

IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors Disciplinary Board (**the Board**) pursuant to section 1292 of the Corporations Act 2001 (Cth) (**Corporations Act**)

MATTER NO: 03/NSW23

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

JOSEPH JOHN SANTANGELO
Respondent

NOTICE OF DECISION AND REASONS
in relation to exercise by the Board of its powers under s1292 Corporations Act.

The Notice of Decision and Reasons will be given to the Respondent under s1296(1)(a) of the Act and lodged with ASIC under s1296(1)(b) of the Corporations Act.

9 December 2024

Panel:

Howard K Insall SC (Panel Chairperson)

Michael Flynn KC (Business Member)

Tony Brain (Accounting Member)

Greg McNally SC instructed by *Gadens* for the Applicant

Samuel Gerber instructed by *Corrs* for the Respondent

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NOTICE OF DECISION

Joseph John SANTANGELO

Corporations Act 2001 (Cth)

SECTION 1296(1)

Following a hearing held pursuant to section 1294 of the *Corporations Act 2001* (Cth) on 2 September 2024, a Panel of the Companies Auditors Disciplinary Board (**the Board**) decided that it was satisfied, on an application by the Australian Securities and Investments Commission, that **Joseph John SANTANGELO**, a registered auditor, had failed to carry out or perform adequately and properly the duties of an auditor, for the purposes of s 1292(1)(d) of the *Corporations Act* and on 9 December 2024, decided to exercise its powers under section 1292 of the Act by making the following orders:

1. Pursuant to s 1292(1) of the *Corporations Act 2001* (Cth), (**Corporations Act**) the registration of Mr Joseph John Santangelo (**Mr Santangelo**), with auditor registration number 000405702, as a company auditor be suspended for the period commencing on the date Mr Santangelo is provided with a notice of the decision pursuant to sub-section 1296(1)(a) of the *Corporations Act* and ending on 1 June 2026.
2. Pursuant to sub-section 1292(9)(b) of the *Corporations Act*, Mr Santangelo give undertakings to the Australian Securities and Investments Commission (**ASIC**), hereby noted by the Board, as set out in Schedule A to the Reasons for Decision.

Howard K Insall SC

Panel Chairperson

9 December 2024

REASONS FOR DECISION

A. INTRODUCTION

1. These are the Reasons for the Decision in relation to an application made to the Companies Auditors Disciplinary Board (**the Board**) by the Australian Securities and Investments Commission (**ASIC**) on 13 June 2023 (**Application**) that the Respondent be dealt with under s 1292 of the Corporations Act 2001 (Cth) (**the Corporations Act**).
2. Section 1292(1)(d) of the Corporations Act provides, in substance, that the Board may, if it is satisfied, on an application by ASIC that a person who is registered as an auditor has failed to carry out or perform adequately and properly the duties of an auditor, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.
3. In essence, the Application relates to the performance by Mr Santangelo of his duties in connection with the audit of the financial statements of the consolidated entity comprising Greensill Capital Pty Ltd and its subsidiaries (**the Greensill Group**) for the financial years ended 31 December 2018 (**FY18**) and 31 December 2019 (**FY19**). Nexia Sydney Audit Pty Ltd was appointed as auditor to conduct the audit. Mr Santangelo, a director of Nexia Sydney Audit Pty Ltd, was lead auditor and engagement partner.
4. The Application was filed together with a Concise Outline on 13 June 2023. On 5 September 2023, the Respondent filed a Concise Response.
5. ASIC filed a Reply on 30 November 2023 and an Amended Concise Outline on 28 February 2024. The parties entered into negotiations about the matter leading to an adjournment of the proceedings. On 23 May 2024, the Respondent filed an Amended Response. On 25 July 2024, the Board was informed that the parties had reached an agreement to settle the proceedings, subject to the approval of the Board.
6. Thereafter, the parties submitted consent orders and a Statement of Agreed Facts (**SOAF**) which was hyperlinked to a substantial number of documents.
7. The matter was set down for a hearing on 2 September 2024. A panel of the Board was constituted, consisting of Howard Insall SC (Chairperson), Tony Brain (Accounting Member) and Michael Flynn KC (Business Member). The Panel resolved that the hearing of the matter would take place by virtual enquiry technology only. Pursuant to s 218A(5) of the ASIC Act 2001 (Cth), the Panel appointed a single place and time at which the hearing was taken to have been held, namely Level 5, 100 Market Street Sydney at 2:00 pm on 2 September 2024.

8. The hearing took place at the appointed time with Mr Greg McNally SC appearing for ASIC, instructed by Gadens and Mr Samuel Gerber of counsel representing Mr Santangelo, instructed by Corrs.
9. At the commencement of the hearing, the SOAF and Consent Orders were tendered. Other documents including the pleadings were also tendered but the Board is only dealing with the matter on the basis of the evidence in the SOAF, the documents hyperlinked in the SOAF and the documents otherwise incorporated by reference in the SOAF.
10. On 19 September 2024, the parties submitted a revised form of consent undertakings following questions raised by the Panel.

B. SUMMARY OF THE CONTENTIONS AND THE BOARD'S FINDING

11. The primary question for the Board on this application is whether the Board is satisfied that Mr Santangelo has failed to carry out or perform adequately and properly the duties of an auditor.

The SOAF and the nature of the Contentions

12. The parties' submissions were based upon the SOAF, which was submitted jointly by ASIC and Mr Santangelo. The SOAF together with hyperlinked documents was Exhibit A4 in the proceedings.
13. The SOAF was divided into a number of sections:
 - (a) Section I – Introduction, which explained the SOAF and included high level conclusions;
 - (b) Section II – Agreed Facts, which set out general matters, common to all of ASIC's contentions; and
 - (c) Sections III to XI – Contentions 1-9, which set out the particular facts and conclusions relevant to each of ASIC's contentions.
14. The SOAF makes many references to ASAs, meaning Auditing Standards made by the Auditing and Assurance Standards Board (**AUASB**).
15. The focus of the agreed failures in the SOAF is that Mr Santangelo failed to carry out or perform adequately or properly duties "informed by" auditing standards, in particular, ASA 600, relating to audits of a group financial report.
16. Section 307A of the Corporations Act provides:

"307A Audit to be conducted in accordance with auditing standards

- (1) If an individual auditor, or an audit company, conducts:
 - (a) an audit or review of the financial report for a financial year;
 - or
 - (b) an audit or review of the financial report for a half-year;

the individual auditor or audit company must conduct the audit or review in accordance with the auditing standards.

- (2) If an audit firm, or an audit company, conducts:
(a) an audit or review of the financial report for a financial year;
or
(b) an audit or review of the financial report for a half-year;
the lead auditor for the audit or review must ensure that the audit or review is conducted in accordance with the auditing standards.

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Strict liability offence

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).” (*emphasis added*)

17. The term “audit company” is defined in s 9 of the Corporations Act as “a company that consents to be appointed, or is appointed, as auditor of a company, registered scheme or registrable superannuation entity”.
18. Nexia Sydney Audit Pty Ltd is a company which was appointed as auditor to conduct the audit of the financial report of the Greensill Group for the financial years ending December 2018 and December 2019.
19. Mr Santangelo was, at material times, a registered company auditor, a director of Nexia Sydney Audit Pty Ltd and “lead auditor” for the audits.
20. Accordingly, and as the parties accept, Mr Santangelo was “required to ensure that the FY18 Audit and FY19 Audit were conducted by NSA in accordance with the ASA” (see paragraph [30] of the SOAF, which contains this admission).
21. It was accepted by the parties that the specific auditing standards referred to in the SOAF (**ASA**) were, indeed, “auditing standards” for the purpose of s 307A of the Act and were each standards in force at the relevant time under s 336 of the Act.

The accepted failure to perform in the SOAF

22. The overarching proposition, accepted by Mr Santangelo, was set out in paragraph 3 of the SOAF, as follows:

“3. By reason of the agreed facts set out in this SOAF, Mr Santangelo admits that he failed to carry out or perform, adequately and properly, the duties of an auditor in respect of the audit of the financial statements of the consolidated entity comprising Greensill Capital Pty Ltd and its subsidiaries (that is, the Greensill Group) for the financial years ended 31 December 2018 (FY18) and 31 December 2019 (FY19) *for the reasons set out in paragraphs ... [ie the specific paragraphs relating to each Contention]*”

23. We make two general observations about the way in which the case is put:
- (a) First, each Contention contains a number of specific “failures” to perform duties (sometimes numerous specific failures). The SOAF does not, in general, assert that *each* specific failure in a Contention amounted to a failure to carry out or perform adequately and properly the duties of an auditor. However, in paragraphs [232]-[236], [240], [242], [245], [247], [249], [251], [254] and [255] of the SOAF, the parties set out specific failures and contend that *each* of these specific failures amounted to a failure to carry out or perform adequately and properly the duties of an auditor. We do not consider that it is appropriate, in every case, to determine whether every specific failure amounted to a failure to carry out or perform adequately and properly the duties of an auditor; and
 - (b) Secondly, the SOAF, in terms, appears to rely on every failure set out in every Contention as underpinning the ultimate conclusion that Mr Santangelo failed to carry out or perform, adequately and properly, the duties of an auditor. However, having regard to the numerous matters relied upon, and the fact that Mr Santangelo agrees that he failed to do numerous things he was obliged to do, we do not understand the case as an “all or nothing” application, ie dependent upon establishing *every* failure referred to in the SOAF.
24. In the circumstances, and having regard to the principles set out in Section C below, the present Application calls for the Panel to make an evaluative and subjective judgment as to whether Mr Santangelo has carried out or performed, adequately and properly, the duties of an auditor in respect of the audits of the financial statements of the Greensill Group, by reason of the failures set out in the Contentions in the SOAF.
25. As already noted, the parties are agreed, in relation to each Contention, that the duties “informed by” auditing standards, required Mr Santangelo to do certain things and that he failed to do those things. This phrase introduces an element of uncertainty about the nature of the failures. This is undesirable because the nature of the failures is both a matter which is relevant to the ultimate question for the Board (ie whether there has been a failure to carry out or perform duties adequately and properly) and a matter which is relevant to the Board’s discretion in imposing sanctions.
26. Having analysed the detail underpinning the Contentions, we have approached the matter on the basis that it is necessary for us to consider whether the matters which Mr Santangelo failed to do were required by various ASAs and whether Mr Santangelo failed to ensure that the audit was carried out in accordance with the ASAs. Notwithstanding the parties’ agreement, we doubt whether there is any relevant substance to the phrase “duties informed by” various ASAs, as opposed to duties to act in accordance with the ASAs, arising under the admitted obligation to ensure that the audits were carried out in accordance with the ASAs.
27. That said, the question whether there has been a contravention of s 307A of the Corporations Act is not a relevant matter for us to decide.

The Board's finding

28. For reasons which follow, on the basis of the material set out in the Contentions, we are satisfied that Mr Santangelo, a person registered as an auditor, failed to carry out or perform adequately and properly the duties of an auditor in respect of the audit of the financial statements of the consolidated entity comprising Greensill Capital Pty Ltd and its subsidiaries for the financial years ended 31 December 2018 and 31 December 2019.

C. RELEVANT PRINCIPLES GOVERNING APPLICATIONS UNDER s 1292(1)(d) - CONSENT APPLICATIONS

The relevant principles governing Applications under s 1292(1)(d)

29. It is important to bear in mind the task of the Board in applications under s 1292(1)(d) of the Corporations Act, which involves:
- (a) First, identifying relevant “duties” of an auditor; and
 - (b) Secondly, making an evaluative or subjective determination about whether the relevant duties have been carried out or performed “adequately and properly” (cf *CWM23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [56]).
30. The authorities establish that:
- (a) The ultimate question for the Board under s 1292(1)(d) is not a pure question of law. It is not concerned about whether there has been a contravention of a statute or the commission of an offence; the question is not dependent simply on whether the auditor has breached an identified duty or duties;
 - (b) The question for the Board is whether duties have been carried out or performed “adequately and properly”;
 - (c) At its heart, the question is directed to whether duties have been performed with “requisite skill and probity” and can be seen as a reasonable surrogate for an enquiry as to the fitness of the person;
 - (d) In other words, the Board tests performance of duties and it does so by making an evaluative and subjective judgment, by reference to a benchmark, being accepted professional standards;
 - (e) This is a task within the expertise of the Board, as a body with appropriate professional skills to make informed decisions on this question;
 - (f) The question can depend to some extent on having an intelligent understanding of the purposes which relevant provisions of the Corporations Law are trying to achieve, and what proper professional

practice required to be done to enable those purposes to be achieved;
and

- (g) The accepted professional standards may be found by the Board to be set by, or alternatively reflected in, published Auditing Standards.

(see *Albarran v Members of CALDB* [2006] FCFCA 69 at [42]ff; *Dean-Wilcocks v CALDB* (2006) 59 ACLR 698 at [26]; *Re Vouris; Epromotions Pty Ltd and Relectronic-Remech Pty Ltd (in liq)* (2003) 177 FLR 289; 47 ACSR 155 at [103]; *Goodman v Australian Securities and Investments Commission* (2004) 50 ACSR 1 at [26]; *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [18]-[29], [52]-[54] (**Albarran**)).

31. The relevant authorities were extensively reviewed in the Board's decision in *ASIC v Fernandez* 02/VIC13 at [39]-[48], and have been summarised in many Board decisions, including most recently in *ASIC v Spagnolo* 01/NSW23 at [13]ff. In the circumstances, it is not necessary to set out relevant passages from the authorities in full. However, the following extract from the decision of the High Court in *Albarran* (albeit in respect of the former s 1292(2)) is particularly instructive in relation to the nature of the Board's role:

"[19] Section 203 of the ASIC Act, in dealing with the composition of the board, requires that it include members appointed by the Minister from panels nominated by professional accountancy bodies. The section also now requires the appointment of "business members" from among persons the Minister is satisfied are suitable as representatives of the business community by reason of qualifications, knowledge or experience in fields including business or commerce, the administration of companies, financial markets, and financial products and financial services.

[20] Against that background, in *Dean-Willcocks*, Tamberlin J went on to observe that par (d)(ii) of s 1292(2):

'... is designed to enable a board representative of the commercial and accounting communities to consider whether the function has been adequately and properly carried out. To assess this, it is permissible, in my view, to have regard to the standards operative in the relevant sphere of activity.'

...

[24] Counsel for the Attorney-General in the present appeals correctly submitted that the words "adequately and properly" import notions of judgment by reference to professional standards rather than pure questions of law and that the concluding expression containing the words "otherwise not a fit and proper person" expands or adds to what precedes it but does not draw in a discrete subject-matter."

...

[29] Further, the Full Court put the matter correctly when it said:

‘If one takes the exercise of power here — that is to terminate or suspend a right or status, created by statute, by reference, in part, to past conduct — it can be readily accepted that a court might do this or an administrative tribunal might do this. This is not a power which is inherently judicial. The character of the board, the undoubted bringing to bear by the board of professional standards (with the knowledge of which its members can be taken to be imbued), an absence of an assigned task of deciding a controversy between parties as to the existence or not of present mutual rights and obligations of those parties upon the application of the law to past events, the exercise of an evaluative and discretionary power in the protection of the public as to whether a person is fit and proper to continue to hold a position of importance provided for by the statute, all combine to give the conclusion that the conferral on the board of the power in s 1292 is not judicial’.

Relevant principles governing consent applications

32. ASIC submitted that the Board may determine an application under s 1292 of the Corporations Act on the basis of consent orders and an agreed statement of facts, so long as they provided a sufficient basis for the Board to arrive at the required state of satisfaction, (relying on the Board’s previous decisions in *ASIC v Wessels* 05/QLD13 (**Wessels**) at [4], [5], [7] and *ASIC v Evett* 17/NSW20 (**Evett**) at [5], [7], which are available on the Board’s website).
33. It is to be assumed that the Respondent, in supporting the making of the consent orders on the basis of agreed facts, accepted this position. The Respondent did not submit otherwise.
34. In *Wessels*, it was accepted that even in “consent” matters, the question whether orders should be made under s 1292 was ultimately one for the Board, and that the Board needed to be “satisfied” of relevant matters in s 1292 before making orders. The Board cited the approach of courts in analogous situations, including:
 - (a) the power of the Court under s 206C of the Corporations Act to disqualify persons from managing corporations where the Court “is satisfied that the disqualification is justified”; and
 - (b) the jurisdiction of the Court under s 1317E of the Corporations Act to make a declaration of contravention of a civil penalty provision in the Act, where the Court is “satisfied” that a person has contravened such a provision.
35. *In the former context*, in *Re One.Tel Ltd (in liq); ASIC v Rich* (2003) 44 ACSR 682 at [27], Bryson J observed:

“Decision can only be made by the Court, and cannot be delegated to anyone else; it cannot be delegated to the parties, which would in effect happen if the Court adopted an agreed form of consent orders without giving genuine consideration to what the Court should do. The fact that parties join in proposing a discretionary order to be made by consent is a consideration favouring a discretionary decision to make it; this is a particularly powerful consideration when ASIC, which for relevant purposes is a guardian of the public interest, has consented. However decision is for the Court, not for the parties.”

36. More recently in this context, in *Commonwealth of Australia v Director, Fair Work Building Inspectorate* (2015) 258 CLR 482; [2015] HCA 46 the High Court¹ said (at [58]):

“Subject to the court being sufficiently persuaded of the accuracy of the parties’ agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and, for the reasons identified in *Allied Mills*, highly desirable in practice for the court to accept the parties’ proposal and therefore impose the proposed penalty.”

37. *In the latter context*, in *ASIC v Rich* (2004) 50 ACSR 500, White J accepted that the Court could proceed on the basis of an agreed statement of facts and, at [15], he said:

“Although a declaration cannot be made under s 1317E unless the court is satisfied that the contravention has occurred, the material which may produce that satisfaction may include a statement of agreed facts and admissions by the parties”.

