

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/12/2020 12:59:00 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD2064/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v UNION STANDARD INTERNATIONAL GROUP PTY LTD ACN 117 658 349
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 10/12/2020 4:53:41 PM AEDT

Registrar

### Important Information

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

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Amended



## **Amended originating process**

**(amended in accordance with the order made by Wigney J on 1 December 2020)**

No. NSD2064 of 2019

Federal Court of Australia

District Registry: New South Wales

Division: ~~Commercial and Corporations~~General

### **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**UNION STANDARD INTERNATIONAL GROUP PTY LTD (in liq) ACN 117 658 349 and others named in the schedule**

Defendants

#### **A. DETAILS OF APPLICATION**

This application is made under:

- (a) ss 1101B(4)(a), 1317E(1), 1317G(1), 1323(1) and 1324(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) ss 12GBA(1), 12GBB(3), 12GD(1), 12GLB(1), 12GNB and 12GNC(d) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- (c) ss 21 and 23 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**); and
- (d) s 39B(1A) of the *Judiciary Act 1903* (Cth).

The nature of the proceeding is an application for:

- (e) orders relating to the property of the First, Second and Third Defendants;
  - ~~(i) requiring the Fourth and Fifth Defendants to deliver up their passports to the Court;~~
  - ~~(ii) prohibiting the Fourth and Fifth Defendants from leaving Australia without the consent of the Court;~~
- (f) declarations against each of the First to Third Defendants;
- (g) declarations of contravention by the:

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<b>Filed on behalf of:</b>	Australian Securities & Investments Commission (Plaintiff)
<b>Prepared by:</b>	Fred Prickett and Lucy Groenewegen of Clayton Utz
<b>Law firm:</b>	Clayton Utz
<b>Tel:</b>	(03) 9286 6344
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<b>Address for service:</b>	Email addresses above and L18, 333 Collins Street, Melbourne, Vic, 3000



- (i) First Defendant of ss 911A(5B), 912A(5A), 1041E and 1041H of the Corporations Act (including by operation of s 769B of the Corporations Act) and ss 12CB, 12DA, 12DB of the ASIC Act (including by operation of s 12GH of the ASIC Act); and
- (ii) Second and Third Defendants of ss 911A(5B), 1041E and 1041H of the Corporations Act and ss 12CB, 12DA and 12DB of the ASIC Act;
- (h) orders that the First, Second and Third Defendants pay to the Commonwealth a pecuniary penalty;
- (i) orders prohibiting the Second Defendant from providing financial services in this jurisdiction; and
- (j) orders requiring the First, Second and Third Defendants to refund money paid to them by their customers.

On the facts stated in the Plaintiff's Concise Statement, the Plaintiff seeks the following orders:

#### **INTERLOCUTORY RELIEF**

**[Paragraphs 1-14 deleted]**

#### **FINAL RELIEF**

**[Paragraphs 15-18 deleted]**

#### ***Asset restraint***

19. Pursuant to ss 1323(1)(h) and 1323(3) of the Corporations Act and/or s 23 of the Federal Court Act, ~~each of the First, Second and Third Defendants, by themselves~~ itself and their its servants, agents and employees, must not:
- (a) remove, or cause or permit to be removed, from Australia all or part of its property (as defined in the Corporations Act); and/or
  - (b) sell, charge, mortgage or otherwise deal with, dispose of and/or diminish the value of all or any part of ~~their~~ its property (as defined in the Corporations Act); and/or
  - (c) cause or permit to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of ~~their~~ its property (as defined in the Corporations Act); and/or
  - (d) without limiting the terms of sub-paragraph (a) to (c) above, withdraw, transfer or otherwise dispose of or deal with, any monies available in any account with any bank, building society or other financial institution, in which the ~~First, Second and/or Third Defendants have~~ has any legal or equitable interest, ~~including without limitation the following Commonwealth Bank of Australia bank accounts:~~



- (i) ~~account number 14306859; BSB number: 062000; account name: Union Standard International Group Pty Ltd;~~
- (ii) ~~account number: 14236993; BSB number: 062000; account name: Union Standard International Group Pty Ltd – Client Trust Account;~~
- (iii) ~~account number: 15669678; BSB number: 062000; account name: Union Standard International Group Pty Ltd – Client Trust Account;~~
- (iv) ~~account number: 15669694; BSB number: 062000; account name: Union Standard International Group Pty Ltd – Client Trust Account; and~~
- (v) ~~account number: 15711565; BSB number: 062000; account name: Union Standard International Group Pty Ltd – Client Trust Account.~~

