

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/04/2021 4:55:46 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
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



Sia Lagos

Dated: 12/04/2021 4:55:51 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 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.



Statement of claim

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

No. NSD2064 of 2019

Australian Securities and Investments Commission

Plaintiff

Union Standard International Group Pty Ltd (in liq) (ACN 117 658 349) and others

Defendants

A. INTRODUCTION

A.1. The parties

1. The plaintiff (**ASIC**) is a body corporate established by s 7 of the *Australian Securities Commission Act 1989* (Cth) and continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. The first defendant (**USG**), the second defendant (**EuropeFX**) and the third defendant (**TradeFred**) each is and was at all relevant times a company registered under the *Corporations Act 2001* (Cth) (**Corporations Act**).
3. On 10 March 2020, TradeFred's sole shareholder, TradeFred Holdings Limited, resolved to place TradeFred into liquidation, appointing Glenn Livingstone and Philip Quinlan as joint and several liquidators.
4. On 8 July 2020, the directors of USG resolved to place USG into voluntary administration, appointing Peter Paul Krejci and Andrew John Cummins as joint and several administrators.
5. On 3 September 2020, the Federal Court of Australia in proceeding number NSD754 of 2020 ordered that:
 - (a) the administration of USG be brought to an end;
 - (b) USG be wound up on the ground that it was just and equitable to do so; and
 - (c) Messrs Krejci and Cummins be appointed as joint and several liquidators.

Filed on behalf of:	Australian Securities and Investments Commission (Plaintiff)
Prepared by:	Fred Prickett and JK Muckersie of Clayton Utz
Law firm:	Clayton Utz
Tel:	(03) 9286 6844
Fax:	(03) 9629 8488
Email:	fprickett@claytonutz.com and jmuckersie@claytonutz.com
Address for service:	Email addresses above and Level 18, 333 Collins Street, Melbourne, Vic, 3000

A.2. AFSL and authorised representatives

6. At all relevant times, USG was the holder of Australian Financial Services Licence No. 302792 issued on 1 February 2016 (**USG AFSL**).

Particulars

The USG AFSL authorised USG to carry on a financial services business to:

- A. provide general financial product advice for derivatives and foreign exchange contracts (FX Contracts);
 - B. deal in a financial product by:
 - 1) issuing, applying for, acquiring, varying or disposing of a financial product in respect of derivatives or FX Contracts;
 - 2) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of derivatives or FX Contracts; and
 - C. make a market for FX Contracts and derivatives,

to retail and wholesale customers.
7. The USG AFSL did not authorise USG to provide personal advice within the meaning of s 766B(3) of the Corporations Act.

Particulars

ASIC refers to and repeats the particulars to paragraph 6 above.

8. Pursuant to a written agreement dated in or around May 2017 between USG, EuropeFX and Maxiflex Global Investments Corp Ltd (**EuropeFX CAR Agreement**), USG authorised EuropeFX to provide on its behalf under s 916A of the Corporations Act the financial services which USG was authorised to provide under the USG AFSL.
9. Pursuant to a written agreement dated on or around 10 October 2017 between USG and TradeFred (**TradeFred CAR Agreement**), USG authorised TradeFred to provide on its behalf under s 916A of the Corporations Act the financial services which USG was authorised to provide under the USG AFSL.
10. On 26 October 2019, USG issued EuropeFX a notice purporting to terminate the EuropeFX CAR Agreement effective immediately, and by notice on 14 November 2019 USG revised the effective date of termination to 26 January 2020.

Particulars

The notice on 26 October 2019 was by email on that date from John Martin on behalf of USG to Pedro Sasso, Peles Iulius-Cezar, Nir Elbaz (all of EuropeFX), Shay Zakhaim and Darren Burns (both of USG) and Yaron Work. The notice on 14 November 2019 was also by email on that date from John Martin on behalf of USG to Yaron Work, the email address Bo3@europeFX.com.au and Shay Zakhaim of USG.

11. On 3 March 2020, USG issued TradeFred a notice terminating the TradeFred CAR Agreement with effect from 10 March 2020.

Particulars

The notice was by email on 3 March 2020 from Jonathan O'Loughlin of O'Loughlin Westhoff Law on behalf of its (then) client, USG to Stephen Lloyd of Arnold Bloch Leibler as the then legal representative of TradeFred.

12. On 15 July 2020, ASIC suspended the USG AFSL under s 915B of the Corporations Act, subject to it continuing until 23 September 2020 for limited purposes.

Particulars

The suspension is in writing signed by Graeme Plath as a delegate of ASIC and dated 15 July 2020.

13. On 14 September 2020, ASIC cancelled the USG AFSL under s 915B of the Corporations Act, subject to it continuing until 18 December 2020 for limited purposes, which date ASIC has since varied to 18 March 2020 and further varied to 17 September 2021.

Particulars

The cancellation is in writing signed by Graeme Plath as a delegate of ASIC and dated 14 September 2020. The first notice of variation is in writing signed by Gai De Bartolomeo as a delegate of ASIC and dated 18 December 2020. The further notice of variation is in writing signed by Graeme Plath as a delegate of ASIC and dated 5 March 2021.

A.3. Businesses of USG, EuropeFX and TradeFred

A.3.1. Business of USG

14. At all relevant times, USG:
 - (a) operated a business dealing in derivatives by issuing contracts for difference (**CFDs**) and FX Contracts to retail customers in Australia and overseas and making a market for CFDs and FX Contracts;

Particulars

ASIC refers to and repeats paragraph 16 below and the particulars to that paragraph.

- (b) by reason of the matters set out in subparagraph (a):
 - (i) dealt (within the meaning of s 766C of the Corporations Act and s 12BAB of the ASIC Act) in financial products (being CFDs and FX Contracts) within the meaning of s 761A of the Corporations Act and s 12BAA of the ASIC Act;
 - (ii) provided financial services (being financial product advice, dealings in CFDs and FX Contracts and making a market in CFDs and FX Contracts) within the meaning of s 761A of the Corporations Act and s 12BAB of the ASIC Act; and
 - (iii) carried on a financial services business within the meaning of s 761A of the Corporations Act;
- (c) carried on its financial services business in Australia including by engaging in conduct that was:
 - (i) intended to induce people in this jurisdiction to use the financial services it provided;
 - (ii) further or in the alternative, likely to have that effect;

Particulars

USG is incorporated in Australia. It held its AFSL from 14 September 2006 until 14 September 2020 and conducted its business under and by reference to the AFSL. Its registered office has been in Bridge Street, Sydney since 26 September 2017 and its principal place of business has been in Macquarie Street, Sydney since 6 November 2014. USG held its bank accounts, including its client trust accounts, with the Commonwealth Bank of Australia in Sydney. USG's website (www.usgfx.com) was accessible in Australia and customers in Australia traded through that website. ASIC also refers to and repeats sub-paragraphs 14(e) and (f) below.

- (d) by reason of the matters set out in subparagraphs (a)-(c) above:
 - (i) carried on a financial services business within this jurisdiction as set out in s 911D of the Corporations Act; and
 - (ii) provided financial product advice to retail customers within the meaning of s 766B of the Corporations Act and s 12BAB(5) of the ASIC Act;
- (e) engaged agents based in Australia known as sales representatives (**Sales Representatives**) to provide financial services to customers in Australia, which services

included contacting potential customers, known as "leads", with the intention of encouraging them to open a trading account (**Trading Account**) with USG and make their first deposit; and

- (f) engaged agents based in Australia and overseas known as introducing brokers (**Introducing Brokers**) to provide financial services to customers located in overseas countries including China, which services comprised referring those customers to USG.
15. At all relevant times, money paid by customers to each defendant was typically:
- (a) paid to accounts held with the Commonwealth Bank of Australia and maintained by USG pursuant to the requirements of Division 2 of Part 7.8 of the Corporations Act; and
 - (b) available to customers to use to open CFDs and FX Contract positions, with the amounts so available displayed to customers on the MT4 or MT5 trading platform software (referred to further at paragraph 19(b) below).
16. At all relevant times, USG:
- (a) made a market for FX Contracts and CFDs;
 - (b) was the counterparty to all positions opened by the customers of each defendant;

Particulars

- A. From on or about 23 March 2018 until on or about 30 October 2018, USG:
 - 1) issued CFDs and FX Contracts to USG customers pursuant to a product disclosure statement dated 22 March 2018 (**First USG PDS**); and
 - 2) was the counterparty to positions opened by USG customers pursuant to the First USG PDS.
- B. From on or about 31 October 2018 until on or about 20 June 2019, USG:
 - 1) issued CFDs and FX Contracts to USG customers pursuant to a product disclosure statement dated 26 October 2018 (**Second USG PDS**); and
 - 2) was the counterparty to positions opened by USG customers pursuant to the Second USG PDS.
- C. From on or about 21 June 2019 until in or about July 2020, USG:
 - 1) issued CFDs and FX Contracts to USG customers pursuant to a product disclosure statement dated 20 June 2019 (**Third USG PDS**); and

- 2) was the counterparty to positions opened by USG customers pursuant to the Third USG PDS.
- D. From on or about 11 November 2017 until on or about 30 October 2018:
- 1) EuropeFX issued on behalf of USG CFDs and FX Contracts to EuropeFX customers pursuant to a product disclosure statement dated 10 November 2017 (**First EuropeFX PDS**);
 - 2) USG was the counterparty to positions opened by EuropeFX customers pursuant to the First EuropeFX PDS.
- E. From on or about 31 October 2018 until on or about 20 June 2019:
- 1) EuropeFX issued on behalf of USG CFDs and FX Contracts to EuropeFX customers pursuant to a product disclosure statement dated 26 October 2018 (**Second EuropeFX PDS**);
 - 2) USG was the counterparty to positions opened by EuropeFX customers pursuant to the Second EuropeFX PDS.
- F. From on or about 21 June 2019 until in or about January 2020:
- 1) EuropeFX issued on behalf of USG CFDs and FX Contracts to EuropeFX customers pursuant to a product disclosure statement dated 20 June 2019 (**Third EuropeFX PDS**);
 - 2) USG was the counterparty to positions opened by EuropeFX customers pursuant to the Third EuropeFX PDS.
- G. From on or about 31 October 2018 until on or about 20 June 2019:
- 1) TradeFred issued on behalf of USG CFDs and FX Contracts to TradeFred customers pursuant to a product disclosure statement dated 26 October 2018 (**First TradeFred PDS**);
 - 2) USG was the counterparty to positions opened by TradeFred customers pursuant to the First TradeFred PDS.
- H. From on or about 21 June 2019 until in or about March 2020:
- 1) TradeFred issued on behalf of USG CFDs and FX Contracts to TradeFred customers pursuant to a product disclosure statement dated 20 June 2019 (**Second TradeFred PDS**);

- 2) USG was the counterparty to positions opened by TradeFred customers pursuant to the Second TradeFred PDS.
- (c) hedged the positions of between 1–5% of customers to whom each defendant issued products (**A Book Customers**) and did not hedge the positions of between 95–99% of customers to whom each defendant issued products (**B Book Customers**);
- (d) in relation to the positions:
- (i) opened by A Book Customers, whether or not USG derived revenue from a position opened by the customer depended on the spread between the position opened by the customer, and the equivalent position opened by USG with its hedging counterparties; and
- (ii) opened by B Book Customers, it was necessary for the position to move adversely to the customer in order for USG to generate revenue, which meant that any loss to the customer was a corresponding gain to USG and vice versa.
17. As a result of the matters set out in paragraph 16 above and paragraphs 20 and 23 below, USG:
- (a) was entitled to:
- (i) the spread between the position opened by each of EuropeFX and TradeFred's A Book Customers and the equivalent position opened by USG with its hedging counterparties, less any amount paid to each of EuropeFX and TradeFred under its respective CAR Agreement;
- (ii) 10-14% of the profit and loss on positions closed by EuropeFX's B Book Customers; and
- (iii) 10-12% of the profit and loss on positions closed by TradeFred's B Book Customers; and
- (b) generated revenue in relation to 95-99% of its own customers and 95-99% of each of EuropeFX's and TradeFred's customers (i.e. in relation to all B Book Customers) when a position moved adversely to the customer, that is when the customer made a loss.

A.3.2. Business of EuropeFX

18. At all relevant times, EuropeFX:
- (a) operated a business issuing on USG's behalf CFDs and FX Contracts to retail customers in Australia and overseas;

Particulars

ASIC refers to and repeats paragraphs 8 and 16 above and the particulars to subparagraph (c) below.

- (b) by reason of the matters set out in subparagraph (a):
 - (i) dealt (within the meaning of s 766C of the Corporations Act and s 12BAB of the ASIC Act) in financial products (being CFDs and FX Contracts) within the meaning of s 761A of the Corporations Act and s 12BAA of the ASIC Act;
 - (ii) provided financial services (being financial product advice, dealings in CFDs and FX Contracts within the meaning of s 761A of the Corporations Act and s 12BAB of the ASIC Act; and
 - (iii) carried on a financial services business within the meaning of s 761A of the Corporations Act;
- (c) carried on its financial services business in Australia including by engaging in conduct that was:
 - (i) intended to induce people in this jurisdiction to use the financial services it provided;
 - (ii) further or in the alternative, likely to have that effect;

Particulars

EuropeFX is incorporated in Australia. Its registered office has been in Hornsby, New South Wales since 28 March 2018. At all relevant times it operated its business under and by reference to the AFSL held by USG. EuropeFX's website (www.europefx.com.au) had an Australian domain, was accessible in Australia and customers in Australia traded through that website. ASIC also refers to and repeats paragraphs 6, 8 and 15(a) above and subparagraphs 18(e) and (f) below.

