

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/04/2021 3:57:12 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

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



Sia Lagos

Dated: 20/04/2021 12:16:40 PM AEST

Registrar

Important Information

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

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

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

Further Amended

Form 2
(rules 2.2 and 15A.3)



Further aAmended originating process

(amended in accordance with the order made by Wigney J on 19 ~~December~~April 2020~~1~~)

No. NSD2064 of 2019

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

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

Defendants

A. DETAILS OF APPLICATION

This application is made under:

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

The nature of the proceeding is an application for:

- (e) orders relating to the property of the ~~First, Second and Third~~ Defendants;
- (f) declarations against each of the First to Third Defendants;
- (g) declarations of contravention by the:
 - (i) First Defendant of ss 911A(5B), 912A(5A), 1041E and 1041H of the *Corporations Act* (including by operation of s 769B of the *Corporations Act*) and ss 12CB, 12DA, 12DB of the *ASIC Act* (including by operation of s 12GH of the *ASIC Act*); and

Filed on behalf of:	Australian Securities & Investments Commission (Plaintiff)
Prepared by:	Fred Prickett and JK Muckersie of Clayton Utz
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(ii) Second and Third Defendants of ss 911A(5B), 1041E and 1041F of the Corporations Act and ss 12CB, 12DA and 12DB of the ASIC Act;

- (h) orders that the First, Second and Third Defendants pay to the Commonwealth a pecuniary penalty;
- (i) orders prohibiting the Second Defendant from providing financial services in this jurisdiction; and
- (j) orders requiring the First, Second and Third Defendants to refund money paid to them by their customers.

On the facts stated in the Plaintiff's ~~Concise Statement~~ statement of claim filed on 12 April 2021, the Plaintiff seeks the following orders:

INTERLOCUTORY RELIEF

~~[Paragraphs 1-14 deleted]~~

FINAL RELIEF

~~[Paragraphs 15-18 deleted]~~

Asset restraint

1. ~~19.~~ Pursuant to ss 1323(1)(h) and 1323(3) of the Corporations Act and/or s 23 of the Federal Court Act, the Second Defendant, by itself and its servants, agents and employees, must not:
 - (a) remove, or cause or permit to be removed, from Australia all or part of its property (as defined in the Corporations Act); and/or
 - (b) sell, charge, mortgage or otherwise deal with, dispose of and/or diminish the value of all or any part of its property (as defined in the Corporations Act); and/or
 - (c) cause or permit to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of its property (as defined in the Corporations Act); and/or
 - (d) without limiting the terms of sub-paragraph (a) to (c) above, withdraw, transfer or otherwise dispose of or deal with, any monies available in any account with any bank, building society or other financial institution, in which the Second Defendant has any legal or equitable interest.
2. ~~20.~~ The above order ~~19~~ 1 shall not prevent:
 - (a) the Second Defendant from paying or otherwise incurring a liability for legal costs reasonably incurred;
 - (b) the Second Defendant from withdrawing amounts to pay:



- (i) staff employed by it in respect of wages and superannuation;
- (ii) the Australian Taxation Office;
- (iii) customers;
- (iv) third party liquidity providers;
- (v) introducing brokers; or
- (vi) other trade creditors of the Second Defendant,
provided that:
 - (vii) any such payments are bona fide, made in the ordinary course of business and for amounts which are due and payable; and
 - (viii) on and from 24 December 2019, the Second Defendant notify the Plaintiff by 5pm on the Tuesday of each week (or the next business day if the Tuesday is a public holiday) of details of the payments made in the previous 7 days and provide supporting documentation; and
 - (ix) any withdrawal of \$50,000 or more may only be made following a request in writing to the Plaintiff to make the withdrawal and receipt of the Plaintiff's approval; and
 - (x) without limiting the generality of the above subparagraph (viii), if the Plaintiff makes a request pursuant to this order in relation to any payment or payments which the Second Defendant claims falls within order ~~20(b)(vii)~~ 2(b)(vii), then within 3 business days the Second Defendant is to provide, in respect of any of the payments queried by the Plaintiff, any documents which detail and evidence:
 - 1. what particular goods or services were provided to the Second Defendant;
 - 2. when those goods or services were provided to the Second Defendant;
 - 3. by whom those goods or services were provided;
 - 4. any contract or purchase order (or equivalent document showing the Second Defendant's request for services) under which the goods or services have been provided;
 - 5. any invoice;
 - 6. how the amount of the payment was calculated; and



7. the extent to which the payee (or payees) and the ~~Second~~ Defendant are related entities, and the extent to which the payee (or payees) and Addnet Solutions Pty Ltd are related entities, and the extent to which the payee (or payees) and Maxiflex Ltd are related entities (within the meaning of the Corporations Act); and
- (xi) insofar as documents do not detail and evidence the matters referred to in order ~~20(b)(x)~~ 2(b)(x) above, then within 7 days of the Plaintiff's request referred to in order ~~20(b)(x)~~ 2(b)(x) above in relation to a payment made pursuant to order ~~20(b)(vii)~~ 2(b)(vii), the Second Defendant is to provide an affidavit deposed to by a director of the Second Defendant (subject to any claim for privilege in respect of self-incrimination) detailing and evidencing the matters set out in order ~~20(b)(x)~~ 2(b)(x) above; and
- (c) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to the Second Defendant prior to the date of this order; and
- (d) the payment of any other amounts where the withdrawal is made following notice of the withdrawal being provided by the Second Defendant to the Plaintiff and no objection is made by the Plaintiff to the withdrawal within 7 days of receipt of the notice by the Plaintiff.

