruments of Credit Suisse Virtuoso as described in the successive versions of their offering documents;

(iv) have in place adequate internal control mechanisms ensuring that the assets of Credit Suisse Virtuoso managed by CSFM were invested in accordance with Credit Suisse Virtuoso's management regulations or instruments of incorporation, having regard to the nature of Credit Suisse Virtuoso;

(v) monitor effectively at any time the delegated portfolio management activity and failed to review the services provided by the delegated portfolio manager on an ongoing basis. In particular, CSFM failed to monitor whether its delegate complied with the investment policy on an ongoing basis;

(vi) ensure compliance with the investment policy set out in the offering documents by reason of the investments by Credit Suisse Virtuoso in notes backed by future account receivables;

(vii) ensure that undue costs were not charged to the Virtuoso Fund in respect of the investments by Credit Suisse Virtuoso in supply chain finance notes, for which not all costs / fees were disclosed to investors;

(viii) ensure that the risk management systems, including the risk management policy and risk profiles in place over the lifetime of the Virtuoso Fund:

(A) addressed all relevant risks to which the funds that CSFM managed were exposed;

(B) implemented the necessary and adequate techniques, tools and arrangements for assessing the exposure of the funds to all relevant risks to which these funds were or might have been exposed; and

(C) addressed in an adequate manner the credit risk relating to some Notes (notably Notes backed by future account receivables), the risks relating to the insurance coverage of the Notes, the concentration risks arising from the exposure to groups / alliances of companies / businesses linked to a common ultimate beneficial owner as a result of the investments in the Notes, as well as the concentration risks in relation to the insurance coverage in place for some of the Notes;

(ix) in respect of the volume (USD 9.32 billion as of 26 February 2021, i.e. before the suspension on 1 March 2021) and the complexity of the sub-funds managed by CSFM and administered by CSFS (including the Virtuoso Fund), ensure that the risk management policy, as well as the arrangements, processes and techniques for assessing the exposure of the Virtuoso Fund to all relevant risks were appropriate given the nature, scale and complexity of those funds;

(x) in respect of the permanent risk management function of CSFM, assess, monitor and periodically (at least annually) review the adequacy and effectiveness of the risk management policy and the related arrangements, processes and techniques, which it also did not review in case of material changes to the investment strategy and objectives of an Alternative Investment Fund and external events indicating than an additional review is required;

(xi) in respect of the reporting by CSFM's permanent risk management function to the senior management and the board of directors of CSFM, provide for a comprehensive overview of the risks of the Virtuoso Fund, as in particular, based on the failure of CSFM to establish, implement and maintain an adequate risk management policy identifying all relevant risks, the risk management reporting did not provide for a coverage of all relevant risks, including the specific risks linked to the set-up of these funds;

(xii) implement for a prolonged period of time an appropriate liquidity management system and related procedures to assess in an adequate manner the asset liquidity risk of the Notes as it did not correctly identify the potentially low liquidity of the Notes, set out in the offering documents and in the risk profiles of the Virtuoso Fund;

(xiii) adequately manage conflicts of interest in relation to the Virtuoso Fund, those conflicts of interest existing at the level of Greensill acting as sole originator of Notes, which had not been identified in due time by CSFM:

(A) consequently, CSFM did not record these conflicts of interest in its conflicts of interest registers dated 2017 to 2020. More particularly, multiple investments made by the delegated portfolio manager on behalf of the Virtuoso Fund, upon proposals of Greensill, were made in a context where there was a potential conflict between the interests of Greensill on the one hand and the interests of the funds and their investors on the other hand, thus exposing the funds to conflicts of

interest with a material risk of damage for the investors. CSFM was exposed in the context of these investments to the risk that Greensill would not be objective in the sourcing of the Notes which were proposed to the delegated portfolio manager and subsequently invested into by the delegated portfolio manager; and

(B) in addition, the failure by CSFM to identify (in due time) these conflicts of interest prevented CSFM from managing and monitoring in an adequate manner these conflicts of interest. CSFM also did not inform the investors about these conflicts of interest for which the management / monitoring efforts revealed ineffective.

Particulars

With respect to paragraphs 104C(kg)(ii)-(xiii), IAL refers to and relies on the administrative sanction imposed by the Luxembourg regulator CSSF on CSFM on 5 December 2024, notification of which was published on 20 December 2024 (**CSSF Administrative Sanction**).

(kh) By reason of the conduct pleaded in paragraph 104C(kg) above, CSFM breached its duties to Credit Suisse Virtuoso pleaded in paragraph 104C(ka) of this Defence;

(ki) By reason of the conduct pleaded in paragraph 104C(kg) above, CSFM breached legislative duties owed under Luxembourgish law;

Particulars

CSSF made findings that CSFM breached various legislative duties owed by CSFM: **CSSF Administrative Sanction.**

(kj) The Management Agreement contained express terms that required CSFM to comply with applicable laws and regulations and to take reasonable care in the performance of its obligations under the Management Agreement.

Particulars

Management Agreement (CSA.0001.0011.1297 and CSA.0001.0011.1296) [cl I, II 2.1, 4.1, III 1-2 and IV 1].

(kk) By reason of the conduct pleaded in paragraph 104C(kg) above, CSFM breached the contractual obligations pleaded in paragraph 104C(kj) above.

(kka) Credit Suisse Virtuoso now accepts that, at all material times, the NMC Notes were not covered by the Policy TS-03088, and that is a matter which would or could with reasonable diligence have been ascertained by CSFM prior to any relevant reliance;

CSFS

(kl) says that CSFS is a "concurrent wrongdoer" because:

(i) at all material times, CSFS was party to and/or agreed to:

(A) the Service Level Agreement, along with CSFM;

(B) internal investment guidelines developed by CSFM;

(C) the Virtuoso Risk Confirmation Letter;

(D) the Nova Risk Confirmation Letter;

Particulars

Affidavit of Guy Reiter sworn on 25 October 2024 (paragraphs 30, 91, 114).

Further agreements may be identified following discovery.

(ii) at all material times, CSFS:

(A) acted as, and was appointed as, the “Central Administrator” for CSFM;

(B) performed an internal audit function for the Credit Suisse group of companies;

(C) was the delegate of certain responsibilities of CSFM under the Virtuoso SICAV-SIF Management Agreement;

Particulars

Affidavit of Guy Reiter sworn on 25 October 2024 (paragraphs 35, 39, 52, 70, 116).

(iii) at all material times, CSFS was responsible for, and owed legal duties to engage in activities including, (inter alia):

(A) day-to-day post-trade monitoring of investment restrictions and limits of each sub-fund, including the Virtuoso Fund;

(B) identifying, reporting, responding to, and escalating any material issues it detected;

(C) implementing a post-trade control on insurance coverage in respect of the Virtuoso Fund;

(D) taking a monthly sample of positions and confirming, or taking steps to confirm, that the Virtuoso Fund was adequately covered as a loss payee under relevant insurance policies;

(E) monitoring of investment policy limits and restrictions, regulatory investment compliance, internal risk limits and counterparty

concentration risk for all sub-funds managed by CSFM and administered by CSFS (including the Virtuoso Fund);

(F) post-trade monitoring of investment restrictions to ensure compliance with the internal investment guidelines of each relevant sub-fund;

(G) escalating to the CSFM Compliance Team any identified active breach of any external investment guidelines, internal investment guidelines or offer documents;

(H) liaising with the CSFM Portfolio Management Team to assess and, if necessary, resolve the breach;

(I) providing independent assurance, including providing independent assurance to CSFM, on the effectiveness, design, and implementation of risk management frameworks;

(J) managing risks, controls and oversight undertaken by CSFM's "first" and "second" lines of defence;

(K) after-the-fact, independent checks that the risk management and internal controls designed to ensure that regulatory compliance implemented by the "first" and "second" lines of defence were functioning properly and as intended;

(L) preparing and presenting a three-year audit plan to the CSFM Board reflecting on all activities and functions of CSFM;

(M) monitoring investment policies and investment policy restrictions, regulatory investment compliance, risk profiles and counterparty risk on a post-trade basis;

(N) monitoring the credit rating of each obligor;

(O) acting on instructions from CSFM Compliance and Risk Management;

(P) implementing a sample-based post-trade control on the insurance coverage (or possible insurance coverage) of the Notes;

(Q) providing the "specific services ... described in ... the Service Description" in the Service Level Agreement;

(R) performing on behalf of CSFM "Fund Administration Services" as described in the Service Level Agreement;

(***The CSFS Duties***)

Particulars

Affidavit of Guy Reiter sworn on 25 October 2024 (paragraphs 30-40, 70, 114, 125).

Service Level Agreement, cl 2; Attachment A1, "Scope".

(iv) at all material times:

(A) it was reasonably foreseeable that, if CSFS did not take reasonable precautions in performing the CSFS Duties, the Virtuoso Fund would suffer loss or damage;

(B) CSFS knew, or ought to have known, that there was a material risk that, if it did not take reasonable precautions in performing the CSFS Duties, the Virtuoso Fund would suffer loss or damage;

Particulars

The evident purpose of these functions was to reduce the risk of the Virtuoso Fund suffering loss or damage.

It must have been obvious to a person in CSFS' position that failure to exercise reasonable care in performing those duties might lead to the Virtuoso Fund suffering loss or damage.

(v) in the premises, and in all the circumstances, CSFS owed a duty to Credit Suisse Virtuoso to exercise reasonable care in relation to the performance of the CSFS Duties;

(vi) further, at all material times, it was an express and/or implied term of the agreements alleged in paragraph 104(kl)(i) above that CSFS was obliged to discharge the CSFS Duties with reasonable care;

(vii) CSFS breached the duties alleged in paragraphs 104C(kl)(iii)(A) to 104C(kl)(iii)(R) above by failing to identify and advise Credit Suisse Virtuoso and/or CSFM, or failing to take reasonable steps to identify and advise Credit Suisse Virtuoso and/or CSFM, of the matters alleged in paragraph 104C(kg) above.

Particulars

The failure to take reasonable steps is inferred from the fact that these steps, which were or ought to have been obvious, were not identified or, if identified, were not advised to Credit Suisse Virtuoso and/or CSFM.