- (d) by reason of the matters set out in subparagraphs (a)-(c) above:
 - (i) carried on a financial services business within this jurisdiction as set out in s 911D of the Corporations Act; and
 - (ii) provided financial product advice to retail customers within the meaning of s 766B of the Corporations Act and s 12BAB(5) of the ASIC Act;
- (e) engaged Global Win Solutions Ltd (**Global Win**), a company registered in Belize, as an agent to provide financial services to customers in Australia, which services included contacting potential customers, known as "leads", with the intention of encouraging them to

open a Trading Account with EuropeFX and make their first deposit, with the Sales Representatives engaged by Global Win to provide those services based in Belize; and

- (f) engaged XYX Media Technologies Ltd (**XYX**), a company registered in Israel, as an agent to provide financial services to customers in Australia, which services comprised contacting customers who had opened a Trading Account with EuropeFX and assisting the customer with the day-to-day operation of the customer's Trading Account (**Account Manager Services**), with XYX and the people engaged by XYX to provide those services (**Account Managers**) based in Tel-Aviv, Israel.
19. At all relevant times, after a customer had opened a Trading Account with EuropeFX, an Account Manager then typically contacted the customer by telephone, and (among other things) assisted the customer to complete certain steps to set up their Trading Account, including:
- (a) downloading software, including TeamViewer and ConnectWise, which would allow Account Managers to remotely view the customer's computer screen;
 - (b) downloading the MetaTrader 4 or MetaTrader 5 (**MT4 or MT5**) trading platform software, or directing the customer to the relevant webpage for the MT4 or MT5 trading platform software, that the customer would use to open, close and monitor CFDs or FX Contracts and to monitor the available margin in the customer's Trading Account;
 - (c) answering various questions posed by the Account Manager regarding the customer's circumstances, such as the customer's age, occupation, financial position and objectives or goals, and questions regarding the customer's knowledge of the operation of, and previous experience with, CFDs and FX Contracts; and
 - (d) completing a knowledge assessment questionnaire that included questions as to the customer's knowledge of the operations of CFDs and FX Contracts.
20. At all relevant times, EuropeFX:
- (a) was entitled pursuant to the terms of the EuropeFX CAR agreement (item 5 in schedule 1) to the following amounts in relation to positions closed by EuropeFX customers:
 - (i) \$7 per lot traded by A Book Customers; and
 - (ii) 86-90% of the profit and loss on positions closed by B Book Customers; and
 - (b) as a result of the matters set out in sub-paragraphs 16 and 20(a) above, generated revenue in relation to 95-99% of its customers (i.e. in relation to all B Book Customers) when a position moved adversely to the customer, that is, when the customer made a loss.

A.3.3. Business of TradeFred

21. At all relevant times, TradeFred:

- (a) operated a business issuing on USG's behalf CFDs and FX Contracts to retail customers in Australia and overseas;

Particulars

ASIC refers to and repeats paragraphs 9 and 16 above and the particulars to subparagraph (c) below.

- (b) by reason of the matters set out in subparagraph (a):
 - (i) dealt (within the meaning of s 766C of the Corporations Act and s 12BAB of the ASIC Act) in financial products (being CFDs and FX Contracts) within the meaning of s 761A of the Corporations Act and s 12BAA of the ASIC Act;
 - (ii) provided financial services (being financial product advice, dealings in CFDs and FX Contracts) within the meaning of s 761A of the Corporations Act and s 12BAB of the ASIC Act; and
 - (iii) carried on a financial services business within the meaning of s 761A of the Corporations Act;
- (c) carried on its financial services business in Australia including by engaging in conduct that was:
 - (i) intended to induce people in this jurisdiction to use the financial services it provided;
 - (ii) further or in the alternative, likely to have that effect;

Particulars

TradeFred is incorporated in Australia. Its registered office has been in Hornsby, New South Wales since 12 June 2017. At all relevant times it operated its business under and by reference to the AFSL held by USG. TradeFred's website (www.tradefred.com.au) had an Australian domain, was accessible in Australia and customers in Australia traded through that website. ASIC also refers to and repeats paragraphs 6, 9 and 15(a) above and subparagraphs 21(e) and (f) below.

- (d) by reason of the matters set out in subparagraphs (a)-(c) above:
 - (i) carried on a financial services business within this jurisdiction as set out in s 911D of the Corporations Act; and

- (ii) provided financial product advice to retail customers within the meaning of s 766B of the Corporations Act and s 12BAB(5) of the ASIC Act;
 - (e) engaged TradeMagnet UK Limited (**TradeMagnet**), a company registered in the United Kingdom, as an agent, which in turn engaged Capital Unit Media Ltd (**Capital Unit**), a company registered in Israel, as an agent, to provide financial services to customers in Australia, which services included contacting potential customers, known as "leads", with the intention of encouraging them to open a Trading Account with TradeFred and make their first deposit, with the Sales Representatives engaged by Capital Unit to provide those services based in Israel; and
 - (f) engaged TradeMagnet as an agent, which in turn engaged Capital Unit as an agent, to provide financial services to customers in Australia, which services comprised Account Manager Services, with Capital Unit and the Account Managers engaged by Capital Unit based in Israel.
22. At all relevant times, after a customer had opened a Trading Account with TradeFred, an Account Manager then usually contacted the customer by telephone, and (among other things) assisted the customer to complete certain steps to set up their Trading Account, including:
- (a) downloading software, including TeamViewer or AnyDesk, which would allow Account Managers to remotely view the customer's computer screen; and
 - (b) the steps set out in sub-paragraphs 19(b) to 19(d) above.
23. At all relevant times, TradeFred:
- (a) was entitled pursuant to the terms of the TradeFred CAR agreement (item 5 of schedule 1) to the following amounts in relation to positions closed by TradeFred customers:
 - (i) \$6-\$8 per lot traded by A Book Customers; and
 - (ii) 88-90% of the profit and loss on positions closed by B Book Customers; and
 - (b) as a result of the matters set out in sub-paragraphs 16 and 23(a) above, generated revenue in relation to 95-99% of its customers (i.e. in relation to all B Book Customers) when a position moved adversely to the customer, that is, when the customer made a loss.

A.4. Bonuses offered by EuropeFX and TradeFred

A.4.1 Bonuses offered by EuropeFX

24. At all relevant times, EuropeFX, by its Account Managers, offered by telephone to customers bonuses in the form of a discount on swap fees or commission if the customer deposited a certain amount of money into the customer's Trading Account.

A.4.2 Bonuses offered by TradeFred

25. At all relevant times, TradeFred, by its Account Managers, offered by telephone to customers bonuses in the form of:
- (a) a discount on swap fees or commission if the customer deposited a certain amount of money into the customer's Trading Account; and
 - (b) an increase in the balance of the customer's Trading Account (**Bonus Credits**) if the customer deposited a certain amount of money into the customer's Trading Account. The Bonus Credits improved the margin position of the customer's Trading Account, and therefore could be used by the customer to:
 - (i) avoid having to close existing positions that had moved against the customer (and therefore had reduced the balance (and margin) that had existed in the customer's account prior to the customer taking out that position); and
 - (ii) open additional and/or larger positions.
26. The terms and conditions upon which TradeFred offered Bonus Credits to its customers, a copy of which was typically sent to customers by email after the customer had made the deposit the subject of the bonus for the customer to sign, included requirements that had to be met before customers could withdraw the Bonus Credits and/or any related trading profits. Those amounts could not be withdrawn until the customer had opened an extremely high total volume of positions in their Trading Account.

Particulars

USI.0032.0001.7425 is an example of the terms & conditions document typically sent to the customer by email. Clause 6 of that document required the customer to complete a trading volume of 10,000 times the amount of the applicable bonus within six months of having received the bonus (for example, if a customer was provided a bonus of \$10,000, the customer was required to complete \$100 million worth of trading within 6 months before being able to withdraw those amounts).

B. PROVISION OF PERSONAL ADVICE

B.1. EuropeFX personal advice

27. From in or around August 2018 to January 2020 (the **Relevant Period** for EuropeFX), EuropeFX, through its Account Managers, made statements to customers by telephone and email to the effect that customers should:
- (a) take (that is, open, close or leave open) specific CFD or FX Contract positions identified by the Account Managers (referred to as a **Position Statement** in Annexure A.1);

- (b) take (that is, open, close or leave open) CFD or FX Contract positions in accordance with indicators on third party websites (referred to as a **Signal Provider Statement** in Annexure A.1);

Particulars

The addresses of the third party websites were www.investing.com and www.tradingcentral.com.

- (c) deposit further funds to, or not withdraw funds from, the customer's Trading Account (referred to as a **Deposit Statement** in Annexure A.1); and
 - (d) adopt a trading strategy as advised by the Account Manager in relation to FX Contracts and/or CFD positions (referred to as a **Trading Strategy Statement** in Annexure A.1), (together, separately, or in any combination, **EuropeFX Advice Statements**).
28. The EuropeFX Advice Statements made by the Account Managers engaged by or on behalf of EuropeFX are set out in Annexure A.1.
29. By each of the EuropeFX Advice Statements, EuropeFX, through its Account Managers:
- (a) made a recommendation or provided a statement of opinion to the customer identified in Annexure A.1 that:
 - (i) was intended to influence the relevant customer in making a decision in relation to a particular financial product, being CFDs and/or FX Contracts;
 - (ii) further or in the alternative, could reasonably be regarded as being intended to have such an influence; and
 - (b) by reason of the matters in (a), provided financial product advice within the meaning of s 766B of the Corporation Act.
30. EuropeFX, through its Account Managers, made each of the EuropeFX Advice Statements in circumstances where:
- (a) it had considered the relevant customer's objectives, financial position or needs;

Particulars

This is to be inferred from at least the following matters:

- A. at the time of opening a Trading Account, customers completed and returned to EuropeFX a questionnaire that included questions as to the customer's employment status, annual income, liquid net worth and trading experience;

- B. the Account Managers requested and received, from the customers to whom each of the EuropeFX Advice Statements were made, information including information regarding one or more of the following:
- 1) the customer's age and employment;
 - 2) the customer's income and available funds;
 - 3) the customer's objectives, including the amount of money that the customers wanted to earn from trading CFDs and/or FX Contracts and the attainment of material goals, such as holidays, renovations or paying for operations;
 - 4) other details regarding the customer's financial position, such as the customer's living expenses and details of any debts, loans or mortgages, and repayments that were due on each of these; and
 - 5) the customer's previous trading experience,
- as set out in Annexure B.1;
- C. engaged in the conduct in B above by, amongst other things, requesting that customers to whom each of the EuropeFX Advice Statements were made install software enabling the Account Managers to remotely access the customer's computers including to view the amounts in the customers' bank accounts (which the Account Managers did). ASIC refers to and repeats paragraph 19 above;
- D. at all times the Account Managers were aware of, or had the ability to access, the balance, equity and free margin of the customer's Trading Account; and
- E. after customers to whom each of the EuropeFX Advice Statements were made had suffered losses on their trading, the Account Managers provided advice to the customers that the Account Manager said was intended to recover those losses.
- (b) further or in the alternative, a reasonable person might have expected EuropeFX to have taken account of the customer's objectives, financial position or needs.

Particulars

ASIC refers to and repeats the matters in paragraphs 27, 28 and 30(a) above, and the particulars to those paragraphs.

In addition, ASIC relies on the following factors:

- A. the relevant Account Managers provided advice to retail customers in one-on-one telephone calls that were usually initiated by the Account Managers and which occurred in the context of an ongoing relationship between the Account Manager and the customer;
 - B. Account Managers frequently contacted customers multiple times each day, and the calls were frequently lengthy;
 - C. the financial products in relation to which Account Managers gave advice, namely FX Contracts and CFDs, were very complex, highly leveraged products, the operation of which the Account Managers rarely explained to customers;
 - D. most customers had little or no prior experience trading FX Contracts and CFDs. ASIC refers to Annexure B.1;
 - E. the Account Managers represented to customers that they were experienced trading specialists, and sought to assure or reassure the customer that they would guide or assist them in their trading; and
 - F. the Account Managers knew or ought to have known from their dealings with customers that the customers had little or no prior experience trading FX Contracts and CFDs, were reliant on the recommendations of the Account Manager, had low levels of income and often did not understand the products they were being advised to invest in. ASIC refers to the rows in Annexure E.1 categorised as “Disadvantage”.
31. By reason of the matters in paragraphs 27 to 30 above, EuropeFX provided personal advice within the meaning of s 766B(3) of the Corporations Act.
32. Accordingly, by the Account Managers of EuropeFX making the EuropeFX Advice Statements, EuropeFX contravened s 911A of the Corporations Act.

Particulars

ASIC refers to and repeats paragraphs 6 and 7 above, and the particulars to those paragraphs.

EuropeFX did not hold an AFSL.

B.2. TradeFred personal advice

33. From in or around December 2018 to March 2020 (the **Relevant Period** for TradeFred), TradeFred, through its Account Managers, made statements to customers by telephone and email to the effect that customers should:

- (a) take (that is, open, close or leave open) specific CFD or FX Contract positions identified by the Account Managers (referred to as a **Position Statement** in Annexure A.2);
- (b) take (that is, open, close or leave open) CFD or FX Contract positions in accordance with indicators on third party websites (referred to as a **Signal Provider Statement** in Annexure A.2);

Particulars

The addresses of the third party websites were www.investing.com and www.tradingcentral.com.