~~[Paragraphs 21 to 23 deleted]~~

DECLARATIONS

Personal advice

3. ~~24.~~ A declaration that from August 2018 to January 2020 ~~in respect of the Second Defendant, and from December 2018 to March 2020 in respect of the Third Defendant,~~ or about ~~these~~ that periods, the Second ~~and Third~~ Defendants provided personal advice within the meaning of s 766B(3) of the Corporations Act, by:
- (a) making recommendations or addressing statements of opinion to ~~customers~~ clients, which were intended to influence them in making a decision in relation to a particular financial product, being contracts for difference (CFDs) and foreign exchange contracts (FX Contracts) ~~an investment in derivative products,~~ or that could reasonably be regarded as being intended to have such an influence; and
- (b) in circumstances where the provider of the advice had considered one or more of those ~~customers'~~ client's objectives, financial situation and needs, or a reasonable person might have expected the provider to have taken account of ~~considered~~ one or more of those matters,



when ~~they~~it did not hold an Australian Financial Services Licence (**AFSL**) or ~~were~~was not acting as a corporate authorised representative for the holder of an AFSL which permitted the provision of personal advice, ~~each of~~ the Second and Third Defendants contravened s 911A(1) of the Corporations Act.

4. ~~25.~~ A declaration of contravention pursuant to s 1317E(1) that from 13 March 2019 by reason of the conduct referred to in paragraph ~~24~~3 above, the Second and Third Defendants contravened s 911A(5B) of the Corporations Act.

5. A declaration that from December 2018 to March 2020, or about that period, the Third Defendant provided personal advice within the meaning of s 766B(3) of the Corporations Act, by:

- (a) making recommendations or addressing statements of opinion to customers, which were intended to influence them in making a decision in relation to a particular financial product, being CFDs and FX Contracts, or that could reasonably be regarded as being intended to have such an influence; and
- (b) in circumstances where the provider of the advice had considered one or more of those customers' objectives, financial situation and needs, or a reasonable person might have expected the provider to have taken account of one or more of those matters,

when it did not hold an AFSL or was not acting as a corporate authorised representative for the holder of an AFSL which permitted the provision of personal advice, the Third Defendant contravened s 911A(1) of the Corporations Act.

6. A declaration of contravention pursuant to s 1317E(1) that from 13 March 2019 by reason of the conduct referred to in paragraph 5 above, the Third Defendant contravened s 911A(5B) of the Corporations Act.

7. A declaration that by operation of s 769B(1) of the Corporations Act and by reason of the Second Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant, the First Defendant is taken to have engaged in the conduct of the Second Defendant referred to in paragraphs 3 to 4 above; and therefore also contravened ss 911A(1) and 911A(5B).

8. A declaration that by operation of s 769B(1) of the Corporations Act and by reason of the Third Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant, the First Defendant is taken to have engaged in the conduct of the Second Defendant referred to in paragraphs 5 to 6 above; and therefore also contravened ss 911A(1) and 911A(5B).



False, misleading or deceptive conduct

9. ~~26.~~ A declaration that from: August 2018 to January 2020

(a) ~~— August 2018 to January 2020 in respect of the Second Defendant; and~~

(b) ~~— December 2018 to March 2020 in respect of the Third Defendant,~~

or about ~~these~~ that periods, the Second and ~~Third~~ Defendants represented to customers ~~clients~~ by telephone and email:

(a) that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts:

(i) profits consistent with a specific figure or percentage return on investment stated by the account manager who assisted the customer with the day-to-day operations of the customer's trading account (**Account Manager**);

(ii) income sufficient for the customers trading to be their main source of income;

(iii) income sufficient to constitute a "secondary income";

(b) that the First Defendant would not make a market for any CFD or FX Contract positions opened by the customer;

(c) that Second Defendant would generate revenue when the customer made money;

(d) that Second Defendant would generate revenue based solely on commissions or fees which applied when a customer opened a CFD or FX Contract position (such as spread or commission) and/or when a customer kept open a CFD or FX Contract position (swap charges);

(e) that Second Defendant would not make money when a customer lost money;

(f) that the Account Managers would earn commission based solely on commissions or fees which applied when a customer opened a CFD or FX Contract position (such as spread or commission) and/or when a customer kept open a CFD or FX Contract position (swap charges);