38. The Board in *Wessels* accepted that whilst it might proceed on the basis of consent orders and an agreed statement of facts, its ability to do so may depend on the circumstances and, at [23]:

“The Board may well be ‘satisfied’ where, for example, agreed facts involve an admission of a straightforward act (such as misappropriation) and an agreement that by reason of this act, the respondent is not a fit and proper person. But where the agreed facts concern conduct which is more nuanced or not so clearly improper, or where the ‘agreed facts’ relate to conclusions of mixed fact and law, (such as whether certain matters constituted a failure to carry out adequately and properly the duties of an auditor), it may be more difficult for the parties to proceed by way of ‘agreed facts’ and consent orders (cf *Legal Services Commissioner v Rushford* [2012] VSC 632 and the decision of the Board in *ASIC v Walker* 22 December 2008 para [7.1(c)]).”

39. These observations are apposite in the present matter. Mr Santangelo admits that he failed to carry out or perform, adequately and properly, the duties of an

¹ French CJ, Kiefel, Bell, Nettle and Gordon JJ. And see *Chief Executive Medicare v Healius Pathology Pty Ltd* [2023] FCA 981.

auditor in respect of the audit (SOAF paragraph [3]). However, there is not complete agreement between the parties as to why this is so. Thus, for example, whilst the parties agreed that ASA 600 paragraphs [26] and [27] applied to the audit in question, and that Mr Santangelo failed to carry out or perform adequately and properly the duties of an auditor “as informed by ASA 600”, there was no agreement as to how ASA 600 [26] and [27] applied to the facts of the case.

40. In the circumstances, we do not consider that it is possible for the Board to be “satisfied” of the matters in s 1292 simply because Mr Santangelo admits failure and simply because the parties accept that he has, in numerous respects, failed to do what was required by the duties of an auditor “as informed by” various ASAs. Accordingly, it has been necessary for the Board to give consideration to the matters underpinning the admissions in order to come to a decision.

D. INTRODUCTORY MATTERS - SECTION I OF THE SOAF

41. In the Introduction to the SOAF (paragraph [2]) it was noted:
- (a) that in these proceedings, ASIC asserted that Mr Santangelo had failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s 1292(1)(d) of the Corporations Act; and
 - (b) that ASIC sought orders under sub-sections 1292(1)(d) and (9)(b) that Mr Santangelo’s registration as an auditor be suspended for a period, and that he provide certain undertakings.
42. The SOAF went on to record:
- (a) that, by reason of the agreed facts set out in the SOAF, Mr Santangelo admitted that he failed to carry out or perform, adequately and properly, the duties of an auditor in respect of the audit of the financial statements of the consolidated entity comprising Greensill Capital Pty Ltd and its subsidiaries (that is, the Greensill Group) for the financial years ended 31 December 2018 (FY18) and 31 December 2019 (FY19) (SOAF paragraph [3]);
 - (b) that Mr Santangelo made the admissions in the SOAF based on his recollection of the FY18 Audit and FY19 Audit, the latter of which concluded in about July 2020, and his review of audit files and other documents in the possession of Nexia Sydney Audit Pty Ltd (SOAF paragraph [4]); and
 - (c) that Mr Santangelo had not had access to the audit files of the Component Auditors since the conclusion of the FY18 Audit and FY19 Audit, respectively (SOAF paragraph [4]).

43. ASIC:
- (a) did not contend that there was any material misstatement in the FY18 or FY19 financial statements of the Greensill Group (SOAF paragraph [5]);
 - (b) did not contend that Mr Santangelo has engaged in any dishonesty or deliberate impropriety (SOAF paragraph [6]); and
 - (c) agreed that Mr Santangelo has cooperated with its investigation into the FY18 and FY19 audits of the Greensill Group (SOAF paragraph [7]).
44. The parties agreed that references in the SOAF to failures by Mr Santangelo were to be read as a failure of Mr Santangelo to ensure that the person or persons on whom the obligation fell (such as the “auditor”, the “group engagement team” and so forth) complied with the relevant obligation (SOAF paragraph [9]).

E. GENERAL AGREED FACTS - SECTION II OF THE SOAF

45. Generally, the Board has not reproduced the SOAF in this decision. However, Section II of the SOAF contains the background facts relevant to the Application as a whole and accordingly, Section II is substantially reproduced in the following paragraphs of this part of the decision.

Mr Santangelo and Nexia Sydney Audit Pty Ltd – appointment as auditor

46. Mr Santangelo is, and has continuously since 26 July 2011 been, registered as a company auditor. Mr Santangelo's principal place of practice is at Level 22, 2 Market Street, Sydney NSW 2000, at the offices of Nexia Sydney Audit Pty Ltd (**NSA**).
47. NSA is an authorised audit company that was incorporated on 30 June 2015. Mr Santangelo is a director of NSA.
48. NSA was engaged to audit the financial statements of Greensill Group on or around 28 July 2015.
49. NSA did not issue an engagement letter to Greensill in respect of the FY18 Audit or the FY19 Audit. Rather, NSA relied upon the FY16 Engagement Letter issued by NSA to Greensill on 2 May 2017 for the audit of the consolidated financial report of Greensill for the year ended 31 December 2016. This letter was expressed to be effective for future years unless terminated, amended or suspended.
50. Under the FY16 Engagement Letter, Mr Santangelo was the relevant engagement partner. The FY16 Engagement Letter was acknowledged and agreed by Greensill CFO, Al Eadie, on 27 September 2017.

Greensill

51. Greensill Capital Pty Limited (ACN 154 088 132) (**Greensill**) was the ultimate holding company of over 40 entities, which comprised the Greensill Group. Greensill had limited operations in Australia providing limited head office support and engaged employees to provide services to its related entities.
52. Most of Greensill Group's operations were conducted in Europe through its major operating subsidiaries, which relevantly included Greensill Capital (UK) Ltd, a company registered in England and Wales, and based in the United Kingdom, (**Greensill UK**) and Greensill Bank AG, a public limited company organised under the laws of the Federal Republic of Germany, and based in Germany (**German Bank**). Greensill Group's main business activity was the provision of Supply Chain Finance (SCF) through Greensill UK. The receivables created through this activity were sold to one of three Luxembourg special purpose vehicles (**SPVs**). The SPVs then issued notes to external investors, predominantly being three funds managed by GAM, two funds managed by Credit Suisse, and German Bank.
53. The FY19 audit of the Greensill Group occurred at the start of the COVID 19 global pandemic, which impacted the conduct of the audit.

Obligation of lead auditor - carrying out audit in accordance with ASA (Auditing Standards)

54. As noted above, s 307A(2) of the Corporations Act relevantly provides that where an "audit company" conducts an audit of a financial report for a financial year, the "lead auditor" for the audit must ensure that the audit is conducted in accordance with the auditing standards.
55. The Board notes that "auditing standard" is defined in s 9 of the Corporations Act as meaning a standard in force under s 336 of the Act. Section 336 provides that the AUASB may, by legislative instrument, make auditing standards for the purposes of the Act which must not be inconsistent with the Act or the Corporations Regulations.
56. "Audit company" is relevantly defined under the Corporations Act as a company that consents to be appointed or is appointed as auditor of a company. NSA was the audit company appointed to conduct the FY18 Audit and the FY19 Audit.
57. Section 324AF of the Act provides that the "lead auditor" is the registered company auditor who is primarily responsible to the audit firm or audit company for the conduct of the audits.
58. As already noted above, it was accepted by the parties that the ASAs referred to in these proceedings are "auditing standards" for the purpose of s 307A of the Corporations Act and are each standards in force under s 336 of the Act.
59. The ASAs apply to an "auditor" as defined in ASA 200 [13(d)], which provides:

“Auditor means the person or persons conducting the audit, usually the engagement partner or other members of the engagement team, or, as applicable, the firm. Where an Auditing Standard expressly intends that a requirement or responsibility be fulfilled by the engagement partner, the term ‘engagement partner’ rather than ‘auditor’ is used...”

60. In his annual auditor statement lodged with ASIC for each of the statement periods between 26 July 2017 and 25 July 2018, 26 July 2018 and 25 July 2019, and 26 July 2019 and 25 July 2020, Mr Santangelo disclosed that NSA was appointed as auditor to Greensill and that his role was that of “Lead Auditor”.
61. As the registered company auditor with primary responsibility to NSA for the conduct of the FY18 and FY19 Audits, Mr Santangelo was the “lead auditor” for the purpose of s 324AF of the Act and was therefore required to ensure that the FY18 Audit and FY19 Audit were conducted by NSA in accordance with the ASA (see paragraph [30] of the SOAF).
62. Mr Santangelo was the engagement partner, and a person conducting the audit, in respect of the FY18 Audit and the FY19 Audit and was therefore an “auditor” as defined in ASA 200.

Component Auditors

63. For each of FY18 and FY19, NSA (as the Greensill Group auditor) instructed the auditors listed below to conduct audits of components of the Greensill Group, by way of letter that set out group audit instructions:
 - (a) Saffery Champness, a member firm of Nexia International, in respect of Greensill UK and controlled entities;
 - (b) PricewaterhouseCoopers (**PwC**), in respect of the GAM Greensill Supply Chain Finance Fund SCsp (**GAM SCF**); and
 - (c) Ebner Stolz, which at all material times was a member firm of Nexia International, in respect of German Bank and controlled entities.
64. A3T, a member firm of Nexia International, assisted NSA with its review of the audit work performed by PwC in respect of the FY18 Audit and the FY19 Audit.

Audit Strategy Documents

65. For each of FY18 and FY19, NSA prepared and documented its audit strategy in the FY18 Audit Strategy (and workpapers referred to therein) and the FY19 Audit Strategy (and workpapers referred to therein), respectively.
66. The stated purpose of the FY18 Audit Strategy and the FY19 Audit Strategy was to “document the key decisions considered necessary to properly set the scope, timing and direction of the audit to guide the direction of the development of the audit plan and communicate significant matters to the engagement team”.

67. For each of FY18 and FY19, NSA also created the FY18 RRPT2 and FY19 RRPT3, which were stated in the FY18 Audit Strategy and the FY19 Audit Strategy to form part of the overall audit strategy. Each of the FY18 RRPT and FY19 RRPT listed certain risks. Recorded against each risk was whether that risk required special audit consideration and what the audit response would entail.
68. The FY18 RRPT and FY19 RRPT both listed risks as "significant risk requiring special audit consideration", which included application of AASB 15, management override of controls, application of AASB 9, valuation of loans and SCF assets and going concern.
69. The FY18 RRPT and FY19 RRPT recorded the "control risk" for revenue recognition as "High", and for the audit response in respect of the risk of revenue recognition, included a request to Saffery Champness and Ebner Stolz to "consider the significant risks of revenue recognition".
70. The risks identified as "significant risk requiring special audit consideration" in the FY18 RRPT and FY19 RRPT together with revenue recognition were referred to in the SOAF as "the Greensill Group Significant Risks".

FY18 Audit

71. On 11 October 2019, a copy of the FY18 Financial Report was lodged with ASIC.
72. On 1 July 2019, Mr Santangelo signed an audit report which expressed the unmodified audit opinion that the FY18 Financial Report was in accordance with the Act, including:
 - (a) giving a true and fair view of Greensill Group's financial position as at 31 December 2018 and of its financial performance for the year then ended; and
 - (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and the Corporations Regulations.

FY19 Audit

73. On 4 January 2021, a copy of the FY19 Financial Report was lodged with ASIC.
 74. On 30 July 2020, Mr Santangelo signed an audit report which expressed the unmodified audit opinion that the FY19 Financial Report was in accordance with the Act, including:
 - (a) giving a true and fair view of Greensill Group's financial position as at 31 December 2019 and of its financial performance for the year then ended; and
-

- (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and the Corporations Regulations.
75. On 1 July 2021, NSA revoked their audit opinion in relation to the FY19 Financial Report. NSA revoked their audit opinion on the basis that they had relied on Ebner Stolz's audit opinion in respect of German Bank for FY19 and that Ebner Stolz had received new information and revoked its audit opinion on 26 April 2021.

F. CONTENTION 1 (DESIGN AND IMPLEMENT RESPONSES TO SIGNIFICANT RISKS) - SECTION III OF THE SOAF

Introduction

76. The gravamen of the complaint in Contention 1 is that whilst significant risks were identified in the FY18 and FY19 audits, Mr Santangelo failed to design and implement appropriate responses to the Component Auditors to address those risks, and in particular he failed to design and implement specified audit procedures in relation to those significant risks.
77. The focus of this Contention related to what the parties described as "the duties of an auditor, informed by ASA 600 [24], [27], [30] and [31] and ASA 230 [8]". ASA 600 paragraph [26] was also relevant.
78. ASA 600 deals with special considerations relating to audits of a group financial report. Paragraph [17] requires the auditor to identify and assess the risks of material misstatement. Paragraphs [24] to [31] deal with "Responding to Assessed Risks". ASA 600 [24] requires the auditor to design and implement appropriate responses to address the assessed risks of material misstatement. ASA 600 [26] and [27] prescribes work to be performed.

The agreed material facts relating to Contention 1

79. The material facts in relation to this Contention are set out in detail in paragraphs [45] to [65] of the SOAF.
80. In essence, the SOAF notes the following key matters.
81. The FY18 Audit Strategy and the FY19 Audit Strategy each referred to the FY18 RRPT and the FY19 RRPT respectively and each identified Greensill UK and German Bank as significant components requiring assessment under ASA 600 [26] - [27].
82. Greensill UK and German Bank were identified as significant components of the Greensill Group (see column H of the FY18 Audit Strategy and the FY19 Audit Strategy) because:
- (a) they were financially significant (see columns D to G of the FY18 Audit Strategy and the FY19 Audit Strategy); and

- (b) they were likely to include significant risks of material misstatement due to their nature and circumstances (see column I of the FY18 Audit Strategy and the FY19 Audit Strategy), in particular:
 - i. in respect of Greensill UK, there were significant risks, including of financial misstatement; and
 - ii. in respect of German Bank, there were significant risks including management override, realisation of net interest, legal (compliance) and valuation of silent participation.
83. Each of the FY18 RRPT and FY19 RRPT:
- (a) listed certain risks and recorded against each risk was whether that risk required special audit consideration and what the audit response would entail;
 - (b) listed risks as "significant risk requiring special audit consideration", which included application of AASB 15, management override of controls, application of AASB 9, valuation of loans and SCF assets and going concern; and
 - (c) recorded the "control risk" for revenue recognition as "High", and for the audit response in respect of the risk of revenue recognition, included a request to Saffery Champness and Ebner Stolz to "consider the significant risks of revenue recognition".
84. Each of Saffery Champness, Ebner Stolz and PwC were separately issued with the FY18 Instructions and the FY19 Instructions, which contained group audit instruction letters for work to be performed with respect to FY18 and FY19.
85. The FY18 Instructions and the FY19 Instructions did not make reference to the FY18 RRPT and the FY19 RRPT, or the risks identified as "significant risk requiring special audit consideration" in the FY18 RRPT and FY19 RRPT together with revenue recognition, ie, did not make reference to the "Greensill Group Significant Risks".
86. The Component Auditors were also provided with instructions throughout the FY18 Audit and FY19 Audit, which included:
- (a) information about which of the Greensill Group controlled entities those Component Auditors were responsible for performing the relevant scope of works with respect to;
 - (b) general instructions to the Component Auditors regarding its audit of the identified Greensill Group controlled entity and requirements; and
 - (c) the Component Auditor Sign Off, a template questionnaire for use by the Component Auditor to record its findings and issues identified through the course of its audit.

87. Both the FY18 Audit Strategy and the FY19 Audit Strategy provided, in relation to Greensill UK and German Bank, for an audit of the financial information of the component using component materiality, including all material account balances of the components.

Agreed position regarding duties and breaches for Contention 1

88. Mr Santangelo accepts that the duties of an auditor, informed by ASA 600 [24], [27], [30] and [31] and ASA 230 [8], required him to ensure that he:
- (a) designed and implemented appropriate responses to address the assessed risks of material misstatement of the financial report, including by determining the type of work performed by the group engagement team, or the Component Auditors on its behalf, on the financial information of the components, which in relation to Greensill UK, German Bank and the GAM SCF required one or more of:
 - i. an audit of the component using component materiality;
 - ii. an audit of one or more account balances, classes of transactions or disclosures relating to the likely significant risks of material misstatement; and
 - iii. specified audit procedures relating to the likely significant risks;
 - (b) discussed the Greensill Group Significant Risks with the Component Auditors at the planning stage of the component audits, and adequately documented that discussion;
 - (c) evaluated, with sufficient professional scepticism, the Component Auditors' further audit procedures in respect of the Greensill Group Significant Risks, and adequately documented that evaluation; and
 - (d) carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to the Greensill Group Significant Risks including going concern, ECL and revenue recognition.
89. Mr Santangelo instructed the Component Auditors to conduct an audit of their respective components using component materiality.
90. The Component Auditor Sign-Offs evidence that the Component Auditors were each directed to the Greensill Group Significant Risks of relevance to their respective components. In addition, workpapers on the FY18 Audit File and FY19 Audit File evidence some discussions between the group engagement team and the Component Auditors, in which the Greensill Group Significant Risks were discussed.
91. The group engagement team's review of the Component Auditors' further procedures in respect of the Greensill Group Significant Risks is evidenced in the manner stated in paragraphs [62] and [64] of the SOAF. However, Mr Santangelo accepts the documents referred to in those paragraphs do not contain sufficient detail which reveals what the review process considered.