- (c) deposit further funds to, or not withdraw funds from, the customer's Trading Account (referred to as a **Deposit Statement** in Annexure A.2); and
 - (d) adopt a trading strategy as advised by the Account Manager in relation to FX Contracts and/or CFD positions (referred to as a **Trading Strategy Statement** in Annexure A.2),

(together, separately, or in any combination, **TradeFred Advice Statements**).
34. The TradeFred Advice Statements made by the Account Managers engaged by or on behalf of TradeFred are set out in Annexure A.2.
35. By each of the TradeFred Advice Statements, TradeFred, through its Account Managers:
- (a) made a recommendation or provided a statement of opinion to the customer identified in Annexure A.2 that:
 - (i) was intended to influence the relevant customer in making a decision in relation to a particular financial product, being CFDs and/or FX Contracts;
 - (ii) further or in the alternative, could reasonably be regarded as being intended to have such an influence; and
 - (b) by reason of the matters in (a), provided financial product advice within the meaning of s 766B of the Corporation Act.
36. TradeFred, through its Account Managers, made each of the TradeFred Advice Statements in circumstances where:
- (a) TradeFred had considered the relevant customer's objectives, financial position or needs;

Particulars

This is to be inferred from matters including the following:

- A. at the time of opening a Trading Account, customers completed and returned to TradeFred a questionnaire that included questions as to the customer's employment status, annual income, liquid net worth and trading experience;
 - B. the Account Managers requested and received, from the customers to whom each of the TradeFred Advice Statements were made, information including information regarding one or more of the following:
 - 1) the customer's age and employment;
 - 2) the customer's income and available funds;
 - 3) the customer's objectives, including the amount of money that the customers wanted to earn from trading CFDs and/or FX Contracts and the attainment of material goals, such as holidays, renovations or paying for operations;
 - 4) other details regarding the customer's financial position, such as the customer's living expenses and details of any debts, loans or mortgages, and repayments that were due on each of these; and
 - 5) the customer's previous trading experience,as set out in Annexure B.2;
 - C. engaged in the conduct in B above by, amongst other things, requesting that customers to whom each of the TradeFred Advice Statements were made install software enabling the Account Managers to remotely access the customer's computers including to view the amounts in the customers' bank accounts (which the Account Managers did) and to control the customer's computers. ASIC refers to paragraph 22 above;
 - D. at all times the Account Managers were aware of, or had the ability to access, the balance, equity and free margin of the customer's Trading Account; and
 - E. after customers to whom each of the TradeFred Advice Statements were made had suffered losses on their trading, the Account Managers provided advice to the customers that the Account Manager said was intended to recover those losses.
- (b) further or in the alternative, a reasonable person might have expected TradeFred to have taken account of the customer's objectives, financial position or needs.

Particulars

ASIC refers to and repeats the matters in paragraphs 33, 34 and 36(a) above, and the particulars to those paragraphs.

In addition, ASIC relies on the following factors:

- A. the relevant Account Managers provided advice to retail customers in one-on-one telephone calls that were usually initiated by the Account Managers and which occurred in the context of an ongoing relationship between the Account Manager and the customer;
 - B. Account Managers frequently contacted customers multiple times each day, and the calls were frequently lengthy;
 - C. the financial products in relation to which Account Managers gave advice, namely FX Contracts and CFDs, were very complex, highly leveraged products, the operation of which the Account Managers rarely explained to customers;
 - D. most customers had little or no prior experience trading FX Contracts and CFDs. ASIC refers to Annexure B.2;
 - E. the Account Managers represented to customers that they were experienced trading specialists, and sought to assure or reassure the customer that they would guide or assist them in their trading; and
 - F. the Account Managers knew or ought to have known from their dealings with customers that the customers had little or no prior experience trading FX Contracts and CFDs, were reliant on the recommendations of the Account Manager, had low levels of income and often did not understand the products they were being advised to invest in. ASIC refers to the rows in Annexure E.2 categorised as "Disadvantage".
37. By reason of the matters in paragraphs 33 to 36 above, TradeFred provided personal advice within the meaning of s 766B(3) of the Corporations Act.
38. Accordingly, by the Account Managers of TradeFred making the TradeFred Advice Statements, TradeFred contravened s 911A of the Corporations Act.

Particulars

ASIC refers to and repeats paragraphs 6 and 7 above, and the particulars to those paragraphs.

TradeFred did not hold an AFSL.

B.3. USG personal advice

39. The conduct in paragraphs 27 and 28 above was conduct engaged in by EuropeFX for and on behalf of USG, by reason of the fact that EuropeFX undertook that conduct:

- (a) as agent of USG, and within the scope of the apparent authority of EuropeFX;
- (b) further or in the alternative, with the consent of USG.

Particulars

ASIC refers to and repeats paragraph 8 above, and paragraphs 16 and 17 above and the particulars to those paragraphs.

ASIC relies on s 769B(1)(a), alternatively s 769B(1)(b), of the Corporations Act.

That USG:

- A. was aware of the financial services being provided by EuropeFX; and
- B. gave implied consent for EuropeFX to:
 - 1) provide those services; and
 - 2) engage in the alleged conduct,

is to be inferred from:

- C. USG entering into the EuropeFX CAR agreement and authorising EuropeFX to provide financial services "on behalf of USG" pursuant to s 916A(1) of the Corporations Act;
- D. the fact that the CFD and FX Contracts issued to the customers of EuropeFX were issued by USG;
- E. the terms of the EuropeFX CAR agreement, including that:
 - 1) EuropeFX must report directly to the board of USG as directed by the board or a representative of USG;
 - 2) EuropeFX must comply with all lawful directions given to it by USG; and
 - 3) an agency relationship is not excluded;
- F. the conduct being within the scope of the authority afforded to EuropeFX by USG;

- G. USG providing EuropeFX with sales training and compliance materials;
 - H. USG's access to and review of, during the period in which EuropeFX were its corporate authorised representatives, recordings of telephone conversations between the Account Managers and customers and Sales Representatives and customers, including the EuropeFX Advice Statements made during those conversations;
 - I. the attendance of John Carlton Martin, who has been a USG director since 1 February 2019, a responsible manager since 18 December 2014 and the sole key person for the USG AFSL since 1 February 2016, at EuropeFX compliance meetings during the Relevant Period; and
 - J. USG providing EuropeFX with, alternatively, USG's review and approval of EuropeFX's financial services guides, product disclosure statements and terms of business during the Relevant Period.
40. The conduct in paragraphs 33 and 34 above was conduct engaged in TradeFred for and on behalf of USG, by reason of the fact that TradeFred undertook that conduct:
- (a) as agent of USG, and within the scope of the apparent authority of TradeFred;
 - (b) further or in the alternative, with the consent of USG.

Particulars

ASIC refers to and repeats paragraphs 9 above, and paragraphs 16 and 17 above and the particulars to those paragraphs.

ASIC relies on s 769B(1)(a), alternatively s 769B(1)(b), of the Corporations Act.

That USG:

- A. was aware of the financial services being provided by TradeFred; and
- B. gave implied consent for TradeFred to:
 - 1) provide those services; and
 - 2) engage in the alleged conduct,

is to be inferred from:

- C. USG entering into the TradeFred CAR agreement and authorising TradeFred to provide financial services "on behalf of USG" pursuant to s 916A(1) of the Corporations Act;

- D. the fact that the CFD and FX Contracts issued to the customers of TradeFred were issued by USG;
 - E. the terms of the TradeFred CAR agreement, including that:
 - 1) TradeFred must report directly to the board of USG as directed by the board or a representative of USG;
 - 2) TradeFred must comply with all lawful directions given to it by USG; and
 - 3) an agency relationship is not excluded;
 - F. the conduct being within the scope of the authority afforded to TradeFred by USG;
 - G. USG providing TradeFred with sales training and compliance materials;
 - H. USG's access to and review of, during the period in which TradeFred was its corporate authorised representative, recordings of telephone conversations between the Account Managers and customers and Sales Representatives and customers, including the TradeFred Advice Statements made during those conversations;
 - I. the attendance of John Carlton Martin, who has been a USG director since 1 February 2019, a responsible manager since 18 December 2014 and the sole key person for the USG AFSL since 1 February 2016, at TradeFred compliance meetings during the Relevant Period; and
 - J. USG providing TradeFred with, alternatively, USG's review and approval of, TradeFred's financial services guides, product disclosure statements and terms of business during the Relevant Period.
41. By reason of the matters in paragraphs 27 to 32 and 33 to 38 above, USG provided personal advice within the meaning of s 766B(3) of the Corporations Act.
42. Accordingly, by the Account Managers of EuropeFX and TradeFred making the EuropeFX Advice Statements and TradeFred Advice Statements respectively, USG contravened s 911A of the Corporations Act.

Particulars

ASIC refers to and repeats paragraphs 6 and 7 above, and the particulars to those paragraphs.

C. FALSE, MISLEADING OR DECEPTIVE REPRESENTATIONS

C.1 Representations

C.1.1. EuropeFX Representations

43. During the Relevant Period, EuropeFX, through its Sales Representatives and its Account Managers, by telephone and email, made the statements set out in Annexure C.1.

44. The statements in paragraph 43 conveyed the following representations:

(a) in the case of the statements characterised as "Profit Representations" in Annexure C.1, 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 customer's trading to be their main source of income;
- (iii) income sufficient to constitute a "secondary income",

(together or separately, **EuropeFX Profit Representations**);

(b) in the case of the statements characterised as "Revenue Representations" in Annexure C.1, that:

- (i) USG would not make a market for any CFD or FX Contract positions opened by the customer;
- (ii) that EuropeFX would generate revenue when the customer made money;
- (iii) that EuropeFX 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);
- (iv) that EuropeFX would not make money when a customer lost money;
- (v) 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),

(together or separately, **EuropeFX Revenue Representations**);

- (c) in the case of the statements characterised as "Money Risk Representations" in Annexure C.1, 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,
- (together or separately, **EuropeFX Money Risk Representations**);
- (d) in the case of the statements characterised as "Withdrawal Representations" in Annexure C.1, 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,
- (together or separately, **EuropeFX Withdrawal Representations**);
- (e) in the case of the statements characterised as "Loss Recovery Representations" in Annexure C.1, that:
- (i) 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;
 - (ii) 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,
- (together or separately, **EuropeFX Loss Recovery Representations**);
- (f) in the case of the statements characterised as "Equities Representations" in Annexure C.1 that by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by EuropeFX:
- (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,

(together or separately, **EuropeFX Equities Representations**);

- (g) in the case of the statements characterised as "Bank Account Representations" in Annexure C.1, 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 EuropeFX by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution) (**EuropeFX Bank Account Representations**);

- (h) in the case of the statements characterised as "Plan Representations" in Annexure C.1, 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 (**EuropeFX Plan Representations**);

- (i) in the case of the statements characterised as "Regulation Representations" in Annexure C.1, that EuropeFX was "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case (**EuropeFX Regulation Representations**);

- (j) in the case of the statements characterised as "Location Representations" in Annexure C.1, that:

- (i) EuropeFX had main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia;

- (ii) the Account Managers were located in Australia,

(together or separately, **EuropeFX Location Representations**);

(together, separately or in any combination, the **EuropeFX Representations**).

45. The EuropeFX Profit Representations, EuropeFX Revenue Representations, EuropeFX Money Risk Representations, EuropeFX Withdrawal Representations, EuropeFX Loss Recovery Representations, EuropeFX Equities Representations and the EuropeFX Plan Representations (to the extent that they relate to a plan which would be developed, rather than one that had been developed) set out in Annexure C.1 (together, separately or in any combination the **EuropeFX Investment Representations**) were made with respect to future matters within the meaning of:

- (a) s 769C of the Corporations Act; and

- (b) s 12BB of the ASIC Act.

46. EuropeFX did not have reasonable grounds, within the meaning of:

- (a) s 769C of the Corporations Act; or
- (b) s 12BB of the ASIC Act,

for making the EuropeFX Investment Representations.

Particulars

ASIC relies on s 12BB(2) of the ASIC Act.

ASIC also refers to paragraph 47 below and the particulars to that paragraph.

47. With respect to the:

- (a) EuropeFX Profit Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because it was not reasonably likely, alternatively that there was not a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts:
 - (i) profits consistent with the specific figure or percentage return on investment stated by the Account Managers;
 - (ii) income sufficient for the customer's trading to be their main source of income;
 - (iii) income sufficient to constitute a "secondary income";

Particulars

The net losses of each of the customers to whom the Account Managers made a representation as set out in Annexures C.1 are listed in Annexure D.

None of the customers to whom the Account Managers made the representations earned net profits from their trading in CFDs or FX Contracts with EuropeFX that were:

- 1) consistent with the amounts stated in the representations; and/or
 - 2) sufficient to provide a main source of income.
- (b) EuropeFX Revenue Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because at all relevant times:
 - (i) USG did make a market for CFDs and FX Contracts and was the counterparty to all positions opened by EuropeFX customers;

Particulars

ASIC refers to and repeats paragraph 16 above and the particulars to that paragraph.

- (ii) in respect of 95-99% of its customers, EuropeFX did not generate revenue when the customer made money (save in respect of fees such as commissions and swaps on trades placed);

Particulars

ASIC refers to paragraphs 16 and 20 above, and the particulars to paragraph 16.

- (iii) EuropeFX did not 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);

Particulars

ASIC refers to paragraphs 16 and 20 above, and the particulars to paragraph 16.

- (iv) in respect of 95-99% of its customers, EuropeFX made money when the customer lost money;

Particulars

ASIC refers to paragraphs 16 and 20 above, and the particulars to paragraph 16.