(g) with regards to the risk associated with depositing money to a trading account, that:

(i) by increasing the amount of money in the customer's trading accounts, customers would reduce the level of risk to which they were exposed;

(ii) the risk associated with transferring additional funds to the customer's trading account would carry an equivalent risk to holding money in a bank account (i.e. an account with an Australian deposit taking institution);



- (iii) only those funds in a customer's trading account used to open CFD or FX Contract positions would be exposed to adverse movement in the price of the asset underlying the relevant position;
- (h) that customers would be able to withdraw money deposited to their trading accounts:
 - (i) in the same manner as money held in a bank account (i.e. an account with an Australian deposit taking institution);
 - (ii) within a particular period of time as specified by the Account Manager, including immediately or at any time,
- (i) that positions that had moved against a customer represented only "temporary" losses, and that it was reasonably likely, alternatively that there was a reasonable prospect, that such positions would become profitable;
- (j) that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts, profits sufficient to recover realised and unrealised losses suffered by the customer from their trading;
- (k) that by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by the Second Defendant:
 - (i) customers would reduce their exposure to risk;
 - (ii) it was reasonably likely, alternatively that there was a reasonable prospect, that the customer would increase their returns,
- (l) that it was reasonably likely, alternatively that there was a reasonable prospect, that the customer would generate greater returns by investing the customer's money with the Second Defendant by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution);
- (m) that a plan would be developed or alternatively had been developed for the customer which was designed to meet the customer's objectives or needs and improve the customer's financial position;
- (n) that the Second Defendant was "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case;
- (o) that the Second Defendant had main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia; and



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

by reason of which conduct the Second and Third Defendants:



- (g) ~~(n)~~ made false or misleading statements in breach of s 1041E(1) of the Corporations Act and s 12DB(1) of the ASIC Act; and
- (r) ~~(e)~~ engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.

10. A declaration of contravention:

- (a) pursuant to ss 21 and 23 of the Federal Court Act in respect of conduct before 13 March 2019,
- (b) pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019,

that by reason of the conduct referred to in paragraph 9 above, the Second Defendant contravened s 12DB(1) of the ASIC Act.

11. A declaration that from December 2018 to March 2020, or about that period, the Third Defendant represented to customers by telephone and email:

- (a) that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts:
- (i) profits consistent with a specific figure or percentage return on investment stated by the Account Manager;
 - (ii) income sufficient for the customers trading to be their main source of income;
 - (iii) income sufficient to constitute a "secondary income";
- (b) that the First Defendant would not make a market for any CFD or FX Contract positions opened by the customer;
- (c) that the Third Defendant would generate revenue when the customer made money;
- (d) that the Third Defendant would generate revenue based solely on commissions or fees which applied when a customer opened a CFD or FX Contract position (such as spread or commission) and/or when a customer kept open a CFD or FX Contract position (swap charges);
- (e) that the Third Defendant would not make money when a customer lost money;
- (f) that the Account Managers would earn commission based solely on commissions or fees which applied when a customer opened a CFD or FX Contract position (such as spread or commission) and/or when a customer kept open a CFD or FX Contract position (swap charges);



- (g) with regards to the risk associated with depositing money to a trading account, that:
- (i) by increasing the amount of money in the customer's trading accounts, customers would reduce the level of risk to which they were exposed;
 - (ii) the risk associated with transferring additional funds to the customer's trading account would carry an equivalent risk to holding money in a bank account (i.e. an account with an Australian deposit taking institution);
 - (iii) only those funds in a customer's trading account used to open CFD or FX Contract positions would be exposed to adverse movement in the price of the asset underlying the relevant position;
- (h) that customers would be able to withdraw money deposited to their trading accounts:
- (i) in the same manner as money held in a bank account (i.e. an account with an Australian deposit taking institution);
 - (ii) within a particular period of time as specified by the Account Manager, including immediately or at any time,
- (i) that positions that had moved against a customer represented only "temporary" losses, and that it was reasonably likely, alternatively that there was a reasonable prospect, that such positions would become profitable;
- (j) that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts, profits sufficient to recover realised and unrealised losses suffered by the customer from their trading;
- (k) that by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by the Third Defendant:
- (i) customers would reduce their exposure to risk;
 - (ii) it was reasonably likely, alternatively that there was a reasonable prospect, that the customer would increase their returns,
- (l) that a customer would receive and would be reasonably able to access an increase in the balance of their trading account (deposited by the Third Defendant) when they deposited a certain amount of money to their trading account;
- (m) that it was reasonably likely, alternatively that there was a reasonable prospect, that the customer would generate greater returns by investing the customer's



money with the Third Defendant by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution);

- (n) that a plan would be developed or alternatively had been developed for the customer which was designed to meet the customer's objectives or needs and improve the customer's financial position;
- (o) that the Third Defendant was "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case;
- (p) that the Third Defendant had main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia; and
- (q) that the Account Managers were located in Australia,

by reason of which conduct the Third Defendant:

- (r) made false or misleading statements in breach of s 1041E(1) of the Corporations Act and s 12DB(1) of the ASIC Act; and
- (s) engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.