20. The above order 19 shall not prevent:

- (a) ~~any of the Second Defendants from paying or otherwise incurring a liability for legal costs reasonably incurred in these proceedings;~~
- (b) ~~any of the Second Defendants from withdrawing amounts to pay:~~
  - (i) staff employed by it in respect of wages and superannuation;
  - (ii) the Australian Taxation Office;
  - (iii) customers;
  - (iv) third party liquidity providers;
  - (v) introducing brokers; or
  - (vi) ~~trade other trade creditors (including customers) of the First, Second and/or Third Defendants,~~  
provided that:
  - (vii) any such payments are bona fide, made in the ordinary course of business and for amounts which are due and payable; and
  - (viii) on and from 24 December 2019, the Second Defendant notify the Plaintiff by 5pm on the Tuesday of each week (or the next business day if the Tuesday is a public holiday) of details of the payments made in the previous 7 days and provide supporting documentation; and
  - (ix) ~~and properly incurred as agreed between the Plaintiff and any Defendant, where the withdrawal is made following a request in writing to the Plaintiff to withdraw funds from the bank account of one or more of the First, Second and/or Third Defendants and receipt of the Plaintiff's approval; and any~~



withdrawal of \$50,000 or more may only be made following a request in writing to the Plaintiff to make the withdrawal and receipt of the Plaintiff's approval; and

(x) without limiting the generality of the above subparagraph (viii), if the Plaintiff makes a request pursuant to this order in relation to any payment or payments which the Second Defendant claims falls within order 20(b)(vii), then within 3 business days the Second Defendant is to provide, in respect of any of the payments queried by the Plaintiff, any documents which detail and evidence:

1. what particular goods or services were provided to the Second Defendant;
2. when those goods or services were provided to the Second Defendant;
3. by whom those goods or services were provided;
4. any contract or purchase order (or equivalent document showing the Second Defendant's request for services) under which the goods or services have been provided;
5. any invoice;
6. how the amount of the payment was calculated; and
7. the extent to which the payee (or payees) and the Second Defendant are related entities, and the extent to which the payee (or payees) and Addnet Solutions Pty Ltd are related entities, and the extent to which the payee (or payees) and Maxiflex Ltd are related entities (within the meaning of the Corporations Act); and

(xi) insofar as documents do not detail and evidence the matters referred to in order 20(b)(x) above, then within 7 days of the Plaintiff's request referred to in order 20(b)(x) above in relation to a payment made pursuant to order 20(b)(vii), the Second Defendant is to provide an affidavit deposed to by a director of the Second Defendant (subject to any claim for privilege in respect of self-incrimination) detailing and evidencing the matters set out in order 20(b)(x) above; and

(c) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to ~~each or any of the~~ Second Defendants prior to the date of this order; and



- (d) the payment of any other amounts where the withdrawal is made following notice of the withdrawal being provided by the Second Defendant to the Plaintiff and no objection is made by the Plaintiff to the withdrawal within 7 days of receipt of the notice by the Plaintiff.

**[Paragraphs 21 to 23 deleted]**

**DECLARATIONS**

24. A declaration that from August 2018 to January 2020 in respect of the Second Defendant, and from December 2018 to March 2020 in respect of the Third Defendant, or about those periods, the Second and Third Defendants provided personal advice within the meaning of s 766B(3) of the Corporations Act, by:
- (a) making recommendations or addressing statements of opinion to clients, which were intended to influence them in making a decision in relation to an investment in derivative products, or that could reasonably be regarded as being intended to have such an influence; and
- (b) in circumstances where the provider of the advice had considered one or more of those client's objectives, financial situation and needs, or a reasonable person might expect the provider to have considered one or more of those matters,
- when they did not hold an Australian Financial Services Licence (AFSL) or were not acting as a corporate authorised representative for the holder of an AFSL which permitted the provision of personal advice, each of the Second and Third Defendants contravened s 911A(1) of the Corporations Act.
25. A declaration of contravention pursuant to s 1317E(1) that from 13 March 2019 by reason of the conduct referred to in paragraph 24 above, the Second and Third Defendants contravened s 911A(5B) of the Corporations Act.
26. A declaration that from:
- (a) August 2018 to January 2020 in respect of the Second Defendant; and
- (b) December 2018 to March 2020 in respect of the Third Defendant,
- or about those periods, the Second and Third Defendants represented to clients by telephone and email:
- (c) as to the risks to which funds deposited by clients would be exposed, that by increasing deposits there would be less risk, that the level of risk was equivalent to holding money in a bank account, and that only funds used to open a position would be exposed to adverse movement in that product;