92. Mr Santangelo accepts that, in the FY18 Audit and FY19 Audit, he failed to ensure that he:
- (a) carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to going concern, ECL and revenue recognition;
 - (b) adequately documented discussion with the Component Auditors of the Greensill Group Significant Risks at the planning stage, and evidenced the group engagement team's evaluation of the Component Auditors' work; and
 - (c) applied sufficient professional scepticism to the evaluation of the Component Auditors' further audit procedures in so far as they affect Contention 5 (as stated in paragraphs 226(a) and 227 below) and Contention 6 (as stated in paragraphs 237 and 238 below), and adequately documented that evaluation.

Submissions

93. As already indicated, the parties agreed that the duties of an auditor which were not adequately and properly performed in connection with Contention 1 were the duties, "informed by ASA 600 [24], [27], [30] and [31] and ASA 230 [8]." However, there was no agreement as to whether it was necessary or appropriate for the Board to decide what was required by ASA 600 and ASA 230 and/or consider whether Mr Santangelo had contravened (or complied with) ASA 600 and ASA 230.
94. Mr Gerber, on behalf of Mr Santangelo submitted:
- (a) Mr Santangelo had not admitted to contravention of particular auditing standards;
 - (b) Rather, Mr Santangelo conceded that he had failed adequately and properly to carry out his duties as an auditor, and that the content of those duties was informed by what the auditing standards required;
 - (c) The reason why Mr Santangelo had not admitted to contraventions of the auditing standards was two-fold:
 - i. it was not a matter that the Board was required to reach a view on, because the ultimate question set by s 1292 is different; and
 - ii. Mr Santangelo does not agree in all aspects of the interpretation of the auditing standard that ASIC has advanced; and
 - (d) Essentially, the issue of contravention of ASA 600 and any other auditing standards did not matter because in the circumstances of this audit, in the various ways set out in the statement of agreed facts, Mr Santangelo accepts that he failed to adequately and properly carry out his duties.

95. Mr Gerber referred to the Board's previous decision in *ASIC v Evett* 17/NSW20, (2 September 2021) at paragraphs [23] and [24], which extracted passages from the earlier decision of the Board in *ASIC v Walker* 06/VIC07 and from the decision of the High Court in *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [18]-[24] (and see to similar effect, the Board's decision in *Wessels* at [40]-[41]).
96. It was submitted, relying upon *Walker*, that the function of the Board under s 1292 was not to decide if a particular statutory (or other) provision had been contravened, but to determine the adequacy and propriety of the carrying out or performance of a relevant duty, which was to be judged by the Board by making an evaluative and subjective determination.
97. Mr Gerber did, however, note that in *Walker* it was said that it is relevant for the Board, in reaching a view about what proper professional practice requires should be done or not done, to have regard to the published codes and standards.
98. In essence, Mr Gerber's submission was to the effect that whilst in some cases, and perhaps in many cases, ASIC's cases before the Board relied upon the fact that particular auditing standards had been breached and the Board decided cases on that basis, (as a step anterior to the question whether duties had been adequately and properly carried out), in the present case, where Mr Santangelo accepts that he failed adequately and properly to carry out the duties required of him, (which are broader than the standards), the SOAF had avoided the need to determine whether the ASAs had been breached and thus it was not necessary to consider the finer points of construction of the standards, particularly where ASA 600 is to be replaced with a different standard as from December 2024.
99. In response, Mr McNally SC on behalf of ASIC, submitted that it was common ground that the version of ASA 600 relied upon (containing paragraphs [26] and [27]) did apply to the present audit but there was no agreement as to how ASA 600 [26] and [27] applied to the facts in this case. In those circumstances, he submitted that it was incumbent upon the Board to interpret and apply the relevant standards that applied to conduct in the hearing before it, regardless of whether those standards may change at some future time.
100. In our view, having regard to the nature of the "agreed facts" in the present case, it is relevant to interpret the ASAs and consider how they applied. As already indicated, we consider that the present case is a case of the type described in *Wessels* at [23], where the matters in the SOAF are not all true "facts", but include conclusions, in particular, a conclusion that Mr Santangelo failed to carry out or perform, adequately and properly, the duties of an auditor in respect of the audit. The Board needs to consider whether the matters relied upon by the parties are sufficient for the Board to be satisfied under s 1292. Before the Board could be satisfied of the matters under s 1292 in this case, it is necessary to give some meaning to the parties' agreement that the duties "**informed** by ASA 600" were not adequately and properly performed.

Consideration

101. The Board was referred to the version of Auditing Standard ASA 600 *Special Considerations - Audits of a Group Financial Report* said to be applicable at the time of the relevant audits⁴ (**ASA 600**).
102. ASA 600 is the standard which deals with special considerations that apply to group audits, in particular those that involve component auditors⁵.
103. A “group audit” is defined in the Standard as the audit of a group financial report. A “group financial report” is defined as a financial report that includes the financial information of more than one component. “Component” is defined as an entity or business activity for which group or component management prepares financial information that should be included in the group financial report. “Component auditor” means an auditor who, at the request of the group engagement team, performs work on financial information related to a component for the group audit⁶.
104. The Requirements in ASA 600 include requirements in respect of “responsibility” for the group audit engagement (pars [11]), “acceptance and continuance” with the group audit engagement (pars [12]-[14]), and the overall “group audit strategy” and “group audit plan” (pars [15]-[16]). The Requirements go on to deal with “Understanding the Group, Its Components and Their Environments” in pars [17]-[18]. Paragraph [17] states, in part:

“The auditor is required to identify and assess the risks of material misstatement through obtaining an understanding of the entity and its environment, the applicable financial reporting framework and the system of internal control.”
105. Paragraphs [19]-[20] of the Requirements deal with “Understanding the Component Auditors” and paras [21]-[23] deal with “Materiality”
106. Of particular relevance to Contention 1 are paragraphs [24]-[31], which deal with “Responding to Assessed Risks”. Paragraphs [24], [26], [27], [30] and [31] are important in this case and are reproduced in full below:

“Responding to Assessed Risks

24. The auditor is required to design and implement appropriate responses to address the assessed risks of material misstatement of the financial report^{Fn10}. The group engagement team shall determine the type of work to be performed by the group engagement team, or the component auditors on its behalf, on the financial information of the components, see paragraphs 26-29 of this Auditing Standard.

[Fn 10.] See ASA 330 The Auditor's Responses to Assessed Risks.

⁴ Compilation date 22 March 2023. We note that the provisions in this compilation which are relevant to this Application were in the same form as the provisions applicable at the time of the audits.

⁵ ASA 600 para 1.

⁶ See the definitions in ASA 600 para 9.

25. ...

Determining the Type of Work to Be Performed on the Financial Information of Components (Ref: Para. A47)

Significant Components

26. For a component that is significant due to its individual financial significance to the group, the group engagement team, or a component auditor on its behalf, shall perform an audit of the financial information of the component using component materiality.
27. For a component that is significant because it is likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances, the group engagement team, or a component auditor on its behalf, shall perform one or more of the following:
- (a) An audit of the financial information of the component using component materiality.
 - (b) An audit of one or more account balances, classes of transactions or disclosures relating to the likely significant risks of material misstatement of the group financial report. (Ref: Para. A48)
 - (c) Specified audit procedures relating to the likely significant risks of material misstatement of the group financial report. (Ref: Para. A49)

Components that Are Not Significant Components

28

29....

Involvement in the Work Performed by Component Auditors (Ref: Para. A54-A55)

Significant Components-Risk Assessment

30. If a component auditor performs an audit of the financial information of a significant component, the group engagement team shall be involved in the component auditor's risk assessment to identify significant risks of material misstatement of the group financial report. The nature, timing and extent of this involvement are affected by the group engagement team's understanding of the component auditor, but at a minimum shall include:
- (a) Discussing with the component auditor or component management those of the component's business activities that are significant to the group;

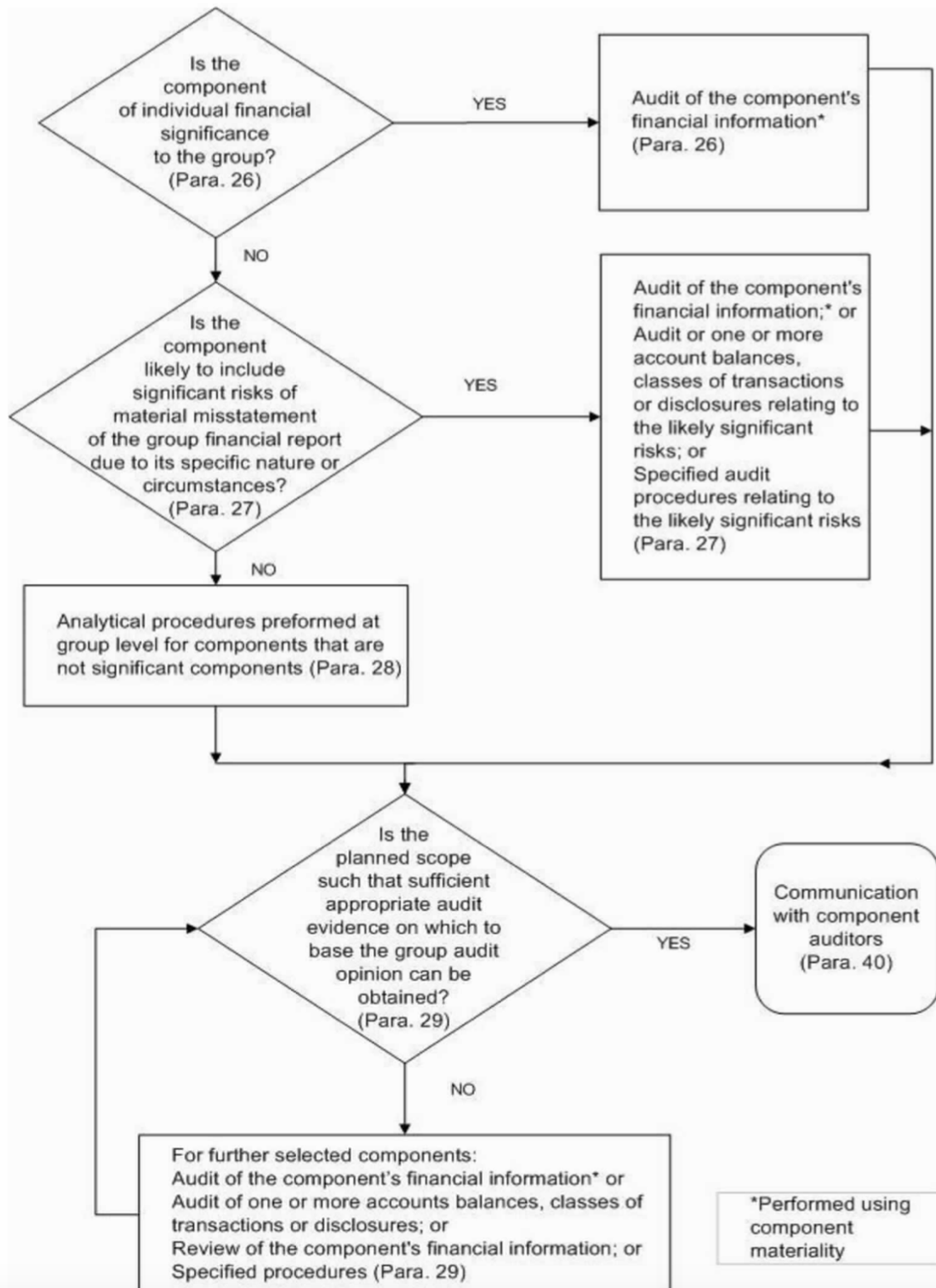
- (b) Discussing with the component auditor the susceptibility of the component to material misstatement of the financial information due to fraud or error; and
- (c) Reviewing the component auditor's documentation of identified significant risks of material misstatement of the group financial report. Such documentation may take the form of a memorandum that reflects the component auditor's conclusion with regard to the identified significant risks.

Identified Significant Risks of Material Misstatement of the Group Financial Report - Further Audit Procedures

- 31. If significant risks of material misstatement of the group financial report have been identified in a component on which a component auditor performs the work, the group engagement team shall evaluate the appropriateness of the further audit procedures to be performed to respond to the identified significant risks of material misstatement of the group financial report. Based on its understanding of the component auditor, the group engagement team shall determine whether it is necessary to be involved in the further audit procedures.”
- 107. The key issue about ASA600 presented by Contention 1 was the interplay between paragraphs [26] and [27]. At the time of the audit, Mr Santangelo instructed the Component Auditor to conduct an audit of their respective components using component materiality. The question was whether Mr Santangelo was also required by ASA 600 to apply paragraph [27].
- 108. Mr McNally SC on behalf of ASIC submitted that paragraphs [26] and [27] were not mutually exclusive alternatives. If a component was significant **both** due to its individual financial significance to the group, **and** because it was likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances, both paragraphs were engaged.
- 109. Mr Gerber maintained that there was an ambiguity in the standard and that this had led to the issue being avoided in the SOAF. He said that one way of reading ASA 600 was that paragraph [26] requires more comprehensive steps because the component as a whole was of individual significance, and it required an audit of the financial information of that component to take place, whereas paragraph [27] was addressed to a component that might have just one aspect about it that required attention in the group audit, so it prescribed one or more of a range of different options, one of which was the same as in paragraph [26], (the most comprehensive option). He submitted that this would be consistent with the diagram in paragraph A47 in the “Application and Other Explanatory Material Section of ASA 600 as follows:

“A47 ...

The following diagram shows how the significance of the component affects the group engagement team's determination of the type of work to be performed on the financial information of the component.



110. In reply, Mr McNally SC submitted that this approach to ASA 600 [26] and [27] was incorrect. He submitted that, if anything, it was ASA 600 [27], which required the more comprehensive approach, because it required consideration not only of the application of sub paragraph (a) (audit of the financial information of the component using component materiality), but also sub paragraphs (b) and (c). That is because for ASA 600 [27] to apply, a significant risk of material misstatement had already been identified, whereas if no such significant risk had been identified, then ASA 600 [26] applied.
111. He submitted that there are situations (as in this case) in which a component can be significant due to both its individual financial significance to the group *and* because it is likely to include significant risks of material misstatement. In such circumstances, there is no reason as to why both ASA 600 [26] and [27] should not apply and that they were not mutually exclusive. To the extent that the diagram in A47 suggested otherwise, it was inaccurate.
112. He submitted that an alternative way of reconciling paragraphs 26 and 27 so that they acted harmoniously together in the circumstances where a component is significant due to both its individual financial significance to the group and because it is likely to include significant risks of material misstatement is to construe the two paragraphs as follows:
- (a) Paragraph [27] takes precedence because it has an option of performing an audit of the component using component materiality and of also requiring specified audit procedures relating to the likely risk of material misstatement audit; and
 - (b) Application of proper professional judgment in the circumstances requires an audit of the component using component materiality and also requires specified audit procedures relating to the likely risk of material misstatement audit.
113. We consider that there is some ambiguity about the operation of ASA 600 [26] and [27]. However, in terms of language alone, ASIC's primary submission appears to have some merit:
- (a) In the first place, there is nothing explicit in the wording of ASA 600 [26] and [27], (or in the wording of the other mandatory components of ASA 600) which suggests that once there is a component that is significant due to its individual financial significance to the group, one must **only** apply ASA [26], regardless of whether one also concludes that ASA 600 [27] is applicable (ie that the component is also significant because it is likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances). The only aspect of ASA 600 which suggests this is the diagram at ASA 600 [A47]. The diagram suggests paragraphs [26] and [27] are alternatives. However, the diagram is part of the guidance section of ASA 600, not part of the mandatory provisions of ASA 600 (see ASA101 [9] and [10]); and

- (b) Secondly, the potential construction put forward by Mr Santangelo could be said to lead to odd results.

For example, in a circumstance where only ASA 600 [27] applied (ie where a component was significant only because it was likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances), **each** of the steps in paragraph [27] (a) to (c) may be required to be performed. Paragraph [27] refers to **one or more of** the steps in (a) to (c) being required, including (possibly) both “(a) an audit of the financial information of the component using component materiality” **and** one or both of the steps in (b) and (c), eg “(c) Specified audit procedures relating to the likely significant risks of material misstatement of the group financial report”.

Yet the effect of the suggested construction put forward on behalf of Mr Santangelo would be that where **both** ASA 600 [26] and ASA 600 [27] applied, the only step required was that referred to in ASA 600 [26]. In other words, the effect of Mr Santangelo’s suggested construction was that the steps required could be **more** extensive where only paragraph [27] applied, than when both paragraph [26] and [27] applied.

114. Mr Santangelo’s suggested construction would only make sense if, in taking the step in paragraph [26] (ie performing an audit of the financial information of the component using component materiality) the auditor would inevitably be required to carry out each of the steps in paragraph [27] (b) and (c). In other words, the construction would only make sense if, in every such audit, the auditor would inevitably be required to carry out:

“(b) An audit of one or more account balances, classes of transactions or disclosures relating to the likely significant risks of material misstatement of the group financial report. [and]

(c) Specified audit procedures relating to the likely significant risks of material misstatement of the group financial report.”

115. In our view, where an auditor had properly carried out an audit in compliance with ASA 600 [26], it may well be that the auditor had also performed the equivalent of the steps set out in paragraph [27] (b) and (c). The auditor may conclude that an audit under paragraph [26] would, in effect, address the matters in paragraph [27]. However, we do not consider that this means that the auditor does not have to consider the matters set out in ASA 600 [27] simply because the auditor has carried out the steps in [26].

116. In the present case, Mr Santangelo instructed the Component Auditors to conduct an audit of their respective components using component materiality (SOAF paragraph [67]) but he failed to ensure that he carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to going concern, ECL and revenue recognition (SOAF paragraph 71(a)).