12. A declaration of contravention:

- (a) pursuant to ss 21 and 23 of the Federal Court Act in respect of conduct before 13 March 2019;
- (b) pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019;

that by reason of the conduct referred to in paragraphs 11 above, the Third Defendant contravened s 12DB(1) of the ASIC Act.

13. 27. A declaration that from July 2018 to December 2019, the First Defendant represented to clients by telephone:

- (a) that it was reasonably likely, alternatively that there was a reasonable prospect, that customers trading CFDs or FX Contracts:
 - (i) would make a profit, either by reference to a specific figure or percentage return on investment, or generally;
 - (ii) would earn "income" of \$100-\$200 per week;
 - (iii) would be able to close 90% or more of their trades in a profitable position;
- (b) that it would not make a market for any CFD or FX Contract positions opened by the customer;



- (c) that it would generate revenue only through the spread between the position opened by the customer, and the equivalent position opened by the First Defendant with its hedging counterparties;
- (d) that it would not generate revenue on commissions or fees which applied when a customer opened a CFD or FX Contract position;
- (e) that it would not make money when a customer lost money,
- (f) that an analyst engaged by the First Defendant, Rob Clayton:
- (i) prepared reports which would be emailed to the customer which:
 1. would provide the customer with advice regarding opening particular positions, including details such as when to buy or sell particular assets, or details such as the stop loss or take profit which should be used on particular positions; and/or
 2. which would result in an accuracy or success rate of 80% or greater if followed; and/or
 3. were circulated to the major Australian banks; and/or
 - (ii) was:
 1. in his previous role at Westpac the head, or the head technical analyst, of Westpac and/or responsible for advising or directing Westpac as to what the bank should trade; and/or
 2. paid by the First Defendant millions of dollars a year to write the reports referred to in paragraph 13(f)(i) above;
- (g) that the First Defendant was "regulated" by the Plaintiff such that the customer was exposed to less risk than would otherwise be the case,
- ~~(a) that the First Defendant was not a "market maker", that it generated revenue only through fees which were based on a client's trading volume, and that it did not make money when a client lost money;~~
- ~~(b) as to the profits that clients were likely or might reasonably expect to generate;~~
- ~~(c) as to the experience of an analyst engaged by the First Defendant, Robert Clayton, and as to the accuracy of his reports; and~~
- ~~(d) that the First Defendant was "regulated" by ASIC such that the client was exposed to less risk than would otherwise be the case,~~

by reason of which conduct the First Defendant:



- (h) ~~(e)~~ made false or misleading statements in breach of s 1041E(1) of the Corporations Act and s 12DB(1) of the ASIC Act; and
- (i) ~~(f)~~ engaged in misleading or deceptive conduct in contravention of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act.

14. ~~28.~~ A declaration of contravention:

- (a) pursuant to ss 21 and 23 of the Federal Court Act in respect of conduct before 13 March 2019,
- (b) pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019,

that by reason of the conduct referred to in paragraphs ~~26 and 27~~ 13 above, each of the First to Third Defendants contravened s 12DB(1) of the ASIC Act.

15. A declaration that by operation of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act and by reason of the Second Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant, the First Defendant is taken to have engaged in the conduct of the Second Defendant referred to in paragraph 9 above; and therefore also contravened ss 1041E(1) and 1041H(1) of the Corporations Act and ss 12DB(1) and 12DA(1) of the ASIC Act.

16. A declaration that by operation of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act and by reason of the Third Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant, the First Defendant is taken to have engaged in the conduct of the Third Defendant referred to in paragraph 11 above; and therefore also contravened ss 1041E(1) and 1041H(1) of the Corporations Act and ss 12DB(1) and 12DA(1) of the ASIC Act.

Unconscionable conduct

17. A declaration that from August 2018 to January 2020, or about that period, the Second Defendant engaged in a system of conduct or pattern of behaviour in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts) to customers in Australia that was in all the circumstances unconscionable.

18. ~~29.~~ A declaration that the circumstances in paragraph 17 above included that from August 2018 to January 2020 in respect of the Second Defendant, and from December 2018 to March 2020 in respect of the Third Defendant, or about those periods, the Second and Third Defendants by its Account Managers and/or Sales Representatives:



- (a) ~~the conduct in paragraph 26 above; and/or~~
- (b) ~~engaging in the conduct referred to in paragraphs 24 and 26 above in circumstances where the Second or Third Defendants:~~
- (a) (i) ~~failed to take reasonable steps to ensure that their clients understood the complex products being recommended by the Second or Third Defendants and their associated risk—did not provide any, or any adequate, explanation or disclosure of the risks involved in investing those products, being risks of which the Second Defendant was or ought reasonably to have been aware;~~
- (b) (ii) ~~engaged customers clients who were vulnerable or at a disadvantage in that they variously: had low financial literacy, were inexperienced in trading in FX contracts and CFDs ~~contracts~~, lacked understanding of the complex products and their associated risks, had low levels of income, and/or were reliant on the advice and recommendations of the Account Manager in circumstances where the Second Defendant was aware, alternatively ought reasonably to have been aware, of the customers' vulnerability or disadvantage;~~
- (c) ~~failed to take reasonable steps to ensure that their customers understood the complex products being recommended by the Second Defendant and their associated risk;~~
- (d) ~~placed pressure on customers to invest further funds in the customer's trading account or to open, close or leave open CFD or FX Contract positions, including by requiring the customers to act quickly or by exerting pressure over the course of lengthy and/or multiple telephone conversations, in respect of customers who were at a disadvantage; and/or had stated they had no more money, were borrowing money or were otherwise reluctant to deposit further funds or open CFD or FX Contract positions;~~
- (e) ~~induced customers to make larger deposits to the customer's trading account by telling the customer that they would gain access to:~~
- (i) ~~premium packages or VIP departments, which would entitle the customer to premium services including access to specialist Account Managers, one-on-one training sessions, access to trading groups or other services; or~~
- (ii) ~~discounts on swap charges or commission fees;~~
- ~~in circumstances including where:~~
- (iii) ~~customers had incurred, or were incurring, losses and had expressed a desire to close a position, withdraw funds or close their trading account; and/or~~



- (iv) the benefits in (i) and (ii) above were contingent on the customer also depositing further funds into their trading account,
- (f) effecting, alternatively having the customer effect, transfers of funds to the customer's trading account from the customer's online banking system, or payments from the customer's bank card to the customer's trading account, in circumstances including that:
 - (i) the relevant Account Manager was remotely connected to the customer's computer;
 - (ii) a material purpose of remotely connecting to the customer's computer was the identification of funds that could be deposited to the customer's trading account, whether the customer paid by bank transfer or by bank card;
 - (iii) where a customer paid by bank card, the customer also often checked their online banking to determine the funds that he or she had available or to check or amend the customer's daily transaction limit;
 - (iv) the Account Manager frequently told the customer that he or she could not see the customer's computer screen while the transfer or payment was effected,
- (g) providing advice to customers to engage in trading strategies which were unfair, including by:
 - (i) advising customers to open a large number of positions;
 - (ii) advising customers to open a large number of positions, further or in the alternative, positions at a high volume, in circumstances where the customer's Account Manager immediately thereafter became unavailable for an extended period of time;
 - (iii) having initially provided customers with advice to open small positions, subsequently advising those customers to open larger and/or a greater number of positions, thereby increasing the risk to which those customers were exposed and the amount of funds required in those customers trading accounts;
 - (iv) providing advice to customers to leave open positions that had moved adversely to the customer's position, including advising customers that they should invest further funds in the customers' Trading Accounts in order to avoid open positions being closed;
 - (v) having advised the customer to invest further funds to support an open position that had moved adversely to the customer's position, and having secured a



further deposit from the customer, immediately thereafter advising the customer to open further positions;

- (vi) advising customers who had already incurred losses to deposit further funds to their trading account in order to be able to open further CFD and/or FX Contract positions and thereby recover some or all of those losses;
- (vii) advising customers to open at the same time both long and short CFD or FX Contract positions in respect of the same currency, index, share or commodity; and
- (viii) advising customers not to use stop losses;
in circumstances where:
 - (ix) those strategies were calculated to limit profits and/or to result in the customers losing all of their deposited funds; and/or
 - (x) further or in the alternative, the Second Defendant and its Account Managers knew, or ought reasonably to have known, that the strategies were not in the customers' immediate or long-term financial interests,
- (h) having unreasonable impediments or delays to customers withdrawing money from their trading accounts, including encouraging customers to cancel withdrawals;
- (i) having unreasonable impediments or delays to customers closing CFD or FX Contract positions;
- (j) telling customers that:
 - (i) the customer would sustain losses or miss an opportunity if; alternatively
 - (ii) the losses that the customer had sustained were sustained because; alternatively
 - (iii) the customer had missed an opportunity because,
the customer did not follow the suggestions or directions of the Account Manager or the customer traded by themselves;
- (k) encouraging deposits from the customer where the money the subject of the deposit would be borrowed (including on credit), from the customer's remaining money or savings, or from the customer's superannuation account, alternatively accepting such deposits in circumstances where the Account Manager was aware of the source of the deposits;
- (l) encouraging, alternatively continuing to engage, the customer to trade FX Contracts and CFDs after the customer described the negative impact trading was