(viii) Credit Suisse Virtuoso now accepts that, at all material times, the NMC Notes were not covered by Policy TS-03088, and that is a matter which would or

could with reasonable diligence have been ascertained by CSFS prior to any relevant reliance;

NMC Health and NMC Health Plc

(l) says that:

(i) NMC Health and NMC Health Plc were "concurrent wrongdoers" because:

(A) [not used] ~~it is a necessary element of Credit Suisse Virtuoso's case that, by reason of an "Insured Cause", the "Insured" has failed to receive its "Expected Allocation" (Policy TS-03088 clause 3.1);~~

(B) [not used] ~~the loss alleged by Credit Suisse Virtuoso is the alleged "Expected Allocation" of the NMC Notes (SOC, paragraph 71);~~

(C) [not used] ~~the alleged "Insured Cause" are the alleged NMC Insured Causes (SOC, paragraph 68);~~

(D) the NMC Insured Causes separately comprise alleged failures on the part of NMC Health and NMC Health Plc to pay amounts said to be owing to GCUK, as alleged in paragraphs 66 and 67 of the SOC;

(E) it is therefore a necessary element of Credit Suisse Virtuoso's case that the loss for which it claims was caused, in whole or in part, by the acts or omissions of NMC Health and NMC Health Plc, namely, the NMC Insured Causes;

(ii) the liability of IAL, BCC and/or Brereton in relation to the apportionable claims under sections 1041I, 236 and/or 12GF is limited to an amount that the Court considers just having regard to the extent of their responsibility for the economic loss alleged by Credit Suisse Virtuoso and the Court may not give judgment against IAL, BCC and/or Brereton for more than that amount;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to (inter alia) the following matters:

(A) on Credit Suisse Virtuoso's pleaded case, NMC Health and NMC Health Plc are subject to voluntarily-assumed legal obligations to pay the amounts the subject of the NMC Insured Causes;

(B) on Credit Suisse Virtuoso's pleaded case, it was the voluntarily-assumed legal obligations of NMC Health and NMC Health Plc (and correlative rights of GCUK) from which the respective NMC Notes were

derived and in respect of which, therefore, the claimed economic loss was suffered;

(C) it is not alleged that BCC and/or Brereton knew and/or ought to have been aware of any facts, matters or circumstances indicating that NMC Health and NMC Health Plc would or might commit the alleged NMC Insured Causes; and

(D) on Credit Suisse Virtuoso's pleaded case, had the alleged NMC Insured Causes not occurred, the loss the subject of the claim would not have been suffered;

GCUK

(m) says further that:

(i) GCUK is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including:

a. it entered into transactions to provide financing to NMC Health and NMC Health Plc on the terms alleged in the SOC, including the "GCUK Execution Agreement" on the terms alleged (SOC, paragraph 24); and

b. further, GCUK engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(B) the acts or omissions of GCUK caused the loss the subject of the claim (inter alia) because:

a. on the expressly or impliedly pleaded case (which is not admitted), as a result of GCUK's acts or omissions:

i. NMC assumed the NMC Plc Payment Obligations (SOC, paragraph 29) and NMC Health Payment Obligations (SOC, paragraph 23);

ii. thereafter, NMC failed to pay the NMC Plc Payment Obligations and NMC Health Payment Obligations as alleged (SOC, paragraph 67), which failure to pay is said to constitute the NMC Insured Causes (SOC, paragraph 68); and

iii. as a result of the NMC Insured Causes, there has been "Loss" which are the subject of the claim (note clause 1.1 of Policy TS-03088 and paragraph 68 of the SOC);

b. had the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC not been made, then the alleged damage or loss the subject of the claim would not have arisen or, alternatively, would have been less;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) GCUK failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (Part C SOC), the transaction documentation (Part E1 to E3) and the guarantee (Part E4 SOC), the NMC Notes (Part F SOC), the insurance arrangements, and the authority of BCC to bind IAL;

(B) GCUK did not operate as a reasonably prudent lender in (i) its provision of finance to NMC Health and NMC Health Plc (as alleged in Part E of the SOC) and (ii) in failing to procure and/or enforce adequate security for the alleged debts;

(C) GCUK has not taken steps, alternatively has not taken adequate steps, to recover payments from NMC Health and NMC Health Plc;

(D) GCUK has not taken steps, alternatively has not taken adequate steps, to enforce the company guarantee of NMC Health Plc (the **Guarantor**) pursuant to its obligations as a guarantor;

(E) GCUK's misrepresentations and non-disclosures were misleading or deceptive;

(F) the matters set out in paragraphs 35ZY(f) to 35ZY(i) of this Defence;

(G) further, at all material times GCUK knew or ought to have known of the matters pleaded in paragraph 35ZY(g) to 35ZY(i) of this Defence;

(H) GCUK was recklessly indifferent to BCC's underwriting authority and

(I) the matters set out in paragraph 104C(n)(i)(C) of this Defence;

(J) the facts alleged in the document titled "Annexure B to Defences to IAL", filed in these Proceedings on 30 April 2026; and

(K) the facts alleged in the document titled "IAL Annexure A", filed in these Proceedings on 30 April 2026.

Greensill Bank

(n) says further that:

(i) Greensill Bank is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into Policy TS-03088 (SOC, paragraph 35ZZC) on the pleaded terms, alternatively agreeing to enter into Policy TS-03088 when it knew the facts referred to in paragraphs 35ZY(f) to 35ZY(h) of this Defence;

b. entering into or agreeing to enter into various endorsements thereto; and

c. acquiring the NMC Notes (SOC, paragraph 34);

(B) further, Greensill Bank engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) further, at all material times Greensill Bank knew or ought to have known that:

a. BCC's authority on behalf of IAL before 30 June 2019 was limited to underwriting trade credit insurance and Policy TS-03088 and its endorsements were not trade credit insurance products;

b. BCC's authority on behalf of IAL to issue Approved Products was subject to Special Acceptance requirements including that any non- approved wording was expressly approved by IAL and Scor Re;

c. Scor Re and IAL had not approved the terms of Policy TS-03088;

d. since September 2017, IAL and Scor Re had not communicated to the Greensill Group, Lex Greensill or Marsh that the matters referred to in paragraphs 35ZY(f) to 35ZY(h) of this Defence had changed;

e. that BCC's authority was not unlimited and as at February 2019 was limited to $50 million for any one Policy subject to Special Acceptance approval by IAL and Scor Re;

f. in the premises, at all material times, Greensill Bank knew, or ought reasonably to have known, that:

i. before BCC and Brereton could agree to Policy TS-03088, it was necessary for IAL and Scor Re to agree to its terms and structure;

ii. IAL and Scor Re did not approve of the wording and structure of Policy TS-03088; and

iii. IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy TS-03088 or any policy or endorsement which was not an Approved Product;

(D) despite knowledge of the fact that IAL and Scor Re had not given that authority, Greensill Bank and GCPL did not seek approval from IAL and Scor Re for the wording and structure of Policy TS-03088;

(E) Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(F) the acts or omissions of Greensill Bank caused the loss the subject of the claim (inter alia) because:

a. they caused Policy TS-03088 and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of Policy TS-03088 and entry into related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in sub-paragraph 104C(m) of this Defence;

ii. Lagoon Park to issue the NMC Notes (SOC, paragraph 33);

iii. Greensill Bank to acquire the NMC Notes (SOC, paragraph 33),

then those acts or omissions caused the loss the subject of the claim;

c. they involved the acquisition of the NMC Notes referred to in paragraph 104C(n)(i)(A)c of this Defence, by Greensill Bank which was a precondition to the arising of "Loss";

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) at all material times Greensill Bank knew or ought to have known of the matters pleaded in paragraphs 35ZY(f) to 35ZY(h) of this Defence;

(B) Greensill Bank was recklessly indifferent to BCC's underwriting authority;

(C) Greensill Bank's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(D) Greensill Bank's misrepresentations and non-disclosures were misleading or deceptive; and

(E) the matters set out in paragraph 104C(n)(i)(C) of this Defence;

(F) the facts alleged in the document titled "Annexure B to Defences to IAL", filed in these Proceedings on 30 April 2026; and

(G) the facts alleged in the document titled "IAL Annexure A", filed in these Proceedings on 30 April 2026.

GCPL

(o) says further that:

(i) GCPL is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted) it engaged in acts or omissions, including (inter alia):

a. agreeing to enter into Policy TS-03088 (SOC, paragraph 36) on the pleaded terms, alternatively agreeing to enter into Policy TS-03088 when it knew the facts referred to in paragraphs 35ZY(f) to 35ZY(h) of this Defence above;

b. entering into or agreeing to enter into various endorsements thereto;

(B) further, GCPL engaged in acts or omissions, comprising the making of the misrepresentations and non-disclosures pleaded in Annexure A to IAL's Defence to the SOC;

(C) the acts or omissions of GCPL caused the loss the subject of the claim (inter alia) because:

a. they caused Policy TS-03088 and related endorsements on the terms set out in them to come into existence;

b. in the event that the existence of Policy TS-03088 and entry into the related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 104C(m) of this Defence;

ii. Lagoon Park to issue the NMC Notes (SOC, paragraph 33);

iii. Greensill Bank to acquire the NMC Notes as alleged (SOC, paragraphs 34 and 35),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the matters set out in paragraphs 35ZY(f) to 35ZY(i) of this Defence;

(B) at all material times, GCPL knew or ought to have known of the matters pleaded in paragraphs 35ZY(g) to 35ZY(i) of this Defence;

(C) GCPL was recklessly indifferent to BCC's underwriting authority;

(D) GCPL's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(E) GCPL's misrepresentations and non-disclosures were misleading or deceptive; ~~and~~

(F) the matters set out in paragraph 104C(n)(i)(C) of this Defence;

(G) the facts alleged in the document titled "Annexure B to Defences to IAL", filed in these Proceedings on 30 April 2026; and

(H) the facts alleged in the document titled "IAL Annexure A", filed in these Proceedings on 30 April 2026.

Lex Greensill

(p) says further that:

(i) Lex Greensill is a concurrent wrongdoer because:

(A) he engaged in acts or omissions constituted by (inter alia) the exercise of control and decision-making authority over Greensill Bank, GCPL and GCUK, and conduct on behalf of those entities;

Particulars

Evidence of Lex Greensill to Treasury Committee, Ordered by the House of Commons on 11 May 2021.

(B) because of Lex Greensill's acts or omissions:

a. GCUK engaged in the conduct pleaded in paragraph 104C(m);

b. Greensill Bank engaged in the conduct pleaded in paragraph 104C(n);

c. GCPL engaged in the conduct pleaded in 104C(o);

and, for the reasons set out in those paragraphs, thereby caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the matters set out in paragraphs 104C(m), 104C(n) and 104C(o) of this Defence concerning apportionment to GCUK, Greensill Bank and GCPL; and

(B) at all material times Lex Greensill (and the Greensill Group) knew or ought to have known of the matters pleaded in 104C(m), 104C(n) and 104C(o) of this Defence above;

(C) Lex Greensill and the Greensill Group were recklessly indifferent to BCC's underwriting authority; ~~and~~

(D) Lex Greensill's central role across the entirety of the events the subject of the SOC; <u>and</u>

(E) <u>the facts alleged in the document titled "IAL Annexure A", filed in these Proceedings on 30 April 2026.</u>

The Guarantors

(q) says further that:

(i) NMC Health Plc is a guarantor;

Particulars

On or about 11 June 2018, Prasanth Manghat and Jonathon Lane, representatives of NMC Health Plc and GCUK, appear to have signed a document styled "Company Guarantee" (CSA.0001.0001.3235).