- (d) that the First Defendant (as the issuer of the products offered by the Second Defendant and the Third Defendant) was not a "market maker", that the Second Defendant and the Third Defendant would generate revenue when the client made money, that the Second Defendant and the Third Defendant generated revenue based solely on fees which were based on a client's trading volume, that the Second Defendant and the Third Defendant did not make money when a client lost money, and that Account Managers engaged by or on behalf of the Second Defendant and the Third Defendant earned commission based solely on a client's trading volume;
- (e) as to the profits that clients were likely to or might reasonably expect to generate, including as a result of a particular trading position or strategy identified by the Second or Third Defendant;
- (f) that money could be withdrawn in the same way as a bank account;
- (g) that a plan had been developed for the client which was designed to meet the client's objectives or needs and improve the client's financial position;
- (h) that positions that had moved against a client represented only "temporary" losses;
- (i) that money was better off invested in trades with the Second or Third Defendants respectively than in a bank account earning 1 or 1.5% interest;
- (j) that a client would receive bonus cash credits when they deposited a certain amount (a representation made by the Third Defendant only);
- (k) that the Second Defendant or the Third Defendant respectively were "regulated" by ASIC such that the client was exposed to less risk than would otherwise be the case;
- (l) that by reducing investments in equities, and increasing investment in the derivative products offered by Third Defendant, clients would increase their returns and reduce their exposure to risk (a representation made by the Third Defendant only); and
- (m) that the Second Defendant and the Third Defendant respectively had offices located in Australia, and that the Account Managers engaged by or on behalf of the Second Defendant and the Third Defendant respectively were located in Australia,

by reason of which conduct the Second and Third Defendants:

- (n) made false or misleading statements in breach of s 1041E(1) of the Corporations Act and s 12DB(1) of the ASIC Act; and



- (o) engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.
27. A declaration that from July 2018 to December 2019, the First Defendant represented to clients by telephone:
- (a) that the First Defendant was not a "market maker", that it generated revenue only through fees which were based on a client's trading volume, and that it did not make money when a client lost money;
- (b) as to the profits that clients were likely or might reasonably expect to generate;
- (c) as to the experience of an analyst engaged by the First Defendant, Robert Clayton, and as to the accuracy of his reports; and
- (d) that the First Defendant was "regulated" by ASIC such that the client was exposed to less risk that would otherwise be the case,
- by reason of which conduct the First Defendant:
- (e) made false or misleading statements in breach of s 1041E(1) of the Corporations Act and s 12DB(1) of the ASIC Act; and
- (f) engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.
28. A declaration of contravention pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019 that by reason of the conduct referred to in paragraphs 26 and 27 above, each of the First to Third Defendants contravened s 12DB(1) of the ASIC Act.
29. A declaration that from August 2018 to January 2020 in respect of the Second Defendant, and from December 2018 to March 2020 in respect of the Third Defendant, or about those periods, the Second and Third Defendants by:
- (a) the conduct in paragraph 26 above; and/or
- (b) engaging in the conduct referred to in paragraphs 24 and 26 above in circumstances where the Second or Third Defendants:
- (i) failed to take reasonable steps to ensure that their clients understood the complex products being recommended by the Second or Third Defendants and their associated risk;
- (ii) engaged clients who were vulnerable or at a disadvantage in that they variously: had low financial literacy, were inexperienced in trading in FX and CFD contracts, lacked understanding of the complex products and their





associated risks, had low levels of income, and/or were reliant on the advice and recommendations of the Account Manager;

