

FIRST DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018/52431

TITLE OF PROCEEDINGS

First plaintiff	Epaminondas Mastoris
Second plaintiff	Lena Mastoris
First defendant	DSHE Holdings Limited (receivers and managers appointed)(in liquidation) ACN 166 237 841
Number of defendants	3

FILING DETAILS

Filed for	DSHE Holdings Limited (receivers and managers appointed)(in liquidation) First defendant
Filed in relation to	Plaintiffs' claim
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COMMERCIAL LIST RESPONSE

A. NATURE OF DISPUTE

1. The Plaintiffs have commenced representative proceedings against DSHE Holdings Ltd (**DSHE**) and its directors Nicholas Abboud (**Abboud**) and Michael Potts (**Potts**) on their own behalf and on behalf of persons who acquired an interest in fully paid ordinary shares in DSHE during the period 14 November 2013 to 3 January 2016.
2. The Plaintiffs allege, amongst other things, that DSHE:
 - (a) in publishing the Prospectus:
 - (i) failed to disclose material information in contravention of s728(1) of the *Corporations Act 2001* ;and

- (ii) engaged in misleading and deceptive conduct in contravention of s1041H of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law* ;
 - (b) failed to communicate information which would have had a material effect on the price or value of shares in contravention of s674(2) of the *Corporations Act*; and
 - (c) by publishing its 2014 Half Yearly Results, 2014 Yearly Results, 2015 Half Yearly Results and 2015 Yearly Results engaged in misleading and deceptive conduct in contravention of s1041H of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law*.
- 3. The Plaintiffs allege that they and Group Members suffered loss and damage as a result of the matters referred to paragraph 2 above.
 - 4. DSHE denies that it is liable to the Plaintiffs and Group Members.

B. ISSUES LIKELY TO ARISE

- 1. DSHE agrees that the common questions identified the Plaintiffs in paragraph 288 of the Statement of Claim are likely to arise in the proceedings.
- 2. Whether any of the alleged breaches of s1041H, s728 and s674(2) of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law* affected the price at which shares in the First Defendant were, or would have been, bought and sold.
- 3. Whether the Plaintiff and Group Members suffered loss or damage as alleged by the Plaintiff.
- 4. Whether the Plaintiffs and Group suffered loss and damage as a result of the alleged contraventions by DSHE by reason of 'market based causation' or by reason of direct reliance on the alleged representations made by DSHE.
- 5. The quantification of any damages to which the Plaintiff or a Group Member is entitled.
- 6. If any of the defendants are found liable, whether their liability be reduced proportionately having regard to the extent of responsibility for the loss of each liable defendant and the extent to which any other concurrent wrongdoer is liable for that same loss.

C. DEFENDANT'S RESPONSES TO CONTENTIONS

Contents

A.	PARTIES	4
A.1	The Plaintiffs and Group Members	4
A.2	The First Defendant	5
A.3	DSHE's Group Reporting Obligations	5
B.	THE SECOND AND THIRD DEFENDANTS	5
C.	BACKGROUND	6
D.1	Share Sale Agreement	6
D.2	Acquisition Accounting	7
E.	EVENTS FOLLOWING THE ACQUISITION	8
F.	THE PROSPECTUS	9
F.1	The Key Offer Statistics	9
F.2	2013 Financial Representations	9
F.3	Obsolete Stock Representations	10
F.4	1Q2014 Representations	11
F.5	Transformation Representations	11
F.6	Growth & Forecast Representations	12
F.7	Compliance Representations	12
G.	PROSPECTUS MATERIAL FACTS	12
G.1	Sales	12
G.2	Rebates	16
G.3	Inventories	18
G.4	Non Disclosed Adjustments	20
G.5	Liquidity and Capital Adequacy	22
G.6	Undisclosed Material Facts	23
H.	POST PROSPECTUS REPRESENTATIONS	25
H.1	2014 Half Yearly Results	25
H.2	2014 Yearly Results	25
H.3	2015 Half Yearly Results	26
H.4	2015 Yearly Results	26
I.	POST PROSPECTUS MATERIAL FACTS	27
I.1	Post Prospectus Sales	27
I.2	Post Prospectus Rebates	27
J.	WHAT DICK SMITH HOLDINGS OUGHT REASONABLY TO HAVE KNOWN	32
J.1	What Abboud and/or Potts ought reasonably to have known or ought reasonably to, by making enquiries, obtained at the Prospectus date	32
J.2	What Abboud and Potts ought reasonably to have known after the Prospectus date	35
J.4	What Dick Smith Holdings ought reasonably to have known or obtained after the Prospectus Date	37
K.	PROSPECTUS CONTRAVENTIONS	37
K.1.	Section 728 Contravention	37

K.2	Continuous disclosure breaches in respect of the Material Prospectus Information	40
K.3	Misleading and deceptive conduct and section 1041E liability in relation to the Prospectus Misleading Statements	40
L.	POST-PROSPECTUS CONTRAVENTIONS	41
L.1	Continuous Disclosure	41
L.2	Misleading and Deceptive Conduct Contraventions	42
M.	MISLEADING OR DECEPTIVE CONDUCT BY ABBODD	45
<i>M.1.1</i>	<i>2014 Half Yearly Results</i>	<i>45</i>
<i>M.1.3</i>	<i>2015 Half Yearly Results</i>	<i>45</i>
<i>M.1.4</i>	<i>2015 Yearly Results</i>	<i>46</i>
N.	MISLEADING OR DECEPTIVE CONDUCT BY POTTS	46
<i>N.1.1</i>	<i>2014 Half Yearly Results</i>	<i>46</i>
<i>N.1.2</i>	<i>2014 Yearly Results</i>	<i>46</i>
<i>N.1.3</i>	<i>2015 Half Yearly Results</i>	<i>47</i>
<i>N.1.4</i>	<i>2015 Yearly Results</i>	<i>47</i>
O.	CAUSATION, LOSS AND DAMAGE	47
O.1	Prospectus Subscribers	47
O.2	Shares Purchased on the secondary market	48
P.	COMMON QUESTIONS	49
Q.	DEFENCES	50
Q.1	Section 1317S	50
Q.2	Proportionate Liability – Apportionable claims	50
Q.2.1	Proportionate Liability — Abboud and Potts	50
Q.2.2	Proportionate Liability — Other DSHE Directors	56
Q.2.3	Proportionate Liability — Deloitte Touche Tohmatsu	63
Q.2.4	Proportionate Liability — Deloitte Corporate Finance Pty Ltd	94

RELIEF CLAIMED

1. DSHE denies the Plaintiffs and Group Members are entitled to the matters in paragraphs 1 to 5 of the Relief Claimed in the Statement of Claim.