117. Indeed, Mr Santangelo accepts that, one way or another, he was required to consider the options in paragraph [27] notwithstanding that he had instructed the Component Auditors to conduct an audit of their respective components

using component materiality (that is, notwithstanding that he had done what was required by paragraph [26]). The SOAF states:

“66. Mr Santangelo accepts that the duties of an auditor, informed by ASA 600 [24], [27], [30] and [31] and ASA 230 [8], required him to ensure that he:

- i. designed and implemented appropriate responses to address the assessed risks of material misstatement of the financial report, including by determining the type of work performed by the group engagement team, or the Component Auditors on its behalf, on the financial information of the components, which in relation to Greensill UK, German Bank and the GAM SCF required one or more of: an audit of the component using component materiality;
- ii. an audit of one or more account balances, classes of transactions or disclosures relating to the likely significant risks of material misstatement; and
- iii. specified audit procedures relating to the likely significant risks;

...;

...; and

d. carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to the Greensill Group Significant Risks including going concern, ECL and revenue recognition.”

67. Mr Santangelo instructed the Component Auditors to conduct an audit of their respective components using component materiality.

...

70. However, in the FY18 Audit and FY19 Audit, Mr Santangelo accepts that he failed to ensure that he:

(a) carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to going concern, ECL and revenue recognition;

... ”

118. Thus, notwithstanding the fact that he instructed component auditors to carry out an audit using component materiality, he accepts that he was duty-bound to do one or more of the things in paragraph 66(a)(i) to (iii) of the SOAF, ie the matters in ASA 600 paragraph [27] (a) to (c).

119. In a sense, the debate may be more apparent than real. If an auditor satisfies their obligation under ASA 600 because they carry out an audit under paragraph [26] and the specific steps set out in paragraph [27] (a) to (c) are required in such an audit anyway, then a failure to carry out those steps is, in effect, a breach of paragraph [26]⁷. On the other hand, if the specific steps are

⁷ And/or the requirements of, for example, ASA 315 and ASA 330.

not performed in an audit under paragraph [26], then it is difficult to see how it can be argued that, if the conditions which give rise to the obligations under [27] exist (ie a component is significant because it is likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances), the auditor is not required to consider the steps in paragraph [27] (a) to (c) anyway.

120. For the above reasons, in the circumstances of the way in which the SOAF has been presented, we prefer the view advanced by ASIC that if a component was significant **both** due to its individual financial significance to the group, **and** because it was likely to include significant risks of material misstatement of the group financial report due to its specific nature or circumstances, both paragraphs were engaged and required contemplation by the Auditor.
121. Accordingly, in our view, where the conditions for engaging each of ASA 600 [26] and [27] existed, Mr Santangelo was required to give consideration to the steps identified in each of those paragraphs.
122. Had Mr Santangelo given consideration to the steps set out in ASA 600 [27] in the circumstances of the present case (or in conjunction with ASA 600 [26] for that matter), he should have carried out, or instructed the Component Auditors to carry out, specified audit procedures with respect to the Greensill Group Significant Risks including going concern, ECL and revenue recognition. He accepts that this was required in the circumstances of the present case, albeit on the basis of his duties “as informed by ASA 600 [24], [27], [30] and [31] and ASA 230 [8]” (see paragraph [66] of the SOAF).
123. In our view, in the circumstances of the present case, having identified significant risks, Mr Santangelo was required to apply the steps set out in ASA 600 [27] and to carry out, or instruct the Component Auditors to carry out specified audit procedures as referred to in ASA 600 [27](c), namely specified audit procedures with respect to going concern, ECL and revenue recognition.
124. He failed to do so.

G. CONTENTION 2 (COMMUNICATE SIGNIFICANT RISKS OF MATERIAL MISSTATEMENT TO COMPONENT AUDITORS) - SECTION IV OF THE SOAF

125. Contention 2 is dealt with in paragraphs [71] to [77] of the SOAF.
126. Contention 2 raises an allegation which is closely related to Contention 1. In essence, the allegation is that, having identified significant risks of material misstatement, Mr Santangelo failed to communicate those risks to component auditors.
127. The parties accept that the relevant duty here is the duty of an auditor, informed by the requirements of ASA 600 [40](d).
128. ASA600 [40](d) provides:

“40. The group engagement team shall communicate its requirements to the component auditor on a timely basis. This communication shall set out the work to be performed, the use to be made of that work, and the form and content of the component auditor's communication with the group engagement team. It shall also include the following: (Ref: Para. A57, A58, A60)

(a) ...

(d) Identified significant risks of material misstatement of the group financial report, due to fraud or error, that are relevant to the work of the component auditor. ...”

129. The communications which took place are summarised in paragraphs [71] to [73] of the SOAF.

130. Mr Santangelo accepts:

(a) that the duties of an auditor, informed by the requirements of ASA 600 [40](d), required him to ensure that he communicated the Greensill Group Significant Risks of relevance to the work of each component auditor (**Relevant Risks**).

(b) that in the FY18 Audit and FY19 Audit he failed to ensure that he communicated the Relevant Risks by referring to the Relevant Risks for each component auditor in the FY18 Instructions and FY19 Instructions for that component auditor. Relevantly, each of the FY18 Instructions and the FY19 Instructions to the Component Auditors:

i. were in the form of a standard template designed to cover all the requirements of ASA 600; and

ii. did not identify the Relevant Risks in the FY18 Instructions and FY19 Instructions themselves or by annexing or referring to the FY18 RRPT and FY19 RRPT.

131. In our view, ASA 600 paragraph 40(d) required Mr Santangelo to communicate the Relevant Risks to each component auditor. He accepts that he failed to ensure that he communicated the Relevant Risks by referring to the Relevant Risks for each component auditor in the FY18 Instructions and FY19 Instructions for that component auditor. We agree that Mr Santangelo failed to do so and to do what was required by ASA 600 paragraph 40(d).

H. CONTENTION 3 (EVALUATE AUDIT EVIDENCE OBTAINED) – Section V of SOAF

132. Contention 3 is dealt with at paragraphs [78] to [98] of the SOAF.

133. The Contention concerns failures by Mr Santangelo in connection with the evaluation of work performed by component auditors.

134. The parties accepted that the relevant duties in relation to Contention 3 were the duties of an auditor, informed by ASA 230 [8], ASA 200 [15] and ASA 600 [42].
135. ASA 600 has already been referred to in some detail above. Paragraph [42] is set out below, (together with subsequent paragraphs, which are relevant to other Contentions):

“Evaluating the Sufficiency and Appropriateness of Audit Evidence Obtained

Evaluating the Component Auditors' Communication and Adequacy of their Work

42. The group engagement team shall evaluate the component auditor's communication, see paragraph 41 of this Auditing Standard. The group engagement team shall:

- (a) Discuss significant matters arising from that evaluation with the component auditor, component management or group management, as appropriate; and
- (b) Determine whether it is necessary to review other relevant parts of the component auditor's audit documentation. (Ref Para A61)

43. If the group engagement team concludes that the work of the component auditor is insufficient, the group engagement team shall determine what additional procedures are to be performed, and whether they are to be performed by the component auditor or by the group engagement team.

Sufficiency and Appropriateness of Audit Evidence

44. The auditor is required to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion. The group engagement team shall evaluate whether sufficient appropriate audit evidence has been obtained from the audit procedures performed on the consolidation process and the work performed by the group engagement team and the component auditors on the financial information of the components, on which to base the group audit opinion. (Ref: Para. A62).

45. The group engagement partner shall evaluate the effect on the group audit opinion of any uncorrected misstatements (either identified by the group engagement team or communicated by component auditors) and any instances where there has been an inability to obtain sufficient appropriate audit evidence. (Ref: Para. A63).

136. ASA 230 is entitled “Audit Documentation”. Paragraph [8] (including headings) states:

“Documentation of the Audit Procedures Performed and Audit Evidence Obtained

Form, Content and Extent of Audit Documentation

8. The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:

(a) The nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements;

(b) The results of the audit procedures performed, and the audit evidence obtained; and

(c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions.”

137. ASA 200 is entitled “Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards”. Paragraphs [15] states:

“Professional Scepticism

15. The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.”

138. The key material facts in the SOAF relating to this Contention show that:

(a) The FY18 and FY19 Saffery Champness’ Component Auditor Sign Offs recorded a series of significant matters (SOAF paragraphs [79], [84]);

(b) The FY18 and FY19 PwC’s Component auditor Sign Off recorded a series of significant matters (SOAF paragraphs [81] and [85]);

(c) The FY18 and FY19 Ebner Stoltzer’s Component auditor sign off recorded no significant matters (SOAF paragraphs [80], [86]);

(d) NSA identified and raised audit risk areas in their communication for those charged with governance in relation to the FY18 Audit, including consolidation, going concern, impairment of loans and receivables, revenue recognition and the first-time application of IFRS 15, impairment of related party loans and investments, tax balances, financial liabilities, subsequent events and foreign exchange translations (SOAF paragraph [82]);

(e) NSA identified and raised audit risk areas in their communication for those charged with governance in relation to the FY19 Audit, being consolidation, COVID-19 pandemic and going concern, revenue recognition and the first-time application of IFRS 15, impairment of loans and receivables, impairment of related party loans and investments, tax balances, related party financial liabilities, subsequent events and foreign exchange translations (SOAF paragraph [87]);

- (f) In respect of the audit of German Bank for FY18 and FY19:
 - i. Ebner Stolz provided some audit workpapers regarding its audit of German Bank in English, some in German and some partly in English and partly in German;
 - ii. further, NSA and Ebner Stolz held conferences where Ebner Stolz would explain to NSA the “key risk areas” and the work papers to demonstrate the work performed; and
 - iii. further, NSA used an online translator service to translate German documents prepared by Ebner Stolz in respect of audit work undertaken (SOAF paragraph [90]);
 - (g) In respect of the FY19 Audit, NSA identified challenges to its review of Ebner Stolz’s audit work as the review occurred remotely and the files were predominantly in German. NSA noted that it was liaising with Ebner Stolz and would require “increased detailed documentation and Video Conferencing” (SOAF paragraph [91]); and
 - (h) There is no evidence on the audit files:
 - i. that NSA obtained official translations of all of Ebner Stolz’s key audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA in respect of the FY18 Audit and FY19 Audit; and
 - ii. of any file notes or minutes of the meetings held between NSA and Ebner Stolz where the audit work undertaken by Ebner Stolz was discussed, beyond the limited notes in the Nexia Ebner FY18 Review Memorandum and Nexia Ebner FY19 Review Memorandum and, for FY18, [20-145.7] and, for FY19, [20-145.5], [20-145.8] and [20-145.14] (SOAF paragraph [92]).
139. “No evidence on the audit file” (of work) is defined in the Concise Statement as meaning that ASIC after reviewing the relevant audit file found no evidence of such work being performed and says that in light of the requirements of ASA 230[8], the natural inference to be drawn is that no such work was undertaken.
140. Mr Santangelo accepts:
- (a) that the duties of an auditor, informed by ASA 230 [8], ASA 200 [15] and ASA 600 [42], required him to:
 - i. ensure that he applied sufficient professional scepticism in his evaluation of the work performed by the Component Auditors, and that his evaluation of the Component Auditors’ work was sufficiently documented; and
 - ii. obtain English translations of all of Ebner Stolz’s audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA;

- (b) that the duties of an auditor, informed by ASA 230 [8], required him to ensure that he sufficiently documented how NSA reached resolutions in respect of each query identified by NSA in its review of the audit work performed by the Component Auditors;
- (c) the professional scepticism in the evaluation of the work performed by the Component Auditors, and the documentation referred to in paragraphs [94] and [95] of the SOAF was not sufficient;
- (d) he failed to obtain English translations of Ebner Stolz's key audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA; and
- (e) he failed to ensure that he adequately documented the matters referred to in paragraphs 90(b) and 97 of the SOAF.

141. In our view, the key aspects of this Contention are:

- (a) the fact that some of Ebner Stolz's key audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA were in German;
- (b) there is no evidence on the audit files that NSA obtained official translations of all of Ebner Stolz's key audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA in respect of the FY18 Audit and FY19 Audit;
- (c) Mr Santangelo accepted that he failed to obtain English translations of Ebner Stolz's key audit workpapers relating to significant matters or risks identified by either Ebner Stolz or NSA; and
- (d) there is no evidence on the audit files of any file notes or minutes of the meetings held between NSA and Ebner Stolz where the audit work undertaken by Ebner Stolz was discussed.

142. We are satisfied that these matters disclose a lack of professional scepticism in the evaluation of the work performed by the Component Auditors and a failure by Mr Santangelo to ensure that his evaluation of the Component Auditors' work was sufficiently documented, as required by ASA 600 [42], ASA 230 [8] and ASA 200 [15].

I. CONTENTION 4 (GOING CONCERN)

Introduction

143. Contention 4 is a very detailed contention. The agreed facts are set out in paragraphs [99] to [144] of the SOAF. It is not productive for us to reproduce the detailed circumstances in this Decision.

144. The Contention relates to Mr Santangelo's failure to ensure that he obtained sufficient appropriate audit evidence regarding Greensill Group's ability to continue as a going concern.

Relevant ASAs

145. The parties agree that the relevant duties concerned were the duties of an auditor, "informed by ASA 230 [8], ASA 500 [6], ASA 570 [16(c)] and ASA 600 [44]".

146. ASA 230 [8] is set out in paragraph 136 above and relates to the requirement for the auditor to prepare sufficient documentation in relation to audit procedures and significant matters.

147. ASA 500 relates to "Audit Evidence" and paragraph [6] provides:

"Sufficient Appropriate Audit Evidence

6. The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence."

148. ASA 570 deals with "Going Concern" and paragraph [16(c)] provides:

"Additional Audit Procedures When Events or Conditions are Identified

16. If events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern, the auditor shall obtain sufficient appropriate audit evidence to determine whether or not a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern (hereinafter referred to as "material uncertainty") through performing additional audit procedures, including consideration of mitigating factors. These procedures shall include:

...

(c) Where the entity has prepared a cash flow forecast, and analysis of the forecast is a significant factor in considering the future outcome of events or conditions in the evaluation of management's plans for future actions:

- (i) Evaluating the reliability of the underlying data generated to prepare the forecast; and
- (ii) Determining whether there is adequate support for the assumptions underlying the forecast."

149. ASA 600, as already stated, deals with Special Consideration in Audits of Group Financial Reports and paragraph [44] (which is set out, in context, in paragraph 135 above) provides:

"Sufficiency and Appropriateness of Audit Evidence

44. The auditor is required to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion. The group engagement team shall evaluate whether sufficient appropriate audit evidence has been obtained from the audit procedures performed on the consolidation process and the work performed by the group engagement team and the component auditors on the financial information of the components, on which to base the group audit opinion. (Ref: Para. A62)".

Consideration

150. We deal with this Contention by reference to each of the five key matters relied upon in paragraphs [143] and [144] of the SOAF, namely the failure by Mr Santangelo to ensure:

- (a) that he obtained a Complete Bank statement supporting capital injection from Softbank;
- (b) that he tested the inputs and assumption made in the cashflow forecasts;
- (c) that he obtained bank statements and/or complete signed agreements to support the capital injection from the Peter Greensill Family Trust;
- (d) that he applied, and adequately documented, sufficient professional scepticism in relation to Saffery Champness' testing of the FY19 Forecasts; and
- (e) that he included a copy of the renewed 2020 Master Policy and Parallel Policy on the FY19 audit file.

151. We set out below some of the key material facts in relation to each matter.

(a) Absence of Complete Bank statement supporting capital injection from Softbank

152. In the FY18 Instructions, going concern was an identified area for work by the Component Auditors. The FY18 RRPT8 recorded "Going Concern" as a "significant risk requiring special audit consideration" (see SOAF paragraphs [100]-[101]).

153. However, the risk of going concern for FY18 changed significantly after the preparation of the FY18 RRPT. In the FY18 Financial Report, note 30 "Events occurring after the reporting date" stated:

"On 9 May 2019, an affiliate of SoftBank Vision Fund L.P. agreed to purchase securities of the Company, including the purchase of existing equity from the Company's shareholders, newly-issued equity from the Company, and convertible loan notes from the Company, in exchange for an aggregate purchase price of approximately US\$800,000,000."

154. In relation to cashflow forecasts, Mr Santangelo had regard to the whole of the going concern section of the audit file, including:
- (a) Greensill 2018 to 2021 Plan Scenarios;
 - (b) Greensill 2019 Forecast; and
 - (c) Greensill April 2019 Results, (together, the **FY18 Forecasts**).
155. There was no evidence on the audit file that NSA tested whether the inputs and assumptions applied by Greensill management in the FY18 Forecasts were reasonable and supportable.
156. (As already stated above, “No evidence on the audit file” (of work) is defined in the Concise Statement as meaning that ASIC after reviewing the relevant audit file found no evidence of such work being performed and says that in light of the requirements of ASA 230 [8], the natural inference to be drawn is that no such work was undertaken).
157. Mr Santangelo considered that he was not required to test whether the inputs and assumptions applied by Greensill management in the FY18 Forecasts were reasonable and supportable, due to the Softbank capital injection, which was more than three times Greensill’s forecast profit before tax for FY19, according to the FY18 Forecasts.
158. However, Mr Santangelo accepts that a detailed assessment to support this position was not undertaken and documented on the audit file. Further, there was no evidence on the audit file of a complete bank statement recording receipt of the capital injection of US\$526 million from Softbank.
159. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], ASA 500 [6], ASA 570 [16](c) and ASA 600 [44], required him to ensure that he obtained a complete bank statement to support the capital injection from Softbank in FY18, and that he failed to do so.
160. We agree, in the light of the duties arising from the standards referred to above, particularly ASA 600 [44], that Mr Santangelo was obliged to ensure that he obtained a complete bank statement to support the capital injection from Softbank in FY18 and that he breached this duty.