- having on them, such as loss of sleep, loss of weight, stress, sickness, loss of housing or impact on relationships with family and/or friends;
- (m) encouraging customers who had large losses on open positions and therefore low equity in their trading account to continue to trade CFDs and FX Contracts by advising them that:
- (i) the customer had not lost money because the total balance of the customer's trading account had not changed as a result of the customer's open positions which were trading at a loss (which loss had not yet crystallised in the balance of the customer's trading account); and/or
 - (ii) the customer had made a profit to date because they had closed some profitable positions, despite the customer's open positions trading at large losses (which losses had not yet crystallised in the balance of the customer's trading account)
- (n) upon customers closing their trading account and making a complaint to the Second Defendant, Account Managers and/or representatives or agents engaged by or on behalf of the Second Defendant who identified themselves as being part of the Second Defendant's "Client Relations Department":
- (i) encouraged the customers not to report the matter to the Plaintiff or Australian Financial Complaints Authority;
 - (ii) told the customer that no, or limited, wrongdoing had occurred;
 - (iii) sought to attribute any responsibility for losses suffered by the customer to the customer;
 - (iv) dissuaded the customer from taking legal action; and/or
 - (v) suggested that entering into a settlement agreement with Second Defendant was the only available means, or the best means, of recovering any of the customer's money.
- (o) encouraged prospective customers to open a trading account with the Second Defendant by informing the customer that the Second Defendant offered an automatic trading program:
- (i) related to Bitcoin;
 - (ii) which required a set deposit of around \$250;
 - (iii) which did not require the customer to open any of their own trades; and/or
 - (iv) in which trades were placed on the customer's behalf,



in circumstances where this was not a service offered by the Second Defendant, and where this mischaracterised the nature of the services offered by them, the risk associated with those services, and the level of involvement, experience and comprehension required of a prospective customer; and

~~(iii) failed to adequately explain or disclose the risks of investing in the relevant financial products, being risks of which the Second or Third Defendants were or ought reasonably to have been aware;~~

~~(iv) facilitated and assisted clients to trade in FX contracts and CFDs, being highly risky financial products, being aware of the clients' vulnerability or disadvantage as pleaded above, and without conducting an adequate assessment of the client's objectives, financial situation and needs to determine whether such financial products were appropriate for the client;~~

~~(v) engaged in unfair conduct, including by:~~

~~1. using high pressure sale tactics to discourage clients from withdrawing funds or to encourage clients to deposit funds and open more positions, including encouraging clients to deposit more money by way of incentives or otherwise (even after the client had told the Account Manager that they had no more money, were borrowing money, or were otherwise reluctant to make further deposits); and~~

~~2. using strategies which were calculated to result in the clients losing all of their deposited funds, such as placing more trades with greater volume and leaving open trades that were trading at a loss; and~~

~~(vi) knew, or ought reasonably to have known, that it was not in the clients' immediate or long-term financial interests to invest in the products, further or in the alternative to take (that is open, close or leave open) specific positions in those products;~~

~~(vii) received a financial benefit when the client incurred financial losses given the First Defendant was the counterparty to the derivative positions opened by their clients;~~

(p) ~~(vii) failed to maintain and apply adequate minimum qualification criteria including the failure to comply with ASIC guidelines (including ASIC Regulatory Guide 227) published for providers of margin forex contracts and contracts for difference which said that issuers should maintain a policy that set out the minimum qualification~~



~~criteria~~ that prospective ~~investors~~ customers would need to demonstrate before the issuer agreed to open an account on their behalf,

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

19. ~~30.~~ A declaration of contravention:

- (a) pursuant to ss 21 and 23 of the Federal Court Act in respect of conduct before 13 March 2019;
- (b) pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019.

that by reason of the conduct referred to in paragraph ~~20~~17 above, the Second and ~~Third~~ Defendants contravened ss 12CB(1) and 12CB(4)(b) of the ASIC Act.

20. A declaration that from December 2018 to March 2020, or about that period, the Third Defendant engaged in a system of conduct or pattern of behaviour in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts) to customers in Australia that was in all the circumstances unconscionable.

21. A declaration that the circumstances in paragraph 20 above included that the Third Defendant by its Account Managers and/or Sales Representatives:

- (a) did not provide any, or any adequate, explanation or disclosure of the risks involved in investing those products, being risks of which the Third Defendant was or ought reasonably to have been aware;
- (b) engaged customers who were vulnerable or at a disadvantage in that they variously: had low financial literacy, were inexperienced in trading in FX and CFD contracts, lacked understanding of the complex products and their associated risks, had low levels of income, and/or were reliant on the advice and recommendations of the Account Manager and in circumstances where the Third Defendant was aware, alternatively ought reasonably to have been aware, of the customers' vulnerability or disadvantage;
- (c) failed to take reasonable steps to ensure that their customers understood the complex products being recommended by the Third Defendant and their associated risk;
- (d) placed pressure on customers to invest further funds in the customer's trading account or to open, close or leave open CFD or FX Contract positions, including