PLEADINGS AND PARTICULARS

A. PARTIES

A.1 The Plaintiffs and Group Members

1. In answer to paragraph 1 of the Statement of Claim, DSHE:
 - (a) admits that the proceeding has been commenced as a representative proceeding;
 - (b) denies any allegation contained in paragraph 1(d); and

- (c) otherwise does not know and cannot admit any allegation contained in paragraph 1.
- 2. In answer to paragraph 2 of the Statement of Claim, DSHE:
 - (a) does not know and cannot admit the allegations contained in paragraph A1 of Annexure A;
 - (b) does not know and cannot admit the allegations contained in paragraph A2 of Annexure A;
 - (c) does not know and cannot admit the allegations contained in paragraph A3 of Annexure A;
 - (d) does not know and cannot admit the allegations contained in paragraph A4 of Annexure A;
 - (e) denies the allegations contained in paragraph A5 of Annexure A.
- 3. DSHE does not know and cannot admit the allegations contained in paragraph 3 of the Statement of Claim.

A.2 The First Defendant

- 4. DSHE admits the allegations contained in paragraph 4 of the Statement of Claim.
- 5. DSHE admits the allegations contained in paragraph 5 of the Statement of Claim.

A.3 DSHE's Group Reporting Obligations

- 6. DSHE admits the allegations contained in paragraph 6 of the Statement of Claim and relies upon Australian Accounting Standards AASB 3, AASB 101, AASB 102, AASB 108, AASB 116, AASB 118, AASB 132, AASB 136, AASB 137, AASB 139 and AASB 1031 for their full terms and effect.
- 7. DSHE admits the allegations contained in paragraph 7 of the Statement of Claim.
- 8. DSHE admits the allegations contained in paragraph 8 of the Statement of Claim.

B. THE SECOND AND THIRD DEFENDANTS

- 9. DSHE admits the allegations contained in paragraph 9 of the Statement of Claim.
- 10. DSHE admits the allegations contained in paragraph 10 of the Statement of Claim.

11. DSHE denies the allegations in paragraph 11 of the Statement of Claim.

C. BACKGROUND

12. DSHE admits the allegations in paragraph 12 of the Statement of Claim.
13. DSHE admits the allegations in paragraph 13 of the Statement of Claim.
14. DSHE admits the allegations in paragraph 14 of the Statement of Claim.
15. DSHE admits the allegations in paragraph 15 of the Statement of Claim.
16. DSHE admits the allegations in paragraph 16 of the Statement of Claim.

D. THE ACQUISITION

D.1 Share Sale Agreement

17. DSHE admits the allegations in paragraph 17 of the Statement of Claim.
18. DSHE denies the allegations in paragraph 18 of the Statement of Claim and says that at the time of Acquisition Dick Smith Sub-Holdings Pty Ltd (**DSSH**) was owned:
- (a) 98% by Anchorage Capital Partners Pty Ltd; and
 - (b) 2% by LMA Investments Pty Ltd.
19. DSHE admits the allegations in paragraph 19 of the Statement of Claim.
20. In answer to paragraph 20 of the Statement of Claim, DSHE:
- (a) relies on the Share Sale Agreement for its full terms and effect; and
 - (b) otherwise does not admit the allegations contained in the said paragraph.
21. In response to paragraph 21 of the Statement of Claim, DSHE:
- (a) relies on the Forgiveness and Release Deed for its full terms and effect;
 - (b) says that Woolworths would forgive all amounts owing by Dick Smith to Woolworths at the Effective Time (as defined in the Forgiveness and Release Deed) less:
 - (i) \$15 million;

- (ii) all amounts owing in the normal course of trading on arm's length terms by Dick Smith to Woolworths in respect of inventory procured through Woolworths' Hong Kong sourcing office at the Effective Time;
 - (iii) an amount equal to the Completion Net Amount (if any) to the extent the Completion Net Amount is payable by Dick Smith to Woolworths (as the Seller) according to the operation and terms of clause 6.1 of the Share Sale Agreement; and
 - (iv) an amount equal to the Net Amount (if any) to the extent the Net Amount is payable by Dick Smith to Woolworths (as the Seller) according to the operation and terms of clause 6.2 of the Share Sale Agreement;
 - (c) otherwise does not admit the allegations contained in the said paragraph.
22. In response to paragraph 22 of the Statement of Claim, DSHE:
- (a) relies on the Anchorage Exit Payment Deed for its full terms and effect;
 - (b) otherwise does not admit the allegations in the said paragraph.
23. DSHE admits the allegations in paragraph 23 of the Statement of Claim.
24. DSHE does not admit the allegations in paragraph 24 of the Statement of Claim.
25. DSHE does not admit the allegations in paragraph 25 of the Statement of Claim.
- D.2 Acquisition Accounting**
26. DSHE does not admit the allegations in paragraph 26 of the Statement of Claim.
27. In answer to paragraph 27 of the Statement of Claim, DSHE:
- (a) says that DSSH recognised the fair value of assets acquired of \$261.056M
 - (b) otherwise denies the allegations in the said paragraph.
28. In answer to paragraph 28 of the Statement of Claim, DSHE:
- (a) says that DSSH recognised the fair value of assets acquired of \$261.056M; and
 - (b) otherwise does not admit the allegations in the said paragraph.
29. DSHE does not admit the allegations in paragraph 29 of the Statement of Claim.

30. DSHE does not admit the allegations in paragraph 30 of the Statement of Claim.
31. In answer to paragraph 31 of the Statement of Claim, DSHE:
- (a) does not admit the allegations in subparagraph 31(a);
 - (b) as to paragraph 31(b):
 - (i) admits that the financial report of DSSH for the 10 month period ended 30 June 2013 recognised a discount arising on acquisition of \$145.848m; and
 - (ii) otherwise does not admit the allegations in the said subparagraph.
32. DSHE does not plead to paragraph 32 of the Statement of Claim as it does not contain any allegation against it.

E. EVENTS FOLLOWING THE ACQUISITION

33. DSHE admits the allegations in paragraph 33 of the Statement of Claim.
34. DSHE does not admit the allegations in paragraph 34 of the Statement of Claim.
35. DSHE admits the allegations in paragraph 35 of the Statement of Claim.
36. DSHE admits the allegations in paragraph 36 of the Statement of Claim.
37. DSHE admits the allegations in paragraph 37 of the Statement of Claim.
38. DSHE admits the allegations in paragraph 38 of the Statement of Claim.
39. DSHE admits the allegations in paragraph 39 of the Statement of Claim.
40. In answer to paragraph 40 of the Statement of Claim, DSHE:
- (a) says the Total Sources of Funds was \$418.3m;
 - (b) says the Total Uses of Funds was \$418.3m; and
 - (c) otherwise admits the allegations in the said paragraph.
41. DSHE admits the allegations in paragraph 41 of the Statement of Claim.
42. DSHE admits the allegations in paragraph 42 of the Statement of Claim.
43. DSHE admits the allegations in paragraph 43 of the Statement of Claim.

44. DSHE admits the allegations in paragraph 44 of the Statement of Claim.

F. THE PROSPECTUS

45. In answer to paragraph 45 of the Statement of Claim, DSHE;

- (a) relies on ss 709 and 710 of the Corporations Act and ASX Listing Rule 1.7 for their full terms and effect; and
- (b) otherwise admits the allegations in the said paragraph.

