**Australian Securities and Investments Commission**
Office address (inc courier deliveries):
Level 5, 100 Market Street
Sydney NSW 2000

Mail address for Sydney office:
GPO Box 9827
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 720 000

www.asic.gov.au

Our Ref: CAS-57815-B2M9N7

17 September 2020

s 47F, s 47G (1)(a) [redacted]

**By hand**

Dear s 47F, s 47G (1)(a)

**Notice requiring appearance for examination**

I am authorised by the Australian Securities and Investments Commission (ASIC) to exercise the powers of ASIC under Part 3 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

I enclose a Notice issued under s19 of the ASIC Act (Notice), requiring you to appear for examination on oath or affirmation and to answer questions before s 22 [redacted] and s 22 [redacted] of ASIC (Inspectors).

This Notice is issued because ASIC, on reasonable grounds, suspects or believes that you can give information relevant to a matter that it is investigating, or is to investigate, under Division 1 of Part 3 of the ASIC Act.

You will note that the Notice also requires you to give to ASIC all reasonable assistance in connection with its investigation. The Inspectors reserve the right to give any particular directions as to how that assistance should be provided, prior to and during the course of the examination.

I draw your attention to the notice of relevant statutory provisions that is attached to the Notice. It refers to s23(1), s63 and s68 of the ASIC Act which respectively relate to your rights to have a lawyer attend the examination, your obligation to comply with the Notice unless you have a reasonable excuse and the privileges against self-incrimination and exposure to a penalty.

I also enclose explanatory notes in relation to s19 examinations which you should read.

**Photographic Identification to be brought to examination**
Security arrangements are such that you and any legal representative must bring photographic identification when you appear for examination that states your full name and date of birth. This can be a current driver's licence or passport. You will be asked to present this at Reception for security purposes prior to the commencement of your examination. If you think that you may be unable to comply with this requirement you must contact me prior to the date of your examination.

Should you have any queries regarding this matter please do not hesitate to contact me on s 22 or email to s 22 @asic.gov.au.

**Privacy**
Any books or information required to be produced or given pursuant to the Notice may include personal information. Please refer to our privacy policy (www.asic.gov.au/privacy) for information about how we handle your personal information, your rights to seek access to and correct personal information, and how to complain about breaches of your privacy.

Yours sincerely

s 22

Senior Specialist, Corporations and Corporate Governance Enforcement
Australian Securities and Investments Commission

Encl.

ASIC
Australian Securities & Investments Commission

NTC2005038

**FORM 1**

**Regulation 4**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION REGULATIONS 2001**

**Australian Securities and Investments Commission**

**NOTICE REQUIRING APPEARANCE AT AN EXAMINATION OR REASONABLE ASSISTANCE IN CONNECTION WITH AN INVESTIGATION**

To: s 47F, s 47G (1)(a) [redacted]

In relation to an investigation s 47F, s 47G (1)(a) [redacted] you are notified that under subsection 19(2) of the *Australian Securities and Investments Commission Act 2001* ('the Act') you are required:

(a) to appear at 11:30am on 28 September 2020 at Level 5, 100 Market Street, Sydney NSW 2000 before s 22 [redacted] and s 22 [redacted] for examination on oath or affirmation and to answer questions put to you in relation to the investigation; and

(b) to give the Australian Securities and Investments Commission all reasonable assistance in connection with the investigation.

Please note the provisions of subsection 23(1) of the Act (relating to legal representation) and section 68 of the Act (relating to self-incrimination). The effect of those provisions is set out at the end of this form.

Dated: 17 September 2020

s 22 [redacted]

s 22 [redacted]

Signature of person authorised by the Commission to conduct the examination

Signature of person authorised by the Commission to conduct the examination

**NOTICE OF RELEVANT STATUTORY PROVISIONS**

1. Subsection 23(1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.

2. (1) You must not fail to comply with this Notice without reasonable excuse (see subsection 63(1) of the Act).

   (2) It is not a reasonable excuse for failure to comply with this Notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 68(1) of the Act).