- (v) Account Managers and/or Sales Representatives did not 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);

Particulars

Account Managers and/or Sales Representatives received commission based on: a percentage of the customer's net deposits; bonuses based on the customer's trading volumes; and bonuses in respect of each new customer.

(c) EuropeFX Money Risk Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because at all relevant times:

(i) by increasing the amount of money in the customer's Trading Accounts, customers did not reduce the level of risk to which they were exposed;

Particulars

A. A purchaser of an FX Contract or a CFD is exposed to all adverse movements in the price of the assets underlying the products.

B. Were a customer to deposit further funds to the customer's Trading Account, those funds would effect an increase in the margin available to a customer in the customer's Trading Account.

C. An adverse movement in price of the underlying asset would, all other things being equal, reduce the available margin in a Trading Account, including any funds deposited to that account after the customer had opened the position.

(ii) the risk associated with transferring additional funds to the customer's Trading Account did not carry an equivalent risk to holding money in a bank account (i.e. an account with an Australian deposit taking institution);

Particulars

By investing in the derivative products offered by EuropeFX , or alternatively by transferring additional funds to a customer's Trading Account, a customer exposed themselves to a greater level of risk than if they were to transfer equivalent funds to an account held with an Australian deposit taking institution.

(iii) all the money that a customer had deposited to their Trading Account was exposed to adverse movement in the price of the asset underlying a CFD or FX Contract position;

(d) EuropeFX Withdrawal Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because:

(i) customers were not able to withdraw money deposited to the customer's Trading Accounts in the same manner as money held in a bank account (i.e. an account with an Australian deposit taking institution); or

(ii) within a particular period of time as specified by the Account Manager, including immediately or at any time;

Particulars

- A. From at least 4 July 2019, EuropeFX was entitled to, and did, charge a withdrawal fee of \$20 (charged in AUD or USD depending on the currency an account was held in): EuropeFX Financial Services Guide dated 4 July 2019 (EuropeFX FSG), s 5.
 - B. EuropeFX was required to approve any withdrawal request made by a customer: EuropeFX Terms of Business dated 11 July 2019, s 6.4.
 - C. EuropeFX frequently either did not approve withdrawal requests or alternatively delayed in doing so.
 - D. At all relevant times, the Account Managers dissuaded or delayed customers from withdrawing money from the customer's Trading Account. ASIC refers to the rows in Annexure E.1 categorised as "Unreasonable impediment to withdrawal".
 - E. As a result of A to D above, customers regularly lost all, or the majority of the money in the customers' Trading Accounts before they were able to make a withdrawal.
- (e) EuropeFX Loss Recovery Representations set out in Annexure C.1 the representations were misleading or deceptive, and false in a material particular or materially misleading, because:
- (i) at all relevant times, positions that had moved against a customer did not represent "temporary" losses and it was not reasonably likely, alternatively that there was not a reasonable prospect, that such positions would become profitable;

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 47(a).
- B. None of the customers to whom an Account Manager made a Loss Recovery Representation recovered profits sufficient to recover losses from earlier trading.
- C. Positions that had moved against a customer did not represent "temporary" losses because there was a material risk that the position would continue to move against the customer and:
 - 1) the customer would ultimately close the position for a greater loss; or
 - 2) the position would be ultimately closed for a greater loss upon the margin level of the customer's Trading Account reaching 30% or less.

- (ii) it was not reasonably likely, alternatively that there was not 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.

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 47(a).
 - B. None of the customers to whom an Account Manager made a Loss Recovery Representation recovered profits sufficient to recover losses from earlier trading.
- (f) EuropeFX Equities Representations set out in Annexure C.1, at all relevant times the representations were misleading or deceptive, and false in a material particular or materially misleading, because by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by EuropeFX:
- (i) customers did not reduce their exposure to risk;
 - (ii) it was not reasonably likely, alternatively that there was not a reasonable prospect, that the customer would increase their returns;

Particulars

- A. The relative risk to capital of investing in the derivative products issued by EuropeFX was, or was likely to be, greater than an investment in equities.
- B. Equities are not leveraged financial products, and the risk of loss to which the purchaser of equities is exposed is limited to the cost of purchasing the particular product.
- C. By contrast:
 - 1) the purchaser of a CFD or FX Contract offered by EuropeFX was required to make a margin payment in order to open the position, that payment representing only a portion of the price of the underlying asset;
 - 2) the purchaser was exposed to all movements in the underlying asset; and
 - 3) therefore, the quantum of the risk of loss to which the purchaser of the CFD or FX Contract was exposed was greater than the cost of acquiring the product.

- (g) EuropeFX Bank Account Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because it was not reasonably likely, alternatively that there was not a reasonable prospect, that the customer would generate greater returns by investing the customer's money with EuropeFX by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution);

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 47(a).
- B. All of the customers to whom these representations were made suffered a net loss from their trading in CFDs or FX Contracts with EuropeFX.
- (h) EuropeFX Plan Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because a plan would not be developed and had not been developed for the customer to whom the Plan Representation was made which was designed to meet the customer's objectives or needs and improve the customer's financial position; and
- (i) EuropeFX Regulation Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because EuropeFX was not "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case.

Particulars

- A. EuropeFX did not hold an AFSL and was not regulated by ASIC in that sense;
- B. The fact that USG held an AFSL and that EuropeFX was therefore regulated by ASIC in that sense did not decrease the level of risk to which the customers of EuropeFX were exposed when trading CFDs or FX Contracts;
- C. The fact that ASIC is responsible for administering the Corporations Act and ASIC Act and therefore that EuropeFX was otherwise regulated by ASIC did not decrease the level of risk to which the customers of EuropeFX were exposed when trading CFDs or FX Contracts.
- (j) EuropeFX Location Representations set out in Annexure C.1, the representations were misleading or deceptive, and false in a material particular or materially misleading, because, at all relevant times:
- (i) EuropeFX did not have main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia;

- (ii) the Account Managers were not located in Australia.

Particulars

EuropeFX conducted its business and day-to-day operations from various locations, including Israel and Cyprus.

C.1.2. TradeFred Representations

- 48. During the Relevant Period, TradeFred, through its Sales Representatives and its Account Managers, by telephone and email, made the statements set out in Annexure C.2.
- 49. The statements in paragraph 48 conveyed the following representations:
 - (a) in the case of the statements characterised as "Profit Representations" in Annexure C.2, 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 customer's trading to be their main source of income;
 - (iii) income sufficient to constitute a "secondary income",
 (together or separately, **TradeFred Profit Representations**);
 - (b) in the case of the statements characterised as "Revenue Representations" in Annexure C.2, that:
 - (i) USG would not make a market for any CFD or FX Contract positions opened by the customer;
 - (ii) that TradeFred would generate revenue when the customer made money;
 - (iii) that TradeFred 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);
 - (iv) that TradeFred would not make money when a customer lost money;
 - (v) 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),

(together or separately, **TradeFred Revenue Representations**);

- (c) in the case of the statements characterised as "Money Risk Representations" in Annexure C.2, 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,

(together or separately, **TradeFred Money Risk Representations**);

- (d) in the case of the statements characterised as "Withdrawal Representations" in Annexure C.2, 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,

(together or separately, **TradeFred Withdrawal Representations**);

- (e) in the case of the statements characterised as "Loss Recovery Representations" in Annexure C.2, that:
- (i) 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;
 - (ii) 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,

(together or separately, **TradeFred Loss Recovery Representations**);

- (f) in the case of the statements characterised as "Equities Representations" in Annexure C.2 that by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by TradeFred:

- (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,

(together or separately, **TradeFred Equities Representations**);

- (g) in the case of the statements characterised as "Bonus Representations" in Annexure C.2, that a customer would receive and would be reasonably able to access Bonus Credits when they deposited a certain amount of money to their Trading Account (**TradeFred Bonus Representations**);
- (h) in the case of the statements characterised as "Bank Account Representations" in Annexure C.2, 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 TradeFred by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution) (**TradeFred Bank Account Representations**);
- (i) in the case of the statements characterised as "Plan Representations" in Annexure C.2, 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 (**TradeFred Plan Representations**);
- (j) in the case of the statements characterised as "Regulation Representations" in Annexure C.2, that TradeFred was "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case (**TradeFred Regulation Representations**); and
- (k) in the case of the statements characterised as "Location Representations" in Annexure C.2, that:
 - (i) TradeFred had main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia;
 - (ii) the Account Managers were located in Australia,

(together or separately, **TradeFred Location Representations**);

(together, separately or in any combination, the **TradeFred Representations**).

50. The TradeFred Profit Representations, TradeFred Revenue Representations, TradeFred Money Risk Representations, TradeFred Withdrawal Representations, TradeFred Loss Recovery Representations, TradeFred Equities Representations, TradeFred Bonus Representations and the TradeFred Plan Representations (to the extent that they relate to a plan which would be developed, rather than one that had been developed) set out in Annexure C.2 (together, separately or in any

combination the **TradeFred Investment Representations**) were made with respect to future matters within the meaning of:

- (a) s 769C of the Corporations Act; and
- (b) s 12BB of the ASIC Act.

51. TradeFred did not have reasonable grounds, within the meaning of:

- (a) s 769C of the Corporations Act; or
- (b) s 12BB of the ASIC Act,

for making the TradeFred Investment Representations.

Particulars

ASIC relies on s 12BB(2) of the ASIC Act. ASIC also refers to paragraph 52 below and the particulars to that paragraph.

52. With respect to the:

- (a) TradeFred Profit Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because it was not reasonably likely, alternatively that there was not a reasonable prospect, that customers would generate, from trading CFDs or FX Contracts:
 - (i) profits consistent with the specific figure or percentage return on investment stated by the Account Managers;
 - (ii) income sufficient for the customer's trading to be their main source of income;
 - (iii) income sufficient to constitute a "secondary income";

Particulars

The net losses of each of the customers to whom the Account Managers made a representation as set out in Annexure C.2 are listed in Annexure D.

None of the customers to whom the Account Managers made the representations earned net profits from their trading in CFDs or FX Contracts with TradeFred that were:

- 1) consistent with the amounts stated in the representations; and/or
- 2) sufficient to provide a main source of income.

(b) TradeFred Revenue Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because at all relevant times:

(i) USG did make a market for CFDs and FX Contracts and was the counterparty to all positions opened TradeFred customers;

Particulars

ASIC refers to and repeats paragraph 16 above and the particulars to that paragraph.

(ii) in respect of 95-99% of its customers, TradeFred did not generate revenue when the customer made money (save in respect of fees such as commissions and swaps on trades placed);

Particulars

ASIC refers to paragraphs 16 and 23 above, and the particulars to paragraph 16.

(iii) TradeFred did not 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);

Particulars

ASIC refers to paragraphs 16 and 23 above, and the particulars to paragraph 16.

(iv) in respect of 95-99% of its customers, TradeFred made money when the customer lost money;

Particulars

ASIC refers to paragraphs 16 and 23 above, and the particulars to paragraph 16.

(v) Account Managers and/or Sales Representatives did not 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);

Particulars

Account Managers and/or Sales Representatives received commission based on: a percentage of the customer's net deposits; bonuses based on the customer's trading volumes; and bonuses in respect of each new customer.

- (c) TradeFred Money Risk Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because at all relevant times:
- (i) by increasing the amount of money in the customer's Trading Accounts, customers did not reduce the level of risk to which they were exposed;

Particulars

- A. A purchaser of an FX Contract or a CFD is exposed to all adverse movements in the price of the assets underlying the products.
- B. Were a customer to deposit further funds to the customer's Trading Account, those funds would effect an increase in the margin available to a customer in the customer's Trading Account.
- C. An adverse movement in price of the underlying asset would, all other things being equal, reduce the available margin in a Trading Account, including any funds deposited to that account after the customer had opened the position.

- (ii) the risk associated with transferring additional funds to the customer's Trading Account did not carry an equivalent risk to holding money in a bank account (i.e. an account with an Australian deposit taking institution);

Particulars

By investing in the derivative products offered by TradeFred, or alternatively by transferring additional funds to a customer's Trading Account, a customer exposed themselves to a greater level or risk than if they were to transfer equivalent funds to an account held with an Australian deposit taking institution.