- (iii) failed to adequately explain or disclose the risks of investing in the relevant financial products, being risks of which the Second or Third Defendants were or ought reasonably to have been aware;
- (iv) facilitated and assisted clients to trade in FX contracts and CFDs, being highly risky financial products, being aware of the clients' vulnerability or disadvantage as pleaded above, and without conducting an adequate assessment of the client's objectives, financial situation and needs to determine whether such financial products were appropriate for the client;
- (v) engaged in unfair conduct, including by:
  - 1. using high pressure sale tactics to discourage clients from withdrawing funds or to encourage clients to deposit funds and open more positions, including encouraging clients to deposit more money by way of incentives or otherwise (even after the client had told the Account Manager that they had no more money, were borrowing money, or were otherwise reluctant to make further deposits); and
  - 2. using strategies which were calculated to result in the clients losing all of their deposited funds, such as placing more trades with greater volume and leaving open trades that were trading at a loss; and
- (vi) knew, or ought reasonably to have known, that it was not in the clients' immediate or long-term financial interests to invest in the products, further or in the alternative to take (that is open, close or leave open) specific positions in those products;
- (vii) received a financial benefit when the client incurred financial losses given the First Defendant was the counterparty to the derivative positions opened by their clients;
- (viii) failed to apply qualification criteria including the failure to comply with ASIC guidelines (including ASIC Regulatory Guide 227) published for providers of margin forex contracts and contracts for difference which said that issuers should maintain a policy that set out the minimum qualification criteria that prospective investors would need to demonstrate before the issuer agreed to open an account on their behalf,



the Second and Third Defendants engaged in unconscionable conduct in connection with the supply or possible supply of financial services in breach of s 12CB(1) of the ASIC Act, including by applying a system of conduct or pattern of behaviour that was unconscionable for the purposes of s 12CB(4)(b).

30. A declaration of contravention pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019 that by reason of the conduct referred to in paragraph 29 above, the Second and Third Defendants contravened ss 12CB(1) and 12CB(4)(b) of the ASIC Act.
31. A declaration that by operation of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act and by reason of the corporate authorised representative agreements between the First Defendant and each of the Second and Third Defendants, the First Defendant is taken to have engaged in the conduct of the Second and Third Defendants referred to in paragraphs 24 to 26 and 28 to 30 above; and therefore also contravened ss 911A(1), 911A(5B), 1041E(1) and 1041H(1) of the Corporations Act and ss 12DB(1), 12DA(1), 12CB(1) and 12CB(4)(b) of the ASIC Act.
32. A declaration that from 11 April 2019 the First Defendant, by encouraging persons located in China to become its clients and by providing its financial services to customers based in China in circumstances where the provision of its financial services necessarily placed those customers in contravention of Chinese law, USG exposed such customers to civil and criminal liability under Chinese law and thereby contravened s 912A(1)(a) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by the licence were provided efficiently, honestly and fairly.
33. A declaration of contravention pursuant to s 1317E(1) of the Corporations Act that from 11 April 2019, by reason of the conduct referred to in paragraph 32 above, the First Defendant contravened subsection 912A(5A) of the Corporations Act.

### **PECUNIARY PENALTIES**

34. Orders pursuant to s 1317G(1) of the Corporations Act that the First, Second and Third Defendants each pay to the Commonwealth a pecuniary penalty for their respective contraventions of s 911A(5B) in such amounts as the Court considers appropriate.
35. Orders pursuant to s 1317G(1) of the Corporations Act that the First Defendant pay to the Commonwealth a pecuniary penalty for its contravention of s 912A(1)(5A) in such amounts as the Court considers appropriate.
36. Orders pursuant to s 12GBA(1) (for conduct occurring prior to 13 March 2019, as then in force) and s 12GBB(3) (for conduct occurring on and after 13 March 2019) of the ASIC Act that each of the First, Second and Third Defendants pay to the Commonwealth a



pecuniary penalty for their respective contraventions of s 12DB(1) in such amounts as the Court considers appropriate.

37. Orders pursuant to s 12GBA(1) (for conduct occurring prior to 13 March 2019, as then in force) and s 12GBB(3) (for conduct occurring on and after 13 March 2019) of the ASIC Act that each of the First, Second and Third Defendants pay to the Commonwealth a pecuniary penalty for their respective contraventions of s 12CB(1) and 12CB(4)(b) in such amounts as the Court considers appropriate.