(ii) the Guarantor (as referred to in paragraph 104C(m)(ii)(D) of this Defence) is a concurrent wrongdoer because:

(A) it engaged in acts or omissions, including the failure to pay amounts in respect of the asserted debts ~~"Eligible Debts"~~ the subject of the claim pursuant to its obligations as a guarantor;

(B) the Guarantor's acts and omissions, including its failure to pay the asserted debts, caused (on the pleaded case, which is not admitted) the debts not to be paid, ~~the NMC Insured Causes (as alleged)~~ and the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the fact that the Guarantor was the subject of voluntarily-assumed legal obligations to discharge the debts;

Lagoon Park

(r) says further that:

(i) Lagoon Park is a concurrent wrongdoer because:

(A) on the pleaded case (which is not admitted), it engaged in (inter alia) acts or omissions including:

a. agreeing to enter into the Master Trust Deed (SOC, paragraph 32);

b. agreeing to receive or otherwise receiving assignment of the NMC Plc Payment Obligations from GCUK (SOC, paragraph 30) and the NMC Health Payment Obligations (SOC, paragraph 30);

c. issuing the NMC Notes (SOC, paragraph 33) on the terms alleged;

d. selling or otherwise transferring the NMC Notes to Greensill Bank as alleged (SOC, paragraphs 34 and 35);

(B) each of the acts or omissions of Lagoon Park caused Greensill Bank to acquire the NMC Notes and to suffer the "Loss" the subject of the claim.

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the fact that Lagoon Park failed to undertake, alternatively failed to undertake adequate, investigations and/or due diligence into the parties to the transaction (Part C SOC), the transaction document (Part E.1 to E.3 SOC) and the guarantee (Part E.4 SOC), the NMC Notes (Part F SOC), the insurance arrangements, the authority of BCC to bind IAL and the transfer referred to in the SOC;

Marsh

(s) says further that:

(i) Marsh, being each of Marsh Pty Ltd and Marsh Ltd (alternatively, any one of them), are concurrent wrongdoers because:

(A) each engaged in acts or omissions, including (inter alia):

a. setting up BCC as an approved underwriting agent on the Marsh billing system;

b. acting as the broker of Greensill Bank and GCPL; and

c. the matters referred to in Section N of the SOC;

(B) they participated in the negotiations for the insurance instruments (including Policy TS-03088 and all other policies and endorsements referred to earlier in this Defence, and those below at paragraph 104C(s)(ii)(H) of this Defence, and took other steps (not presently known to IAL, but which will be the subject of requests for compulsory production) which caused or contributed to Greensill Bank and GCPL's purported entry into Policy TS-03088 and/or the pleaded endorsements thereto;

(C) those acts or omissions caused the loss the subject of the claim because:

a. they caused Greensill Bank and GCPL to purportedly enter into Policy TS-03088 and related endorsements on the terms set out in them;

b. in the event that Greensill Bank and GCPL's purported entry into Policy TS-03088 and related endorsements caused:

i. any (or all) of the conduct of GCUK referred to in paragraph 104C(m) of this Defence;

ii. Lagoon Park to issue the NMC Notes (SOC, paragraph 33);

iii. Greensill Bank to acquire the NMC Notes (SOC, paragraphs 34 and 35),

then those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) Marsh's acts and omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) Marsh knew, or ought reasonably to have known, that BCC was only permitted to underwrite trade credit insurance and Policy TS-03088 was not trade credit insurance;

(C) Marsh knew, or ought reasonably to have known, that:

a. before BCC and Brereton could agree to Policy TS-03088 and any endorsements issued pursuant to that policy, it was necessary for IAL and Scor Re to agree to their terms and structure;

b. IAL and Scor Re did not approve of the wording and structure of Policy TS-03088 or any of the endorsements issued pursuant to that policy as pleaded by Credit Suisse Virtuoso in the SOC;

c. IAL and Scor Re had not given authority to BCC and Brereton to enter into Policy TS-03088 nor any of the endorsements issued pursuant to that policy as pleaded by Credit Suisse Virtuoso in the SOC;

d. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

e. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the *Corporations Act* on and after 1 July 2019;

(D) at the time of first setting up BCC as an approved underwriting agency Marsh ought to have obtained, and reasonably satisfied itself of, the terms of the CGU AAR Agreement confirming the existence, duration of the agreement and related limits, to ensure that it was aware of the limitations on BCC's authority, but failed to do so;

(E) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any agency agreement between IAL and BCC, and the limitation on BCC's authority;

(F) Marsh ought to have, but failed to, ensure that its employees and representatives were aware of and understood the terms of any authority arrangement between IAL and Brereton, and the limitation on Brereton's authority;

(G) Marsh ought to have, but failed to, review on an annual basis the ongoing authority of BCC including the terms on which it was permitted to underwrite Approved Products on behalf of IAL; and

(H) Marsh ought to have, but failed to, obtain any or any proper confirmation or verification of BCC's authority to underwrite on behalf of IAL the LOS Policy, Policy TW-03137, Policy TS-03088, Policy TS-03087, the 2019 Policy, Policy TB-03691, Policy TB-04271, Policy TB-04278, Policy TB-04584, Policy TB-05370, Policy TB-05369, Policy TW-03456, Policy TW-03457, Policy TW-05411 and Policy TW-05412 in circumstances where the combined limits of the identified Policies were in excess of any other insurers underwriting trade credit insurance in the Australian market and in circumstances where BCC was a start-up underwriting agency;

(I) Marsh facilitated the execution of Endorsement 10, Endorsement 11 and Endorsement 12 to purportedly extend the policy period of Policy TS-03088 in circumstances when Marsh knew from 15 April 2019 (as to which, see paragraph 40A of this Defence) and before the execution of

Endorsement 10, Endorsement 11 and Endorsement 12 that BCC did not have authority to extend existing insurance arrangements issued on behalf of IAL;

(sa) says further or alternatively that, if the matters alleged by Credit Suisse Virtuoso ~~the Applicants~~ at paragraphs 108DDDD to 108ZZZZ of the SOC are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs.

(sb) says further or alternatively that, if the matters alleged by GBAG at paragraphs 231 to 290 of the Fourth Amended Statement of Claim in proceedings NSD 174 of 2023 ~~(which will be heard together with this proceeding)~~ are established:

(i) Marsh is a concurrent wrongdoer for the reasons alleged in those paragraphs; and

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including those alleged in those paragraphs.

TMNF

(t) says further that:

(i) TMNF was a concurrent wrongdoer because on and from 1 July 2019:

(A) it engaged in acts or omissions, including (inter alia):

a. failing to ensure that its authorised representatives, BCC and Brereton, acted within the scope of what TMNF authorised them to do;

b. failing to ensure that BCC and Brereton did not purport to enter into the endorsements referred to in paragraph 104C(t)(i)(B) below in respect of Policy TS-03088 on behalf of IAL on and from 1 July 2019;

c. failing to ensure that BCC provided bordereaux to IAL that contained complete and accurate information in respect of

endorsements issued by BCC and Brereton on and from 1 July 2019;

(B) the acts and omissions of BCC and Brereton in purporting to enter the following instruments on behalf of IAL, which were engaged in (on the pleaded case) as agent and authorised representative of TMNF:

a. Endorsement 9, dated 26 February 2020 which purported to extend the Policy Period to 15 April 2020 (SOC, paragraph 40A);

b. Endorsement 10, dated 15 April 2020 which purported to extend the Policy Period to 15 May 2020 (SOC, paragraph 41);

c. Endorsement 11, dated 15 May 2020 which purported to extend the Policy Period to 15 June 2020 (SOC, paragraph 42); and

d. Endorsement 12, dated 16 June 2020 which purported to extend Policy TS-03088 to 1 March 2021 (SOC, paragraph 43);

(ii) those acts and omissions caused the loss the subject of the claim because:

(A) they caused BCC and/or Brereton to purportedly enter into the related endorsements to Policy TS-03088 referred to in paragraph 104C(t)(i)(B) of this Defence;

(B) in the event that Greensill Bank and GCPL's entry into Policy TS-03088 and related endorsements caused:

a. any (or all) of the conduct of GCUK referred to in paragraph 104C(m) of this Defence;

b. Lagoon Park to issue the NMC Notes (SOC, paragraph 33; and

c. Greensill Bank to acquire the NMC Notes (SOC, paragraphs 34 and 35),

then those acts or omissions caused the loss the subject of the claim;

(iii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the acts or omissions were of substantial causal significance to the arising of the loss the subject of the claim;

(B) TMNF knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into Policy TS-03088 nor any of the endorsements issued pursuant to that policy as pleaded by Credit Suisse Virtuoso in the SOC;

b. BCC and Brereton's authority to write new policies or risks, or extend the term or scope of existing policies, on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

c. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the Corporations Act on and after 1 July 2019.