- (iii) all the money that a customer had deposited to their Trading Account was exposed to adverse movement in the price of the asset underlying a CFD or FX Contract position;
- (d) TradeFred Withdrawal Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because:

- (i) customers were not able to withdraw money deposited to the customer's Trading Accounts in the same manner as money held in a bank account (i.e. an account with an Australian deposit taking institution); or
- (ii) within a particular period of time as specified by the Account Manager, including immediately or at any time;

Particulars

- A. TradeFred was required to approve any withdrawal request made by a customer: TradeFred Terms and Conditions, undated, s 3.9.
 - B. TradeFred frequently either did not approve withdrawal requests or alternatively delayed in doing so.
 - C. At all relevant times, the Account Managers dissuaded or delayed customers from withdrawing money from the customer's Trading Account. ASIC refers to the rows in Annexure E.2 categorised as "Unreasonable impediment to withdrawal".
 - D. As a result of A - C above, customers regularly lost all, or the majority of the money in the customers' Trading Accounts before they were able to make a withdrawal.
- (e) TradeFred Loss Recovery Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because:
- (i) at all relevant times, positions that had moved against a customer did not represent "temporary" losses and it was not reasonably likely, alternatively that there was not a reasonable prospect, that such positions would become profitable;

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 52(a).
- B. None of the customers to whom an Account Manager made a TradeFred Loss Recovery Representation recovered profits sufficient to recover losses from earlier trading.
- C. Positions that had moved against a customer did not represent "temporary" losses because there was a material risk that the position would continue to move against the customer and:
 - 1) the customer would ultimately close the position for a greater loss; or

- 2) the position would be ultimately closed for a greater loss upon the margin level of the customer's Trading Account reaching 30% or less;
- (ii) it was not reasonably likely, alternatively that there was not 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;

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 52(a).
 - B. None of the customers to whom an Account Manager made a TradeFred Loss Recovery Representation recovered profits sufficient to recover losses from earlier trading.
- (f) TradeFred Equities Representations set out in Annexure C.2, at all relevant times the representations were misleading or deceptive, and false in a material particular or materially misleading, because by reducing investments in equities (including those held in a superannuation account), and increasing investment in the derivative products offered by TradeFred:
- (i) customers did not reduce their exposure to risk;
 - (ii) it was not reasonably likely, alternatively that there was not a reasonable prospect, that the customer would increase their returns;

Particulars

- A. The relative risk to capital of investing in the derivative products issued by TradeFred was, or was likely to be, greater than an investment in equities.
- B. Equities are not leveraged financial products, and the risk of loss to which the purchaser of equities is exposed is limited to the cost of purchasing the particular product.
- C. By contrast:
 - 1) the purchaser of a CFD or FX Contract offered TradeFred was required to make a margin payment in order to open the position, that payment representing only a portion of the price of the underlying asset;
 - 2) the purchaser was exposed to all movements in the underlying asset; and

- 3) therefore, the quantum of the risk of loss to which the purchaser of the CFD or FX Contract was exposed was greater than the cost of acquiring the product.
- (g) TradeFred Bonus Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because the customer did not receive or was not reasonably able to access Bonus Credits when they deposited a certain amount of money to their Trading Account.

Particulars

- A. ASIC refers to and repeats paragraphs 25 to 26 above.
- B. TradeFred did not provide Bonus Credits which were the subject of the representations.
- C. Alternatively, the Bonus Credits were the subject of unfair terms and conditions which were only disclosed after the customer to whom the representation was made had made a deposit and which prevented the customer from reasonably accessing the Bonus Credits.
- (h) TradeFred Bank Account Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because that it was not reasonably likely, alternatively that there was not a reasonable prospect, that the customer would generate greater returns by investing the customer's money with TradeFred by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution);

Particulars

- A. ASIC refers to and repeats the particulars to paragraph 52(a).
- B. All of the customers to whom these representations were made suffered a net loss from their trading in CFDs or FX Contracts with TradeFred.
- (i) TradeFred Plan Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because a plan would not be developed and had not been developed for the customer to whom the TradeFred Plan Representation was made which was designed to meet the customer's objectives or needs and improve the customer's financial position;
- (j) TradeFred Regulation Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because

TradeFred was not "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case.

Particulars

- A. TradeFred did not hold an AFSL and was not regulated by ASIC in that sense;
 - B. The fact that USG held an AFSL and that TradeFred was therefore regulated by ASIC in that sense did not decrease the level of risk to which the customers of TradeFred were exposed when trading CFDs or FX contracts;
 - C. The fact that ASIC is responsible for administering the Corporations Act and ASIC Act and therefore that TradeFred was otherwise regulated by ASIC did not decrease the level of risk to which the customers of TradeFred was exposed when trading CFDs or FX Contracts.
- (k) TradeFred Location Representations set out in Annexure C.2, the representations were misleading or deceptive, and false in a material particular or materially misleading, because, at all relevant times:
- (i) TradeFred did not have main offices, headquarters or offices from which it conducted a substantial part of its business located in Australia;
 - (ii) the Account Managers were not located in Australia.

Particulars

TradeFred conducted its business and day to day operations from various locations, including Israel and Cyprus.

C.1.3. USG Representations

53. From July 2018 to December 2019 (the **Relevant Period** for USG), USG, through its Sales Representatives, by telephone and email, made the statements set out in Annexure C.3.
54. The statements in paragraph 53 conveyed the following representations:
- (a) in the case of the statements characterised as "Profit Representations" in Annexure C.3, 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,
(together, separately or in any combination, **USG Profit Representations**); and
- (b) in the case of the statements characterised as "Revenue Representations" in Annexure C.3, that USG would:
 - (i) not make a market for any CFD or FX Contract positions opened by the customer;
 - (ii) generate revenue only through the spread between the position opened by the customer, and the equivalent position opened by USG with its hedging counterparties;
 - (iii) would not generate revenue on commissions or fees which applied when a customer opened a CFD or FX Contract position;
 - (iv) not make money when a customer lost money,
(together, separately or in any combination, **USG Revenue Representations**);
- (c) in the case of the statements under the heading "Rob Clayton Representations" in Annexure C.3, that an analyst engaged by USG, Rob Clayton:
 - (i) prepared reports which would be emailed to the customer (**Rob Clayton Reports**) which:
 - A. 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
 - B. which would result in an accuracy or success rate of 80% or greater if followed; and/or
 - C. were circulated to the major Australian banks; and/or
 (together, separately or in any combination, **Rob Clayton Report Representations**);
 - (ii) was:
 - A. in his previous role at Westpac:
 - 1) the head, or the head technical analyst, of Westpac; and/or
 - 2) responsible for advising or directing Westpac as to what the bank should trade; and/or
 - B. paid by USG millions of dollars a year to write the Rob Clayton Reports,

(together, separately or in any combination, **Rob Clayton Representations**);

- (d) in the case of the statements characterised as "Regulation Representations" in Annexure C.3, that USG was "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case (**USG Regulation Representations**),

(together, separately or in any combination, the **USG Representations**).

55. In respect of the USG Profit Representations, USG Revenue Representations and Rob Clayton Report Representations set out in Annexure C.3, these representations were made with respect to future matters within the meaning of:

- (a) s 769C of the Corporations Act; and
 (b) s 12BB of the ASIC Act.

56. USG did not have reasonable grounds, within the meaning of:

- (a) s 769C of the Corporations Act; or
 (b) s 12BB of the ASIC Act,

for making the USG Profit Representations, USG Revenue Representations and Rob Clayton Report Representations.

Particulars

ASIC relies on s 12BB(2) of the ASIC Act. ASIC also refers to paragraph 57 below and the particulars to that paragraph.

57. With respect to the:

- (a) USG Profit Representations set out in Annexure C.3, the representations were misleading or deceptive, and false in a material particular or materially misleading, because it was not reasonably likely, alternatively that there was not 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;

Particulars

During the Relevant Period:

- A. 86,602 USG customers achieved net monthly profits in a calendar month with total net profits over that period of \$350,182,786.44;
- B. 116,017 USG customers achieved net monthly losses in a calendar month with total net losses over that period of \$573,783,257.64; and
- C. that is, approximately 43% of USG customers on average achieved a net profit in a calendar month, as against 57% who achieved a net loss in a calendar month; and

In the 12 months immediately prior to the Relevant Period:

- D. 39,845 USG customers achieved net monthly profits in a calendar month with total net profits over that period of \$129,471,832.49;
- E. 64,157 USG customers achieved net monthly losses in a calendar month with total net losses over that period of \$182,160,117.16;
- F. that is, approximately 38% of USG customers on average achieved a net profit in a calendar month, as against 62% who achieved a net loss in a calendar month.

- (b) USG Revenue Representations set out in Annexure C.3, the representations were misleading or deceptive, and false in a material particular or materially misleading, because, at all relevant times, USG:
 - (i) made a market for all CFD and FX Contract positions opened by the customer;
 - (ii) did not generate revenue only through only through the spread between the position opened by the customer, and the equivalent position opened by USG with its hedging counterparties;
 - (iii) did generate revenue on commissions or fees which applied when a customer opened a CFD or FX Contract position;
 - (iv) in respect of 95-99% of its customers, made money when a customer lost money;

Particulars

ASIC refers to and repeats paragraph 16 above (and the particulars to that paragraph) and paragraph 17 above.

- (c) Rob Clayton Report Representations set out in Annexure C.3, the representations were misleading or deceptive, and false in a material particular or materially misleading, because at all relevant times, the Rob Clayton Reports:

- (i) did not provide advice about 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;
 - (ii) did not have an accuracy or success rate of 80% or greater if followed; and
 - (iii) were not circulated to any of the major Australian banks;
- (d) Rob Clayton Representations set out in Annexure C.3, the representations were misleading or deceptive, and false in a material particular or materially misleading, because, at all relevant times:
- (i) in his previous role at Westpac, Rob Clayton was not the head, or the head technical analyst, of Westpac;
 - (ii) in his previous role at Westpac, Rob Clayton was not responsible for advising or directing Westpac what to trade, and in particular was not responsible for the foreign exchange transactions entered into by Westpac; and
 - (iii) USG remunerated Rob Clayton on a flat fee basis of \$3,150 per month (ex GST);
- (e) USG Regulation Representations set out in Annexure C.3, the representations were misleading or deceptive, and false in a material particular or materially misleading, because USG was not "regulated" by ASIC such that the customer was exposed to less risk than would otherwise be the case.

Particulars

- A. The fact that USG held an AFSL and that USG was therefore regulated by ASIC in that sense did not decrease the level of risk to which the customers of USG were exposed when trading CFDs or FX contracts.
- B. The fact that ASIC is responsible for administering the Corporations Act and ASIC Act and therefore that USG was otherwise regulated by ASIC did not decrease the level of risk to which the customers of USG were exposed when trading CFDs or FX contracts.

C.2. Representation contraventions

C.2.1. EuropeFX Representation contraventions

58. The EuropeFX Representations were:

- (a) conduct in trade or commerce;

- (b) in relation to:
- (i) a financial product within the meaning of:
 - A. ss 763A(1)(a) and 764A(1)(c) of the Corporations Act; and
 - B. s 12BAA(1)(a) of the ASIC Act,
 namely CFDs and/or FX Contracts; and
 - (ii) in the premises in (i) – a financial service within the meaning of:
 - A. ss 766A(1) and 766B(1) of the Corporations Act; and
 - B. s 12BAB(1) of the ASIC Act;
- (c) made in connection with the supply, possible supply, or promotion of the supply or use of financial services within the meaning of s 12BAB(1) of the ASIC Act, namely financial product advice and dealing in financial products;
- (d) likely to induce persons in this jurisdiction to apply for, dispose of or acquire financial products, namely CFDs or FX Contracts;

Particulars

ASIC refers to and repeats paragraph 18(c) above and the particulars to that paragraph.

- (e) made in circumstances where EuropeFX:
- (i) knew, or ought reasonably to have known, that the statement the subject of the representation was:
 - A. false in a material particular;
 - B. further or in the alternative, materially misleading;
 - (ii) further or in the alternative, did not care whether the statement was true or false.

Particulars

This is to be inferred from the fact that:

- A. the Sales Representatives:
 - 1) made the representations with the material purpose of convincing as many customers as possible to open a Trading Account with EuropeFX;

- 2) were paid bonuses by reference to the number of customers who opened a Trading Account and their trading volume and total deposits;
- B. the Account Managers:
- 1) made the representations with the material purpose of either misleading customers into depositing as much money as possible into their Trading Account or losing all their deposited funds or both;
 - 2) were remunerated by reference to net deposits, being any money deposited by the customer less any amounts withdrawn by the customer;
- C. EuropeFX remunerated the Sales Representatives and Account Managers as set out in A and B above;
- D. further or in the alternative to C above, EuropeFX engaged the entities referred to in paragraphs 18(e) and 18(f) above, who EuropeFX knew or ought reasonably to have known remunerated the Sales Representatives and/or Account Managers as set out in paragraphs 18(e) and 18(f) above;
- E. EuropeFX was aware of all complaints made by its customers to ASIC or the Australian Financial Complaints Authority (AFCA) in respect of its conduct, including the making of the representations;
- F. EuropeFX was, because of regular compliance meetings with USG, made aware of misconduct that USG had identified during its reviews of telephone calls between the Sales Representatives and/or Account Managers and its customers (including the making of the representations);
- G. to the extent that EuropeFX provided training to their Account Managers and/or Sales Representatives (including via the entities engaged by EuropeFX referred to in paragraphs 18(e) and 18(f) above), it encouraged, or alternatively was inadequate to discourage, Account Managers and/or Sales Representatives making the representations;
- H. to the extent that EuropeFX sought to address the complaints referred to in E above, or the misconduct referred to in F above, the steps it took were inadequate to prevent the Account Managers and/or Sales Representatives from making the representations.

Further, EuropeFX had no proper basis for making the representations having regard to the matters set out in paragraphs 46 and 47 above in circumstances where it ought have known they were false given the nature of its business and the matters set out above.

59. Accordingly:

- (a) by reason of the matters:
 - (i) in paragraphs 45 and 46 above, or alternatively paragraph 47 above, by making the EuropeFX Investment Representations; and
 - (ii) in paragraph 47 above, by making the EuropeFX Plan Representations (to the extent that they relate to a plan which had been developed, rather than one that would be developed), the EuropeFX Location Representations and the EuropeFX Regulation Representations;
- (b) EuropeFX engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:
 - (i) s 1041H(1) of the Corporations Act; and
 - (ii) s 12DA(1) of the ASIC Act; and
- (c) EuropeFX made statements that were false in a material particular or materially misleading in contravention of s1041E(1) of the Corporations Act.