46. DSHE admits the allegations in paragraph 46 of the Statement of Claim.

F.1 The Key Offer Statistics

47. DSHE admits the allegations in paragraph 47 of the Statement of Claim.

F.2 2013 Financial Representations

48. In answer to paragraph 48 of the Statement of Claim, DSHE:

- (a) says the Prospectus stated that Historical Financial Information for the three years ended 30 June 2013, was derived from:
 - (i) the audited financial statements of Dick Smith Sub-Holdings for the period from the Acquisition to 30 June 2013; and
 - (ii) the unaudited accounting records of DSE Holdings Pty Ltd (**DSE**) for the period from 28 June 2010 to 26 November 2012;
- (b) says the Prospectus further stated that the income statements for each of the three years ended 30 June 2013 (referred to as pro forma historical financial statements) had the following adjustments applied:
 - (i) sales and contribution to EBIT of the 73 stores that were closed prior to the Acquisition were excluded;
 - (ii) depreciation expense prior to the Acquisition was adjusted to reflect the fair value adjustments recorded to plant and equipment at Acquisition;
 - (iii) interest and tax expense was adjusted to reflect the post-Offer capital structure and borrowings;

Particulars

Prospectus, p 53

- (c) says the Prospectus further stated that the unaudited income statements for the period from 1 July 2010 to 26 November 2012, which were derived from the unaudited accounting records of DSE, excluded certain items, such as inventory impairment, write downs of plant and equipment and onerous lease provisions as those adjustments were not recorded in the DSE unaudited income statements. Those items were charged to either the Acquisition balance sheet or the impairment loss and restructuring provisions;

Particulars

Prospectus, p 53

- (d) otherwise does not admit the allegations in the said paragraph.
49. DSHE admits the allegations in paragraph 49 of the Statement of Claim.
50. In answer to paragraph 50 of the Statement of Claim, DSHE:
- (a) admits the allegations in paragraph 50(a);
 - (b) admits the allegations in paragraph 50(b);
 - (c) admits the allegations in paragraph 50(c);
 - (d) admits the allegations in paragraph 50(d);
 - (e) admits the allegations in paragraph 50(e);
 - (f) admits the allegations in paragraph 50(f);
 - (g) admits the allegations in paragraph 50(g) and further says that depreciation was recognised so as to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation method were reviewed at each year end, with the effect of any changes in estimate accounted for on a prospective basis.

F.3 Obsolete Stock Representations

51. DSHE admits the allegations in paragraph 51 of the Statement of Claim.

F.4 1Q2014 Representations

52. In answer to paragraph 52 of the Statement of Claim, DSHE:

- (a) admits sub-paragraph (a);
- (b) admits sub-paragraph (b);
- (c) admits sub-paragraph (c); and
- (d) says further that the Prospectus stated that:
 - (i) pro forma sales declined by 10.6% to \$273.3 million in 1Q2014 on the previous corresponding period, while like for like pro forma sales declined by 12.2% over the same corresponding period, largely due to the cycling of increased sales in 1Q2013 that were associated with increased promotional and inventory clearance activity;

Particulars

Prospectus, p 66

- (ii) when compared against management's pro forma adjusted 1Q2013 sales, 1Q2014 pro forma sales declined by 2.2% on a total basis and declined by 3.1% on a like for like basis;

Particulars

Prospectus, p 67

- (i) The overall decline of management's adjusted like for like sales in 1Q2014 was driven by adjusted like for like pro forma sales growth in Australia of 2.4%, offset by a decline in adjusted like for like pro forma sales in New Zealand of 24.7%.

Particulars

Prospectus, p 67

F.5 Transformation Representations

53. DSHE admits the allegations in paragraph 53 of the Statement of Claim.

F.6 Growth & Forecast Representations

54. In answer to paragraph 54 of the Statement of Claim, DSHE:

(a) as to paragraph 54(a)(i), says the Prospectus stated that:

- (i) for FY2014, total pro forma sales were forecast to be \$1,226.0 million, representing a 4.2% decline on FY2013 pro forma sales;

Particulars

Prospectus, p 70

- (ii) Pro forma forecast of sales for 1H2014 was 52% of forecast sales;
- (iii) Pro forma forecast of sales for 2H2014 was 48% of forecast sales;

Particulars

Prospectus, p 65

- (iv) Like for like sales on a pro forma adjusted basis were forecast to decline by 2.5% in FY2014;
- (v) for the forecast of like for like sale it was assumed that product and category mix would continue to be weighted towards private label brands, consistent with previous periods;

Particulars

Prospectus, p 70

- (b) otherwise admits the allegations in the subparagraph 54(a);
- (c) does not admit the allegations in the subparagraph 54(b).

F.7 Compliance Representations

55. DSHE admits the allegations in paragraph 55 of the Statement of Claim.

G. PROSPECTUS MATERIAL FACTS

G.1 Sales

Sales Trend

56. In answer to paragraph 56 of the Statement of Claim, DSHE:

- (a) admits Dick Smith Sub-Holdings' pro forma sales decreased from \$1,369.5m in FY2012 to \$1,280.4m in FY2013;
- (b) admits 1Q2014 pro forma sales were \$273.3m;
- (c) further says that the Prospectus stated that:
 - (i) total FY2014 pro forma sales were forecast to decline by 4.2% on FY2013 pro forma sales of \$1,280.4 million;

Particulars

Prospectus, p 70

- (ii) FY2014 pro forma adjusted sales were forecast to increase by 4.1% on FY2013 pro forma adjusted sales of \$1,177.8 million;
- (iii) the adjustment referred to in subparagraph (ii) above reflected the estimate of the sales impact of increased promotional activity that occurred prior to the Acquisition and the inventory clearance activity undertaken prior to and subsequent to the Acquisition to clear aged and obsolete stock. The increase in promotional activity, which was focused primarily on clearance sales, did not represent a level of clearance activity that would be incurred in a normal operating environment;

Particulars

Prospectus, p 57

- (iv) that the overall forecast decline of adjusted like for like sales in 1Q2014 was driven by adjusted like for like pro forma sales growth in Australia of 2.4%, offset by a decline in adjusted like for like pro forma sales in New Zealand of 24.7%;

Particulars

Prospectus, p 67

- (v) pro forma sales decreased by 6.5% to \$1,280.4 million in FY2013, while like for like pro forma sales declined by 5.2%. Pro forma sales were

boosted by the increased promotional and inventory clearance activity in 1H2013 offset by the cycling of strong sales of new exclusive products in the prior year;

Particulars

Prospectus, p 68

- (vi) the consumer electronics sector in Australia and New Zealand had experienced price deflation in several categories, which led to overall market value contraction;

Particulars

Prospectus, p 27

- (vii) Dick Smith Sub-Holding's financial performance was impacted by global economic conditions and their effect on the retail environment. As a result of subdued economic conditions both globally and in Australia and New Zealand, consumer confidence had gone through a period of decline, which had a negative impact on Dick Smith Sub-Holding's financial performance in FY2011, FY2012 and FY2013;

Particulars

Prospectus, p 67

- (d) otherwise does not admit the allegations in the said subparagraph.