The Administrators

(u) says further that:

(i) each of TMMA and Bond (together, **the Administrators**) was a concurrent wrongdoer because:

(A) each engaged in acts or omissions including (inter alia):

a. providing administration services to IAL under the PACAO; and

b. failing to provide those services with due care and skill;

(B) those acts or omissions caused the loss the subject of the claim;

(ii) in determining what is a just apportionment of liability to IAL, BCC and/or Brereton, the Court should have regard to all the circumstances including (inter alia) the following matters:

(A) the PACAO did not confer a general authority on Bond or BCC as Bond's delegate to act as IAL's agent to administer trade credit insurance policies issued by IAL on or before 30 June 2019, as pleaded in paragraph 10(f) of this Defence;

(B) it was a term of the PACAO that after 9 April 2019 Bond, or BCC as Bond's delegate, was not permitted to write new business or renewals on IAL paper (Schedule 5, clause 2), as pleaded in paragraph 10(g) of this Defence;

(C) it was a term of the PACAO that Bond would prepare and disseminate monthly Written and Paid Bordereaux and reconcile reporting systems to bank and bordereaux reports (Schedule 5, clause 2.1);

(D) it was a term of the PACAO that Bond would deliver administration services with due skill and care, efficiently and fairly (clause 5.1);

(E) it was a term of the PACAO that Bond would ensure that it properly supervised its staff (including Brereton) in relation to the provision of services (clause 5.1(c));

(F) there were further restrictions on the Administrators as stipulated in the PACAO, for which IAL repeats the matters pleaded in paragraphs 10, 35ZO and 35ZP of this Defence;

(G) the authority of BCC and Brereton was confined at all material times on and after 9 April 2019 until 30 June 2019, in the manner described in paragraphs 9(m) to 9(cc) of this Defence, a matter known by the Administrators;

(H) BCC and Brereton purported to issue endorsements after 9 April 2019 which were not Approved Endorsements and were outside of the authority referred to in the preceding sub-paragraph, including:

a. Endorsement 9, dated 26 February 2020 which purported to extend the Policy Period to 15 April 2020 (SOC, paragraph 40A);

b. Endorsement 10, dated 15 April 2020 which purported to extend the Policy Period to 15 May 2020 (SOC, paragraph 41);

c. Endorsement 11, dated 15 May 2020 which purported to extend the Policy Period to 15 June 2020 (SOC, paragraph 42);

d. Endorsement 12, dated 16 June 2020 which purported to extend Policy TS-03088 to 1 March 2021 (SOC, paragraph 43);

e. Endorsement 3, dated 6 March 2019 which purported to endorse Credit Suisse Virtuosos as a Loss (SOC, paragraph 44);

(I) the acts or omissions of the Administrators were of substantial causal significance to the arising of the loss the subject of the claim; and

(J) the Administrators knew, or ought reasonably to have known, that:

a. IAL had not given authority to BCC and Brereton to enter into Policy TS-03088 nor any of the endorsements issued pursuant to that policy as pleaded by Credit Suisse Virtuoso in the SOC;

b. IAL had only authorised BCC and Brereton to issue Approved Products and Policy TS-03088 was not an Approved Product;

c. BCC and Brereton's authority to write risks on behalf of IAL would cease at the time of, or shortly after, the sale of BCC to TMMA; and

d. BCC and Brereton ceased to be authorised representatives of IAL for the purposes of Division 6 of Part 7.6 of the Corporations Act on and after 1 July 2019;

BCC and Brereton

(v) in the event that it is established that BCC and Brereton engaged in the misleading or deceptive conduct pleaded in paragraphs 95 to 102 of the SOC, BCC and Brereton were concurrent wrongdoers such that IAL's liability in relation to the Apportionable Claims is limited to an amount reflecting the proportion of the loss and damage claimed that is just, having regard to the extent of BCC's and Brereton's responsibility for the loss or damage suffered, pursuant to section 87CD of the *CCA*, section 1041N of the *Corporations Act* and section 12GR of the *ASIC Act*;

Reservation

(w) IAL says further that in relation to the whole of paragraphs 104C(a) to 104C(v) of this Defence:

(i) it was not a party to the transactions the subject of the SOC (including Policy TS-03088, the endorsements thereto, and the various underlying transactional documents) ~~said to have given rise to claims under Policy TS-03088)~~ which gave rise to the alleged loss and damage in respect of which Credit Suisse Virtuoso sue;

(ii) it does not know the circumstances in which the alleged loss arose, the identities of those who caused or contributed to the alleged loss and the role and culpability of those who did so;

(iii) it intends to pursue compulsory production and following compulsory production, and the development of evidence in the proceedings:

(A) it may become apparent that there are additional persons relevantly meeting the description of "concurrent wrongdoer"; and

(B) it may become appropriate to supplement or vary the circumstances identified in paragraphs 104C(a) to 104C(v) of this Defence.

L.4 Section 1041E Claim

105 Save to repeat that, for the reasons set out in paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, 39 to 47D, and 80 to 104B of this Defence, it denies that BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 88 of the SOC, IAL does not know and cannot admit paragraphs 105 to 107B ~~108~~ of the SOC, which do not make allegations against it.

106 [Blank]

107A [Blank]

107B [Blank]

107 ~~[Blank]~~As to paragraph 107 of the SOC, IAL:

(a) repeats paragraph 103 of this Defence; and

(b) otherwise denies paragraph 107 of the SOC.

108 ~~[Blank]~~ IAL denies paragraph 108 of the SOC and:

(a) refers to and repeats paragraph 108ZI of this Defence;

(b) says that the conduct alleged (even if established) did not cause Credit Suisse Virtuoso loss in the requisite normative sense because, having regard to Credit Suisse's admissions (and to the allegations in Annexure A) as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to Credit Suisse Virtuoso's claims; and

(c) in the alternative to paragraphs 108(a) and 108(b), repeats paragraph 104(c) of this Defence.

108A As to paragraph 108A of the SOC, IAL:

(a) repeats paragraphs 104A(aa)-104A(f) ~~47D(a) to 47D(k)~~ of this Defence;

(b) repeats paragraphs 40A(b) to 40A(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019;

(c) as to paragraph 108A(a) of the SOC, subject to paragraph 104A(b) ~~47D(a) and 47D(b)~~ of this Defence, admits that if the conduct of BCC and Brereton pleaded at paragraphs 95, 97 and 105 to 107B of the SOC is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(d) denies paragraph 108A(b) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) of the *Corporations Act* turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 95, 97 and 105 to 107B of the SOC was conduct on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(b) of the *Corporations Act* is the "rel[iance]" referred to in section 917A(c) of the *Corporations Act*, with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 108A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 108A(b) of the SOC;

(v) the conduct of BCC and/or Brereton referred to in paragraphs 95, 97 and 105 to 107B of the SOC was not conduct on which a "Loss Payee", including Credit Suisse Virtuoso as alleged "Loss Payee", could reasonably be expected to rely;

Particulars

Particulars under paragraph 47D(e)(v) of this Defence.

(e) denies paragraph 108A(c) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 108A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 108A(b) of the SOC;

(iii) [Blank]

(iv) Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct referred to in paragraphs 95, 97 and 105 to 107B of the SOC, at all or in any relevant respect, and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing.

Particulars

~~IAL refers to and repeats Annexure C to this Defence.~~ IAL refers to and repeats paragraphs 6 to 16 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

(v) repeats paragraph 35ZZAAA(i) of this Defence;

(f) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~; and

~~**Particulars**~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 40A(f) of this Defence) that TMMA had acquired BCC on 9 April 2019.~~

~~Further particulars will be provided after discovery, compulsory production and evidence.~~

~~IAL also makes this same reservation under section 917D of the *Corporations Act* in relation to Credit Suisse Virtuoso (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.~~

(g) otherwise denies paragraph 108A of the SOC.

108B IAL denies paragraph 108B of the SOC and says further that:

(aa) in circumstances where, having regard to Credit Suisse Virtuoso's admissions as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to Credit Suisse Virtuoso's claims, it would be contrary to or

otherwise not consistent with policy for IAL to be held liable for the losses claimed and/or for Credit Suisse Virtuoso to be entitled to or otherwise receive compensation for any "loss"; and

insofar as Credit Suisse Virtuoso asserts that IAL is responsible for certain conduct of BCC and/or Brereton under Division 6 of Part 7.6 of the *Corporations Act*:

(a) it repeats paragraphs 47B to 47D of this Defence, including the allegations as to the deficiencies in the Applicant's pleading based on Division 6 of Part 7.6;

(b) the responsibility deemed by Division 6 of Part 7.6 of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and Credit Suisse Virtuoso;

(c) further, IAL's responsibility and/or liability to Credit Suisse Virtuoso under Division 6 of Part 7.6 is no greater than any responsibility and/or liability of BCC and/or Brereton to Credit Suisse Virtuoso.

L.4 Deceit

108ZA Save to repeat that, for the reasons set out in paragraphs 9, 35A, 35H, 35S, 35ZC, 35ZZC, 36, 39 to 47D, and 80 to 104B of this Defence, ~~it denies that~~ neither BCC or Brereton was authorised by IAL to make an agreement in terms of any of the documents referred to in paragraph 88 of the SOC, IAL does not know and cannot admit paragraphs 108ZA to 108ZF ~~108ZH~~ of the SOC.

108ZB [Blank]

108ZC [Blank]

108ZD [Blank]

108ZE [Blank]

108ZF [Blank]

108ZG ~~[Blank]~~ IAL denies 0195AG of the SOC and says further that:

(a) Credit Suisse Virtuoso was on notice that the risks underlying the NMC Notes were not backed by underlying trade receivables; and

(b) Credit Suisse Virtuoso knew or should have known that a trade credit insurance policy would not cover, or would be unlikely to cover, risks that were not trade credit risks.

Particulars

IAL repeats paragraphs 8, 9, 10, 11 and 14 of Annexure C, and the particulars thereto.

108ZH ~~[Blank]~~As to paragraph 108ZH of the SOC, IAL:

(d) repeats paragraph 108ZG of this Defence; and

(e) otherwise denies paragraph108ZH of the SOC.

108ZI IAL denies paragraph 108ZI and says further that:

(a) Credit Suisse Virtuoso suffered no loss or damage for the reasons in paragraphs 108ZI(b) to 108ZI(l).

(b) The Virtuoso Fund was launched to facilitate the purchase of notes backed by receivables originated by Greensill Capital.

Particulars

(a) Credit Suisse (Lux) Supply Chain Finance Fund 'Go for Launch' Presentation dated March 2017 (CSA.5000.0004.8423).

(b) Credit Suisse (Lux) Supply Chain Finance Fund Business Overview dated 28 March 2017 (CSA.5000.0002.0307).

(c) Credit Suisse (Lux) Supply Chain Finance Fund – Due Diligence & Commentary dated February 2018 (CSA.5000.0002.1030), which states, inter alia, "[t]o access the market Credit Suisse went into a partnership with Greensill Capital".

(d) Affidavit of Christian Mossdorf affirmed 25 October 2024 at [14(a)].

(c) The Virtuoso Fund exclusively purchased notes backed by receivables originated by Greensill Capital.

Particulars

(a) Transcript of Interview with Michel Degen, Head Asset Management Switzerland & EMEA dated 8 July 2021 (CSA.5000.0008.3337 at .0006, .0018 to .0019).

(b) Transcript of Interview with Luc Mathys, AM Fixed Income WDIF dated 1 September 2021 (CSA.5000.0008.3328 at .0006).

(c) Transcript of Interview with Lukas Haas, Portfolio Manager, WDIF 6, Credit Suisse Asset Management (Schweiz) AG dated 19 July 2021 (CSA.5000.0008.3338 at .0003, .0013).

(d) Credit Suisse (Lux) Supply Chain Finance Fund 'Go for Launch' Presentation dated March 2017 (CSA.5000.0004.8423) which states "Greensill is the sole provider of the Notes and hence is the key party of the fund. Fund is depending on the supply of notes and quality of origination of Greensill".