60. Further, by reason of the matters in:

- (a) paragraphs 45 and 46 above, or alternatively paragraph 47(a) above, by EuropeFX making the EuropeFX Profit Representations, EuropeFX made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(e) of the ASIC Act;
- (b) paragraphs 45 and 46 above, or alternatively paragraph 47(c) above, by making the EuropeFX Money Risk Representations, EuropeFX made false or misleading representations:
 - (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, were of a particular standard or quality, namely as to the financial

- risk to which the customer would or might be exposed, in contravention of s 12DB(1)(a) of the ASIC Act;
- (ii) that the services in (i) had particular performance characteristics, uses or benefits, namely as to the financial risk to which the customer would or might be exposed, in contravention of s 12DB(1)(e) of the ASIC Act; and
 - (iii) concerning the need for the services in (i), namely the need to make further deposits or transfer funds to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;
- (c) paragraphs 45 and 46 above, or alternatively paragraph 47(d) above, by making the EuropeFX Withdrawal Representations, EuropeFX made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products, had particular performance characteristics, uses or benefits, namely that a customer would be able to withdraw money in certain ways, in contravention of s 12DB(1)(e) of the ASIC Act;
- (d) paragraphs 45 and 46 above, or alternatively paragraph 47(e) above, by making the EuropeFX Loss Recovery Representations, EuropeFX made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
- (i) were of a particular standard or quality, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn profits, either by reference to a specific position or generally to recover earlier losses, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn profits, either by reference to a specific position or generally to recover earlier losses, in contravention of s 12DB(1)(e) of the ASIC Act;
- (e) paragraphs 45 and 46 above, or alternatively paragraph 47(f) above, by making the EuropeFX Equities Representations, EuropeFX made false or misleading representations:
- (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, had certain performance characteristics, namely the reduction of financial risk to which the customer would be exposed and an increase in returns, in contravention of s 12DB(1)(e) of the ASIC Act;
 - (ii) concerning the need for the services in (i), namely the need to transfer the funds the subject of the customer's investment in equities (including those held in a

superannuation account) to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;

- (f) paragraphs 45 and 46 above, or alternatively paragraph 47(g) above, by making the EuropeFX Bank Account Representations, EuropeFX made false or misleading representations:
- (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, were of a particular standard or quality, namely 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 EuropeFX by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution), in contravention of s 12DB(1)(a) of the ASIC Act;
 - (ii) that the services in (i) had particular performance characteristics, uses or benefits, namely 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 EuropeFX by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution), in contravention of s 12DB(1)(e) of the ASIC Act; and
 - (iii) concerning the need for the services in (i), namely the need to transfer funds from the customer's bank account to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;
- (g) paragraphs 45 and 46 above, and paragraph 47(h) above, by making the EuropeFX Plan Representations, EuropeFX made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
- (i) were of a particular standard or quality, namely that the financial product advice included a plan which 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, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that the financial product advice included a plan which 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, in contravention of s 12DB(1)(e) of the ASIC Act;

- (h) paragraph 47(i) above, by making the EuropeFX Regulation Representations, EuropeFX made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
- (i) were of a particular standard or quality, namely as to the level of risk to which customers were exposed by trading CFDs and FX Contracts, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had approval, namely the approval of ASIC, in contravention of s 12DB(1)(e) of the ASIC Act.

C.2.2. TradeFred Representation contraventions

61. The TradeFred Representations were:

- (a) conduct in trade or commerce;
- (b) in relation to:
 - (i) a financial product within the meaning of:
 - A. ss 763A(1)(a) and 764A(1)(c) of the Corporations Act; and
 - B. s 12BAA(1)(a) of the ASIC Act,
 namely CFDs and/or FX Contracts; and
 - (ii) in the premises in (i) – a financial service within the meaning of:
 - A. ss 766A(1) and 766B(1) of the Corporations Act; and
 - B. s 12BAB(1) of the ASIC Act;
- (c) made in connection with the supply, possible supply, or promotion of the supply or use of financial services within the meaning of s 12BAB(1) of the ASIC Act, namely financial product advice and dealing in financial products; and
- (d) likely to induce persons in this jurisdiction to apply for, dispose of or acquire financial products, namely CFDs or FX Contracts;

Particulars

ASIC refers to and repeats paragraph 21(c) above and the particulars to that paragraph.

- (e) made in circumstances where TradeFred:

- (i) knew, or ought reasonably to have known, that the statement the subject of the representation was:
 - A. false in a material particular;
 - B. further or in the alternative, materially misleading;
- (ii) further or in the alternative, did not care whether the statement was true or false.

Particulars

This is to be inferred from the fact that:

- A. the Sales Representatives:
 - 1) made the representations with the material purpose of convincing as many customers as possible to open a Trading Account with TradeFred;
 - 2) were paid bonuses by reference to the number of customers who opened a Trading Account and their trading volume and total deposits;
- B. the Account Managers:
 - 1) made the representations with the material purpose of either misleading customers into depositing as much money as possible into their Trading Account or losing all their deposited funds or both;
 - 2) were remunerated by reference to net deposits, being any money deposited by the customer less any amounts withdrawn by the customer;
- C. TradeFred remunerated the Sales Representatives and Account Managers as set out in A and B above;
- D. further or in the alternative to C above, TradeFred engaged the entities referred to in paragraphs 21(e) and 21(f) above, who TradeFred knew or ought reasonably to have known remunerated the Sales Representatives and/or Account Managers as set out in A and B above;
- E. TradeFred was aware of all complaints made by its customers to ASIC or AFCA in respect of its conduct, including the making of the representations;
- F. TradeFred was, because of regular compliance meetings with USG, made aware of misconduct that USG had identified during its reviews of telephone calls between the Sales Representatives and/or Account Managers and its customers (including the making of the representations);

- G. to the extent that TradeFred provided training to its Account Managers and/or Sales Representatives (including via the entities engaged by TradeFred referred to in paragraphs 21(e) and 21(f) above), it encouraged, or alternatively was inadequate to discourage, Account Managers and/or Sales Representatives making the representations;
- H. to the extent that TradeFred sought to address the complaints referred to in E above, or the misconduct referred to in F above, the steps it took were inadequate to prevent the Account Managers and/or Sales Representatives from making the representations.

Further, TradeFred had no proper basis for making the representations having regard to the matters set out in paragraphs 51 and 52 above in circumstances where it ought have known they were false given the nature of its business and the matters set out above.

62. Accordingly:

- (a) by reason of the matters:
 - (i) in paragraphs 50 and 51 above, or alternatively paragraph 52 above, by making the TradeFred Investment Representations;
 - (ii) in paragraph 52 above, by making the TradeFred Plan Representations (to the extent that they relate to a plan which had been developed, rather than one that would be developed), the TradeFred Location Representations and the TradeFred Regulation Representations;
- (b) TradeFred engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:
 - (i) s 1041H(1) of the Corporations Act; and
 - (ii) s 12DA(1) of the ASIC Act; and
- (c) TradeFred made statements that were false in a material particular or materially misleading in contravention of s1041E(1) of the Corporations Act.

63. Further, by reason of the matters in:

- (a) paragraphs 50 and 51 above, or alternatively paragraph 52(a) above, by TradeFred making the TradeFred Profit Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:

- (i) were of a particular standard or quality, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(e) of the ASIC Act;
- (b) paragraphs 50 and 51 above, or alternatively paragraph 52(c) above, by making the TradeFred Money Risk Representations, TradeFred made false or misleading representations:
 - (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, were of a particular standard or quality, namely as to the financial risk to which the customer would or might be exposed, in contravention of s 12DB(1)(a) of the ASIC Act;
 - (ii) that the services in (i) had particular performance characteristics, uses or benefits, namely as to the financial risk to which the customer would or might be exposed, in contravention of s 12DB(1)(e) of the ASIC Act; and
 - (iii) concerning the need for the services in (i), namely the need to make further deposits or transfer funds to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;
- (c) paragraphs 50 and 51 above, or alternatively paragraph 52(d) above, by making the TradeFred Withdrawal Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products, had particular performance characteristics, uses or benefits, namely that a customer would be able to withdraw money in certain ways, in contravention of s 12DB(1)(e) of the ASIC Act;
- (d) paragraphs 50 and 51 above, or alternatively paragraph 52(e) above, by making the TradeFred Loss Recovery Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn profits, either by reference to a specific position or generally to recover earlier losses, in contravention of s 12DB(1)(a) of the ASIC Act; and/or

- (ii) had certain performance characteristics, uses or benefits, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn profits, either by reference to a specific position or generally to recover earlier losses, in contravention of s 12DB(1)(e) of the ASIC Act;
- (e) paragraphs 50 and 51 above, or alternatively paragraph 52(f) above, by making the TradeFred Equities Representations, TradeFred made false or misleading representations:
 - (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, had certain performance characteristics, namely the reduction of financial risk to which the customer would be exposed and an increase in returns, in contravention of s 12DB(1)(e) of the ASIC Act;
 - (ii) concerning the need for the services in (i), namely the need to transfer the funds the subject of the customer's investment in equities (including those held in a superannuation account) to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;
- (f) paragraphs 50 and 51 above, or alternatively paragraph 52(g) above, by making the TradeFred Bonus Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely that the customer would receive and would be reasonably able to access Bonus Credits when they deposited a certain amount of money to their Trading Account, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, the customer would receive and would be reasonably able to access Bonus Credits when they deposited a certain amount of money to their Trading Account, in contravention of s 12DB(1)(e) of the ASIC Act;
- (g) paragraphs 50 and 51 above, or alternatively paragraph 52(h) above, by making the TradeFred Bank Account Representations, TradeFred made false or misleading representations:
 - (i) that financial services it provided, namely financial product advice, and/or dealing in financial products, were of a particular standard or quality, namely 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 TradeFred by trading CFDs or FX Contracts than by keeping it in a bank account (i.e.

- an account with an Australian deposit taking institution), in contravention of s 12DB(1)(a) of the ASIC Act;
- (ii) that the services in (i) had particular performance characteristics, uses or benefits, namely 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 TradeFred by trading CFDs or FX Contracts than by keeping it in a bank account (i.e. an account with an Australian deposit taking institution), in contravention of s 12DB(1)(e) of the ASIC Act; and
 - (iii) concerning the need for the services in (i), namely the need to transfer funds from the customer's bank account to the customer's Trading Account, in contravention of s 12DB(1)(h) of the ASIC Act;
- (h) paragraphs 50 and 51 above, and paragraph 52(i) above, by making the TradeFred Plan Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
- (i) were of a particular standard or quality, namely that the financial product advice included a plan which 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, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that the financial product advice included a plan which 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, in contravention of s 12DB(1)(e) of the ASIC Act;
- (i) paragraph 52(j) above, by making the TradeFred Regulation Representations, TradeFred made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
- (i) were of a particular standard or quality, namely as to the level of risk to which customers were exposed by trading CFDs and FX Contracts, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had approval, namely the approval of ASIC, in contravention of s 12DB(1)(e) of the ASIC Act.

C.2.3. USG Representation contraventions

64. The USG Representations were:

- (a) conduct in trade or commerce;
- (b) in relation to:
 - (i) a financial product within the meaning of:
 - A. ss 763A(1)(a) and 764A(1)(c) of the Corporations Act; and
 - B. s 12BAA(1)(a) of the ASIC Act,
 namely CFDs and/or FX Contracts; and
 - (ii) in the premises in (i) – a financial service within the meaning of:
 - A. ss 766A(1) and 766B(1) of the Corporations Act; and
 - B. s 12BAB(1) of the ASIC Act;
- (c) made in connection with the supply, possible supply, or promotion of the supply or use of financial services within the meaning of s 12BAB(1) of the ASIC Act, namely financial product advice and dealing in financial products;
- (d) likely to induce persons in this jurisdiction to apply for, dispose of or acquire financial products, namely CFDs or FX Contracts;

Particulars

ASIC refers to and repeats paragraph 14(c) above and the particulars to that paragraph.

- (e) made in circumstances where USG:
 - (i) knew, or ought reasonably to have known, that the statement the subject of the representation was:
 - A. false in a material particular;
 - B. further or in the alternative, materially misleading;
 - (ii) further or in the alternative, did not care whether the statement was true or false.

Particulars

This is to be inferred from the fact that:

- A. the Sales Representatives:

- 1) made the representations with the material purpose of convincing as many customers as possible to open a Trading Account with USG;
 - 2) were paid bonuses by reference to the number of customers who opened a Trading Account and their trading volume and total deposits;
- B. USG remunerated the Sales Representatives as set out in A above;
 - C. USG reviewed telephone calls between the Sales Representatives and its customers (including the making of the representations); and
 - D. to the extent that USG provided training to its Sales Representatives, it encouraged, or alternatively was inadequate to discourage, Sales Representatives from making the representations.

Further, USG had no proper basis for making the representations having regard to the matters set out in paragraph 57 in circumstances where it ought have known they were false given the nature of its business and the matters set out above.

65. Further, in relation to financial products issued by USG, EuropeFX made the EuropeFX Representations for and on behalf of USG, by reason of the fact that EuropeFX made the representations:
 - (a) as agent of USG, and within the scope of EuropeFX's apparent authority; further or in the alternative,
 - (b) with the consent of USG.

Particulars

ASIC refers to and repeats the particulars to paragraph 39 above. ASIC relies on s 12GH of the ASIC Act.

66. Further, in relation to financial products issued by USG, TradeFred made the TradeFred Representations for and on behalf of USG, by reason of the fact that TradeFred made the representations:
 - (a) as agent of USG, and within the scope of TradeFred's apparent authority; further or in the alternative,
 - (b) with the consent of USG.