   (3) However, if:

      (a) before making an oral statement or signing a record in answer to this Notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and

      (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;

   the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.

   (4) The right to make a claim of this kind is not available to a body corporate (see subsections 68(2) and (3) of the Act).

## EXPLANATORY NOTES - SECTION 19 EXAMINATIONS

Your attention is drawn to the following (the section references are to the ASIC Act unless otherwise specified):

**FAILURE TO COMPLY WITH SECTION 19 REQUIREMENT:** Subsection 63(1) provides that a person who, without reasonable excuse, fails to comply with a requirement made under section 19 may be subject to a penalty of up to 240 penalty units ($53,280) or imprisonment for 2 years, or both (see also s93D).

**PRIVATE EXAMINATIONS:** Section 22 provides that the examination must take place in private. Accordingly, at the examination you may be directed not to discuss any of the questions asked or answers given in any examination with any person (other than a legal adviser) unless advised otherwise for a specified period. A breach of these directions may amount to contempt of ASIC or obstruction and an offence under sections 65 and 66, breaches of which carry severe penalties.

**OATH/AFFIRMATION:** Subsection 21(1) provides that you are required to either take an oath or make an affirmation. Failure to do so without reasonable excuse may be a criminal offence (see s63(3)).

**REQUIREMENT TO ANSWER QUESTIONS:** Subsection 21(3 provides that the Inspectors may require you to answer a question that is put to you at the examination and is relevant to a matter that ASIC is investigating, or is to investigate. Failure to do so without reasonable excuse may be a criminal offence (see s63(1)).

**PRIVILEGES AGAINST SELF-INCRIMINATION OR EXPOSURE TO A PENALTY:** It is not a reasonable excuse for failure to comply with this Notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see s68(1)). Failure to do so without reasonable excuse may be a criminal offence (see s63(1)).

However, if:

(a) before making an oral statement or signing a record in answer to this Notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and

(b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;

then pursuant to subsection 68(3) the statement or the fact that you have signed the record is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.
Subsection 68(3) does not apply to certain proceedings for the imposition of a non-monetary penalty. Those proceedings are specified in section 1349 of the Corporations Act. They comprise proceedings for the imposition of a penalty under the following parts of the Corporations Act:

(a) a disqualification under Part 2D.6;

(b) a declaration under section 853C;

(c) a suspension or cancellation under section 915B;

(d) a suspension or cancellation under section 915C;

(e) a banning order under section 920A;

(f) an order under section 921A;

(g) a cancellation or suspension under Div 3 of Part 9.2;

(h) a requirement to give an undertaking under subsections 1292(9)(b) or (c); or

(i) a cancellation or suspension under Div 2 of Part 9.2A.

Examples of those proceedings include court or administrative proceedings to ban a person from managing a corporation or from providing financial services.

Should you wish to claim, pursuant to section 68, that an answer might tend to incriminate you or make you liable to a penalty then before you answer a question you should say the word "**privilege**" and then answer the question.

**LEGAL PROFESSIONAL PRIVILEGE:** For the purposes of your obligations arising from the Notice, ASIC will accept that it is a reasonable excuse to not provide information during an examination or in response to a request for reasonable assistance if that information is covered by legal professional privilege (LPP). Accordingly, you are not obliged to provide during an examination or in response to a request for reasonable assistance, information that is covered by LPP.

LPP may be relied upon as a reasonable excuse for you not providing information where:

- you are the holder of that privilege and you claim the privilege;
- you claim the privilege on behalf of its holder; or
- you reasonably believe that the information comprised in the answer is covered by LPP but you do not have authority to claim the privilege on behalf of the holder. In this instance, you may indicate that the information is covered by LPP belonging to another person.

If you claim or indicate that any information that you are required to provide is subject to LPP, it will be necessary for you to provide to the Inspectors sufficient information to allow them to make an informed decision about whether your claim or indication can be supported.

If you indicate that information is covered by LPP belonging to another person, but you do not have authority to claim the privilege on behalf of the holder, you must provide the name and contact details of that other person, and the basis for their reasonable belief that the information is covered by LPP.
A person claiming LPP has the onus of establishing that privilege.