(e) Warehousing Facility Letter for the Virtuoso Fund dated 4 October 2017 (CSA.0001.0057.0001).

(f) Warehousing Facility Letter for the Virtuoso Fund dated 14 December 2017 (CSA.0001.0001.3633).

(g) Warehousing Facility Letter for the Virtuoso Fund dated 4 April 2019 (CSA.0001.0001.3632).

(h) Credit Suisse Virtuoso Investment Guidelines dated 10 April 2017 (CSA.5000.0004.7040 at .0004).

(i) Side Letter between SoftBank, Credit Suisse Virtuoso SICAV-SIF and CSFM dated 24 April 2020, stating (CSA.5000.0002.6828):

> "3.1 The Company and the AIFM confirm that the Subfund [Credit Suisse Virtuoso] has only acquired to date notes issued out of three SPVs, namely Lagoon Park Capital SA, Wickham SA and Hoffman S.A R.L,, all incorporated in Luxembourg, and sourced by Greensill Capital Supply Chain Finance program.
>
> 3.2 The Company and the AIFM also confirm that the Subfund (i) has not acquired any supply chain finance asset outside the Greensill Capital program and has limited its investment in target funds to the Credit Suisse Nova (Lux) Supply Chain Finance investment Grade Fund and/or Credit Suisse Supply Chain Finance Investment Grade Fund and/or Credit Suisse Money Market Fund - USD ("Authorised Target Funds"), (ii) does not intend to do otherwise going forward, and (iii) in any event will not acquire any supply chain finance asset outside the Greensill Capital program or Invest in any other collective investment scheme other than the Authorised Target Funds at any time while the Investor has any investment in the Subfund as from the Effective Date...".

(d) Credit Suisse Virtuoso communicated to investors that the Virtuoso Fund only acquired notes backed by receivables originated by Greensill Capital.

Particulars

(a) Transcript of Interview with Luc Mathys, AM Fixed Income WDIF dated 1 September 2021 (CSA.5000.0008.3328 at .0006).

(b) Investor presentation titled 'Credit Suisse (Lux) Supply Chain Finance Fund Access to Credit Protected Supply Chain Financing' dated July 2018 (CSA.5000.0002.1314).

(e) The marketing for the Virtuoso Fund was on the basis that the Fund only purchased notes backed by receivables originated by Greensill Capital.

Particulars

(a) Transcript of Interview with Michel Degen, Head Asset Management Switzerland & EMEA dated 8 July 2021 (CSA.5000.0008.3337 at .0006, .0018 to .0019).

(b) Email from Claude Harbonn to various internal Credit Swiss recipients with the subject line "FW: Attractive stable income: Credit Suisse Supply Chain Finance High Income Fund: Gross Yield of 3M Libor+350 bps, LTV 65%", stating under the heading "Key selling points", "Exclusive partnership with Greensill Capital" (CSA.5000.0002.5008).

(c) Investor presentation titled 'Credit Suisse (Lux) Supply Chain Finance Fund Access to Credit Protected Supply Chain Financing' dated July 2018 (CSA.5000.0002.1314).

(f) Investors sought confirmation that the Virtuoso Fund only invested in notes backed by receivables originated by Greensill Capital.

Particulars

(a) Email chain between Vlad Maly, Lukas Haas, various Credit Suisse personnel, Ludwig Sels (Greensill), Daniel Shuttelworth (Greensill), Luc Mathys, dated 24 March 2020 to 26 March 2020 (CSA.5000.0002.4601).

(b) Side Letter between SoftBank, Credit Suisse Virtuoso SICAV-SIF and CSFM dated 24 April 2020 (CSA.5000.0002.6828).

(c) Transcript of Interview with Michel Degen, Head Asset Management Switzerland & EMEA dated 8 July 2021 (CSA.5000.0008.3337 at .0018 to .0019).

(g) In the premises of paragraphs 108ZI(b) to 108ZI(f), the money invested in the Virtuoso Fund was for the sole purpose of purchasing notes backed by receivables originated by Greensill Capital.

(h) Credit Suisse Virtuoso received funds from investors for the Virtuoso Fund by issuing specific classes of shares as set out in the offering memoranda.

Particulars

(a) Offering Memorandum dated 31 March 2017 (CSA.5000.0001.0030).

(b) Offering Memorandum dated 22 May 2017 (CSA.5000.0002.9790).

(c) Offering Memorandum dated 31 July 2017 (CSA.5000.0002.9787).

(d) Offering Memorandum dated 6 October 2017 (CSA.5000.0002.9789).

(e) Offering Memorandum dated 16 October 2017 (CSA.5000.0002.9785).

(f) Offering Memorandum dated 5 January 2018 (CSA.5000.0004.8281).

(g) Offering Memorandum dated May 2018 (CSA.5000.0002.9788).

(h) Offering Memorandum dated August 2018 (CSA.5000.0004.8282).

(i) Offering Memorandum dated 7 February 2019 (CSA.5000.0004.8284).

(j) Offering Memorandum dated 1 July 2019 (CSA.5000.0004.0115).

(k) Offering Memorandum dated 30 September 2020 (CSA.5000.0004.8283).

(l) Offering Memorandum dated 10 March 2021 (CSA.5000.0002.9792).

(i) But for the alleged contraventions, Credit Suisse Virtuoso would not have sought or received any funds from investors for the Virtuoso Fund.

Particulars

(a) When access to notes originated by Greensill Capital was limited by comparison with investor funds, Credit Suisse Virtuoso introduced a special subscription procedure ('soft close') to limit the flow of funds into Credit Suisse Virtuoso Supply Chain Finance Fund.

(b) 'Supply Chain Finance Fund Newsletter – Credit Suisse (Lux) Supply Chain Finance Fund' dated June 2019 (CSA.5000.0002.3011), which states: 'The fund has recently recorded substantial inflows, which caused the performance to drop slightly below target return…In order to protect the interests of existing investors and create the basis for a strong risk-adjusted performance, a special subscription procedure ("soft close") has been introduced....'

(c) Email from Lukas Haas to Lex Greensill, Ludwig Sels, Ivan Jesensky, Brett Downes, Michel Degen and Adam Milenkovic dated 25 October 2019 with the subject 'FW: Greensill/CSAM Meeting- Follow up' (GCU.0005.0019.5012). Lukas Haas states: 'GC and CSAM agreed to soft-close the SCF HIF in the light of elevated cash levels. CSAM to initiate process (similar to SCF Virtuoso) with immediate effect'.

(d) Email from Lukas Haas to Ludwig Sels copying Lex Greensill and Luc Mathys dated 26 November 2019 with the subject 'SCF Funds – Performance Issue' (GCU.0005.0019.5012). Lukas Haas states: 'CS Virtuoso: We already lost two large client of roughly USD 90m and USD 80m and are currently in a very challenging discussion with a USD 300m investor taking into account to redeem our funds given the current underperformance….Fact is, for CS Virtuoso and CS HIF investors seems to lose patience given the elevated cash levels combined with an underperformance already persist since a few months'.

(j) Further or in the alternative to paragraph 108ZI(i), but for the alleged contraventions, the Virtuoso Fund would not have been launched or, if launched, would have subsequently been suspended and dissolved.

Particulars

(a) Affidavit of Guy Reiter sworn 25 October 2024 at [103] and [123].

(b) Affidavit of Nena Egelhof affirmed 25 October 2024 at [36].

(k) Loss is determined by comparing the position of the Virtuoso Fund with its position if the alleged contraventions of BCC and Brereton had not occurred.

(l) In the premises of 108ZI(i) and/or 108ZI(j), but for the alleged contraventions of BCC and Brereton:

(i) Credit Suisse Virtuoso would not have issued any of, or a substantial amount of, the special classes of shares for the Virtuoso Fund that were in fact issued;

(ii) Credit Suisse Virtuoso therefore would not have received any of, or a substantial amount of, the funds it in fact received; and

(iii) Credit Suisse Virtuoso would be no worse off, or in the alternative only marginally worse off, than as a result of the alleged contraventions of BCC and Brereton.

Particulars

(a) As at 1 June 2017, the Virtuoso Fund had approximately USD 117,500,000 of assets under management (CSA.0001.0004.3579).

(b) As at 31 October 2021, deducting for 'Overdue receivables from matured Supply Chain Notes', the Virtuoso Fund had net assets of USD 364,525,149.92 (Credit Suisse Virtuoso SICAV – SIF, Audited Annual Reports dated 31 October 2021).

(c) As at 31 October 2023, deducting for 'Overdue receivables from matured Supply Chain Notes', the Virtuoso Fund had net assets of USD 222,928,138.60 (Credit Suisse Virtuoso SICAV – SIF, Audited Annual Reports dated 31 October 2023).

(m) in the alternative, Credit Suisse Virtuoso has suffered no loss or damage because, if the alleged representations had not been made:

(i) the underlying credit risk of the Notes would have been covered by a different insurer;

(ii) Credit Suisse Virtuoso would have purchased the Notes; and

(iii) any insurance policy issued by a different insurer would not have responded to any claims made by Credit Suisse Virtuoso in relation to the Notes.

Particulars

(a) Email from Julian Macey-Dare to Michael Gilhuley, Tom Traill and Marie Payton, subject line 'RE: Greensill solution for single B Credits' dated 27 January 2016 (GCU.0010.0001.0649).

(b) Email from Ewan Berkemeier to Edward Smith and Martin McConnell, subject line 'Re: Greensill' dated 23 May 2018 (MAR.0002.0001.0312).

(c) Email from Ewan Berkemeier to Edward Smith and Julian Macey-Dare, subject line 'FW: Greensill' dated 28 May 2018 (MAR.0002.0001.0312).

(d) Emails from Edward Smith to Victor Agius, Gary Lorimer, Mike Reynolds and Neil Fay, subject line 'RE: Greensill Query - Facebook Euler Hermes ID - 94489415 ERG 1' on 4 April 2019 and 5 April 2019 (MAR.0003.0002.2251).

(e) Email from Craig Pinnington to Tom Coenen, subject line 'RE: Onboarding questions' dated 30 October 2020 (GCU.0010.0015.8711).

(f) Zurich Insurance Company Limited Defence in CL-2023-000136 before the High Court of England and Wales

(g) IAL relies on the matters pleaded in Section E of this Defence.

(h) IAL also relies on misrepresentations and non-disclosures pleaded in Annexure A to this Defence.

(n) in the further alternative, Credit Suisse Virtuoso has suffered no loss or damage because, if the alleged representations were true, it was still not entitled to indemnity:

(i) as is admitted by Credit Suisse Virtuoso;

(ii) for the reasons in Section E of IAL's Defence; and

(ii) for the reasons in paragraph 110(a) to (c) of this Defence.