- by requiring the customers to act quickly or by exerting pressure over the course of lengthy and/or multiple telephone conversations, in respect of customers who were at a disadvantage; and/or had stated they had no more money, were borrowing money or were otherwise reluctant to deposit further funds or open CFD or FX Contract positions;
- (e) induced customers to make larger deposits to the customer's trading account by telling the customer that they would gain access to:
- (i) premium packages or VIP departments, which would entitle the customer to premium services including access to specialist Account Managers, one-on-one training sessions, access to trading groups or other services; or
 - (ii) discounts on swap charges or commission fees;
in circumstances including where:
 - (iii) customers had incurred, or were incurring, losses and had expressed a desire to close a position, withdraw funds or close their trading account; and/or
 - (iv) the benefits in 21(e)(i) and 21(e)(ii) above were contingent on the customer also depositing further funds into their trading account,
- (f) effecting, alternatively having the customer effect, transfers of funds to the customer's trading account from the customer's online banking system, or payments from the customer's bank card to the customer's trading account, in circumstances including that:
- (i) the relevant Account Manager was remotely connected to the customer's computer;
 - (ii) a material purpose of remotely connecting to the customer's computer was the identification of funds that could be deposited to the customer's trading account, whether the customer paid by bank transfer or by bank card;
 - (iii) where a customer paid by bank card, the customer also often checked their online banking to determine the funds that he or she had available or to check or amend the customer's daily transaction limit;
 - (iv) the Account Manager frequently told the customer that he or she could not see the customer's computer screen while the transfer or payment was effected,
- (g) providing advice to customers to engage in trading strategies which were unfair, including by:
- (i) advising customers to open a large number of positions;



- (ii) advising customers to open a large number of positions, further or in the alternative, positions at a high volume, in circumstances where the customer's Account Manager immediately thereafter became unavailable for an extended period of time;
- (iii) having initially provided customers with advice to open small positions, subsequently advising those customers to open larger and/or a greater number of positions, thereby increasing the risk to which those customers were exposed and the amount of funds required in those customers trading accounts;
- (iv) providing advice to customers to leave open positions that had moved adversely to the customer's position, including advising customers that they should invest further funds in the customers' Trading Accounts in order to avoid open positions being closed;
- (v) having advised the customer to invest further funds to support an open position that had moved adversely to the customer's position, and having secured a further deposit from the customer, immediately thereafter advising the customer to open further positions;
- (vi) advising customers who had already incurred losses to deposit further funds to their trading account in order to be able to open further CFD and/or FX Contract positions and thereby recover some or all of those losses;
- (vii) advising customers to open at the same time both long and short CFD or FX Contract positions in respect of the same currency, index, share or commodity; and
- (viii) advising customers not to use stop losses;
in circumstances where:
 - (ix) those strategies were calculated to limit profits and/or to result in the customers losing all of their deposited funds; and/or
 - (x) further or in the alternative, the Third Defendant and its Account Managers knew, or ought reasonably to have known, that the strategies were not in the customers' immediate or long-term financial interests.
- (h) having unreasonable impediments or delays to customers withdrawing money from their trading accounts, including encouraging customers to cancel withdrawals;
- (i) telling customers that:
 - (i) the customer would sustain losses or miss an opportunity if; alternatively



- (ii) the losses that the customer had sustained were sustained because:
alternatively
- (iii) the customer had missed an opportunity because,
the customer did not follow the suggestions or directions of the Account Manager
or the customer traded by themselves;
- (j) encouraging deposits from the customer where the money the subject of the
deposit would be borrowed (including on credit), from the customer's remaining
money or savings, or from the customer's superannuation account, alternatively
accepting such deposits in circumstances where the Account Manager was aware
of the source of the deposits;
- (k) encouraging, alternatively continuing to engage, the customer to trade FX
Contracts and CFDs after the customer described the negative impact trading was
having on them, such as loss of sleep, loss of weight, stress, sickness, loss of
housing or impact on relationships with family and/or friends;
- (l) encouraged prospective customers to open a trading account with the Third
Defendant by informing the customer that the Second Defendant offered an
automatic trading program:
- (i) related to Bitcoin;
- (ii) which required a set deposit of around \$250;
- (iii) which did not require the customer to open any of their own trades; and/or
- (iv) in which trades were placed on the customer's behalf,
in circumstances where this was not a service offered by the Third Defendant, and
where this mischaracterised the nature of the services offered by them, the risk
associated with those services, and the level of involvement, experience and
comprehension required of a prospective customer; and
- (m) failed to maintain and apply adequate minimum qualification criteria that
prospective customers would need to demonstrate before the issuer agreed to
open an account on their behalf,
with the effect that the Third Defendant engaged in unconscionable conduct in connection
with the supply or possible supply of financial services in breach of s 12CB(1) of the ASIC
Act, including by applying a system of conduct or pattern of behaviour that was
unconscionable for the purposes of s 12CB(4)(b).