Particulars

ASIC refers to and repeats the particulars to paragraph 40 above. ASIC relies on s 12GH of the ASIC Act.

67. Accordingly:

- (a) by reason of the matters:
 - (i) in paragraphs 55 and 56 above, or alternatively paragraph 57 above, by making the USG Profit Representations, USG Revenue Representations and the Rob Clayton Report Representations;
 - (ii) in paragraph 57 above in respect of the Rob Clayton Representations and the USG Regulation Representations;
 - (iii) in paragraphs 43 to 47, 58 to 60 and 65 by EuropeFX making the EuropeFX Representations for and on behalf of USG;
 - (iv) in 48 to 52, 61 to 63 and 66 by TradeFred making the TradeFred Representations for and on behalf of USG;
- (b) USG engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:
 - (i) s 1041H(1) of the Corporations Act; and
 - (ii) s 12DA(1) of the ASIC Act; and
- (c) USG made statements that were false in a material particular or materially misleading in contravention of s1041E(1) of the Corporations Act.

68. Further, by reason of the matters in:

- (a) paragraphs 55 and 56 above, or alternatively paragraph 57(a) above, by making the USG Profit Representations, USG made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that it was reasonably likely, alternatively that there was a reasonable prospect, that customers

would earn the profits or income stated by the Sales Representative, in contravention of s 12DB(1)(e) of the ASIC Act;

- (b) paragraphs 55 and 56 above, or alternatively paragraph 57(c) above, by making the Rob Clayton Report Representations, USG made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely that the financial product advice provided through the provision of the Rob Clayton Reports had the characteristics stated by the Sales Representative, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had certain performance characteristics, uses or benefits, namely that that the financial product advice provided through the provision of the Rob Clayton Reports had the characteristics stated by the Sales Representative, in contravention of s 12DB(1)(e) of the ASIC Act;
- (c) paragraph 57(d) above, by making the Rob Clayton Representations, USG made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products were of a particular standard or quality, namely that the financial product advice provided through the provision of the Rob Clayton Reports had been prepared by a person with the experience or credentials stated by the Sales Representative, in contravention of s 12DB(1)(a) of the ASIC Act;
- (d) paragraph 57(e) above, by making the USG Regulation Representations, USG made false or misleading representations that financial services it provided, namely financial product advice, and/or dealing in financial products:
 - (i) were of a particular standard or quality, namely as to the level of risk to which customers were exposed by trading CFDs and FX Contracts, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) had approval, namely the approval of ASIC, in contravention of s 12DB(1)(e) of the ASIC Act.

D. UNCONSCIONABLE CONDUCT

D.1 EuropeFX unconscionable conduct

69. During its Relevant Period, EuropeFX 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:

- (a) had the following features or characteristics:
- (i) the features in paragraphs 15 to 20 and 24 above;
 - (ii) Account Managers engaged on behalf of EuropeFX directed its customers to download software that would allow Account Managers to remotely view the customer's computer in order to:
 - A. ascertain how much money the customers had available for transferring to trading accounts; and/or
 - B. show the customers what trades they should place;
 - (iii) Account Managers and/or Sales Representatives engaged by or on behalf of EuropeFX made the EuropeFX Representations;
 - (iv) Account Managers engaged by or on behalf of EuropeFX made the EuropeFX Advice Statements as set out in paragraph 27 above;
 - (v) the purpose, alternatively a material purpose, of increasing the amount of money that customers deposited to Trading Accounts, and maximising the amount that the customers lost;
 - (vi) by reason of the matters set out in paragraphs 16 and 20 above, EuropeFX received, in respect of 95-99% of its customers, financial benefits when the customers incurred financial losses on CFDs and/or FX Contract positions that EuropeFX had advised the customers to open;
 - (vii) Account Managers were compensated by commission payments, the quantum of which were determined in whole or in part by the quantum of the net funds deposited by customers to their Trading Account;
 - (viii) to the extent that EuropeFX provided training to its Account Managers and/or Sales Representatives (including via the entities engaged by EuropeFX referred to in paragraphs 18(e) and 18(f) above), it encouraged, or alternatively was inadequate to discourage, Account Managers and/or Sales Representatives engaging in the conduct pleaded in paragraph 71 below;
 - (ix) EuropeFX was aware that its Account Managers and/or Sales Representatives were engaging in conduct of the kind described in paragraph 71 below.

Particulars

ASIC refers to and repeats the particulars to paragraph 58(e) above.

- (x) potential customers came to EuropeFX by registering and providing personal details through online advertising, including advertising for Bitcoin automatic trading software programs, referred to variously as Bitcoin Future, Bitcoin Revolution, Bitcoin Trader or Crypto Revolution (among others), which was not a service offered by EuropeFX and which mischaracterised the nature of the services offered EuropeFX, the risk associated with those services, and the level of involvement, experience and comprehension required of the prospective customer;
 - (b) was in all the circumstances unconscionable.
70. Further or in the alternative to the allegations in paragraph 69 above, by reason of the matters in paragraph 71 below, EuropeFX engaged in conduct in relation to the customers identified in Annexure E.1. that was:
- (a) conduct in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts); and
 - (b) in the case of each individual customer, in all the circumstances unconscionable.
71. The circumstances in paragraphs 69 and 70 included that EuropeFX, by its Account Managers and/or Sales Representatives:

Particulars

ASIC refers to and repeats paragraph 15 to 20 and 24 above and the particulars to that paragraph.

EuropeFX dealt in CFDs and/or FX Contracts issued under the First, Second and Third EuropeFX PDSs by arranging for its customers to acquire those financial products within the meaning of s 766C(2) of the Corporations Act.

The customers to whom each circumstance applied, and the particulars of those circumstances are set out in Annexure E.1.

Further particulars will be provided after ASIC files its further evidence and/or the production of further documents by each defendant.

- (a) did not provide any, or any adequate, explanation or disclosure of the risks involved in investing those products, being risks of which EuropeFX was or ought reasonably to have been aware (referred to as **Inadequate explanation of risk** in Annexure E.1);

Particulars

Account Managers engaged by or on behalf of EuropeFX:

- A. provided no explanation to customers regarding the risks of investing in CFDs or FX Contracts;
 - B. provided an inadequate or inaccurate explanation to customers regarding the risks of investing in CFDs or FX Contracts, including by mischaracterising the risk of particular investments or scenarios as low or conservative; or
 - C. having provided some explanation of the risk, said to the customer that, or words to the effect that, the risk could be managed by the customer:
 - 1) following the Account Manager's instructions;
 - 2) depositing additional funds to the customer's Trading Account; or
 - 3) undertaking a specific trading strategy identified by the Account Manager.
- (b) engaged customers who were vulnerable or at a disadvantage:
- (i) in that they variously: had low financial literacy, were inexperienced in trading in FX Contracts and CFDs, 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

Particulars

Particulars of the customers' vulnerability are set out in Annexure F.

- (ii) in circumstances where EuropeFX was aware, alternatively ought reasonably to have been aware, of the customers' vulnerability or disadvantage as set out in subparagraph 71(b)(i) above,

Particulars

ASIC refers to and repeats the particulars to paragraph 30(a) above.

See the responses given by EuropeFX customers to the questionnaire which EuropeFX required the customer to complete upon opening a Trading Account, and the information provided by EuropeFX customers to the customers' Account Managers during telephone calls, which are extracted in Annexure B.1.

(together, separately or in any combination, referred to as **Disadvantage** in Annexure E.1)

- (c) failed to take reasonable steps to ensure that their customers understood the complex products being recommended by EuropeFX and their associated risk (referred to as **Failure to ensure comprehension** in Annexure E.1);
- (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:
 - (i) by requiring the customers to act quickly,
 - (ii) by exerting pressure over the course of lengthy and/or multiple telephone conversations,
 - (iii) in respect of customers who:
 - A. were at a disadvantage; and/or
 - B. 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;

(together, separately or in any combination, referred to as **Pressure to invest** in Annexure E.1);
- (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,

(referred to as **Unfair promotions** in Annexure E.1);
- (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,
- (together, separately or in any combination, referred to as **Remotely viewing bank balance** in Annexure E.1);
- (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, EuropeFX 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,

(together, separately or in any combination, referred to as **Unfair trading strategies** in Annexure E.1),

- (h) having unreasonable impediments or delays to customers withdrawing money from their Trading Accounts, including encouraging customers to cancel withdrawals (referred to as **Unreasonable impediment to withdrawal** in Annexure E.1);
- (i) having unreasonable impediments or delays to customers closing CFD or FX Contract positions (referred to as **Unreasonable impediment to closing positions** in Annexure E.1);
- (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 (referred to as **Encouraging reliance** in Annexure E.1);

- (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 (referred to as **Encouraging use of borrowed funds, remaining savings or superannuation** in Annexure E.1);
- (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 (referred to as **Negative impact of trading** in Annexure E.1);
- (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),

(referred to as **Encouraging ongoing trading by reference to Trading Account balance** in Annexure E.1);

- (n) upon customers closing their Trading Account and making a complaint to EuropeFX, Account Managers and/or representatives or agents engaged by or on behalf of EuropeFX who identified themselves as being part of the EuropeFX "Client Relations Department":

- (i) encouraged the customers not to report the matter to ASIC or AFCA;
- (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 EuropeFX was the only available means, or the best means, of recovering any of the customer's money,

(together, separately or in any combination, referred to as **Unfair complaint resolution process** in Annexure E.1);

- (o) encouraged prospective customers to open a Trading Account with EuropeFX by informing the customer that EuropeFX 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 EuropeFX, and where this mischaracterised the nature of the services offered by EuropeFX, the risk associated with

those services, and the level of involvement, experience and comprehension required of a prospective customer (referred to as **Bitcoin automatic trading** in Annexure E.1); and

- (p) 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 (referred to as **Failure to apply qualification criteria** in Annexure E.1).

Particulars

ASIC Regulatory Guide 227, *Over-the-counter contracts for difference: Improving disclosure for retail investors* at [227.37]-[227.40]

72. The conduct in paragraphs 69 to 71 was conduct in:

- (a) trade or commerce; and
- (b) connection with the supply or possible supply of financial services.

73. By reason of the matters in paragraphs 69 to 72 above, EuropeFX:

- (a) engaged in conduct that was in all circumstances unconscionable; and
- (b) in the premises contravened s 12CB of the ASIC Act.

D.2 TradeFred unconscionable conduct

74. During its Relevant Period, TradeFred 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:

- (a) had the following features or characteristics:
- (i) the features in paragraphs 15 to 17, 21 to 23 and 25 to 26 above;
- (ii) Account Managers engaged on behalf of TradeFred directed its customers to download software that would allow Account Managers to remotely view the customer's computer in order to:
- A. ascertain how much money the customers had available for transferring to trading accounts; and / or
- B. show the customers what trades they should place;
- (iii) Account Managers and/or Sales Representatives engaged by or on behalf of TradeFred made the TradeFred Representations;

- (iv) Account Managers engaged by or on behalf of TradeFred made the TradeFred Advice Statements as set out in paragraph 33 above;
- (v) the purpose, alternatively a material purpose, of increasing the amount of money that customers deposited to Trading Accounts, and maximising the amount that the customers lost;
- (vi) by reason of the matters set out in paragraphs 16 and 23 above, TradeFred received, in respect of 95-99% of its customers, financial benefits when the customers incurred financial losses on CFDs and/or FX Contract positions that TradeFred had advised the customers to open;
- (vii) Account Managers were compensated by commission payments, the quantum of which were determined in whole or in part by the quantum of the net funds deposited by customers to their Trading Account;
- (viii) to the extent that TradeFred provided training to its Account Managers and/or Sales Representatives (including via the entities engaged by TradeFred referred to in paragraphs 21(e) and 21(f) above), it encouraged, or alternatively was inadequate to discourage, Account Managers and/or Sales Representatives engaging in the conduct pleaded in paragraph 76 below;
- (ix) TradeFred was aware that its Account Managers and/or Sales Representatives were engaging in conduct of the kind described in paragraph 76 below;

Particulars

ASIC refers to and repeats the particulars to paragraph 61(e) above.

- (x) potential customers came to TradeFred by registering and providing personal details through online advertising, including advertising for Bitcoin automatic trading software programs, referred to variously as Bitcoin Future, Bitcoin Revolution, Bitcoin Trader or Crypto Revolution (among others), which was not a service offered by TradeFred and which mischaracterised the nature of the services offered by TradeFred, the risk associated with those services, and the level of involvement, experience and comprehension required of the prospective customer.
- (b) was in all the circumstances unconscionable.

75. Further or in the alternative to the allegations in paragraph 74 above, by reason of the matters in paragraph 76 below, TradeFred engaged in conduct in relation to the customers identified in Annexure E.2 that was:

- (a) conduct in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts); and
- (b) in the case of each individual customer, in all the circumstances unconscionable.

76. The circumstances in paragraphs 74 and 75 included that TradeFred, by its Account Managers and/or Sales Representatives:

Particulars

ASIC refers to and repeats paragraph 15 to 17, 21 to 23 and 25 to 26 above and the particulars to that paragraph.

TradeFred dealt in CFDs and/or FX Contracts issued under the First and Second TradeFred PDSs by arranging for its customers to acquire those financial products within the meaning of s 766C(2) of the Corporations Act.

The customers to whom each circumstance applied, and the particulars of those circumstances are set out in Annexure E.2.

Further particulars will be provided after ASIC files its further evidence and/or the production of further documents by each defendant.