57. DSHE does not admit the allegations in paragraph 57 of the Statement of Claim.

58. DSHE does not admit the allegations in paragraph 58 of the Statement of Claim.

59. In answer to paragraph 59 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 56 to 58 of this Commercial List Response;
- (b) otherwise does not admit the allegations in the said paragraph.

Sales Accounting

60. DSHE does not admit the allegations in paragraph 60 of the Statement of Claim.

61. DSHE does not admit the allegations in paragraph 61 of the Statement of Claim.

62. DSHE does not admit the allegations in paragraph 62 of the Statement of Claim.
63. DSHE does not admit the allegations in paragraph 63 of the Statement of Claim and further says that DSHE's auditor, Deloitte Touche Tohmatsu (**DTT**) advised that the reporting of agency sales on a gross rather than net basis was immaterial and had no net income statement impact.

Particulars

- (A) DTT report to Board for the period ended 30 June 2013, section 1.1 and Appendix B
 - (B) DTT report to Finance and Audit Committee for the half-year ended 29 December 2013, section 1.1, section 3.2 and Appendix B
 - (C) DTT report to Finance and Audit Committee for the year ended 29 June 2014, Appendix B and Appendix F
 - (D) DTT report to Finance and Audit Committee for the half-year ended 28 December 2014, Appendix B and Appendix F
 - (E) DTT report to Finance and Audit Committee for the year ended 28 June 2015, Appendix B
64. In answer to paragraph 64 of the Statement of Claim, DSHE:
- (a) refers to and repeats its paragraphs 60 to 63 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph
65. In answer to paragraph 65 of the Statement of Claim, DSHE:
- (a) refers to and repeats its paragraphs 60 to 64 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph

Sales Mix

66. DSHE does not admit the allegations in paragraph 66 of the Statement of Claim.
67. DSHE does not admit the allegations in paragraph 67 of the Statement of Claim.

68. In answer to paragraph 68 of the Statement of Claim, DSHE:

- (a) refers to and repeats its paragraphs 66 and 67 of this Commercial List Response;
- (b) further says that the Prospectus stated that:
 - (i) when compared against management's pro forma adjusted 1Q2013 sales, 1Q2014 pro forma sales declined by 2.2% on a total basis and declined by 3.1% on a like for like basis;

Particulars

Prospectus, p 66-67

- (ii) pro forma sales decreased by 6.5% to \$1,280.4 million in FY2013, while like for like pro forma sales declined by 5.2%;

Particulars

Prospectus, p 68

- (iii) FY2014 pro forma like for like sales were forecast to decline by 10.1% in FY2014. Like for like sales on pro forma adjusted basis were forecast to decline by 2.5% in FY2014, with sales based on a weekly store sales run rate that was being achieved in 1Q2014, adjusted for seasonality;

Particulars

Prospectus, p 70

- (c) otherwise does not admit the allegations in the said paragraph.

G.2 Rebates

69. In answer to paragraph 69 of the Statement of Claim, DSHE:

- (a) admits that Dick Smith Sub-Holdings and/or Dick Smith Holdings obtained rebates, some which were ad hoc and individually negotiated, from suppliers and service providers (**O&A Rebates**);
- (b) says that the accounting treatment which was adopted by the management of DSHE in preparing Post Prospectus Accounts involved such O&A Rebates being recognised immediately in the P&L, either as a Cost of Doing Business or as a

Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A Rebate was allowed to DSHE;

Particulars

- (1) Email from Cork to Potts dated 26 May 2014
 - (2) Email from Potts to White dated 6 June 2014 attaching position papers
 - (c) otherwise does not admit the allegations in the said paragraph.
70. DSHE does not admit the allegations in paragraph 70 of the Statement of Claim,
71. In answer to paragraph 71 of the Statement of Claim, DSHE:
- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph;
 - (b) under cover of the objection in subparagraph (a) above, denies the allegations in the said paragraph.
72. DSHE denies the allegations in paragraph 72 of the Statement of Claim.
73. DSHE denies the allegations in paragraph 73 of the Statement of Claim.
74. In answer to paragraph 74 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraph 73 of this Commercial List Response; and
 - (b) otherwise denies the allegations in the said paragraph.
75. In answer to paragraph 75 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraph 73 of this Commercial List Response; and
 - (b) otherwise denies the allegations in the said paragraph.
76. In answer to paragraph 76 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
 - (b) says that the Prospectus listed corporate/procurement efficiencies and marketing rebates as one of the major drivers of the forecast increase in EBITDA between FY2013 and the forecast period FY2014;

Particulars

Prospectus, p 58

- (c) otherwise does not admit the allegations in the said paragraph.
77. In answer to paragraph 77 of the Statement of Claim, DSHE:
- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph;
 - (b) under cover of the objection in subparagraph (a) above, denies the allegations in the said paragraph.
78. DSHE admits the allegations in paragraph 78 of the Statement of Claim, save that it adopts the definition of O&A Rebate in paragraph 69(a) above.
79. DSHE denies the allegations in paragraph 79 of the Statement of Claim.
80. In answer to paragraph 80 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 69 to 79 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.

G.3 Inventories

81. In answer to paragraph 81 of the Statement of Claim, DSHE:
- (a) relies on Australian Accounting Standards AASB 3 and AASB 102 for their full terms and effect; and
 - (b) otherwise does not admit the allegations in the said paragraph.
82. DSHE does not admit the allegations in paragraph 82 of the Statement of Claim.
83. DSHE does not admit the allegations in paragraph 83 of the Statement of Claim.
84. DSHE does not admit the allegations in paragraph 84 of the Statement of Claim.
85. DSHE does not admit the allegations in paragraph 85 of the Statement of Claim.
86. DSHE does not admit the allegations in paragraph 86 of the Statement of Claim.

87. DSHE does not admit the allegations in paragraph 87 of the Statement of Claim.
88. DSHE denies the allegations in paragraph 88 of the Statement of Claim.
89. In answer to paragraph 89 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 88 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
90. DSHE does not admit the allegations in paragraph 90 of the Statement of Claim.
91. DSHE does not admit the allegations in paragraph 91 of the Statement of Claim.
92. In answer to paragraph 92 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 90 and 91 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
93. In answer to paragraph 93 of the Statement of Claim, DSHE says that:
- (a) in its Report to the Finance and Audit Committee for the half-year ended 28 December 2013, DTT reported that:
 - (i) a provision for uplift of 1% was implemented by management in FY2014 as a tool to build up the obsolescence provision on purchases of inventory;
 - (ii) management made an adjustment to the system to automatically provide 1% on all purchases of inventory; and
 - (iii) a true up calculation was then made to adjust the inventory provision to the required balance and release any excess amount at balance sheet date to profit and loss.

Particulars

- (A) DTT report to Finance and Audit Committee for the half-year ended 29 December 2013, section 3.5
- (b) in its Report to the Finance and Audit Committee for the year ended 28 June 2014, DTT reported that:
 - (i) the 1% provision was recorded for management purposes only; and

- (ii) there was no impact on the inventory amounts reported externally.