22. A declaration of contravention:



- (a) pursuant to ss 21 and 23 of the Federal Court Act in respect of conduct before 13 March 2019;
- (b) pursuant to s 12GBA(1) of the ASIC Act in respect of conduct on and after 13 March 2019.

that by reason of the conduct referred to in paragraphs 21 above, the Third Defendant contravened ss 12CB(1) and 12CB(4)(b) of the ASIC Act.

23. 34. A declaration that by operation of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act and by reason of the Second Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant the corporate authorised representative agreements between the First Defendant and each of the Second and Third Defendants, the First Defendant is taken to have engaged in the conduct of the Second and Third Defendants referred to in paragraphs 24 to 26 and 28 to 30 19 and 20 above; and therefore also contravened ss 911A(1), 911A(5B), 1041E(1) and 1041H(1) of the Corporations Act and ss 42DB(1), 42DA(1), 12CB(1) and 12CB(4)(b) of the ASIC Act.

24. A declaration that by operation of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act and by reason of the Third Defendant undertaking the relevant conduct as agent of the First Defendant and within the scope of its apparent authority, further or in the alternative, with the consent of the First Defendant, the First Defendant is taken to have engaged in the conduct of the Third Defendants referred to in paragraphs 21 and 22 above; and therefore also contravened ss 12CB(1) and 12CB(4)(b) of the ASIC Act.

Failure to provide financial services efficiently honestly and fairly

25. 32. A declaration that from 11 April 2019 the First Defendant, by encouraging persons located in China to become its clients, and by providing its financial services to customers based in China and by doing so in circumstances where the provision of its financial services necessarily placed those customers and the First Defendant in contravention of Chinese law, USG the First Defendant breached Chinese law and exposed such customers to civil and criminal liability under Chinese law and thereby contravened s 912A(1)(a) of the Corporations Act by failing to do all things necessary to ensure that the financial services covered by the licence were provided efficiently, honestly and fairly.

26. 33. A declaration of contravention pursuant to s 1317E(1) of the Corporations Act that from 11 April 2019, by reason of the conduct referred to in paragraph 3225 above, the First Defendant contravened subsection 912A(5A) of the Corporations Act.



PECUNIARY PENALTIES

27. ~~34.~~ Orders pursuant to s 1317G(1) of the Corporations Act that the First, Second and Third Defendants each pay to the Commonwealth a pecuniary penalty for their respective contraventions of s 911A(5B) in such amounts as the Court considers appropriate.
28. ~~35.~~ Orders pursuant to s 1317G(1) of the Corporations Act that the First Defendant pay to the Commonwealth a pecuniary penalty for its contravention of s 912A(1)(5A) in such amounts as the Court considers appropriate.
29. ~~36.~~ Orders pursuant to s 12GBA(1) (for conduct occurring prior to 13 March 2019, as then in force) and s 12GBB(3) (for conduct occurring on and after 13 March 2019) of the ASIC Act that each of the First, Second and Third Defendants pay to the Commonwealth a pecuniary penalty for their respective contraventions of s 12DB(1) in such amounts as the Court considers appropriate.
30. ~~37.~~ Orders pursuant to s 12GBA(1) (for conduct occurring prior to 13 March 2019, as then in force) and s 12GBB(3) (for conduct occurring on and after 13 March 2019) of the ASIC Act that each of the First, Second and Third Defendants pay to the Commonwealth a pecuniary penalty for their respective contraventions of s 12CB(1) and 12CB(4)(b) in such amounts as the Court considers appropriate.

NON PARTY REDRESS AND PUBLICITY

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

INJUNCTIONS

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

FURTHER ORDERS

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



Date: 12 December 2019

Date amended: 10 December 2020

Date further amended: 19 April 2021

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

Signed by Fred Prickett
Lawyer for the Plaintiff



B. NOTICE TO DEFENDANTS

TO:

UNION STANDARD INTERNATIONAL GROUP PTY LTD (in liq) of Shuriken Consulting Sydney, Suite 2, Level 11, 10 Bridge Street, Sydney, New South Wales, 2000. Address for service: ~~Mr Jonathan O'Loughlin, O'Loughlin Westhoff, Suite 7.06, Level 7, 32 Market St, Sydney, NSW 2000.~~ Mr Michael Bracken, Colin Biggers & Paisley Lawyers Pty Ltd, Level 42, 2 Park Street, Sydney, NSW 2000

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

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

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

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

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

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

D. FILING

Date of filing:

.....
Registrar

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

E. SERVICE

The plaintiff's address for service is:

Email: fprickett@claytonutz.com, jmuckersie@claytonutz.com and lgroenewegen@claytonutz.com

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

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



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

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

Schedule

No. NSD2064 of 2019

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

Defendants

Second Defendant: Maxi EFX Global AU Pty Ltd ACN 625 283 785
Third Defendant BrightAU Capital Pty Ltd (in liq) ACN 619 685 120

Date: [**] December 2019

Date amended: 10 December 2020

Date further amended: 19 April 2021