- (a) did not provide any, or any adequate, explanation or disclosure of the risks involved in investing those products, being risks of which TradeFred was or ought reasonably to have been aware (referred to as **Inadequate explanation of risk** in Annexure E.2);

Particulars

Account Managers engaged by or on behalf of TradeFred:

- A. provided no explanation to customers regarding the risks of investing in CFDs or FX Contracts;
- B. provided an inadequate or inaccurate explanation to customers regarding the risks of investing in CFDs or FX Contracts, including by mischaracterising the risk of particular investments or scenarios as low or conservative; or
- C. having provided some explanation of the risk, said to the customer that, or words to the effect that, the risk could be managed by the customer:
 - 1) following the Account Manager's instructions;
 - 2) depositing additional funds to the customer's Trading Account; or
 - 3) undertaking a specific trading strategy identified by the Account Manager.

- (b) engaged customers who were vulnerable or at a disadvantage:
- (i) in that they variously: had low financial literacy, were inexperienced in trading in FX Contracts and CFDs, 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

Particulars

Particulars of the customers' vulnerability are set out in Annexure F.

- (ii) in circumstances where TradeFred was aware, alternatively ought reasonably to have been aware, of the customers' vulnerability or disadvantage as set out in subparagraph (i) above,

Particulars

ASIC refers to and repeats the particulars to paragraph 36(a) above.

See the information provided by TradeFred customers to the customers' Account Managers during telephone calls, which are extracted in Annexure B.2.

(together, separately or in any combination referred to as **Disadvantage** in Annexure E.2);

- (c) failed to take reasonable steps to ensure that their customers understood the complex products being recommended by TradeFred and their associated risk (referred to as **Failure to ensure comprehension** in Annexure E.2);
- (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:
- (i) by requiring the customers to act quickly,
- (ii) by exerting pressure over the course of lengthy and/or multiple telephone conversations,
- (iii) in respect of customers who:
- A. were at a disadvantage; and/or
- B. 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;

(together, separately or in any combination, referred to as **Pressure to invest** in Annexure E.2);

(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,

(referred to as **Unfair promotions** in Annexure E.2);

(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,

(together, separately or in any combination referred to as **Remotely viewing bank balance** in Annexure E.2);

(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, TradeFred 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,

(together, separately or in any combination referred to as **Unfair trading strategies** in Annexure E.2),

- (h) having unreasonable impediments or delays to customers withdrawing money from their Trading Accounts, including encouraging customers to cancel withdrawals (referred to as **Unreasonable impediment to withdrawal** in Annexure E.2);
- (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 (referred to as **Encouraging reliance** in Annexure E.2);
- (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 (referred to as **Encouraging use of borrowed funds, remaining savings or superannuation** in Annexure E.2);
 - (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 (referred to as **Negative impact of trading** in Annexure E.2);
 - (l) encouraged prospective customers to open a Trading Account with TradeFred by informing the customer that TradeFred 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 TradeFred, and where this mischaracterised the nature of the services offered by TradeFred, the risk associated with those services, and the level of involvement, experience and comprehension required of a prospective customer (referred to as **Bitcoin automatic trading** in Annexure E.2); 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 (referred to as **Failure to apply qualification criteria** in Annexure E.2).

Particulars

ASIC Regulatory Guide 227, *Over-the-counter contracts for difference: Improving disclosure for retail investors* at [227.37]-[227.40]

77. The conduct in paragraphs 74 to 76 was conduct in:

- (a) trade or commerce; and
- (b) connection with the supply or possible supply of financial services.

78. By reason of the matters in paragraphs 74 to 77 above, TradeFred:

- (a) engaged in conduct that was in all circumstances unconscionable; and
- (b) in the premises contravened s 12CB of the ASIC Act.

D.3 USG unconscionable conduct

D.3.1 USG – EuropeFX’s unconscionable conduct undertaken for and on behalf of USG

79. Further to the allegations in paragraph 70 above, by reason of the matters in paragraph 72 above, USG engaged in conduct in relation to the customers identified in Annexure E.1, that was:

- (a) conduct in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts); and
- (b) in the case of each individual customer, in all the circumstances unconscionable.

80. The conduct in paragraphs 69 to 73 and 79 was:

- (a) conduct in:
 - (i) trade or commerce; and
 - (ii) connection with the supply or possible supply of financial services; and
- (b) conduct engaged in:
 - (i) as principal; and
 - (ii) for and on behalf of USG, by reason of the fact that EuropeFX undertook that conduct:
 - A. as agent of USG, and within the scope of EuropeFX’s apparent authority; further or in the alternative,
 - B. with the consent of USG.

Particulars

ASIC refers to and repeats the particulars to paragraph 39(b) above.

ASIC relies on s 12GH of the ASIC Act.

81. By reason of the matters in paragraphs 69 to 73 and 79 to 80 above, USG:

- (a) engaged in conduct that was in all circumstances unconscionable; and
- (b) in the premises contravened s 12CB of the ASIC Act.

D.3.2 USG – TradeFred's unconscionable conduct undertaken for and on behalf of USG

82. Further to the allegations in paragraph 75 above by reason of the matters in paragraph 77 above, USG engaged in conduct in relation to the customers identified in Annexure E.2 that was:

- (a) conduct in connection with the supply or possible supply of financial services (namely providing financial product advice and/or dealing in CFDs or FX Contracts); and
- (b) in the case of each individual customer, in all the circumstances unconscionable.

83. The conduct in paragraphs 74 to 78 and 82 was:

- (a) conduct in:
 - (i) trade or commerce; and
 - (ii) connection with the supply or possible supply of financial services; and
- (b) conduct engaged in:
 - (i) as principal; and
 - (ii) for and on behalf of USG, by reason of the fact that TradeFred undertook that conduct:
 - A. as agent of USG, and within the scope of TradeFred's apparent authority; further or in the alternative,
 - B. with the consent of USG.

Particulars

ASIC refers to and repeats the particulars to paragraph 40(b) above. ASIC relies on s 12GH of the ASIC Act.

84. By reason of the matters in paragraphs 74 to 78 and 82 to 83 above, USG:

- (a) engaged in conduct that was in all circumstances unconscionable; and
- (b) in the premises contravened s 12CB of the ASIC Act.

E. USG’S FAILURE TO PROVIDE FINANCIAL SERVICES EFFICIENTLY, HONESTLY AND FAIRLY

85. From at least 11 April 2019 until 8 July 2020 (when it went into administration) USG:

- (a) encouraged persons located in the People's Republic of China (excluding Macau, Hong Kong and Taiwan) (**China**) to become its customers; and

Particulars

USG engaged Introducing Brokers, including in China, to encourage persons located in China to become its customers and trade in FX Contracts.

Introducing Brokers used methods such as social media (including WeChat and QQ), discussion forums and email (among others) to contact potential new customers in China.

As at 14 November 2019, the simplified Chinese version of USG’s website:

- (a) as compared to the English version, contained an extra tab at the top of the first page of the website which says “Special Promotions/Marketing Events”. This tab contained details about promotional activities, forex exhibitions, forex contests, forex seminars and a page containing a series of educational videos about training. The promotional activities page contained offers limited to customers from China. The videos (not accessible on the English version of USG’s website) are presented on a webpage with the China Central Television (**CCTV**) logo displayed in a banner at the top; and
- (b) stated that USG is a premium Australian forex and CFD broker which enables customers worldwide to trade in currency pairs, indices and commodities safely and securely online.

USG engaged companies with offices in Taiwan and Hong Kong to assist to manage the Introducing Brokers in China, and to run in China the promotional activities, forex exhibitions, forex contests, and forex seminars referred to in (a) above.

- (b) provided its financial services to customers located in China by issuing FX Contracts for the customers to trade.

Particulars

Introducing Brokers would introduce customers in China to USG. The customers would then trade FX Contracts issued by USG.

<i>Month</i>	<i>Total number of customers in China who traded FX Contracts issued by USG</i>
Mar-19	6,575
Apr-19	7,037
May-19	7,387
Jun-19	7,561
Jul-19	8,167
Aug-19	7,843
Sep-19	7,586
Oct-19	9,311
Nov-19	8,194
Dec-19	8,729
Jan-20	8,655
Feb-20	8,037
Mar-20	9,140
Apr-20	7,232
May-20	5,950

86. At all material times, it was illegal in China for an organisation to provide FX Contracts to Chinese citizens or residents without being approved or registered to do so and for individuals to trade in FX Contracts through such organisations.

Particulars

See the *Notice Concerning Strictly Investigating Illegal Activities Involving Foreign Exchange Futures and Margin Foreign Exchange Transactions* issued by the China Securities Regulatory Commission.

87. USG has not at any time been approved or registered in China to provide FX Contracts to customers located in China.

Particulars

By letter dated 1 November 2019, the State Administration of Foreign Exchange (**SAFE**) confirmed that SAFE did not approve and had not approved any application or registration of USG to provide margin FX products to Chinese citizens.

88. As a result of the matters set out in paragraphs 85 to 87 above:
- (a) all USG customers located in China who traded FX Contracts contravened the laws of China; and

- (b) in providing its financial services to customers located in China, USG necessarily exposed those customers to civil or criminal liability under Chinese law, depending on the gravity of the offence.

Particulars

The customers were exposed to the following penalties:

Administrative penalties: any illegal income will be confiscated and a fine of not more than 30% of the illegal amount involved in the unlawful purchase or sale or repurchase or resale imposed. When the case is serious, a fine ranging from 30% of the illegal amount up to the equivalent value will be imposed: Article 45 of the PRC Foreign Exchange Control Regulations.

Criminal penalties: in serious circumstances, the person may be sentenced to a fixed-term imprisonment of not more than five years or may, either additionally or exclusively, be fined not less than one time but not more than five times the amount of the illegal gains. In particularly serious circumstances, the person may be sentenced to a fixed-term imprisonment of not less than five years and may also be fined not less than one time but not more than five times the amount of the illegal gains or may be subject to confiscation of property: Article 2 of the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Laws in the Handling of Criminal Cases Involving Illegal Fund Payment and Settlement Business and Illegal Foreign Exchange Trading.*

89. As a result of the matters set out in paragraphs 85 to 88 above, USG contravened the laws of China.
90. USG did not inform customers located in China that:
- (a) it was not authorised to market or provide FX Contracts in China; and
- (b) they may be exposed to civil and criminal liability under Chinese law for trading FX Contracts.

Particulars

The simplified Chinese version of USG's website did not contain any warning as to these matters. Instead, USG actively sought to encourage China-based customers to trade using its margin FX products.

Further, ASIC refers to and repeats the particulars to paragraph 85.

91. From at least 11 April 2019, USG was aware that there was at least a risk that AFSL holders with customers located in China may be conducting unlicensed or illegal activities in China if they were providing margin FX Contracts to retail customers in China.

Particulars

On 11 April 2019, ASIC issued a media release in which it notified the market that in ASIC's view, AFS licensees offering OTC derivatives to retail investors located in some overseas jurisdictions may be providing unlicensed or unauthorised services in those jurisdictions; AFS licensees offering OTC derivatives to overseas retail clients should, as a matter of priority, seek advice on the legality of their offerings to these clients; and AFS licensees with China-based clients may be conducting unlicensed or illegal activities in China if they are providing margin foreign exchange products to retail clients in China. Following that media release, USG failed to obtain proper legal advice as to the legality of its offerings to its financial products to retail clients in China, in that it failed to seek legal advice on the basis of complete instructions and on all relevant issues.

92. In engaging in the conduct set out at paragraph 85 above, USG carried on a financial services business with customers located in China within this jurisdiction.

Particulars

ASIC refers to and repeats paragraph 14(c) above and the particulars to that paragraph and 14(d) above and further relies on the following particulars:

- A. USG does not operate using subsidiaries either in Australia or overseas. Save for the use of corporate authorised representatives, it conducts all of its business directly in its own right.
- B. On the Simplified Chinese version of its website, USG emphasises that it is a premium Australian forex and CFD broker, that it is regulated by ASIC and that it holds an AFSL thereby representing that all its business is conducted under and by reference to the AFSL.
- C. In various responses to statutory notices issued by ASIC, USG has included information about customers based in China thereby confirming that such customers are a part of its business regulated under its AFSL.
- D. The contracts entered into by USG with all customers since 11 April 2019 are covered by the Second and Third USG PDS's. Clause 5.2 of each provides that:

This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia. The parties agree to irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

- E. USG accounts for the profits and losses associated with all of its customers, including those based in China, in Australia.
- F. USG's client trust accounts for all customers (including offshore customers) are held with the Commonwealth Bank of Australia in accounts maintained in Sydney.

93. As a result of the matters set out at paragraphs 85 to 92 above, from 11 April 2019 USG failed to do all things necessary to ensure that its financial services covered by its AFSL were provided efficiently, honestly and fairly and therefore contravened s 912A(1)(a) of the *Corporations Act*.

94. By reason of the matters referred to in paragraph 93 above, USG has contravened s 912A(5A) of the *Corporations Act*.

F. RELIEF

95. Customers of EuropeFX, TradeFred and USG have suffered losses as a result of the conduct referred to above in this statement of claim.

96. On the basis of the matters set out above, ASIC claims the relief set out in its originating process.

Date: 12 April 2021



.....
Signed by Frederick Michael Prickett
Lawyer for the plaintiff

This pleading was prepared by Fred Prickett and JK Muckersie, lawyers for the plaintiff, and settled by David Thomas SC and David Birch of counsel.

Certificate of lawyer

I Frederick Michael Prickett certify to the Court that, in relation to the statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 12 April 2021



.....
Signed by Frederick Michael Prickett
Lawyer for the plaintiff