Particulars

- (A) DTT report to Finance and Audit Committee for the year ended 29 June 2014, section 3.2

- (c) denies there was a further provision for obsolescence; and
 - (d) otherwise does not admit the allegations in the said paragraph.
94. DSHE does not admit the allegations in paragraph 94 of the Statement of Claim.
95. DSHE does not admit the allegations in paragraph 95 of the Statement of Claim.
96. DSHE does not admit the allegations in paragraph 96 of the Statement of Claim.
97. In answer to paragraph 97 of the Statement of Claim, DSHE:
- (a) refers to and repeats its response to paragraphs 81 to 96 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
98. In answer to paragraph 98 of the Statement of Claim, DSHE:
- (a) refers to and repeats its response to paragraphs 82 to 96 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.

G.4 Non Disclosed Adjustments

Onerous Leases Provision

99. DSHE does not admit the allegations in paragraph 99 of the Statement of Claim.
100. DSHE does not admit the allegations in paragraph 100 of the Statement of Claim.
101. DSHE does not admit the allegations in paragraph 101 of the Statement of Claim.

Receivables Provision

102. DSHE does not admit the allegations in paragraph 102 of the Statement of Claim.
103. DSHE does not admit the allegations in paragraph 103 of the Statement of Claim.

104. DSHE does not admit the allegations in paragraph 104 of the Statement of Claim.

105. In answer to paragraph 105 of the Statement of Claim, DSHE:

- (a) refers to and repeats its response to paragraphs 102 to 104 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

Warranty Sign On Liability

106. DSHE does not admit paragraph 106 of the Statement of Claim and further says that in its Report to the Board for the period ended 30 June 2013, DTT

- (a) reported that "Other adjustments relate primarily to an unearned revenue liability raised in respect of The Warranty Group sign-on bonus. Management ascribed a fair value of \$2.1 million to this liability at acquisition, however due to the requirements of AASB 3 we have assessed the fair value of this as \$nil. This adjustment has been included on the schedule of unadjusted differences in Appendix A";
- (b) recognised an overstatement of Warranty Sign-on fee recognised on acquisition but advised that *'In performing our audit we have not identified any unadjusted differences that could, in our judgement, either individually or in aggregate, have a material effect on the consolidated financial report for the period ended 30 June 2013.'*

Particulars

DTT Report to the Board for the period ended 30 June 2013,
section 2.5 & Appendix A

107. DSHE does not admit the allegations in paragraph 107 of the Statement of Claim.

108. DSHE denies the allegations in paragraph 108 of the Statement of Claim.

Capitalisation of Employee and Other Costs

109. In answer to paragraph 109 of the Statement of Claim:

- (a) admits that after Acquisition DSHE capitalised certain employee and other costs into the cost of assets; and
- (b) otherwise does not admit the allegations in the said paragraph.

110. DSHE does not admit the allegations in paragraph 110 of the Statement of Claim.

111. DSHE denies the allegations in paragraph 111 of the Statement of Claim.

Breakages and Cost Adjustments

112. DSHE does not admit the allegations in paragraph 112 of the Statement of Claim.

113. DSHE does not admit the allegations in paragraph 113 of the Statement of Claim.

114. DSHE does not admit the allegations in paragraph 114 of the Statement of Claim.

Conclusion

115. In answer to paragraph 115 of the Statement of Claim, DSHE

- (a) refers to and repeats paragraphs 99 to 114 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

G.5 Liquidity and Capital Adequacy

Woolworths Payment Information

116. DSHE does not admit the allegations in paragraph 116 of the Statement of Claim.

117. In answer to paragraph 117 of the Statement of Claim, DSHE

- (a) refers to and repeats paragraphs 17 and 25 of this Commercial List Response;
- (b) relies on the Share Sale Agreement and the May 2013 Woolworths Agreement for their full terms and effect; and
- (c) otherwise does not admit the allegations in the said paragraph.

118. In answer to paragraph 118 of the Statement of Claim, DSHE

- (a) refers to and repeats paragraphs 17 and 25 of this Commercial List Response;
- (b) relies on the Share Sale Agreement and the May 2013 Woolworths Agreement for their full terms and effect; and
- (c) otherwise does not admit the allegations in the said paragraph.

119. DSHE does not admit the allegations in paragraph 119 of the Statement of Claim.

120. DSHE does not admit the allegations in paragraph 120 of the Statement of Claim.

121. DSHE does not admit the allegations in paragraph 121 of the Statement of Claim.

Historical Equity and Cash Flow Position

122. In answer to paragraph 122 of the Statement of Claim, DSHE

- (a) admits the allegations in subparagraph 122(a) of the Statement of Claim;
- (b) denies the allegations in subparagraph 122(b) of the Statement of Claim.

123. In answer to paragraph 123 of the Statement of Claim, DSHE admits that the completion of the Offer caused Dick Smith Holdings to incur the cash outflows alleged in subparagraphs (a) and (b) and otherwise does not admit the allegations in the paragraph.

124. DSHE denies allegations in paragraph 124 of the Statement of Claim and further says the notes to the Statutory and pro forma historical consolidated balance sheets in the Prospectus included the following:

- (a) *Impact of the Offer and the New Facility – Adjustment to reflect the payment of \$21.0 million in costs associated with the Offer, payment of \$15.0 million to reflect the adjustment to the purchase price consideration for Dick Smith Sub Shares purchased and payable to the Existing Ordinary Shareholders, payment to Woolworths of \$24.0 million as part of the deferred consideration on the Acquisition and the \$27.2 million drawdown of the New Facility less establishment fees of \$0.7 million*

Particulars

Prospectus, p 60

G.6 Undisclosed Material Facts

125. In answer to paragraph 125 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 26-32, 54, 65, 68, 76, 98, 115, 120 and 124 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

126. In answer to paragraph 126 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 61, 71, 73 and 88 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
127. In answer to paragraph 127 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 26-32, 65, 76, 98, 115 and 126 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
128. In answer to paragraph 128 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 26-31, 65, 76, 98, 115, 120 and 126 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
129. In answer to paragraph 129 of the Statement of Claim, DSHE:
- (a) refers to and repeats 61, 71, 73 and 88 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
130. In answer to paragraph 130 of the Statement of Claim, DSHE:
- (a) refers to and repeats 26-32, 65, 76, 98, 115 and 129 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
131. In answer to paragraph 131 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 61, 71, 73, 88 and 129 of this Commercial List Response;
 - (b) otherwise does not admit the allegations in the said paragraph.
132. In answer to paragraph 132 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 131 of this Commercial List Response;
 - (b) otherwise does not admit the allegations in the said paragraph.

133. In answer to paragraph 133 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 125, 126, 129 and 131 of this Commercial List Response;
 - (b) otherwise does not admit the allegations in the said paragraph.
134. In answer to paragraph 134 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 125 to 133 of this Commercial List Response;
 - (b) otherwise does not admit the allegations in the said paragraph.