(b) Failure to test the inputs and assumption made in the cashflow forecasts

161. It is apparent from the above, that Mr Santangelo did not test whether the inputs and assumptions applied by Greensill management in the FY18 Forecasts were reasonable and supportable.
162. Mr Santangelo’s view that he was not required to do so (due to the Softbank capital injection) was apparently formed without any detailed assessment to support this position, without documenting any such assessment on the audit file and where there was no evidence on the audit file of a complete bank statement recording receipt of the capital injection of US\$526 million from Softbank.

163. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], ASA 500 [6], ASA 570 [16](c) and ASA 600 [44], required him to ensure with respect to the FY18 Forecasts, that he tested whether the inputs and assumptions made in the cashflow forecasts in these workpapers were reasonable and supportable, and that he failed to do so (see paragraph [143](b)).
164. We agree, in the light of the standards referred to above, particularly ASA 570 [16](c), that Mr Santangelo had a duty as auditor to ensure that he tested whether the inputs and assumptions made in the cashflow forecasts in these workpapers were reasonable and supportable, and that he breached this duty.

(c) Failure to obtain bank statements and/or complete signed agreements to support the capital injection from the Peter Greensill Family Trust

165. On 21 April, NSA emailed Saffery Champness stating “In regards to closing out the audit process we obviously need to get comfortable with COVID-19 assessment and broader going concern assessment” and seeking certain information. On 14 May 2020, Saffery Champness replied, advising NSA, that:
- (a) Saffery Champness is "nearly comfortable that there is no material uncertainty regarding going concern";
 - (b) Peter Greensill Family Co Pty as trustee for the Peter Greensill Family Trust was going to provide Greensill UK with a \$150 million facility which will only be required in the event that "low forecast is realised" and that the low forecast is appropriately prudent;
 - (c) Greensill UK was going to obtain an additional facility for \$400 million, but that was not going to be finalised "in the coming weeks"; and
 - (d) Kelly Plester, Greensill indicated that the "\$150m facility signed facility agreement should be available by the end of the week", which Saffery Champness would then provide to NSA.
166. The meeting minutes of a telephone call between NSA and Saffery Champness on 19 May 2020 record that issues in relation to going concern were discussed and included the notes:
- “Technical team conclusion:
§ Can PG trust provide the cash in the event it is required.
§ Kelly is looking to provide this (Revolving Credit Facility –\$150m of notes) – in terms finalisation stage.
§ PG expected to sign by the end of last week.
§ AI and Kelly are aware this is an essential piece of audit evidence.”
167. NSA obtained copies of some documents by way of email dated 19 May 2020 from Greensill representatives. It is apparent from the email trail that documents were in the process of being prepared and/or executed at about that time. The

documents actually received are identified in paragraph [138] of the SOAF. However, Mr Santangelo did not obtain:

- (a) complete signed copies of the documents in SOAF paragraph [138] (a), (c), (f), (h), (j) and (l), in the sense that he did not obtain, for each document, a single copy of the document which contained the entire document including signed execution pages; and/or
- (b) bank statements supporting the anticipated significant capital injection from the Peter Greensill Family Co Pty as trustee for the Peter Greensill Family Trust.

168. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], ASA 500 [6], ASA 570 [16](c) and ASA 600 [44], required him to ensure that he obtained bank statements and/or complete signed agreements to support the capital injection from the Peter Greensill Family Co Pty as trustee for the Peter Greensill Family Trust. Mr Santangelo accepts that he failed to ensure that he received those documents.

169. We agree, in the light of the standards referred to above, particularly ASA 600 [44], Mr Santangelo had a duty as auditor to ensure that he obtained bank statements and/or complete signed agreements to support the capital injection from the Peter Greensill Family Co Pty as trustee for the Peter Greensill Family Trust and that he breached this duty.

(d) Failure to apply, and adequately document, sufficient professional scepticism in relation to Saffery Champness' testing of the FY19 Forecasts

170. We were unable to ascertain with sufficient clarity the material upon which this aspect of Contention 4 was based and we make no finding in relation to it.

(e) Failure by Mr Santangelo to ensure that he included a copy of the renewed 2020 Master Policy and Parallel Policy on the FY19 audit file

171. Although not in the SOAF, ASIC submitted that the way in which the Greensill's supply finance chain business operated, it was necessary to have insurance in existence in order to cover the risk that the payments may not be met, that that was a very important part of the business and the 2020 master policy was very important as to whether or not, for the FY19 audit, there was a reasonable assurance that the company could continue on a going concern basis, or that there was no reason to suspect that it might not be appropriate for it to continue on a going concern basis.

172. In relation to insurance, Mr Santangelo had regard to the existing Master Policy and Parallel Policy which were both due to expire on 1 March 2020 (see SOAF paragraph [128]).

173. In the meeting minutes of Greensill's Risk Team on 8 July 2020 and 21 July 2020 at which Mr Santangelo was present, discussions were had in relation to Greensill Group's insurance policies, where it was noted "Working with Marsh

to find new insurers to decrease the concentration risk” and “No current concerns regarding the renewal process”

174. Mr Santangelo was aware, after March 2020 and up to the signing of the FY19 Audit Report, that Greensill Group was continuing to write new business dependent on the existence of insurance and pay premiums for the Master Policy and Parallel Policy.
175. The documents relied upon by the parties included documents relating to the significance of the insurance.
176. A Chief Risk Officer Report for Quarter End March 2020, noted in the section titled “Credit Risk Profile”, “Issue: Our risk of loss relative to outstandings is increasing as we grow the portfolio, implying that Greensill is targeting higher risk obligors to support revenue growth”.
177. The Greensill FY19 Cash Flow Review recorded debts owed to Greensill Group to the amount of approximately USD 6.5 billion by the GFG Group and approximately USD 855 million by Bluestone on senior secured facilities. The conclusion in the Greensill FY19 Cash Flow Review included the following:

“...

[Greensill Group] does face significant risk in terms of default however the known distressed positions are covered prudently with insurance coverage and structuring options if required. A prolonged decline in global markets would see an [sic] increased realised credit defaults however based on the information available [Greensill Group] appears to be in a position to weather the current pandemic and work with the major creditors of the business to achieve an acceptable and financially viable outcome.”
178. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], ASA 500 [6], ASA 570 [16](c) and ASA 600 [44], required him to ensure that he included a copy of the renewed 2020 Master Policy and Parallel Policy on the FY19 audit file.
179. We agree, in the light of the standards referred to above, particularly ASA 600 [44], Mr Santangelo had a duty as auditor to ensure that he included a copy of the renewed 2020 Master Policy and Parallel Policy on the FY19 audit file, and that he breached this duty.

J. CONTENTION 5 (EXPECTED CREDIT LOSS) – SECTION VII SOAF

180. Contention 5 is another very detailed allegation, set out in paragraphs [145]-[191] of the SOAF.
181. In essence, ASIC makes a series of allegations of failure to perform duties adequately and properly in the FY18 and FY19 audits in relation to Greensill’s Expected Credit Loss calculations and provisions.

182. The parties agree that the relevant duties are the duties of an auditor, informed by ASA 230 [8], ASA 500 [6] and ASA 600 [44]:
- (a) ASA 230 [8] is set out in paragraph 136 above and relates to the requirement for the auditor to prepare sufficient documentation in relation to audit procedures and significant matters.
 - (b) ASA 500 [6] is set out in paragraph 147 above and relates to the requirement to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining appropriate audit evidence.
 - (c) ASA 600 [44] is set out in paragraph 135 above and deals with obtaining sufficient appropriate audit evidence in the context of audits of Group Financial Reports.
183. The parties accept that Mr Santangelo failed to demonstrate sufficient professional scepticism, failed to perform audit procedures or obtain audit evidence and failed adequately to document matters in connection with the ECL calculations and provisions (see SOAF paragraph [190]).
184. The SOAF, paragraph [145] notes that "Credit losses are the difference between all contractual cash flows that are due under the contract and all cash flows that the entity expects to receive, discounted at the original effective interest rate. Effective from 1 January 2018, AASB 9 introduced an expected credit loss framework for the recognition of impairment in which "*expected credit losses*" is defined as "*the weighted average of credit losses with the respective risks of a default occurring as the weights*". The revised AASB 9 standards required companies to estimate expected credit losses on a forward-looking basis, having regard to the history of credit and the credit risk of customers. This was in contrast with the previous requirement to focus on credit losses incurred."

FY18

185. Key matters relevant to the failures in the FY18 audit are set out below.
186. The FY18 RRPT identified ECL allowance and the application of AASB 9 as a "significant risk requiring special audit consideration". Additionally, NSA prepared a summary of "allowance for doubtful debts (**ECL**)", which attributes the risk of each of the below as "high":
- (a) risk rating for each obligor, changes in risk that prompt ECL stage movement as per IFRS 9;
 - (b) the assumptions underlying the accounting estimates in respect of ECL to be controlled by Greensill; and
 - (c) the nature and extent of documentation management to support Greensill's assumptions.

187. The ECL calculations for Greensill Group were performed at a group level and reviewed by Saffery Champness.
188. On 28 November 2018, NSA emailed Neil Davies of Greensill with initial queries from NSA's review of the ECL calculations.
189. The inputs or judgments applied by Greensill management in the ECL calculations were tested by Saffery Champness and Saffery Champness' audit work was reviewed by the group engagement team.
190. On 28 May 2019, NSA reviewed the Saffery FY18 Expected Credit Losses and noted no issues through its review and that "Nexia to ensure that ECL provision is allocated against receivables as part of consolidation process" and "sufficient appropriate audit evidence appears to have been obtained for the valuation debtors as at 31 December 2018".
191. NSA ensured that the ECL provision was allocated against receivables as part of the consolidation process.
192. There was no documentation of that audit work on the audit file.
193. On 5 June 2019, NSA reviewed the Saffery FY18 ECL Reconciliation.
194. In the Nexia Saffery FY18 Review Memorandum, NSA:
 - (a) raised queries regarding the audit work performed with the insurance deductible, IFRS 9 adjustment in equity section and IFRS 9 (namely, HIF, Bank and GAM fund assets); and
 - (b) resolved those queries with reference to the Saffery FY18 Expected Credit Loss and the Saffery FY18 ECL Reconciliation.
195. There was no evidence on the audit file that NSA performed any additional audit procedures with respect to the issues it had identified.
196. In view of the definition of the phrase "no evidence on the audit file" the natural inference to be drawn is that no such work was undertaken.
197. In respect of German Bank, NSA raised queries regarding IFRS 9 provisioning with Ebner Stolz and Ebner Stolz advised that it did not expect any further IFRS 9 provisions and that ECL would be calculated at a group level.
198. NSA confirmed that ECL would be calculated, and was calculated, at a group level by Saffery Champness. Further, in the Nexia IFRS 9 Memorandum, NSA noted that:
 - (a) "Greensill have prepared their own analysis on the adoption of IFRS 9 (see UK-400 to UK-405 for Greensill's memorandums). The key points outlined in the memorandums are:
 - Greensill have not adopted the simplified model under IFRS 9 (recognising lifetime expected credit losses on trade receivables due in

less than 12 months), as the maturity profile of receivables held tend to vary, and are not all due within 12 months.

- Greensill have a sophisticated risk function allowing the asset risk ratings to be tracked and adjusted on a timely basis";

(b) "Saffery Champness have tested the ECL calculation and associated allocated obligor risk ratings on a sample basis. This is documented on file at UK-516"; and

(c) "Nexia have noted that the Greensill applied model appears consistent with the three stage model in accordance with IFRS 9, and that Saffery's testing did not find any material exceptions".

199. The Nexia IFRS 9 Memorandum:

(a) contains no evidence of procedures or evidence obtained by NSA to verify Greensill's approach to the adoption of IFRS 9 and provides only a high-level review; and

(b) otherwise, references and relies on the workpapers prepared by Greensill management and Saffery Champness in relation to the ECL calculations.

FY19

200. The FY19 RRPT identified ECL allowance and the application of AASB 9 each as a "significant risk with potential audit evidence to be obtained".

201. Additionally, NSA prepared a summary of "Allowance for Doubtful Debts (ECL)" (Tab 40-152), which attributes the risks related to assumptions underlying the accounting estimate as "high".

202. As in FY18, the ECL calculations for Greensill Group were performed at a group level and reviewed by Saffery Champness. In conducting its FY19 audit work in relation to ECL, Saffery Champness obtained the October 2018 IFRS 9 Memorandum, Greensill ECL Summary, Vision Fund Accounting ECL Charge Memorandum and Greensill FY19 ECL Provision Assessment.

203. The Greensill ECL Summary sets out the formulas used for ECL calculations, being the standard, first lost and insurer default formulas. The key inputs for each of the formulas are as described in paragraph [151] of the SOAF and include exposure at default, obligor probability of default, loss given default, funded balance, insured balance (less deductible), and insurer probability of default.

204. The Greensill FY19 ECL Provision Assessment noted that:

(a) "the ECL provision recognised on 31 December 2018 balance sheet was \$16m and the actual credit losses during 2019 were \$8m (including specific provisions). This would suggest that the provision was 50% utilised during 2019. However, given the \$8m of actual losses related to

a 12-month period (where asset flow was 4-5x the year-end amount), would suggest that the utilization of the 2018 year-end provision was more accurately somewhere between 25% and 35% (the "2018 Year-end Utilization Range")."; and

- (b) "using the existing ECL model, the FY19 provision would be \$48 m (up from \$16m in FY18). Reducing this by 25% would bring this down to a closing provision of \$36m. As the business grows the ECL provision is expected to increase, therefore, reducing the provision by 25% will have an incremental improvement to EBITDA going forward".

205. NSA noted on the Greensill FY19 ECL Provision Assessment the following:

"file note has been reviewed and rationale behind the 25% hair cut appears reasonable. It [is] based primarily on two facts:

1) Historic information - of the amount provided for as at 31/12/2018 only 50% was utilized hence indicating methodology is overly conservative.

2) The source of their risk rating is based on a 12 month tenor. Greensill's typical tenor is 80-90 days therefore a significantly shorter period and therefore less risk.

3) The Greensill credit team has significantly increased its effectiveness through additional procedures and more resources. Consequently they are in a better position to identify expected credit losses and make specific provisions in these cases."

206. The NSA audit file documented work performed by Saffery Champness on ECL in the Saffery FY19 ECL Reconciliation and Testing, Saffery FY19 ECL Sample Reconciliation, Saffery FY19 Final ECL Reconciliation and Saffery FY19 ECL completeness review.

207. The Saffery FY19 ECL Reconciliation and Testing relevantly included:

- (a) an assessment of IFRS 9, at Tabs "Overview of IFRS 9", "Review of client methodology", and "Testing 2019";
- (b) a reconciliation of assets to ECL workings, at Tab "Reconciliation – 80525"; and
- (c) lists of obligors, at Tabs "Central Calculation (Dec)" and "Central Calculation (Nov)".

208. In the Saffery FY19 ECL Sample Reconciliation, Saffery Champness agreed a sample of 10 investor notifications to the ECL reconciliation. Both the sample testing and the underlying tabs include lists of obligors.

209. On 10 February 2020, Saffery Champness advised NSA that Saffery Champness had identified significant errors in the ECL and SCF balances that needed to be examined further. As a result, Saffery Champness identified an additional adjustment of \$4.3 million and requested that Greensill provide an

updated ECL schedule. In the Saffery FY19 Final ECL Reconciliation, Saffery Champness performed audit work to substantiate the additional adjustment and to ensure that all adjustments were appropriately recognised.

210. In the Saffery FY19 ECL Completeness Review, Saffery Champness obtained NCS data and reconciled the list of assets to the ECL calculations. It also included lists of obligors at Tabs "Central Calculation – Dec 19" and "Credit Tracker Source PBS".
211. On 26 February 2020, Saffery Champness emailed NSA attaching a document titled "Nexia Sydney Audit Memo" prepared by Saffery Champness and dated 25 February 2020, which identified ECL as a key audit area and noted:
 - (a) errors identified by Saffery Champness in the insurance inputs and a subsequent full review of the ECL calculations, resulting in an adjustment of approximately \$4.3 million; and
 - (b) the ECL provision remained appropriately prudent after the 25% haircut, the total impact of which was approximately \$13.9 million.
212. NSA did not include the memo referred to at paragraph 211 on the audit file for the FY19 Audit.
213. Further, Saffery Champness issued the Nexia Sydney Audit Memo, which:
 - (a) communicated the audit tests conducted on ECL calculations; and
 - (b) noted errors in the relevant ECL calculations due to incorrect inputs made in respect of insurance, which resulted in approximately \$4 million increase in the ECL provision.
214. There is no evidence on the audit file that NSA separately undertook testing or review:
 - (a) of whether the inputs and judgments applied by Greensill management in the ECL calculations were reasonable and supportable;
 - (b) of the errors identified by Saffery Champness in the ECL calculations and the resulting adjustment; and
 - (c) to support the conclusion that Greensill management's rationale for the 25% haircut to the ECL provision was reasonable and supportable.
215. There being "no evidence on the audit file" of work, the natural inference to be drawn is that no such work was undertaken.
216. NSA reviewed the Saffery FY19 ECL Reconciliation and Testing, the Saffery FY19 ECL Sample Reconciliation and the Saffery FY19 ECL Completeness Review and concluded for each that "sufficient appropriate audit evidence appears to have been obtained for the completeness of the ECL calculation as at 31 December 2019".