Particulars

Credit Suisse Virtuoso is not entitled to any benefit under the 2019 Policy. The Claims are not covered by the 2019 Policy. (CSA.0001.0001.3171).

Letters from Gilbert + Tobin dated 29 (IAL.500.020.0003) and 30 June 2026 (IAL.500.021.0001).

(o) in the further alternative, the conduct alleged (even if established) did not cause Credit Suisse Virtuoso loss in the requisite normative sense because, having regard to Credit Suisse Virtuoso's admissions as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to Credit Suisse Virtuoso's claims.

108ZJ As to paragraph 108ZJ of the SOC, IAL:

(a) repeats paragraphs 104A(aa)-104A(f) ~~47D(a) to 47D(k)~~ of this Defence;

(b) further repeats paragraphs 40A(b) to 40A(c) of this Defence in respect of any conduct of BCC and Brereton on and from 1 July 2019;

(c) as to paragraph 108ZJ(a) of the SOC, ~~subject to paragraphs 47D(a) and 47D(b) of this Defence,~~ admits that if the conduct pleaded at paragraphs 95, 97 and 108ZA to 108ZF is established (which is denied), that conduct related to the provision of a financial service within the meaning of section 917A of the *Corporations Act*;

(d) denies paragraph 108ZJ(b) of the SOC and says further that:

(i) whether conduct is such that a third person could reasonably be expected to rely on it for the purposes of section 917A(1) of the *Corporations Act* turns on all the circumstances, including what is known to or reasonably ascertainable by the third person;

(ii) there is no pleading as to the circumstances which warrant the conclusion that the conduct referred to in paragraphs 95, 97 and 108ZA to 108ZF of the SOC was conduct on which a Loss Payee (including Credit Suisse Virtuoso) could reasonably be expected to rely;

(iii) the "rel[iance]" referred to in section 917A(1)(b) is the "rel[iance]" referred to in section 917A(1)(c), with the result that the relevant question is whether the conduct is conduct on which a third person could reasonably be expected to rely in the manner and to the extent that the conduct was (allegedly) in fact relied on;

(iv) there is no pleading linking the actual reliance alleged in paragraph 108ZJ(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 108ZJ(b) of the SOC;

(v) the conduct of BCC and/or Brereton referred to in paragraphs 95, 97 and 108ZA to 108ZF of the SOC was not conduct on which a "Loss Payee", including Credit Suisse Virtuoso as alleged "Loss Payee", could reasonably be expected to rely;

Particulars

Particulars under paragraph 47D(e)(v) of this Defence.

(e) denies paragraph 108ZJ(c) of the SOC and says further that:

(i) there is no pleading as to the facts, matters and circumstances said to constitute actual good faith reliance;

(ii) there is no pleading linking the actual reliance alleged in paragraph 108A(c) of the SOC with the reasonable expectation as to reliance alleged in paragraph 108A(b) of the SOC;

(iii) Credit Suisse Virtuoso did not rely, or rely in good faith, on the conduct referred to in paragraphs 95, 97 and 108ZA to 108ZF of the SOC, at all or in any relevant respect, and, to the extent it did rely on the conduct:

(A) wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;

(B) was recklessly indifferent to whether the alleged conduct could be relied upon;

(C) acted contrary to accepted standards of commercial behaviour; and

(D) failed to act reasonably and with fair dealing.

Particulars

~~IAL refers to and repeats Annexure C to this Defence.~~ IAL refers to and repeats paragraphs 6 to 16 of Annexure C to this Defence and the particulars thereto.

IAL relies on the entirety of the circumstances that Credit Suisse Virtuoso knew or ought to have known as set out in the particulars of knowledge in those paragraphs of Annexure C.

(iv) repeats paragraph 35ZZAAC(ja) ~~35ZZAAA(i)~~ of this Defence.

(f) further, IAL repeats paragraphs 104A(aa)(iii)(C), 104A(f) and 104A(fa) and the particulars thereto ~~reserves the right to rely on section 917D of the *Corporations Act* that Brereton and BCC's lack of authority was disclosed to the "client", being Greensill Bank and GCPL if they were the "client" (which is denied)~~; and

~~Particulars~~

~~Particulars under paragraph 35ZY(i) of this Defence.~~

~~Particulars under paragraph 39(q) of this Defence. Further, Greensill Bank and GCPL knew (by reason of the matters in paragraph 39(k) of this Defence) that TMMA had acquired BCC on 9 April 2019.~~

~~IAL also makes this same reservation under section 917D of the *Corporations Act* in relation to Credit Suisse Virtuoso (in addition to Greensill Bank and GCPL), should additional issues come to light in relation to the disclosures made to them following discovery, compulsory production and evidence.~~

(g) otherwise denies paragraph 108ZJ of the SOC.

108ZK IAL denies paragraph 108ZK of the SOC and says further that:

(aa) in circumstances where, having regard to Credit Suisse's admissions as to coverage, the policies and endorsements, even if valid and binding on IAL, would not have responded to Credit Suisse's claims, it would be contrary to or otherwise not consistent with policy for IAL to be held liable for the losses claimed and/or for Credit Suisse to be entitled to or otherwise receive compensation for any "loss"; and

insofar as Credit Suisse Virtuoso asserts that IAL is responsible for certain conduct of BCC and/or Brereton under Division 6 of Part 7.6 of the *Corporations Act*;

(a) it repeats paragraphs 47B to 47D of this Defence, including the allegations as to the deficiencies in the Applicant's pleading based on Division 6 of Part 7.6;

(b) the responsibility deemed by Division 6 of Part 7.6 of the *Corporations Act* does not extend to responsibility for conduct and/or causes of action for which BCC and/or Brereton have a defence as between BCC/Brereton and Credit Suisse Virtuoso;

(c) further, IAL's responsibility and/or liability to Credit Suisse Virtuoso under Division 6 of Part 7.6 is no greater than any responsibility and/or liability of BCC and/or Brereton to Credit Suisse Virtuoso.

M CLAIMS RELATING TO TOKIO MARINE AND BCC

108A – 108AA [Not used]

MA [NOT USED] ~~CLAIMS AGAINST THE INSURER~~

MA.1 [Not used] ~~Misleading or deceptive conduct of Insurer directed towards GBAG~~

108AB [Not used] ~~IAL does not plead to paragraph 108AB of the SOC as it does not contain any allegation against it.~~

108AC [Not used] ~~IAL does not plead to paragraph 108AC of the SOC as it does not contain any allegation against it.~~

108AD [Not used] ~~IAL denies paragraph 108AD of the SOC and refers to and relies on paragraphs 192AF and 192AH of its Defence filed in the Bluestone Proceeding (**IAL Bluestone Defence**) (which will heard together with this proceeding).~~

108AE [Not used] ~~IAL denies paragraph 108AE of the SOC and:~~

(a) ~~refers to and relies on paragraphs 64A to 64Z, 192AF and 192AH of the IAL Bluestone Defence; and~~

(b) ~~repeats paragraphs 108DDD to 108JJJJ of this Defence.~~

108AF [Not used] ~~IAL denies paragraph 108AF of the SOC and repeats paragraph 108AD of this Defence.~~

N CLAIMS AGAINST MARSH

N.1 Marsh's knowledge in 2017

108BB IAL does not know and cannot admit paragraph 108BB of the SOC.

108CC IAL does not know and cannot admit paragraph 108CC of the SOC.

108DD IAL does not know and cannot admit paragraph 108DD of the SOC.

108EE As to paragraph 108EE of the SOC, IAL:

(a) repeats paragraphs 35W to 35Y of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 108EE of the SOC.

108EEA As to paragraph 108EEA of the SOC, IAL:

(a) repeats paragraphs 35W to 35Y of this Defence; and

(b) otherwise, does not know and cannot admit paragraph 108EEA of the SOC.

108EEB IAL does not know and cannot admit paragraph 108EEB of the SOC.

108EEC IAL does not know and cannot admit paragraph 108EEC of the SOC.

108EED IAL does not know and cannot admit paragraph 108EED of the SOC.

N.2 Misleading or deceptive conduct: limit confirmation trackers and letters

108FF IAL does not know and cannot admit paragraph 108FF of the SOC.

108GG IAL does not know and cannot admit paragraph 108GG of the SOC.

108HH IAL does not know and cannot admit paragraph 108HH of the SOC.

108II IAL does not know and cannot admit paragraph 108II of the SOC.

108IIA IAL does not know and cannot admit paragraph 108IIA of the SOC.

108IIB IAL does not know and cannot admit paragraph 108IIB of the SOC.

108IIC IAL does not know and cannot admit paragraph 108IIC of the SOC.

108IID IAL does not know and cannot admit paragraph 108IID of the SOC.

108JJ IAL does not know and cannot admit paragraph 108JJ of the SOC.

108KK IAL does not know and cannot admit paragraph 108KK of the SOC.

108LL IAL does not know and cannot admit paragraph 108LL of the SOC.

108LLA IAL does not know and cannot admit paragraph 108LLA of the SOC.

108MM IAL does not know and cannot admit paragraph 108MM of the SOC.

108NN IAL does not know and cannot admit paragraph 108NN of the SOC.

108OO IAL does not know and cannot admit paragraph 108OO of the SOC.

108PP IAL does not know and cannot admit paragraph 108PP of the SOC.

108PPA IAL does not know and cannot admit paragraph 195PPA of the SOC.

108QQ IAL does not know and cannot admit paragraph 108QQ of the SOC.

108RR IAL does not know and cannot admit paragraph 108RR of the SOC.

N.3 Governing law for negligence claims

108SS IAL does not plead to paragraph 108SS of the SOC, which does not make any allegation against it.

N.4 Negligent misstatement

108TT IAL does not know and cannot admit paragraph 108TT of the SOC.

108UU IAL does not know and cannot admit paragraph 108UU of the SOC.

108VV IAL does not know and cannot admit paragraph 108VV of the SOC.

108WW IAL does not know and cannot admit paragraph 108WW of the SOC.

108WWA IAL does not know and cannot admit paragraph 108WWA of the SOC.

Loss and damage

108XX IAL does not know and cannot admit paragraph 108XX of the SOC.

108YY IAL does not know and cannot admit paragraph 108YY of the SOC.

N.5 Negligence

Duty of Care

108ZZ IAL does not know and cannot admit paragraph 108ZZ of the SOC.

108AAA IAL does not know and cannot admit paragraph 108AAA of the SOC.

108BBB IAL does not know and cannot admit paragraph 108BBB of the SOC.

Precautions

108CCC IAL does not know and cannot admit paragraph 108CCC of the SOC.