H. POST PROSPECTUS REPRESENTATIONS

H.1 2014 Half Yearly Results

135. DSHE admits the allegations in paragraph 135 of the Statement of Claim and relies on the 19 February 2014 Announcement to the ASX, the 1H2014 Results Briefing and the 2014 Half Year Results for their full terms and effect.
136. In answer to paragraph 136 of the Statement of Claim, DSHE:
- (a) admits subparagraphs 136(a), (c), (d) and (e); and
 - (b) as to subparagraph 136(b), says that the 2014 Half Yearly Results made the statement that Australian pro forma adjusted like for like sales growth of 1.4% reflected the level of discounting in 1H2013 and otherwise does not admit the subparagraph.
137. In answer to paragraph 137 of the Statement of Claim, DSHE:
- (a) as to subparagraph 137(a) refers to and repeats paragraphs 137 of the Commercial List Responses filed by the Second and Third Defendants; and
 - (b) otherwise admits the allegations in the said paragraph.

H.2 2014 Yearly Results

138. DSHE admits the allegations in paragraph 138 of the Statement of Claim and relies on the FY2014 Results for their full terms and effect.
139. In answer to paragraph 139 of the Statement of Claim, DSHE:

(a) as to subparagraph 139(b) says the 19 August 2014 announcement to the ASX stated that *"the Company's strong growth and trading focus delivered results ahead of the Prospectus forecasts"* and otherwise does not admit the subparagraph; and

(b) otherwise admits the allegations in the said paragraph.

140. DSHE admits the allegations in paragraph 140 of the Statement of Claim.

H.3 2015 Half Yearly Results

141. DSHE admits the allegations in paragraph 141 of the Statement of Claim and relies on the 2015 Half Yearly Results for their full terms and effect.

142. In answer to paragraph 142 of the Statement of Claim, DSHE:

(a) says growth rates and comparisons for EBITDA were based on 1H 2014 pro forma numbers; and

(b) otherwise admits the allegations in the said paragraph.

143. In answer to paragraph 143 of the Statement of Claim, DSHE:

(a) refers to and relies on paragraph 143 of the Commercial List Responses filed by the Second and Third Defendants; and

(b) otherwise admits the allegations in the said paragraph.

H.4 2015 Yearly Results

144. DSHE admits the allegations in paragraph 145 of the Statement of Claim and relies on the 2015 Yearly Results for their full terms and effect.

145. In answer to paragraph 145 of the Statement of Claim;

(a) As to paragraph 145(d) says that the 18 August 2015 announcement to the ASX contained statements: *"A second year of solid performance as the Company's Growth Strategy continues to resonate" and "Dick Smith continues to drive cost efficiencies, with cash Cost of Doing Business (CODB) decreasing 32bp to 18.7% of sales in 2015"* and otherwise does not admit the subparagraph; and

(b) otherwise admits the allegations in the said paragraph.

146. DSHE admits the allegations in paragraph 146 of the Statement of Claim.

I. POST PROSPECTUS MATERIAL FACTS

I.1 Post Prospectus Sales

Agency Sales

147. In answer to paragraph 147 of the Statement of Claim, DSHE refers to and repeats paragraphs 61 and 63 of this Commercial List Response.
148. In answer to paragraph 148 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 61 to 63 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.

Sales Mix

149. In answer to paragraph 149 of the Statement of Claim, DSHE refers to and repeats paragraphs 66 and 67 of this Commercial List Statement.
150. DSHE does not admit the allegations in paragraph 150 of the Statement of Claim.

I.2 Post Prospectus Rebates

151. In answer to paragraph 151 of the Statement of Claim, DSHE refers to and repeats paragraphs 69 to 75 of this Commercial List Response.
152. In answer to paragraph 152 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response; and
 - (b) Otherwise does not admit the allegations in the said paragraph.

I.3 Post Prospectus Inventories

153. In answer to paragraph 153 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 81 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
154. In answer to paragraph 154 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 81 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.

2014 Half Yearly Results

155. In answer to paragraph 155 of the Statement of Claim, DSHE:

- (a) as to subparagraph 155(a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
- (b) as to subparagraph 155(b) refers to and repeats paragraphs 60 to 63 of this Commercial List Response;
- (c) as to subparagraph 155(c) refers to and repeats paragraphs 88 and 89 of this Commercial List Response;
- (d) as to subparagraph 155(d) refers to and repeats paragraphs 99 to 101 of this Commercial List Response;
- (e) as to subparagraph 155(e) refers to and repeats paragraphs 104 and 105 of this Commercial List Response;
- (f) as to subparagraph 155(f) refers to and repeats paragraphs 107 and 108 of this Commercial List Response;
- (g) as to subparagraph 155(g) refers to and repeats paragraphs 109 to 111 of this Commercial List Response;
- (h) otherwise does not admit the allegations in the said paragraph.

156. DSHE does not admit the allegations in paragraph 156 of the Statement of Claim.

157. In answer to paragraph 157 of the Statement of Claim, DSHE:

- (a) admits the 2014 Half Yearly Results did not include the matters pleaded at paragraphs 32, 59, 61, 68, 76, 88, 98, 155, 156 or 183 of the Statement of Claim;
- (b) refers to and repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 155, 156 and 183 of this Commercial List Response; and
- (c) otherwise does not admit the allegations in the said paragraph.

158. In answer to paragraph 158 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 156 of this Commercial List Response; and
- (b) otherwise denies the allegations in the said paragraph.

159. DSHE does not admit the allegations in paragraph 159 of the Statement of Claim.

2014 Half Yearly Results

160. In answer to paragraph 160 of the Statement of Claim, DSHE:

- (a) as to subparagraph 160(a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
- (b) as to subparagraph 160(b) refers to and repeats paragraphs 60 to 63 of this Commercial List Response;
- (c) as to subparagraph 160(c) refers to and repeats paragraphs 88 and 89 of this Commercial List Response;
- (d) as to subparagraph 160(d) refers to and repeats paragraphs 99 to 101 of this Commercial List Response;
- (e) as to subparagraph 160(e) refers to and repeats paragraphs 104 and 105 of this Commercial List Response;
- (f) as to subparagraph 160(f) refers to and repeats paragraphs 107 and 108 of this Commercial List Response;
- (g) as to subparagraph 160(g) refers to and repeats paragraphs 109 to 111 of this Commercial List Response;
- (h) otherwise does not admit the allegations in the said paragraph.

161. DSHE does not admit the allegations in paragraph 161 of the Statement of Claim.

162. In answer to paragraph 162 of the Statement of Claim, DSHE:

- (a) admits the 2014 Yearly Results did not include the matters pleaded at paragraphs 32, 59, 61, 68, 76, 88, 98, 160, 161, or 183 of the Statement of Claim;
- (b) refers to and repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 160, 161 and 183 of this Commercial List Response; and
- (c) otherwise does not admit the allegations in the said paragraph.

163. In answer to paragraph 163 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 161 of this Commercial List Response; and

- (b) otherwise denies the allegations in the said paragraph.

164. DSHE does not admit the allegations in paragraph 164 of the Statement of Claim.

2015 Half Yearly Results

165. In answer to paragraph 165 of the Statement of Claim, DSHE:

- (a) as to subparagraph 165(a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
- (b) as to subparagraph 165(b) refers to and repeats paragraphs 60 to 63 of this Commercial List Response;
- (c) as to subparagraph 165(c) refers to and repeats paragraphs 88 and 89 of this Commercial List Response;
- (d) as to subparagraph 165(d) refers to and repeats paragraphs 99 to 101 of this Commercial List Response;
- (e) as to subparagraph 165(e) refers to and repeats paragraphs 109 to 111 of this Commercial List Response;
- (f) otherwise does not admit the allegations in the said paragraph.