#### **NON PARTY REDRESS AND PUBLICITY**

38. Orders pursuant to ss 12GNB and 12GNC(d) of the ASIC Act that the First, Second and Third Defendants refund to their clients their net deposits (i.e. the total amount deposited to the client's trading account, plus any profit earned, less any amount already withdrawn).
39. Orders pursuant to s 1101B(1)(a) of the Corporations Act and ss 12GLA(2)(c) and (d) and 12GLB(1) of the ASIC Act requiring the First, Second and Third Defendants to disclose information to their customers and publish advertisements in terms to be determined by the Court.

#### **INJUNCTIONS**

40. Orders pursuant to ss 1101B(4)(a) and 1324(1) of the Corporations Act and s 12GD(1) of the ASIC Act restraining the Second Defendant from carrying on a financial services business, or carrying on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the Corporations Act, or otherwise providing financial product advice howsoever, for a period to be determined by the Court.

#### **FURTHER ORDERS**

41. Costs.
42. Such further or other order as the Court thinks fit.



Date: 12 December 2019

Date amended: 10 December 2020

A handwritten signature in blue ink, appearing to read "Fred Prickett".

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Signed by Fred Prickett  
Lawyer for the Plaintiff



## B. NOTICE TO DEFENDANTS

TO:

UNION STANDARD INTERNATIONAL GROUP PTY LTD (in liq) of Shuriken Consulting Sydney, Suite 2, Level 11, 10 Bridge Street, Sydney, New South Wales, 2000. Address for service: Mr Jonathan O'Loughlin, O'Loughlin Westhoff, Suite 7.06, Level 7, 32 Market St, Sydney, NSW 2000.

~~JOHN CARLTON MARTIN of '215' 11 Wentworth Street, Manly, NSW, 2095~~

MAXI EFX GLOBAL AU PTY LTD ACN 625 283 785 of Shuriken Consulting Hornsby Pty Ltd, Suite 21, Level 1, 23-29 Hunter street, Hornsby, New South Wales, 2077. Address for service: Mr Gordon Grieve, Piper Alderman, Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000.

~~PEDRO EDUARDO SASSO of 138 Chatham Road, Denistone, NSW, 2114~~

BRIGHTAU CAPITAL PTY LTD (in liq) ACN 619 685 120 of Shuriken Consulting Hornsby Pty Ltd, Suite 21, Level 1, 23-29 Hunter street, Hornsby, New South Wales, 2077. Address for service: Mr Elan Sasson, Quinn Emanuel, Level 15, 111 Elizabeth Street, Sydney, NSW 2000.

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

## D. FILING

Date of filing:

.....  
Registrar

This originating process is filed by Clayton Utz for the plaintiff.

## E. SERVICE

The plaintiff's address for service is:

*Email:* [fprickett@claytonutz.com](mailto:fprickett@claytonutz.com) and [jmuckersielgroenewegen@claytonutz.com](mailto:jmuckersielgroenewegen@claytonutz.com)

*Post:* L18, 333 Collins Street, Melbourne, Vic, 3000

It is intended to serve a copy of this originating process on each defendant and on any person listed below:



Messrs Peter Krejci and Andrew Cummins as liquidators of the First Defendant, BRI Ferrier (NSW) Pty Ltd Chartered Accountants, Level 30, Australia Square, 264 George Street NSW 2000, Sydney NSW 2001.

Mr Michael Bracken, Colin Biggers & Paisley as legal representatives for the liquidators of the First Defendant, Level 42, 2 Park Street, Sydney, NSW 2000.

~~The time by which a copy of this originating process is to be served has been abridged by order made \_\_\_\_\_ on \_\_\_\_\_ to 4.30 pm on 12 December 2019~~

**Schedule**No. NSD2064 of 2019

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

**Defendants**

Second Defendant: Maxi EFX Global AU Pty Ltd ACN 625 283 785  
Third Defendant BrightAU Capital Pty Ltd (in liq) ACN 619 685 120  
~~Fourth Defendant John Carlton Martin~~  
~~Fifth Defendant Pedro Eduardo Sasso~~

Date: [\*\*] December 2019

Date amended: 10 December 2020