217. On 20 March 2020, Saffery Champness emailed NSA to respond to questions about the ECL calculations, which included:
- (a) “Are they still using the 2017 Annual Global Corporate Default Study And Rating Transitions, when there is an updated 2018 report?”; and
 - (b) “How have you confirmed the credit worthiness of the CDS providers? Are they wholly owned subs of Softbank?”.
218. On 16 April 2020, NSA responded with additional questions, which included:
- (a) “Any thoughts on how we can tie the Credit Tracker Source back to external sources such as audited entities or third party confirmations?”; and
 - (b) a request in relation to the documentation regarding the “IPA Deals”.
219. NSA resolved the queries identified in paragraphs 217 and 218 as follows:
- (a) the query described in paragraph 217(a) was resolved by email from Saffery of 20 March 2020 at 2.10am, which stated, inter alia, that the S&P ratings used were the latest available at the start of the year (and this was a satisfactory answer, including because the figures used were long-term averages which moved minimally, if at all, from year to year);
 - (b) the query described in paragraph 217(b) was also resolved in Saffery’s email of 20 March 2020 at 2.10am, which stated, “Confirmed that they are part of the Softbank group and hence credit worthy”; and
 - (c) the query described 218 was resolved in workpaper [UK-568-2].
220. NSA relied on the Nexia IFRS 9 Memorandum in respect of FY19, stating that:
- “The...technical memorandum was prepared for the 2018 audit, but remains relevant for considerations of IFRS 9 for the 2019 audit.”
221. NSA also obtained the following workpapers from Greensill management Greensill Key Credit Exposures, Greensill Watchlist Summary, March 2020 Distressed Debts Update (which NSA reviewed and concluded “[o]verall position has been improved”) and July 2020 Distressed Debts Update (which NSA reviewed and concluded that “[n]o further deterioration in distressed debts from March 2020. A few new obligors have been added to the Credit Watch List at 60-226 and 60-225”).
222. The March 2020 Distressed Debts Update noted that:
- (a) “despite a number of obligors becoming distressed since the year end, there is has been sufficient recoverability of the year end outstanding notes to assess that the year-end provision for expected credit losses was sufficient. The following adjustment could potentially be made:

Agritrade +\$5.95m
 CB&I -\$3.5m
 Softbank Vision -\$6.33m
 IFRS 9 general -\$7.4m
 Total -\$11.28m";

(b) "no overall adjustment deemed necessary to the 31 December 2019 financial statements"; and

(c) "management are therefore satisfied to make no further adjustment to the disclosed provisions for 31 December 2019 and feel that the current level remains sufficiently prudent".

223. The July 2020 Distressed Debts Update set out "an overview" of "the distressed debt changes since the paper provided to Saffery's" and noted that there was "nothing" in the update "that would require adjustment above the ECL that was provided at year end, as noted in the paper to Saffery's".

224. On 29 July 2020, NSA analysed aspects of the ECL provisioning for FY19, identifying outstanding balances and an increase in the ECL provision amount, as follows:

Balance at 31/12/2019: \$54.9m

Including:

GFG Group \$1.954m

Softbank (View \$8.8m) \$14.1m

Balance at 30/06/2020: \$92m

Including:

GFG Group \$15.1m The ORR went from average 5.8 to 8 flat which increased the ECL \$13.2m

Softbank (View \$8.8m) \$33m View increased \$19m due to the increase in LGF to 100% of the ORR (8=24.17%)

Write offs:

Agritrade \$29m

NMC \$5m deductible

EHG \$3.5m First loss in HIF

None of the above were included in the December ECL

225. The inputs or judgements applied by Greensill management in the ECL calculations were tested by Saffery Champness and reviewed by NSA, including as documented in paragraphs 211 - 218 above.
226. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], ASA 500 [6] and ASA 600 [44], required him to ensure that he:
- (a) demonstrated sufficient professional scepticism in the evaluation of the procedures with respect to ECL performed by the Component Auditors;
 - (b) tested whether the key inputs and judgements applied by Greensill management to support the ECL calculations were reasonable and supportable, including by:
 - i. performing or requesting the Component Auditors to perform additional audit procedures to test the estimated probability of default percentages for obligors; and
 - ii. documenting his understanding of the risk ratings attached to individual obligors and receivables and, if necessary, performed additional audit procedures to test whether those risk ratings were appropriate;
 - (c) tested the appropriateness of the adjustment applied by Saffery Champness as a result of errors identified in the ECL calculations;
 - (d) obtained audit evidence to support Greensill management's rationale for the 25% haircut to the ECL provision;
 - (e) adequately documented on the audit file the work described in paragraph 190 above; and
 - (f) adequately documented the group engagement team's assessment of the Greensill-prepared October 2018 IFRS 9 Memorandum on the audit files.
227. Mr Santangelo accepts that, in the FY18 Audit and FY19 Audit, he did not do the things in paragraph 226 above.
228. We agree, in the light of the circumstances detailed above and the standards referred to above, Mr Santangelo had a duty as auditor to ensure that he did the things referred to in paragraph 226 above and that he breached this duty.

K. CONTENTION 6 (REVENUE RECOGNITION) – SECTION VIII OF THE SOAF

229. Contention 6 relates to testing of revenue recognition. The detailed facts relevant to the contention are set out in paragraphs [192]-[219] of the SOAF.
230. The parties accept that the relevant duties were the duties of an auditor, informed by ASA 600 [44], which is referred to in paragraph 135 above.

231. The specific issues about which ASIC complains, and which Mr Santangelo accepts, are of relatively short compass.
232. The first related to Supply Chain Finance/ Accounts Receivable revenue (**SCF/AR revenue**).
233. In FY18 and FY19, Saffery Champness tested the existence and accuracy of SCF/AR revenue by agreeing the revenue to an originating document for the transaction. In most cases, the only originating documentation relied upon (to Mr Santangelo's knowledge) was the "csv file", a data file generated by the obligor.
234. Mr Santangelo accepts that the duties of an auditor, informed by ASA 600 [44]:
- (a) required him to be satisfied that the reliability, integrity and accuracy of the csv files had been tested before relying on the csv files as evidence of the existence and accuracy of the SCF/AR revenue; or
 - (b) alternatively, required him to ensure that the existence and accuracy of SCF/AR revenue was tested by obtaining key revenue contracts.
235. In the FY18 Audit and FY19 Audit, Mr Santangelo accepts that he failed to either:
- (a) ensure that the reliability, integrity and accuracy of the csv files was tested by himself, the group engagement team or Saffery Champness, before he relied on the csv files as evidence of the existence and accuracy of the SCF/AR revenue; or
 - (b) ensure that the existence and accuracy of SCF/AR revenue was tested by either the group engagement team or Saffery Champness obtaining key revenue contracts.
236. The second issue relates to the BRI Warrant.
237. Mr Santangelo accepts that the duties of an auditor, informed by ASA 600 [44], required him to ensure that he or Saffery Champness:
- (a) tested the balances which were noted as "per draft unaudited accounts" in the FY18 BRI Warrant Testing and FY19 BRI Warrant Testing;
 - (b) challenged the appropriateness of Greensill management's recognition of the fair value movement of the BRI Warrant of \$25 million in FY18 and \$50 million in FY19; and
 - (c) identified that the fair value movements referred to in sub-paragraph (b) above were incorrectly classified in the Greensill Group financial statements as revenue.
238. Mr Santangelo failed to ensure that he or (to his knowledge) Saffery Champness did the things in sub-paragraphs 237(a)-(c) above.

239. We agree, in the light of the circumstances detailed above and the standards referred to above, particularly ASA 600 [44], that Mr Santangelo:
- (a) had a duty as auditor to ensure that he or Saffery Champness did the things in paragraph 234 and 237 above; and
 - (b) failed to carry out that duty.

L. CONTENTION 7 (PROFESSIONAL SCEPTICISM ETC) – SECTION IX OF THE SOAF

240. Contention 7 is an “overlay” contention, which relies upon the failures set out in Contentions 1 to 6 and 9 in asserting that those failures meant that Mr Santangelo failed to perform his duties in a number of respects.
241. The duties which the parties accept are the relevant duties are the duties of an auditor, “informed by ASA 200 [15], [16] and [17] and ASA 220 [8], [15], [17] and [18]”.
242. ASA 200 [15] is set out at paragraph 137 above and relates to “Professional Scepticism”. For convenience, ASA [15], [16] and [17] are set out below:

“Professional Scepticism

15. The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated. (Ref: Para. A21-A25)

Professional Judgement

16. The auditor shall exercise professional judgement in planning and performing an audit of a financial report. (Ref: Para. A26-A30)

Sufficient Appropriate Audit Evidence and Audit Risk

17. To obtain reasonable assurance, the auditor shall obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor’s opinion. (Ref: Para.A31-A57).”

243. ASA 220 is concerned with Quality Control for an audit. Paragraphs [8] and [15], [17] and [18] are set out below:

“Leadership Responsibilities for Quality on Audits

8. The engagement partner shall take responsibility for the overall quality on each audit engagement to which that partner is assigned. (Ref: Para. A3)

Engagement Performance

Direction, Supervision and Performance

15. The engagement partner shall take responsibility for:

- (a) The direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements (Ref: Para. A14-A16, A21); and
- (b) The auditor's report being appropriate in the circumstances.

Reviews

16. ...

17. On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued. (Ref: Para.A19-A21)

Consultation

18. The engagement partner shall:

- (a) Take responsibility for the engagement team undertaking appropriate consultation on difficult or contentious matters;
- (b) Be satisfied that members of the engagement team have undertaken appropriate consultation during the course of the engagement, both within the engagement team and between the engagement team and others at the appropriate level within or outside the firm;
- (c) Be satisfied that the nature and scope of, and conclusions resulting from, such consultations are agreed with the party consulted; and
- (d) Determine that conclusions resulting from such consultations have been implemented. (Ref: Para. A22-A23)."

244. Mr Santangelo accepts that the duties of an auditor, informed by ASA 200 [15], [16] and [17] and ASA 220 [8], [15], [17] and [18], required him to:

- (a) plan and perform the FY18 Audit and FY19 Audit with sufficient professional scepticism;
- (b) exercise an appropriate level of professional judgment in planning and performing the FY18 Audit and FY19 Audit;
- (c) obtain sufficient appropriate audit evidence in relation to going concern, ECL and revenue recognition;

- (d) take responsibility for the overall quality of the FY18 Audit and FY19 Audit;
 - (e) take responsibility for the direction, supervision and performance of the FY18 Audit and FY19 Audit; and
 - (f) be satisfied that sufficient appropriate audit evidence was obtained in relation to going concern, ECL and revenue recognition.
245. We accept that the matters in (a), (b), (d) and (e) are, in substance the duties imposed by ASA 200 [15], ASA 200 [16], ASA 220 [8] and ASA 220 [15] respectively. We accept that the matters in (c) and (f) were duties required by reason of ASA 200 [17] and ASA 220 [17] respectively and the particular circumstances of this case, as found in this Decision.
246. Mr Santangelo accepts that to the extent of the failures mentioned in Contentions 1 to 6 and 9 of the Statement of Agreed Facts, he did not do the things in paragraph 244 above.
247. We are satisfied, by reason of our findings in relation to Contentions 1 to 6 below and Contention 9 below, that Mr Santangelo failed to do the things in paragraph 244 above as required by the standards in paragraph 245 above.

M. CONTENTION 8 (DOCUMENTATION OF THE AUDIT FILE) – SECTION X OF THE SOAF

248. Contention 8 is a relatively contained contention. It relates to an admitted failure to prepare audit documentation. Mr Santangelo accepts that the duties of an auditor, informed by ASA 230 [8], required him to ensure that the work performed in the FY18 Audit and FY19 Audit were adequately documented on the audit files.
249. ASA 230 paragraph [8] has already been set out above, but for convenience, is repeated below:

“Documentation of the Audit Procedures Performed and Audit Evidence Obtained

Form, Content and Extent of Audit Documentation

8. The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:

- (a) The nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements;
- (b) The results of the audit procedures performed, and the audit evidence obtained; and

(c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions.”

250. The parties have identified, in paragraphs [228] and [229] of the SOAF, about twenty documents which were not on the audit files but which ought to have been. It is not productive to discuss the nature of every document when Mr Santangelo accepts that he breached his duties by not including each document on the audit files. But by way of example, these documents include:
- (a) The email dated 26 February 2020 attaching the Memo identifying errors, referred to at paragraph 211 above, (see SOAF paragraph [229(d)]).
 - (b) The meeting minutes of a telephone call between NSA and Saffery Champness on 19 May 2020, referred to in paragraph 166 above. (see SOAF paragraph [229(l)]).
251. Mr Santangelo accepts that with respect to the FY18 audit, he failed to ensure that the documents referred to in paragraph [228] of the SOAF were documented on the audit file and, with respect to the FY19 audit, he failed to ensure that the documents referred to in paragraph [229] of the SOAF were documented on the audit file. He also accepts that he did not ensure that the work performed in the FY18 Audit and FY19 Audit was adequately documented in the circumstances in paragraphs [70], [98], [144], [191], [228] and [229] of the SOAF.
252. We are satisfied, in the circumstances referred to in paragraph 251 above, that Mr Santangelo failed to prepare sufficient audit documentation as required by ASA 230 [8].

N. CONTENTION 9 – GENERAL – SECTION XI OF THE SOAF

253. Contention 9 is another very detailed contention raising a number of disparate issues. Contention 9 was introduced into the Amended Concise Outline by reason of the matters raised by Mr Santangelo in his Response to the original Concise Outline. In substance, Mr Santangelo’s Response contained the matters which he relied upon in asserting that he had complied with his duties as an auditor. In Contention 9, ASIC contend that the matters relied upon by Mr Santangelo did not amount to the proper performance of his duties. In the SOAF, Mr Santangelo agrees that he failed to carry out adequately and properly, his duties as an auditor in the various ways advanced by ASIC.

Specifying further audit procedures

254. Further to paragraph 92(a) above, Mr Santangelo accepts that the instruction to the Component Auditors to perform audits of the components using component materiality was not a sufficient response because his duties as an auditor, informed by ASA 600 [27], also required him to ensure that he:

- (a) designed and implemented appropriate responses to address the assessed risks of material misstatement of the financial report, including by determining the type of work performed by the group engagement team, or the Component Auditors on its behalf, on the financial information of the components, which in relation to Greensill UK, German Bank and the GAM SCF required one or more of:
 - i. an audit of the component using component materiality;
 - ii. an audit of one or more account balances, classes of transactions or disclosures relating to the likely significant risks of material misstatement; and
 - iii. specified audit procedures relating to the likely significant risks;
- (b) discussed the Greensill Group Significant Risks with the Component Auditors at the planning stage of the component audits, and adequately documented that discussion; and
- (c) evaluated, with sufficient professional scepticism, the Component Auditors' further audit procedures in respect of the Greensill Group Significant Risks, and adequately documented that evaluation.

255. We agree, based upon the material in the SOAF, that in the light of ASA 600 [27], Mr Santangelo had a duty as auditor to ensure that he did the things set out in paragraph 254 and we are satisfied that he breached that duty.

Evaluation of Component Auditors' workpapers

256. Further to paragraph 92(b) above:

- (a) Although NSA's review of the FY18 audits performed by Saffery Champness and Ebner Stolz is documented throughout the FY18 Audit File, including in review notes on Component Auditors' workpapers, the Nexia Saffery FY18 Review Memorandum and Nexia Ebner FY18 Review Memorandum, and Case Ware sign-offs of Component Auditors' workpapers:
 - i. the Nexia Saffery FY18 Review Memorandum and the Nexia Ebner FY18 Review Memorandum do not contain any or sufficient detail which reveals what the review process considered;
 - ii. the Nexia Ebner FY18 Review Memorandum is limited to review of procedures that are already noted on the workpaper itself, which does not provide sufficient evidence and insight into what were the key areas of significance that NSA reviewed;
 - iii. the sign offs recorded in Case Ware of the Component Auditor workpapers do not provide evidence of what the review process considered or aspects that were reviewed in the Nexia Saffery FY18 Review Memorandum or Nexia Ebner FY18 Review Memorandum;

- iv. the Nexia Saffery FY19 Review Memorandum and the Nexia Ebner FY19 Review Memorandum do not contain any or sufficient detail which reveals what NSA's review process considered;
 - v. the Nexia Saffery FY18 Review Memorandum, the Nexia Ebner FY18 Review Memorandum, the Nexia Saffery FY19 Review Memorandum and the Nexia Saffery FY19 Review Memorandum do not provide sufficient evidence of evaluation by NSA to consider the appropriateness of the further audit procedures performed by the Component Auditors; and
 - vi. the signoffs recorded in Case Ware of the Component Auditor workpapers do not provide evidence of what the review process considered or aspects that were reviewed by NSA in the Nexia Saffery FY19 Review Memorandum or Nexia Ebner FY19 Review Memorandum; and
- (b) in the circumstances, Mr Santangelo accepts that:
- i. he did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level; and
 - ii. he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 600 [44] and [45], ASA 200 [17] and ASA 220 [17].
257. We are satisfied that, in the circumstances, Mr Santangelo failed to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level, as required by ASA 600 [44] and [45], ASA 200 [17] and ASA 220 [17].
258. Although workpapers on the FY18 Audit File and FY19 Audit File evidence discussions between the group engagement team and the Component Auditors, in which the Greensill Group Significant Risks were discussed:
- (a) The extent of those discussions was not adequately documented on the audit file; and
 - (b) in the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 230 [8].
259. We are satisfied that in the circumstances, Mr Santangelo failed to adequately document the discussions referred to in paragraph 258, as required by ASA 230 [8].
260. While NSA documented its review of each Component Auditor's audit file for the FY18 Audit and the FY19 Audit in the Nexia Saffery FY18 Review Memorandum, the Nexia Ebner FY18 Review Memorandum, the Nexia Saffery FY19 Review Memorandum and the Nexia Ebner FY19 Review Memorandum:
- (a) the Nexia Saffery FY18 Review Memorandum, Nexia Ebner FY18 Review Memorandum, Nexia Saffery FY19 Review Memorandum and

Nexia Ebner FY19 Review Memorandum do not evidence or document the work performed by the Component Auditors and/or how NSA reached resolutions in respect of each issue identified by NSA in its review of the audit work performed by the Component Auditors; and

- (b) in the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 230 [8].
261. We are satisfied that in the circumstances, Mr Santangelo failed to adequately document the matters in paragraph 260(a) as required by ASA 230 [8].
262. While Mr Santangelo and the group engagement team had already reviewed and evaluated many of the Component Auditors' workpapers by the time the component auditors' communications were received and had engaged with the Component Auditors during the course of the Component Audits, and while, as such, the Component Auditors' workpapers were substantially as expected, and did not require significant further evaluation:
- (a) the Nexia Saffery FY18 Review Memorandum, Nexia Ebner FY18 Review Memorandum, Nexia Saffery FY19 Review Memorandum and Nexia Ebner FY19 Review Memorandum contain insufficient evidence that NSA determined whether it was necessary to review each Component Auditor's communication with respect to each of the FY18 Audit and the FY19 Audit; and
 - (b) in the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 230 [8] and ASA 600 [42].
263. We are satisfied that in the circumstances, Mr Santangelo failed to adequately document the matters in paragraph 262(a) as required by ASA 230 [8].