166. DSHE does not admit the allegations in paragraph 166 of the Statement of Claim.

167. In answer to paragraph 167 of the Statement of Claim, DSHE:

- (a) admits the 2015 Half Yearly Results did not include the matters pleaded at paragraphs 32, 59, 61, 68, 76, 88, 98, 165, 166 or 183 of the Statement of Claim;
- (b) refers to and repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 165, 166 and 183 of this Commercial List Response; and
- (c) otherwise does not admit the allegations in the said paragraph.

168. In answer to paragraph 168 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 166 of this Commercial List Response; and
- (b) otherwise denies the allegations in the said paragraph.

169. DSHE does not admit the allegations in paragraph 169 of the Statement of Claim.

2015 Yearly Results

170. In answer to paragraph 170 of the Statement of Claim, DSHE:

- (a) as to subparagraph 170(a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
- (b) as to subparagraph 170(b) refers to and repeats paragraphs 60 to 63 of this Commercial List Response;
- (c) as to subparagraph 170(c) refers to and repeats paragraphs 88 and 89 of this Commercial List Response;
- (d) as to subparagraph 170(d) refers to and repeats paragraphs 99 to 101 of this Commercial List Response;
- (e) as to subparagraph 170(e) refers to and repeats paragraphs 109 to 111 of this Commercial List Response;
- (f) denies subparagraph 170(f) and says 'Other Costs of Sales Income Adjustments' has not been defined in the Statement of Claim;
- (g) otherwise does not admit the allegations in the said paragraph.

171. DSHE does not admit the allegations in paragraph 171 of the Statement of Claim.

172. In answer to paragraph 172 of the Statement of Claim, DSHE:

- (a) admits the 2015 Yearly Results did not include the matters pleaded at paragraphs 32, 59, 61, 68, 76, 88, 98, 170, 171 or 183 of the Statement of Claim;
- (b) refers to and repeats paragraphs 32, 59, 61, 68, 76, 88, 98, 170, 171 and 183 of this Commercial List Response; and
- (c) otherwise does not admit the allegations in the said paragraph.

173. In answer to paragraph 173 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 171 of this Commercial List Response; and
- (b) otherwise denies the allegations in the said paragraph.

174. DSHE does not admit the allegations in paragraph 174 of the Statement of Claim.

I.5 POST PROSPECTUS DEBT

175. DSHE does not admit the allegations in paragraph 175 of the Statement of Claim.
176. DSHE does not admit the allegations in paragraph 176 of the Statement of Claim.
177. DSHE does not admit the allegations in paragraph 177 of the Statement of Claim.
178. DSHE does not admit the allegations in paragraph 178 of the Statement of Claim.
179. DSHE admits the allegations in paragraph 179 of the Statement of Claim.
180. DSHE does not admit the allegations in paragraph 180 of the Statement of Claim.
181. DSHE does not admit the allegations in paragraph 181 of the Statement of Claim.
182. DSHE does not admit the allegations in paragraph 182 of the Statement of Claim.
183. DSHE does not admit the allegations in paragraph 183 of the Statement of Claim.

J. WHAT DICK SMITH HOLDINGS OUGHT REASONABLY TO HAVE KNOWN

J.1 What Abboud and/or Potts ought reasonably to have known or ought reasonably to, by making enquiries, obtained at the Prospectus date

J.1.1 The General Prospectus Information

184. In answer to paragraph 184 of the Statement of Claim, DSHE:
- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
 - (b) repeats paragraphs 26 to 31 above; and
 - (c) otherwise does not admit the allegations in the said paragraph.

Sales Trend Information

185. In answer to paragraph 185 of the Statement of Claim, DSHE:
- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
 - (b) repeats paragraphs 56 to 59 above; and
 - (c) otherwise does not admit the allegations in the said paragraph..

Sales Accounting Information

186. In answer to paragraph 186 of the Statement of Claim, DSHE

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 60 to 65 above; and
- (c) otherwise does not admit the allegations in the said paragraph..

Retail Sales Information

187. In answer to paragraph 187 of the Statement of Claim, DSHE

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 66 to 68 above; and
- (c) otherwise does not admit the allegations in the said paragraph..

O&A Rebate Information

188. In answer to paragraph 188 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 69 to 80 above;
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged O&A Rebate Information; and
- (d) otherwise does not admit the allegations in the said paragraph..

Prospectus Inventory Information

189. In answer to paragraph 189 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 81 to 98 above;

- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged Prospectus Inventory Information ; and
- (d) otherwise does not admit the allegations in the said paragraph.

Adjustments Information

190. In answer to paragraph 190 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 99 to 115 above;
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged Adjustments Information; and
- (d) otherwise does not admit the allegations in the said paragraph.

Woolworths Payment Information and Historical Cash Flow

191. In answer to paragraph 191 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 116 to 124 above; and
- (c) otherwise does not admit the allegations in the said paragraph.

192. In answer to paragraph 192 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 184 to 191 above; and
- (c) otherwise does not admit the allegations in the said paragraph.

J.1.2 FY2013 Results Information

193. In answer to paragraph 193 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;

- (b) repeats paragraphs 126, 186, 188 and 189 above; and
- (c) otherwise does not admit the allegations in the said paragraph.

J.1.3 The 1Q2014 Results Information

194. In answer to paragraph 194 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 129, 184, 186, 188 and 189 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged 1Q2014 Results Information;
- (d) otherwise does not admit the allegations in the said paragraph.

J.1.4 The FY2014 Results Information

195. In answer to paragraph 195 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 69 to 80, 131, 186, 188 and 189 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged FY2014 Forecast Rebate Information;
- (d) otherwise does not admit the allegations in the said paragraph.

J.2 What Abboud and Potts ought reasonably to have known after the Prospectus date

196. In answer to paragraph 196 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 155 to 157, 186, 188 and 189 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged 2014 Half Yearly Results Information;
- (d) otherwise does not admit the allegations in the said paragraph.

2014 Yearly Results Information

197. In answer to paragraph 197 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 160 to 162, 186, 188, 189 and 190 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged 2014 Yearly Results Information;
- (d) otherwise does not admit the allegations in the said paragraph.

2015 Half Yearly Results Information

198. In answer to paragraph 198 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 165 to 167 and 184 to 191 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged 2015 Half Yearly Results Information;
- (d) otherwise does not admit the allegations in the said paragraph.

2015 Yearly Results Information

199. In answer to paragraph 199 of the Statement of Claim, DSHE:

- (a) does not plead to the said paragraph to the extent it contains allegations against Abboud and Potts;
- (b) repeats paragraphs 170 to 172 and 184 to 191 above; and
- (c) denies that Abboud and Potts ought reasonably to have known or ought reasonably to have obtained the alleged 2015 Yearly Results Information;
- (d) otherwise does not admit the allegations in the said paragraph.