**LPP claims over information in documents**

If you are claiming LPP over information in documents, you should identify the document over which LPP is claimed, by individually itemising each document and providing the following information in respect of each document:

(a) the names of all authors and recipients of the document (including recipients of copies) together with their positions and employer, if any;

(b) the date of the document;

(c) the type of document e.g. email or letter;

(d) whether the document (original or copies) exists in electronic or hard copy;

(e) the category of legal professional privilege claimed (advice privilege or litigation privilege) and the basis on which the privilege is claimed;

(f) the name of all persons who claim the right to assert the privilege, including any third parties on whose behalf the privilege claim is made;

(g) the address of the premises where the document is kept; and

(h) whether privilege is claimed over the whole or part of the document. Please note, where only part of the document is subject to a claim of privilege, an appropriately masked version of the document must be provided to ASIC.

In the case of a claim of LPP on behalf of another party in respect of a document, you should also provide the following information:

(a) the identity of the privilege holder;

(b) the last known contact details of the privilege holder; and

(c) an explanation of the circumstances by which the document came to be within your possession or control.

**LPP claims over oral information**

If, during an examination, you seek to claim LPP over information responsive to a question you may be requested to provide the details specified below during the examination or at such later date as may be specified by the Inspectors:

(a) the names of all parties who communicated the information or to whom the information has been communicated, together with their positions and employer (if any);

(b) the date of the communication;

(c) the category of LPP claimed (advice privilege or litigation privilege) and the basis on which the privilege is claimed;

(d) the name of all persons who claim the right to assert the privilege (including any third parties on whose behalf the privilege claim is made); and

(e) whether the information has been recorded in part or in whole in a tangible form (e.g. electronic or hard copy).

In the case of a third-party LPP claim, you may be requested to provide the following details in respect of the information:

(a) the identity of the privilege holder;

(b) the last known contact details of the privilege holder; and

(c) an explanation of the circumstances by which the information came to be known by you.

To the extent that you are able to provide all or any of the above details during any examination that arises from this Notice, you may be requested to provide those details during that examination or within a reasonable time after the adjournment or conclusion of the examination. Where you are unable to provide all or any of the above details during the examination, you may be requested to provide them within a reasonable time following the adjournment or conclusion of the examination.

If you are requested to provide details of your claim or indication of privilege following the adjournment or conclusion of an examination, you will be requested to provide them in writing.

You will also be requested to provide details of your claim or indication of privilege in writing if your claims are made in response to a request for reasonable assistance.

**RECORD OF THE EXAMINATION:** Section 24 provides that the Inspector may, and must if you request, cause a record to be made of statements made at the examination. Subsection 24(2)(a) provides that, if that record is reduced to writing, you may be required to read the transcript and to sign it. Failure to do so without reasonable excuse may be a criminal offence and may be subject to a penalty of up to 30 penalty units ($6,660) or imprisonment for 3 months, or both (see s63(3) and s93D). If a transcript is made and you wish to have a copy of it, you are required to make a written request for a copy, which in due course will be provided without charge, but subject to such conditions (if any) which may be made.

**FALSE OR MISLEADING INFORMATION:** Subsection 64(1) provides that a person shall not give information or make a statement that is false or misleading in a material particular and provides for a penalty of up to 600 penalty units ($133,200) or imprisonment for 5 years, or both (see also s93D).

**OBSTRUCTION:** Subsection 65(1) provides that a person shall not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under Part 3 and provides for a

penalty of up to 240 penalty units ($53,280) or imprisonment for 2 years, or both (see also s93D).

**CONCEALING, DESTROYING, MUTILATING OR ALTERING A BOOK:** Subsection 67(1) provides that where ASIC is investigating, or is about to investigate a matter, a person shall not:

(a) in any case - conceal, destroy, mutilate or alter a book relating to that matter; or

(b) take or send the book out of the State or Territory or Australia.

The penalty is up to 600 penalty units ($133,200) or imprisonment for 5 years, or both (see also s93D).