Softbank capital injection

264. Further, because Mr Santangelo failed to obtain a complete bank statement recording receipt of the capital injection of US\$526 million from Softbank, Mr Santangelo accepts that:
- (a) NSA obtained insufficient audit evidence to support that the Softbank capital injection had taken place at the time of the signing of the audit report in relation to the FY18 Audit;
 - (b) Mr Santangelo failed to ensure that sufficient audit evidence was obtained to conclude that the Softbank capital injection had taken place at the time of signing the audit report in respect of the FY18 Audit; and
 - (c) Mr Santangelo failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 200 [17].

265. We are satisfied that, in the circumstances, Mr Santangelo failed to obtain sufficient audit evidence of the matters in paragraph 264(a) and (b), as required by ASA 200 [17].

FY18 Forecasts

266. Further, NSA was required to test whether the inputs and assumptions applied by Greensill management in the FY18 Forecasts were reasonable and supportable due to the Softbank capital injection. Further:

- (a) Greensill had prepared the FY18 Forecasts;
- (b) Analysis and evaluation of the cash flow forecast is a significant factor in considering whether the underlying inputs were achievable in supporting the future growth outcomes or management's plans for future action;
- (c) ASA 570 [16] required NSA to test whether the inputs and assumptions applied by Greensill management in the FY18 Forecasts were reasonable and supportable due to the Softbank capital injection, in circumstances where Greensill prepared the FY18 Forecasts;
- (d) There is a lack of evidence on the audit file to support the Softbank capital injection; and
- (e) In circumstances where the FY18 Forecasts were prepared by Greensill management, proper professional practice required NSA to test the inputs and assumptions applied by the Greensill management in reaching its conclusion regarding the going concern basis of the operation.

267. In the circumstances, Mr Santangelo accepts that he failed to ensure that NSA complied with ASA 570 [16] by testing the inputs and assumptions applied by the Greensill management in reaching its conclusion regarding the going concern basis of the operation.

268. We are satisfied that in the circumstances, Mr Santangelo failed to ensure that NSA complied with ASA 570 [16] by testing the inputs and assumptions applied by the Greensill management in reaching its conclusion regarding the going concern basis of the operation.

FY19 Forecasts

269. Further, while the inputs and assumptions applied by Greensill management in the FY19 Forecasts were tested by Saffery Champness and Saffery Champness' testing was reviewed by NSA, including as documented in workpapers [60-211], [60-212], [60-213], [60-214] and [60-215]:

- (a) [60-212], being the Greensill Scenario Analysis, is a high-level review prepared by Mr Santangelo, which includes handwritten notes;
- (b) there is no evidence on the audit file to support how Mr Santangelo's review of the Greensill Scenario Analysis was conducted and whether

appropriate evidence was obtained to support the assertions noted by Mr Santangelo in the Greensill Scenario Analysis;

- (c) [60-213], being the Greensill FY19 Cashflow Review does not contain any written comments by the group engagement team or Mr Santangelo;
- (d) the Saffery Champness review of Greensill's low forecast is not supported by any evidence or documentation to support the basis of adopting the "low forecast" and why the "low forecast" was deemed conservative; and
- (e) whilst these workpapers evidence some consideration of the inputs and assumptions applied by Greensill, such consideration is in the form of high-level notes and assertions which have not been tested or corroborated with sufficient or appropriate evidence.

270. In the circumstances described in paragraph 269 above, Mr Santangelo accepts that he failed to carry out adequately and properly the duties of an auditor, informed by ASA 500 [6], ASA 600 [44], ASA 570 [6], ASA 200 [15], ASA 200 [17] and ASA 230 [8] by:

- (a) failing to ensure that there was sufficient appropriate audit evidence to support the assertions noted by Mr Santangelo in the Greensill Scenario Analysis;
- (b) failing to ensure that there was sufficient appropriate audit evidence to support the 'Greensill's low forecast' and why the "low forecast" was deemed conservative;
- (c) failing to ensure that adequate professional scepticism was applied to inputs and assumptions applied by Greensill in the FY19 Forecasts; and
- (d) failing to ensure that there was prepared audit documentation regarding the results of the audit procedures performed and the audit evidence obtained in relation to Greensill FY19 Cashflow Review and/or the Saffery Champness review of Greensill's low forecast.

271. We are satisfied that, in the circumstances, Mr Santangelo failed to do the things set out in paragraph 270, as required by the ASAs in paragraph 270.

Renewal of the 2020 Master Policy and Parallel Policy

272. Further, there was insufficient appropriate audit evidence on the audit file as to whether the Master Policy and Parallel Policy had been extended for a further 12 months.

273. In the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 500 [6], ASA 600 [44], and ASA 570 [6], by ensuring that there was sufficient audit evidence to resolve the issue as to whether the 2020 Master Policy and Parallel Policy had been extended for a further 12 months.

274. We are satisfied that, in the circumstances in paragraphs 272 and 273, Mr Santangelo failed to act, as required by ASA 500 [6], ASA 600 [44], and ASA 570 [6], to ensure that there was sufficient audit evidence to resolve the issue as to whether the 2020 Master Policy and Parallel Policy had been extended for a further 12 months

Going Concern

275. Further, the parties accept that:

- (a) there was insufficient testing of the underlying cashflows supporting the going concern assessment were sufficiently tested and that NSA obtained appropriate evidence to support its assessment of going concern;
- (b) Mr Santangelo failed to ensure that the group engagement team obtained sufficient appropriate audit evidence to show that the underlying cashflows supporting the going concern assessment were sufficiently tested; and
- (c) Mr Santangelo failed to ensure compliance by the group engagement team with ASA 570 [16].

276. We are satisfied that, in the circumstances in paragraph 275, Mr Santangelo failed to ensure compliance by the group engagement team with ASA 570 [16].

ECL inputs and assumptions

277. Mr Santangelo accepts that he placed too much reliance on Saffery Champness' testing of the inputs or judgments applied by Greensill management in the ECL calculations, and in doing so:

- (a) did not apply sufficient professional scepticism in accordance with ASA 200 [15]; and
- (b) did not sufficiently document evidence why the inputs and assumptions in the ECL calculation were reasonable and supportable.

278. In the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 200 [15] and ASA 230 [8].

279. Further, Mr Santangelo accepts that the audit evidence obtained by Mr Santangelo to better understand how Saffery Champness tested the inputs for the ECL calculation, including in the email and workpaper referred to in paragraph 219 above, was not adequate.

280. In the circumstances, Mr Santangelo accepts that he:

- (a) failed to obtain sufficient appropriate audit evidence to support the Saffery Champness testing of the inputs supporting the adequacy of the ECL provision amounts; and

- (b) failed to carry out adequately and properly the duties of an auditor, informed by ASA 200 [17] and ASA 230 [8].
281. We are satisfied that, in the circumstances referred to in paragraph 277, Mr Santangelo did not apply sufficient professional scepticism in accordance with ASA 200 [15] and did not sufficiently document evidence why the inputs and assumptions in the ECL calculation were reasonable and supportable, as required by ASA 230[8].
282. We are satisfied that, in the circumstances referred to in paragraph 279, Mr Santangelo failed to obtain sufficient appropriate audit evidence to support the Saffery Champness testing of the inputs supporting the adequacy of the ECL provision amounts as required by ASA 200 [17] and ASA 230 [8].

Resolution of queries regarding ECL

283. While Mr Santangelo obtained answers to the queries referred to in paragraphs 217 and 218 above, as stated in paragraph 219 above Mr Santangelo accepts that:
- (a) the email of 20 March 2020 was too high level to satisfactorily resolve the queries or issues raised regarding the ECL calculations referred to in paragraph 217 and 218 above; and
 - (b) in particular, there was no explanation as to why the mere fact that the CDS providers were part of the Softbank group made the CDS providers credit worthy.
284. In the circumstances, Mr Santangelo accepts that he:
- (a) failed to obtain sufficient appropriate audit evidence; and
 - (b) failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 200 [17], ASA 500 [6], ASA 600 [44] and ASA 200 [17].
285. We are satisfied that, in the circumstances in paragraph 283, Mr Santangelo failed to obtain sufficient appropriate audit evidence and failed to act as required by ASA 200 [17], ASA 500 [6] and ASA 600 [44].

CSV File Testing

286. Further, Mr Santangelo accepts that:
- (a) NSA relied upon the csv data files without first testing or ensuring the reliability, integrity and accuracy of the data files;
 - (b) NSA was required to first test or ensure the reliability, integrity and accuracy of the data file before relying on it; and

- (c) Mr Santangelo failed to ensure that the group engagement team first tested or ensured the reliability, integrity and accuracy of the csv data files before relying on them.
287. In the circumstances, the Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 600 [44] and ASA 540 [25].
288. We are satisfied that, in the circumstances in paragraph 286, Mr Santangelo failed to act in accordance with the requirements of ASA 600 [44] and ASA 540 [25]

BRI Warrant Testing

289. Further , Mr Santangelo accepts that Saffery Champness was required to:
- (a) test the balances which were noted as “per draft unaudited accounts”;
 - (b) challenge the appropriateness of Greensill managements’ recognition of the fair value movement of \$25 million in FY18 and \$50 million in FY19; and
 - (c) identify that the fair value movements were incorrectly classified in the financial statements as revenue.
290. Further, Mr Santangelo accepts that while the FY18 BRI Warrant Testing and FY19 BRI Warrant Testing workpapers contain some evidence of the matters described in subparagraphs 289(a)-(c) above, the quality of audit evidence is not sufficient.
291. In the circumstances, Mr Santangelo accepts that he failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 500 [6].
292. We are satisfied that, in the circumstances in paragraphs 289 and 290 above, Mr Santangelo failed to act as required by ASA 500 [6].

Nexia Saffery FY19 Review Memorandum

293. Further, Mr Santangelo accepts that while NSA raised and finalised the issues referred to in paragraph 217 of the SOAF:
- (a) the Nexia Saffery FY19 Review Memorandum does not contain sufficient evidence that NSA performed audit procedures to resolve those issues or queries; and
 - (b) in the circumstances, Mr Santangelo failed to carry out or perform adequately and properly the duties of an auditor, as informed by ASA 600 [44].

294. We are satisfied that, in the circumstances in paragraph 293 above, Mr Santangelo failed to obtain sufficient appropriate audit evidence as required by ASA 600 [44]

O. THE BOARD'S CONCLUSIONS

295. For reasons set out above and elaborated below, we are satisfied that Mr Santangelo has failed to carry out or perform adequately and properly the duties of an auditor.
296. We have set out in relation to each Contention above, specific conclusions that Mr Santangelo failed to perform the duties of an auditor, in many cases on the basis that he had not carried out particular actions which were required to be done by various ASAs.
297. We refer to the discussion at paragraph 30 above which identifies the question which the Board needs to address on an Application under s 1292(1)(d)(i), namely, whether the Board is satisfied that the auditor has failed to carry out or perform "adequately and properly" the relevant duties. We are required to test performance of duties and we are required to do so by making an evaluative and subjective judgment, by reference to a benchmark, being accepted professional standards.
298. We note the following extract from the Board's decision in *ASIC v Evett*, (at [27] - [29]):

"27. It is uncontroversial to propose that the requirements of the Auditing and Assurance Standards, relevant provisions and regulations under the Corporations legislation and relevant pronouncements by the Accounting Professional and Ethical Standards Board in force from time to time will inform the general professional standard to be met by [a registered company auditor]. Evidence relevant to an auditor's compliance or otherwise with specific aspects of this framework will therefore be instructive.

28. Further, the Auditing Standards are principles based and designed to be applied by an auditor through the exercise of professional judgement and the appropriately diligent application of professional scepticism. The Panel's assessment of whether there has been proper and adequate performance of duties will also therefore involve an element of qualitative evaluation.

29. The framework referred to in paragraph 27 is of central relevance to evaluating the level and standard of performance by Mr Evett of his audit duties and functions, although is not circumscriptive. Relevant matters for this Panel's consideration with respect to the facts we find to be reasonably established include whether or the extent to which those facts demonstrate:

(a) Any respects in which the audits were not performed in compliance with specific relevant applicable legislative/regulatory requirements and framework, including the Auditing Standards.

(b) Whether Mr Evett had performed his audit duties in accordance with relevant AUASB guidelines, pronouncements and/or bulletins published from time to time.

(c)..."

299. Mr Santangelo has accepted that he failed, in numerous respects, to comply with the duties of an auditor as informed by various ASAs and Mr Santangelo admits, that by reason of the matters in the various Contentions, he failed to carry out or perform, adequately and properly, the duties of an auditor in respect of the FY18 and FY19 audit of the financial statements of the Greensill Group. In our view, the professional standard by which Mr Santangelo's performance was to be tested was informed by the relevant ASAs referred to in respect of each Contention. Mr Santangelo has failed to meet that professional standard and consequently has failed to "carry out or perform adequately and properly the duties of an auditor" within the meaning of s 1292(1)(d)(i) of the Act. In those circumstances, our powers under s 1292 are enlivened.

P. SANCTIONS AND ORDERS

300. Where the Board is satisfied that a respondent has failed to carry out or perform adequately and properly the duties of an auditor, s 1292 empowers the Board to

- (a) cancel, or suspend for a specified period, the registration of the person as an auditor; and
- (b) either in addition to, or in substitution for, the exercise of those powers, to deal with the person in one or more of the following ways:
 - i. by admonishing or reprimanding the person;
 - ii. by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct; and
 - iii. by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (ii) or (iii), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

301. In the present case, the parties have submitted proposed Consent Orders in the following terms (**Proposed Consent Orders**):

“1. Pursuant to s 1292(1) of the *Corporations Act 2001* (Cth), that the registration of Mr Joseph John Santangelo (**Mr Santangelo**), with auditor registration number 000405702, as a company auditor be suspended for a period of twenty-four (24) months commencing on 1 June 2024.

2. Pursuant to sub-section 1292(9)(b) of the *Corporations Act 2001* (Cth), that Mr Santangelo give undertakings to ASIC, hereby noted by the Board, as set out in Schedule A to these orders.

3. Pursuant to section 223 of the *Australian Securities and Investment Commission Act 2001* (Cth), that Mr Santangelo pay the Applicant's costs in the fixed sum of \$375,000 within twenty-eight (28) days of the date Mr Santangelo is provided with a notice of this decision pursuant to sub-section 1296(1)(a) of the Act.”

302. Schedule A is attached to this Decision and involves a series of undertakings, including undertakings in relation to not performing the duties of an auditor until 1 June 2026, completing additional CPD and arranging a Peer Reviewer and engagement quality control reviewer for audits post suspension.
303. Prior the hearing, Mr Santangelo had undertaken to ASIC that he would not, from 1 June 2024 to 1 June 2026, perform the duties of, or otherwise act as, a registered company auditor.

ASIC's submissions

304. ASIC made submissions as to the principles applicable to the imposition of sanctions by the Board. In substance, ASIC submitted:

- (a) that in considering whether the Proposed Consent Orders are appropriate, the Board should bear in mind what has previously been described as the “prime concern” in the Board’s exercise of its powers under s 1292 – namely, the need to protect the public from further breaches of duty by both the practitioner concerned and the wider community of practising company auditors. ASIC relied upon the previous decision of the Board in *ASIC v Walker* 06/VIC07 (**Walker**), where the Board stated (at [20.7]):

“20.7 In summary, we believe that in exercising our powers under s 1292:

- (a) Our prime concern has to be the protection of the public;
- (b) The protection of the public includes the maintenance of a system under which the public can be confident that the relevant practitioner and all other practitioners will know that breaches of duty will be appropriately dealt with; and
- (c) The personal circumstances of the practitioner concerned are to be given limited consideration.”

- (b) in considering the appropriateness of the Proposed Consent Orders,
 - i. the Board must consider whether the orders and undertakings are appropriate to protect the public, including through specific deterrence of the Respondent from repeating the contravening conduct, and general deterrence of registered company auditors from engaging in similar conduct, which, if orders are made, will be achieved by publication of the orders and determination in due course; and
 - ii. as part of that process, the Board must consider the “gravity” of Mr Santangelo’s failures to comply with his duties and the circumstances in which the failures occurred, as “one of the principal factors relevant to [its] consideration of sanctions is the seriousness of the matters that have been found to be established”: *ASIC v McVeigh* Matter No 10/VIC08 at [12.7] (**McVeigh**); see also *Re Young and Companies Auditors and Liquidators Disciplinary Board* (2000) 34 ACSR 425 [82]–[83], [89]; *Walker* at [21.4].
- (c) an overriding consideration was that an auditor’s departure from the Relevant Benchmark, and thus failure to comply with the duties of an auditor, will always be serious because they “perform a vital role in the administration of corporate affairs and ... the financial and wider communities rely on the reports of auditors and are entitled to assume that auditors undertake their statutory functions with adequate skill and care in accordance with applicable auditing standards”: *Walker* at [21.5];
- (d) Because the Board’s “prime concern” is the protection of the public, the personal circumstances of the practitioner are to be given only limited consideration in the setting of an appropriate penalty: *McVeigh* at [12.7].