108DDD IAL does not know and cannot admit paragraph 108DDD of the SOC.

108EEE IAL does not know and cannot admit paragraph 108EEE of the SOC.

Loss and damage

108FFF IAL does not know and cannot admit paragraph 108FFF of the SOC.

108FFFA IAL does not know and cannot admit paragraph 108FFFA of the SOC.

108GGG IAL does not know and cannot admit paragraph 108GGG of the SOC.

N.6 [Not used]

108HHH [Not used]

108III [Not used]

108JJJ [Not used]

108KKK [Not used]

108LLL [Not used]

108MMM [Not used]

108NNN [Not used]

108OOO [Not used]

108PPP [Not used]

108QQQ [Not used]

108RRR [Not used]

108SSS [Not used]

N.7 [Not used]

108TTT–108ZZZ [Not used]

N.8 Section 1041E Claim

108AAAA As to paragraphs 108AAAA to 108CCCC of the SOC, IAL:

(a) refers to the letter from Gilbert + Tobin to (inter alia) Clyde & Co dated 22 December 2023, in which Gilbert + Tobin communicated that the Applicant did not press the allegations in Section N.8 of the SOC against Marsh;

(b) says that it understands from that letter that the allegations in Section N.8 of the SOC are not pressed against any party; and

(c) says that, in the circumstances, it does not plead to the entirety of Section N.8 (paragraphs 108AAAA to 108CCCC) as no allegation is made against it.

N.9 [Not used] ~~Misleading or deceptive conduct directed toward GBAG~~

108DDDD [Not used] ~~IAL denies paragraph 108DDDD of the SOC and:~~

(a) ~~repeats paragraph 35ZZAA of this Defence; and~~

(b) ~~refers to and relies on subparagraph 230B to 290(a)(ii) of the IAL Bluestone Defence.~~

108EEEE [Not used] ~~IAL admits paragraph 108EEEE of the SOC.~~

108FFFF [Not used] ~~IAL admits paragraph 108FFFF of the SOC.~~

108GGGG [Not used] ~~IAL admits paragraph 108GGGG of the SOC.~~

108HHHH [Not used] ~~IAL denies paragraph 108HHHH of the SOC and repeats paragraph 35ZZC of this Defence.~~

108IIII [Not used] ~~IAL does not know and cannot admit paragraph 108IIII of the SOC.~~

108JJJJ [Not used] ~~IAL does not know and cannot admit paragraph 108JJJJ of the SOC.~~

108KKKK [Not used] ~~IAL does not know and cannot admit paragraph 108KKKK of the SOC.~~

108LLLL [Not used] ~~IAL does not know and cannot admit paragraph 108LLLL of the SOC.~~

108MMMM [Not used] ~~IAL does not know and cannot admit paragraph 108MMMM of the SOC.~~

108NNNN [Not used] ~~IAL does know and cannot admit paragraph 108NNNN of the SOC.~~

108OOOO [Not used] ~~IAL does not know and cannot admit paragraph 108OOOO of the SOC.~~

108PPPP [Not used] ~~IAL repeats paragraphs 17, 20 – 22 and 467 of Annexure A to this Defence, and otherwise admits paragraph 108PPPP of the SOC.~~

108QQQQ [Not used] ~~IAL refers to and relies on subparagraph 230B to 290(b) of the IAL Bluestone Defence.~~

108RRRR [Not used] ~~IAL does not know and cannot admit paragraph 108RRRR of the SOC.~~

108SSSS [Not used] ~~IAL does not know and cannot admit paragraph 108SSSS of the SOC.~~

108TTTT [Not used] ~~IAL does not know and cannot admit paragraph 108TTTT of the SOC.~~

108UUUU [Not used] ~~IAL does not know and cannot admit paragraph 108UUUU of the SOC.~~

108VVVV [Not used] ~~IAL does not know and cannot admit paragraph 108VVVV of the SOC.~~

108WWWW [Not used] ~~IAL does not know and cannot admit paragraph 108WWWW of the SOC.~~

108XXXX [Not used] ~~IAL does not know and cannot admit paragraph 108XXXX of the SOC.~~

108YYYY [Not used] ~~IAL does not know and cannot admit paragraph 108YYYY of the SOC.~~

108ZZZZ [Not used] ~~IAL does not know and cannot admit paragraph 108ZZZZ of the SOC.~~

O THE RELIEF SOUGHT

109 As to paragraph 109 of the SOC, IAL admits that Credit Suisse Virtuoso seeks the relief outlined in the Fifth Amended Originating Application, but denies that Credit Suisse Virtuoso is entitled to any of the relief sought against IAL.

P FURTHER ANSWER

110 In further answer to the whole of the SOC:

(a) IAL repeats the matters pleaded at Annexure A in IAL's Defence to the SOC;

(b) IAL repeats the matters pleaded in this Defence at paragraph 114;

(c) IAL says if, which is denied, ~~IAL is bound by~~ Policy TS-03088 and/or the pleaded endorsements had been binding, then:

(i) pursuant to clause 15.4 of Policy TS-03088 or section 28(2) of the *ICA*, Policy TS-03088 and any endorsements under this policy would have been ~~are~~ liable to be avoided and any loss recoverable by Credit Suisse Virtuoso is to be calculated on that basis ~~IAL hereby avoids them~~;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(ii) further or alternatively pursuant to section 28(3) of the *ICA*, if Policy TS-03088 and pleaded endorsements ~~are~~ were not liable to be avoided, the right to indemnity of Greensill Bank and/or Credit Suisse Virtuoso ~~is~~ would be reduced to the amount that would place IAL in the position it would have been had the matters pleaded by IAL in Annexure A to its Defence to the SOC not occurred, that amount being nil, and any loss recoverable by Credit Suisse Virtuoso is to be calculated on that basis;

Particulars

IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.

(d) [Not used] ~~IAL says further, or alternatively, pursuant to clause 9.7 of Policy TS-03088, each of Greensill Bank and GCPL failed to comply with its duty of fair presentation and those failures together or separately had a "Material Policy Impact" such that IAL has no liability to indemnify Greensill Bank or Credit Suisse Virtuoso for the loss claimed in this proceeding.~~

~~**Particulars**~~

~~IAL relies on the misrepresentations and non-disclosures pleaded in Annexure A of IAL's Defence to the SOC.~~

111 In further answer to the whole of the SOC:

(a) even if IAL would have been ~~is~~ bound by Policy TS-03088 and the pleaded endorsements (which is no longer in contest ~~denied~~) it would not have been ~~is not~~ liable by reason of the matters set out in this Defence;

(b) even if IAL would have been bound by Policy TS-03088 and the pleaded endorsements, Credit Suisse Virtuoso does not have standing to make any claim under Policy TS-03088 for the following reasons:

(ia) paragraphs 44(f) of this Defence is repeated and, in the premises, the Loss Payee Endorsement confers no rights on Credit Suisse Virtuoso to sue under Policy TS-03088;

(ib) paragraph 44(g) of this Defence is repeated and, in the premises, the Loss Payee Endorsement confers no rights on Credit Suisse Virtuoso to sue under Policy TS-03088;

(i) on its proper construction, the Loss Payee Endorsement (if valid and effective, which is denied):

(A) only required IAL to make Claim payments to the Loss Payee with respect to Loss suffered by the Insured arising out of Assets acquired by the Insured from the Loss Payee, and only to the extent that the Claim (made by the Insured) has been accepted by IAL with respect to such Asset, and IAL has not accepted any such Claim with respect to the Claimed Amount; and

(B) did not effect an assignment of the benefit of Policy TS-03088 to Credit Suisse Virtuoso, or otherwise give Credit Suisse Virtuoso the right to make a claim under Policy TS-03088;

(ii) further or alternatively, clause 15.3(c) of Policy TS-03088 provided that no party may assign or transfer any of its rights and/or obligations under or in connection with Policy TS-03088 except with the written consent of the other party, and IAL never provided such consent;

(iii) ~~further or alternatively, Credit Suisse Virtuoso is not entitled to recover from IAL pursuant to section 48(1) of the *ICA*, as:~~

~~(A) any right pursuant to section 48(1) of the *ICA* must be exercised in accordance with the contract and is subject to the terms of the contract, which terms prohibited assignment without consent and otherwise provided for a Loss Payee to receive payment where a claim had otherwise been made by the Insured and accepted by IAL; and~~

~~(B) further or alternatively, Credit Suisse Virtuoso is not a third-party beneficiary as defined in section 11 of the *ICA*, as it is not specified or referred to in Policy TS-03088 as a person to whom the benefit of insurance cover provided by the contract extends.~~

111A [Not used] ~~In further answer to the whole of the SOC, IAL:~~

~~(a) says that the amendments to the versions of the Fifth Amended Originating Application and SOC filed on 21 August 2024, which change the identity of the Applicant, should take effect from the date the amendments were made, namely 21 August 2024; and~~

~~(b) in the premises, says that, by virtue of cl 15.2 of the Policy TS-03088, Credit Suisse Virtuoso's claim is time barred because it has been brought more than 24 months~~

~~after the last day of the last Policy Period during which the Policy was (alleged to be) in force.~~

112 [Not used] ~~In further answer to the whole of the SOC, IAL:~~

(a) ~~says that it was an express term of Policy TS-03088 (if valid and effective, which is denied) that the "Insured" shall ensure that, following the occurrence of an event that may reasonably be expected to result in a "Loss" under Policy TS-03088, it shall, by exercising the "Insured's" rights under the "Transaction Documents", act reasonably and prudently to prevent and mitigate "Losses" at all times and, 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 TS-03088 (clause 10.7(a));~~

(b) ~~says that, it was an express term of Policy TS-03088 that, in the event of the "Insured's" failure to mitigate "Loss" in accordance with clause 10.7, the "Insurer" is not obliged to indemnify the "Insured" to the extent that a "Loss" would reasonably be expected to have been lower but for the failure to mitigate in accordance with clause 10.7(a) (clause 10.7(d));~~

(c) ~~in the event that the Insureds have settled, or purported to settle, any of the purported "Eligible Debts" relied on, then, depending on (inter alia) the terms of any agreement, the circumstances in which it is entered into and the information known to the Insureds, IAL reserves the right to assert that any agreement between the Insureds and the purported "Customer" was entered into in breach of the duty in clause 10.7(a) and/or that there should be a reduction in any indemnity under clause 10.7(c).~~

(d) ~~says that, on Credit Suisse Virtuoso's case, which is not admitted, the Master Trust Deed was a "Master Trust Deed" and thus a "Transaction Document";~~