305. As to the specific circumstances of this case, ASIC submitted:

- (a) Whilst the Respondent’s failure to meet the Relevant Benchmark did not rise to the highest level of seriousness, as it did not involve dishonesty or deliberate impropriety (*Wessels* at [51]) the conduct reflected a moderately high to high degree of seriousness that supported the 24-month suspension and undertaking proposed by the parties;
- (b) the Respondent has failed to comply with a large number of standards such as the gathering of sufficient appropriate audit evidence, the need for proper documentation and the application of professional scepticism. The Board previously has noted that failures of this type are “serious” and go to matters of “fundamental importance for an auditor properly discharging their duty and observing professional standards of auditing”: *Walker* at [21.4]; see also *McVeigh* at [13.4] – [13.5] (in the liquidator context);
- (c) The following aspects of the Respondent’s conduct were especially serious and support the period of suspension proposed by the parties:

- i. NSA and the Component Auditors corresponded throughout the course of the Greensill Audits, however there is limited evidence on the audit file demonstrating NSA Audit's evaluation of the Component Auditor's work;
- ii. Memoranda prepared by NSA in respect of its review of the audit work performed by the Component Auditors' included high-level commentary in relation to audit work performed (and for Saffery Champness, a reference to updates made to the workpaper), however NSA did not demonstrate how it satisfied themselves that the Component Auditors had effectively assessed and responded to significant risks appropriately;
- iii. Mr Santangelo relied on the work done by the Component Auditors and did not obtain sufficient appropriate audit evidence on which to base the group audit opinion;
- iv. Greensill UK and German Bank were identified as significant components because they were financially significant and likely to include significant risks of material misstatement due to their nature and circumstances. NSA instructed the component auditors to conduct audits of those components using component materiality. However, Mr Santangelo did not ensure that he designed and implemented appropriate responses to address the assessed risks of material misstatement of the financial report, including by carrying out, or instructing the component auditors to carry out, specified audit procedures with respect to significant risks including going concern, ECL and revenue recognition;
- v. There is no evidence on the audit files that NSA obtained official translations of Ebner Stolz's key audit workpapers in respect of the FY18 Audit and FY19 Audit. Further there is no evidence on the audit files of any notes of minutes of meetings discussing the audit work undertaken by Ebner Stolz;
- vi. There was no evidence on the audit file of a complete bank statement recording receipt of the capital injection of \$526 million from Softbank;
- vii. Mr Santangelo obtained unsigned agreements and (separately) signed execution pages for those agreements, but failed to obtain bank statements and/or complete signed agreements in support of the capital injection from Peter Greensill Family Co Pty as trustee for the Peter Greensill Family Trust when conducting going concern assessment;
- viii. Mr Santangelo failed to obtain sufficient audit evidence, before signing the FY19 audit opinion, that the 2020 Master and Parallel Policies, which were due to expire by March 2020, had been renewed; and

- ix. Mr Santangelo failed to assess the completeness of the obligor list, appropriateness of inputs and judgment applied by management in ECL calculations, including testing appropriateness of obligor probability of default percentages and document the understanding of risk ratings attached to individual obligor/receivables and test appropriateness of these risk ratings, obtaining audit evidence to support managements rationale for reducing the ECL provision amount and assess the need for increasing the ECL provision in light of the new information in relation to the individual obligors and their ability to pay;
 - (d) This matter is the first CADB matter concerning the work of a Group Auditor. ASIC submitted that a 24-month suspension would have an important educative and deterrent effect on the profession as a whole in relation to Group Audits by demonstrating that it is not appropriate that a Group Audit Team simply rely on the work performed by a Component Auditor without properly evaluating that work and applying professional scepticism;
 - (e) The relevance of sanctions imposed in previous matters was considered by the Board in *McVeigh* in the following terms (at [13.3]):

“The question of what order we should decide to make is to be answered by reference to the merits of the individual case, although we accept that in a general sense it is desirable that there be a consistency of approach by the Board in the application of sanctions under the Act. There are definite limits on the value of reference to other cases since each turns on its own facts. There can be a range of factors which mean that even though the words used to describe other cases may indicate that the nature of the contentions was similar, nevertheless the actual matters established may be rather different. Such factors can include not only the objective circumstances of the particular case but also less tangible matters such as a respondent's recognition and acceptance of breaches of duty, attitude to compliance with professional standards generally and willingness to improve.”;

and
 - (f) Accordingly, whilst sanctions imposed in previous matters are generally of limited utility, particularly where the facts and findings bear no relation to the facts and findings in the present case, ASIC provided a table of recent sanctions of potential relevance and a high-level summary of the matters, to provide assurance to the Board that the proposed penalty falls within the permissible range.
306. As to the question of the Board's ability to proceed where consent orders are proposed, ASIC submitted that the Board should give weight to the consideration that the proposed sanction is supported by ASIC, the specialist regulatory body that administers the regime for auditor registration, and that ASIC considers the proposed penalty will have a deterrent effect on the

Respondent personally and other registered company auditors: *Wessels* at [49].

Mr Santangelo's submissions

307. Mr Santangelo's submissions did not extend to taking issue with any of ASIC's submissions on the principles relating to sanctions or the application of those principles in the present case.
308. Mr Santangelo submitted that his conduct, as recorded in the SOAF, supported the 24-month period of suspension and undertakings proposed by the parties, as well as the proposed order that he pay ASIC's costs in the amount of \$375,000.
309. Mr Santangelo's submissions went on to state that he believed, and respectfully submitted, that the undertakings in the Proposed Consent Orders would help to ensure his rehabilitation as an audit practitioner and would protect the public by ensuring the quality of his audits once he resumed practice as a registered company auditor. In this regard, paragraph 7 of the proposed undertakings requires the peer reviewer to provide ASIC with an opinion in writing as to whether each audit has been conducted in all material respects in accordance with standards promulgated by the Auditing and Assurance Standards Board and the Australian Accounting Standards Board, and provide the reasons on which the opinion is based. This, Mr Santangelo submitted would assist ASIC in monitoring the quality of Mr Santangelo's audits following his suspension.

Consideration

310. We generally accept the parties' submissions as to the principles applicable to imposing sanctions and the appropriateness of the Proposed Consent Orders in the present case.
311. As recognised in ASIC's submissions, the Board's primary function is to assess whether a respondent should continue to occupy a statutory position involving skill and probity, not to impose punishment for an offence: *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [21].
312. The longstanding guiding principle adopted by the Board in exercising its powers is "protection of the public", noting that this involves two aspects: *first*, protection of the public from the actions of a person who is found to have been in breach of duties, and *secondly*, protection of the public by encouraging other auditors to adhere to proper standards (see the decision of this Board in *ASIC v McVeigh* 10/VIC08 at paragraph [12]; *ASIC v Fernandez* 02/VIC13 at paragraph at [353]).

313. Underpinning the Board's powers is a compelling public interest in the maintenance of a system which recognises that registration as an auditor is a privilege, the continuance of which is conditional upon diligent performance of its attendant duties (cf the statements of Middleton J in *ASIC v Dunner* (2013) 303 ALR 98; [2013] FCA 872 (*Dunner*) at [219], albeit in relation an analogous jurisdiction of the Federal Court in relation to liquidators). Further, as revealed in the extract from *Walker*, cited by ASIC above, the protection of the public includes maintenance of a system under which the public can be confident that the Respondent and all other practitioners will know that breaches of duty will be appropriately dealt with. Middleton J in *Dunner* put the matter slightly differently, in stating that it was important to demonstrate to the public that there existed a regulatory regime applicable to auditors which was effective in maintaining high standards.
314. A useful summary of the legal principles applicable to the exercise of the Board's discretion in determining appropriate sanctions was made by the Hon Brian Tamberlin QC DP (as he then was) in *NHPT v Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [18] as follows:
- “(a) The principal purpose of the proceedings is protective rather than punitive and the guiding principle is protection of the public;
 - (b) The protection of the public includes ensuring that those who are unfit to practise do not continue to hold themselves out as fit to practise;
 - (c) The protection of the public includes deterrence;
 - (d) It also includes the maintenance of a system under which the public can be confident that practitioners will know that breaches of duty will be appropriately dealt with and that the regulatory regime applicable to auditors is effective in maintaining high standards of professional conduct;
 - (e) The impact of the Board's orders on the practitioner is to be given limited consideration, as the prime concern of the Board is the protection of the public;
 - (f) Relevant matters include the respondent's recognition and acceptance of the breaches of duty, attitude to compliance generally and willingness to improve. Genuine acceptance of failure, contrition and remorse are necessary requirements to rehabilitation; and
 - (g) If a respondent is not considered fit and proper, suspension is not appropriate unless the Board can be confident that the respondent would be fit and proper after the period of suspension.”

315. Where the parties propose consent orders, there are further principles which apply.

316. In *Australian Securities and Investments Commission v Rich* (already referred to above), White J summarised relevant principles in analogous proceedings at [80], as follows:

“(1) The responsibility for determining whether a disqualification is justified and if so for what period, rests with the court, not with the parties.

(2) The fixing of a period of disqualification is not an exact science. Where the parties have agreed on a precise figure, the court need not and should not ask whether it would have fixed the same period of disqualification in the absence of agreement. If the agreed period of disqualification is within a permissible range, it should not be rejected merely because the court would have been disposed to select some other figure.

(3) The court examines all of the circumstances of the case and may act on agreed statements of fact if it is appropriate to do so. The court is not bound to do so. It may request the parties to provide additional evidence and if they do not do so, the court may well not be satisfied that the proposed period of disqualification is within the permissible range.

(4) There is a public interest in promoting settlement of litigation, particularly where it is likely to be lengthy, and that may be taken into account in determining whether it is appropriate to act on an agreed statement of facts.”

317. In *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 258 CLR 482 (***Commonwealth v Director, Fair Work***), the High Court dealt with the principles applicable when a court is presented with agreed penalty submissions in civil penalty proceedings. The issue was also canvassed by the Full Court of the Federal Court in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* [2021] FCAFC 49; (2021) 284 FCR 24. We were not referred to any authority where the approach in these cases was held to apply to proceedings before the Board. Proceedings before the Board may not be wholly analogous with civil penalty proceedings. We note, however, that the High Court in *Commonwealth v Director, Fair Work* stated that in the context of agreed penalty submissions in civil penalty proceedings,

“the Court is *not* bound by the figure suggested by the parties. The court asks ‘whether their proposal can be accepted as fixing an *appropriate* amount’ and for that purpose the court must satisfy itself that the submitted penalty is appropriate.”

318. We consider that this approach is applicable to proceedings before the Board.

319. In our view, it is appropriate to make the orders in the form of the Proposed Consent Orders and the sanctions proposed by the parties are both within the range of sanctions which would be imposed by the Board and are “appropriate” in the sense used by the High Court in *Commonwealth v Director, Fair Work*.

320. We accept, in particular, ASIC's submissions as to the approach and appropriateness of the Proposed Consent Orders in light of the circumstances set out in paragraph 305 above. Mr Santangelo's breaches are of a type and number which are sufficiently serious to justify suspension and the giving of the undertakings proposed by the parties. We take into account the fact that there was no suggestion that Mr Santangelo has engaged in any dishonesty or deliberate impropriety and that Mr Santangelo has cooperated with ASIC's investigation into the FY18 and FY19 audits.
321. Mr Santangelo's submissions and his agreement to the Proposed Consent Orders demonstrate a recognition by him that his conduct did not meet the required standards and a willingness on his part to improve.
322. We also note that the fact that the parties have joined in proposing the orders to be made by consent is a consideration favouring our discretionary decision to make the orders and that this is a particularly powerful consideration when ASIC, which for relevant purposes is a guardian of the public interest, has consented (*cf Re One.Tel Ltd (in liq); ASIC v Rich* (2003) 44 ACSR 682 at [27]).
323. We have decided that it is appropriate to make orders in accordance with the parties' Proposed Consent Orders. However, notwithstanding the parties' agreement that the Board should order that Mr Santangelo be suspended for 24 months commencing 1 June 2024, there may be a question as to whether the Board has a power to suspend retrospectively.
324. Where, as part of the agreement between the parties, Mr Santangelo has undertaken to ASIC that he would not, from 1 June 2024 to 1 June 2026, perform the duties of, or otherwise act as, a registered company auditor and where Mr Santangelo has, in fact, not done so as from 1 June 2024, we consider it is appropriate that the period from 1 June 2024 to the date of the order taking effect be recognised as part of a two year suspension. Accordingly, we will make an order that Mr Santangelo's registration be suspended from the date of service of the order upon Mr Santangelo up to 1 June 2026, with the intent that the sanction imposed upon Mr Santangelo is, in effect, a two-year suspension.
325. For the reasons set out above, we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 326 (1) and (2) below. We have also decided to make the costs order in paragraph 326(3) below.
326. We make the following orders:
1. Pursuant to s 1292(1) of the *Corporations Act 2001* (Cth), (**Corporations Act**) the registration of Mr Joseph John Santangelo (**Mr Santangelo**), with auditor registration number 000405702, as a company auditor be suspended for the period commencing on the date Mr Santangelo is provided with a notice

of the decision pursuant to sub-section 1296(1)(a) of the Corporations Act and ending on 1 June 2026.

2. Pursuant to sub-section 1292(9)(b) of the Corporations Act, Mr Santangelo give undertakings to the Australian Securities and Investments Commission (**ASIC**), hereby noted by the Board, as set out in Schedule A to the Reasons for Decision.
3. Pursuant to section 223 of the *Australian Securities and Investment Commission Act 2001* (Cth), Mr Santangelo pay ASIC's costs in the fixed sum of \$375,000 within twenty-eight (28) days of the date Mr Santangelo is provided with a notice of the decision pursuant to sub-section 1296(1)(a) of the Corporations Act.

Howard K Insall SC
Panel Chairperson
9 December 2024

Schedule A
UNDERTAKINGS

I, Joseph John Santangelo, undertake to ASIC as follows:

Work as a registered company auditor

1. From 1 June 2024 to 1 June 2026, I will not perform the duties of, or otherwise act as, a registered company auditor.

Membership of professional body

2. I shall use all reasonable endeavours to retain my current membership of Chartered Accountants Australia & New Zealand (**CAANZ**) until 1 June 2027.

Additional Annual CPD requirement

3. I shall complete additional continuing professional development education activity (**CPD**) as follows:
 - (a) for a period of two years commencing on 1 June 2024;
 - (b) for a further twenty hours per year of CPD in addition to the CPD I am required to complete to retain my membership of CAANZ (**Additional CPD**);
 - (c) the Additional CPD will include training content covering the specific requirements of ASA 600 in addition to substantive audit matters, concepts of professional scepticism, professional judgment, the gathering of appropriate audit evidence and appropriate audit documentation (**Content of the Additional CPD**);
 - (d) the Additional CPD will be provided by external training provider(s) (**External Training Provider**); and
 - (e) The External Training Provider and the CPD content must be approved in writing in advance by ASIC.
4. I shall provide ASIC with documentary evidence of satisfactory completion of the CPD.

Audit reviews by Peer Reviewer post-suspension

5. Following the conclusion of the suspension of my registration as a company auditor ordered by CADB, I shall, at my expense, engage another registered company auditor as a peer reviewer (**Peer Reviewer**) to undertake a review of the first three audits for which I undertake the role of either Lead Auditor or Engagement Partner. The Peer Reviewer will be approved by ASIC as per paragraph 7 below.

6. I undertake that any appointed Peer Reviewer will be independent and have no connection to me or to Nexia Sydney Pty Ltd.

Arrangements for engagement of Peer Reviewer

7. In order to enable ASIC to consider whether a prospective Peer Reviewer is suitable, I shall provide ASIC with a curriculum vitae of at least one proposed Peer Reviewer together with draft written terms for the proposed engagement of the Peer Reviewer.
8. The Peer Reviewer will provide ASIC with an opinion in writing as to whether each Audit has been conducted in all material respects in accordance with standards promulgated by the Auditing and Assurance Standards Board and the Australian Accounting Standards Board. The Peer Reviewer's Statement must include the reasons on which the opinion is based.
9. Should the Peer Reviewer not conclude that the audits have been conducted in all material respects in accordance with relevant standards, ASIC will be entitled to take such action as it thinks fit.

Quality Control and Technical Specialists

10. Following the conclusion of the suspension of my registration as a company auditor ordered by CADB:
 - (a) for three separate audit engagements for listed or public interest entities in respect of three separate full financial year-ends, I will:
 - i. engage, formally, an engagement quality control reviewer who is a partner within the firm or a suitably qualified external person with appropriate skills to objectively evaluate the significant judgment and conclusions reached in formulating the auditor's report for audits of public interest entities, which may also include significant component auditors; and
 - ii. appoint an appropriate technical specialist, who may be a member of the firm or a suitably qualified external person with appropriate skills on these audit engagements for audits of public interest entities (which may also include significant component auditors) if they involve use of significant judgment in auditing accounting estimates and related disclosures including fair value estimates that have significant risk of causing material misstatements.

Non-Compliance with Undertaking

11. Mr Santangelo shall advise ASIC in writing of any non-compliance with the undertaking within 5 business days of becoming aware of such issue.

12. Should Mr Santangelo fail to comply with any of the matters the subject of the undertaking, ASIC shall be entitled to take such action as it thinks fit in relation to any such non-compliance.