(e) ~~says that the events that may reasonably be expected to result in a "Loss" under Policy TS-03088 for the purposes of clause 10.7(a) include each of the alleged NMC Insured Causes;~~

(f) ~~says that following the occurrence of the events described in paragraph 112(e) of this Defence:~~

(i) ~~Credit Suisse Virtuoso transferred the NMC Notes to Greensill Bank;~~

(ii) ~~Greensill Bank (on Credit Suisse Virtuoso's pleaded case) acquired the NMC Notes (including the relevant NMC Note) when they were in default;~~

(iii) ~~Greensill Bank, as the "Insured" under Policy TS-03088, thereby generated or created the potential for a "Loss" which would not otherwise have existed because ownership of an "Asset" by an "Insured" is an essential condition of a "Loss" and, also, is an essential condition of a right of indemnity; and~~

(iv) ~~Greensill Bank acquired the NMC Notes in circumstances where it was uncommercial to do so;~~

(g) ~~says that as best IAL understands Credit Suisse Virtuoso's case:~~

(i) ~~in transferring the NMC Notes or the relevant NMC Note, Credit Suisse Virtuoso exercised rights under the Master Trust Deed; and~~

(ii) ~~in acquiring the NMC Notes or the relevant NMC Note, Greensill Bank exercised rights under the Master Trust Deed; and~~

(h) ~~says that in acquiring the NMC Notes:~~

(i) ~~Credit Suisse Virtuoso and Greensill Bank did not act reasonably and prudently to prevent and mitigate "Losses"; and~~

(ii) ~~Credit Suisse Virtuoso and Greensill Bank instead took a step which had no commercial explanation other than being a step which would or might generate an alleged "Loss" and a potential right of indemnity under Policy TS-03088 which otherwise would not have existed;~~

~~Particulars~~

~~The conclusion that there is no commercial justification is supported by the fact that the alleged transfer of the NMC Notes from Credit Suisse Virtuoso to Greensill Bank was free of payment, as stated by Credit Suisse Virtuoso in the particulars 34 and 35 of the SOC.~~

~~The conclusion is further supported by the fact that, at the time of the alleged transfer, on Credit Suisse Virtuoso's pleaded case, all of the alleged debts secured by the NMC Notes were in substantial default.~~

~~The last of the NMC Notes which remained outstanding was transferred to Greensill Bank no earlier than 25 February 2021, months after the NMC Claim Form was submitted (SOC, Annexure A).~~

~~IAL also refers to the existence and content of the MW Report, as pleaded in paragraphs 72(d), 73(c) and 73(e) of this Defence.~~

(i) ~~says that a person in the position of Credit Suisse Virtuoso or Greensill Bank, acting reasonably and prudently to prevent and mitigate "Losses" would not have acquired the NMC Notes;~~

(j) ~~says that had Credit Suisse Virtuoso not transferred the NMC Notes and Greensill Bank not acquired the NMC Notes:~~

(i) ~~an "Insured" would never have owned the "Asset"; and~~

(ii) ~~there would have been no alleged "Loss" and/or no alleged entitlement to an indemnity under Policy TS-03088;~~

(k) ~~says that there is no entitlement to an indemnity under Policy TS-03088 (if valid and effective, which is denied) to the extent that any "Loss" said to give rise to that entitlement has been caused by a breach of clause 10.7(a), which is, for the reasons referred to in paragraphs 112(e) to 112(i) of this Defence, is the case here;~~

(l) ~~says that in the premises, Credit Suisse Virtuoso has no entitlement to an indemnity; and~~

(m) ~~says further that:~~

(i) ~~by reason of the matters alleged in paragraphs 112(a) to 112(i) of this Defence, for Credit Suisse Virtuoso (insofar as it claims to be a third party beneficiary under Policy TS-03088, which is denied) and Greensill Bank (insofar as it claims to be an insured, which is denied) to rely upon provisions of Policy TS-03088 providing for indemnity would be for it to fail to act with the utmost good faith implied into Policy TS-03088 by reason of section 13 of the *ICA*; and~~

(ii) ~~in the premises and by reason of section 14 of the *ICA*, Credit Suisse Virtuoso and Greensill Bank may not seek or obtain indemnity under Policy TS-03088.~~

113 In further answer to Credit Suisse Virtuoso's claim, IAL says:

(a) that it was an express term of Policy TS-03088 (if valid and effective, which is denied and not asserted by Credit Suisse Virtuoso) that the "Insurer" shall be deemed to have delivered a "Stop Asset Acquisition Instruction" to the "Insured" in relation to "Assets" arising from a "Customer" or if applicable a "Customer Group", where the "Customer" or any member of the applicable "Customer Group" has failed to pay a "Debt" on the relevant "Due Date" and such failure to pay has not been remedied within 10 Business Days after the "Due Date" (Policy TS-03088, clause 8.3(a));

(b) that, upon the deemed delivery of a "Stop Asset Acquisition Instruction", no "Asset" (arising from the applicable "Customer" or "Customer Group") acquired after the deemed delivery of the "Stop Asset Acquisition Instruction" shall attach to Policy TS-03088;

(c) the asserted failures to pay occurred from approximately 3 March 2020 (SOC, paragraph 67) and, ten days following the first asserted failure to pay, IAL was deemed to have issued a "Stop Asset Acquisition" (Policy TS-03088, clause 8.3(a));

(d) Policy TS-03088 did not attach to each "Asset" (including each of the NMC Notes) arising from NMC Health and/or NMC Health Plc acquired thereafter;

(e) on the pleaded case, Policy TS-03088 did not attach to the relevant NMC Note, of which 23 of 24 are said to have been acquired on 23 October 2020, and one acquired no earlier than 25 February 2021 (SOC, Annexure A); and

(f) there is no coverage in respect of relevant NMC Notes.

114 In further answer to Credit Suisse Virtuoso's claim, IAL:

(a) refers to and repeats paragraphs 37(j)(i), 72(d), 73(c) and 73(e) and 109 of this Defence;

(b) says that the matters in paragraphs 72(d), 73(c) and 73(e) and 113(c) of this Defence was material information which ought to have been delivered by GCUK to IAL but was not; and

(c) says further each of that the matters in paragraphs 72(d), 73(c) and 73(e) and 113(c) of this Defence constituted a Material Policy Impact as defined by Policy TS-03088, such that IAL has no liability to indemnify Greensill Bank or Credit Suisse Virtuoso for the loss claimed in this proceeding.

115 In further answer to Credit Suisse Virtuoso's claim, IAL says:

(a) it was a term of Policy TS-03088 (if valid and effective, which is denied and not asserted by Credit Suisse Virtuoso) that the "Insurer" need not indemnify the "Insured" for "Losses" exceeding the lower of the "Applicable Limit of Liability" and the "Maximum Limit of Liability" (Policy TS-03088 clause 5.2);

(b) the "Applicable Limit of Liability" was defined in Schedule 1 and was the lower of (inter alia) the relevant "Customer Limit" of an "Eligible Customer";

(c) the "Maximum Limit of Liability" was defined in Schedule 1 and Schedule 6 and meant (inter alia), for any particular "Customer", the amount as set out in the relevant "Customer Endorsement";

(d) it was a term of Policy TS-03088 that the "Insurer's" maximum liability for the aggregate of all "Losses" insured under the "Policy" for the "Customer" was a "Customer Limit", being an amount recorded in an "Endorsement" to the "Policy" (Schedule 1, definition of "Customer Limit"); and

(e) if, and to the extent that the "Loss" in respect of the NMC Insured Causes exceeds the "Applicable Limit of Liability" or the "Maximum Limit of Liability" in respect of relevant "Customers", there is no coverage.

116 [Not used] ~~In further answer to Credit Suisse Virtuoso's claim, IAL says that:~~

(a) ~~under Policy TS-03088 (if valid and effective, which is denied), the "Insurer" has or may have contractual rights of subrogation under clause 12.1, being rights exercisable against any person or organisation the subject of or otherwise involved in "Loss" (Policy TS-03088, clause 12.1);~~

(b) ~~under Policy TS-03088, payment of a "Claim" under the policy is subject to and conditional upon the receivables, insurance proceeds or other sources of recovery to which the "Insurer" shall be subrogated in relation to that "Loss" not being subject to any lien, security interest or other third party claim superior to that of the "Insurer" created or granted by the "Insured" or, alternatively, by the "Insured" or a "Loss Payee" (Policy TS-03088, clause 12.2); and~~

(c) ~~it reserves its right to rely on clause 12.2 of the Policy TS-03088 in the event that the "Loss" the subject of the claim is subject to liens or other interests or claims referred to in clause 12.2.~~

117 In further response to the Applicant's claims pleaded against it in the SOC, IAL pleads the facts alleged in the document titled "Annexure B to Defences to IAL", which is filed in these Proceedings on 30 April 2026.

Date: [31 July 2026] ~~1 May 2026~~



Signed by Malcolm Stephens, solicitor on record

This pleading was prepared by Malcolm Stephens and settled by S Finch, DFC Thomas, D Hume, M Ellicott, C Ernst, N Wootton and H Cooper of Counsel.

Certificate of lawyer

I, Malcolm Stephens, certify to the Court that, in relation to the Defence filed on behalf of the First 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

M Stephens

Signed by Malcolm Stephens, solicitor on record
Lawyer for the First Respondent

Schedule

No. NSD110/2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent:	Greensill Bank AG
Third Respondent:	Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Fourth Respondent:	BCC Trade Credit Pty Ltd
Fifth Respondent:	Greg Brereton
Sixth Respondent:	Tokio Marine Management (Australasia) Pty Ltd (ACN 001 488 455)
Seventh Respondent:	Tokio Marine & Nichido Fire Insurance Co Ltd (ARBN 000 438 291)
Eighth Respondent:	Marsh Limited

CROSS CLAIM

Cross-Claimant:	Greensill Bank AG
Second Cross-Claimant:	Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
Cross-Respondent:	Insurance Australia Limited (ACN 000 016 722)

CROSS CLAIM

Cross-Claimant:	BCC Trade Credit Pty Ltd (ACN 608 296 233)
Cross Respondent:	Greensill Capital (UK) Ltd
Second Cross Respondent:	Greensill Bank AG
Third Cross Respondent:	Greensill Capital Pty Ltd (in liquidation)

CROSS CLAIM

Cross-Claimant:	Marsh Limited

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

Second Cross Respondent: Greg Brereton

Third Cross Respondent: Insurance Australia Limited (ACN 000 016 722)

Fourth Cross Respondent: Tokio Marine & Nichido Fire Insurance Co., Ltd (ACN 000 438 291)

CROSS CLAIM

Cross-Claimant: Marsh Limited

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

Second Cross Respondent: UBS Asset Management Switzerland AG