J.3 What Dick Smith Holdings ought reasonably to have known or ought reasonably to have, by making inquiries, obtained at the Prospectus Date

200. In answer to paragraph 200 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 184 to 195 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

J.4 What Dick Smith Holdings ought reasonably to have known or obtained after the Prospectus Date

201. In answer to paragraph 201 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 196 to 199 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

K. PROSPECTUS CONTRAVENTIONS

K.1. Section 728 Contravention

202. DSHE admits the allegations in paragraph 202 of the Statement of Claim.

203. DSHE admits the allegations in paragraph 203 of the Statement of Claim.

204. In answer to paragraph 204 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 125 to 134 of this Commercial List Response;
- (b) says that at the time of the Prospectus was issued, it had reasonable grounds, within the meaning of section 728(2) of the Corporations Act, for making the pro forma FY2014 EBITDA and pro forma FY2014 NPAT forecasts;

Particulars

In preparing the Prospectus, DSHE undertook a Due Diligence Program, which included, amongst other things,:

- (A) undertaking enquiries of DSHE's directors, senior management and other reporting persons including legal advisors, auditors, accountants and other professional advisors;

- (B) establishment of a Due Diligence Committee which was involved the matters pleaded at paragraphs 293(a)(ii) to (vi) below;
- (C) engaging professional advisors to advise on matters concerning the marketing of the Initial Public Offering generally and specifically in relation to legal, financial, accounting, taxation, operational or regulatory matters;
- (D) any statements about future matters, including the content of any narrative, qualifications and assumptions and the time period covered by the statements were be reviewed and verified to make sure that there were reasonable grounds for making those statement and that they were otherwise not misleading or deceptive.

(c) otherwise denies the allegations in the said paragraph.

205. In answer to paragraph 205 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 71, 72 and 82 to 87 of this Commercial List Response;
- (b) otherwise does not admit the allegations in the said paragraph.

206. In answer to paragraph 206 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 125 to 127 and 134 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

207. In answer to paragraph 207 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 125 to 128 and 134 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

208. In answer to paragraph 208 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 128 to 130 and 134 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

209. In answer to paragraph 209 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 133 and 134 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
210. In answer to paragraph 210 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 131 to 134 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
211. In answer to paragraph 211 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 62 to 65, 73 to 76, 94 to 98 and 99 to 115 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
212. DSHE does not admit the allegations in paragraph 212 of the Statement of Claim.
213. In answer to paragraph 213 of the Statement of Claim;
- (a) repeats paragraph 212 of this Commercial List Response;
 - (b) otherwise denies the paragraph.
214. In answer to paragraph 214 of the Statement of Claim, DSHE;
- (a) repeats paragraph 131 and 132 of this Commercial List Response;
 - (b) says it made all inquiries that were reasonable in the circumstances and, after doing so, believed on reasonable grounds that the Growth Representations were not misleading or deceptive; and
 - (c) otherwise does not admit the allegations in the said paragraph.
215. In answer to paragraph 215 of the Statement of Claim, DSHE;
- (a) repeats paragraph 204 to 214 of this Commercial List Response;
 - (b) says that with respect to the alleged Prospectus Misleading Statements, DSHE made all inquiries that were reasonable in the circumstances; and after doing so,

believed on reasonable grounds that the matters referred to at subparagraphs 215(a)(i) to (viii) were not misleading or deceptive; and

(c) otherwise does not admit the allegations in the said paragraph.

216. DSHE does not admit the allegations in paragraph 216 of the Statement of Claim.

K.2 Continuous disclosure breaches in respect of the Material Prospectus Information

217. In answer to paragraph 217 of the Statement of Claim, DSHE:

(a) repeats paragraphs 125 to 132, 200, 201 and 212 of this Commercial List Response;

(b) otherwise denies the allegations in the said paragraph.

218. In answer to paragraph 218 of the Statement of Claim, DSHE:

(a) relies on ASX Listing Rule 3.1 for its full terms and effect;

(b) does not admit that it was obliged to tell the ASX the Material Prospectus Information; and

(c) otherwise does not admit the allegations in the said paragraph.

219. In answer to paragraph 219 of the Statement of Claim, DSHE:

(a) refers to and repeats paragraph 229 below; and

(b) otherwise denies the allegations in the said paragraph.

220. In answer to paragraph 220 of the Statement of Claim, DSHE:

(a) refers to and repeats paragraph 216 to 219 of this Commercial List Response; and

(b) otherwise does not admit the allegations in the said paragraph.

K.3 Misleading and deceptive conduct and section 1041E liability in relation to the Prospectus Misleading Statements

221. In answer to paragraph 221 of the Statement of Claim, DSHE:

(a) refers to and repeats paragraphs 215 and 216 of this Commercial List Response; and

- (b) otherwise does not admit the allegations in the said paragraph.
- 222. In answer to paragraph 222 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 204 to 214, 216 and 221 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 223. In answer to paragraph 223 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 221 to 222 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 224. In answer to paragraph 224 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 9 to 10 and 184 to 195 of this Commercial List Response;
 - (b) otherwise denies the allegations in the said paragraph.
- 225. In answer to paragraph 225 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraph 200 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 226. In answer to paragraph 226 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 224 and 225 of this Commercial List Response; and
 - (b) otherwise denies the allegations in the said paragraph.

L. POST-PROSPECTUS CONTRAVENTIONS

L.1 Continuous Disclosure

- 227. In answer to paragraph 227 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 135 to 146, 155 to 174, 200 and 201 of this Commercial List Statement; and

(b) otherwise does not admit the allegations in the said paragraph.

228. In answer to paragraph 228 of the Statement of Claim, DSHE:

- (a) admits that once it became aware of any information concerning DSHE that a reasonable person would expect to have a material effect on the price or value of DSHE securities, it was obliged to tell the ASX;
- (b) does not admit it was obliged to tell the ASX the Post Prospectus Material Information; and
- (c) otherwise does not admit the allegations in the said paragraph.

229. In answer to paragraph 229 of the Statement of Claim, DSHE:

- (a) denies the following were not disclosed to the ASX before the Administration:
 - (i) Sales Trend Information;

Particulars

Prospectus, pp 57, 67, 68 and 70

- (ii) Onerous Leases Adjustment;

Particulars

2014 Annual Report, p 63

(b) otherwise does not admit the allegations in the said paragraph.

230. In answer to paragraph 230 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraph 227 to 229 of this Commercial List Response; and
- (b) otherwise does not admit the allegations in the said paragraph.

L.2 Misleading and Deceptive Conduct Contraventions

231. In answer to paragraph 231 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 135 to 146, 155 to 174, 200 and 201 of this Commercial List Response; and

- (b) otherwise does not admit the allegations in the said paragraph.
232. In answer to paragraph 232 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 155 to 159 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
233. In answer to paragraph 233 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
234. In answer to paragraph 234 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 160 to 164 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
235. In answer to paragraph 235 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
236. In answer to paragraph 236 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 165 to 169 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
237. In answer to paragraph 237 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
238. In answer to paragraph 238 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 170 to 174 of this Commercial List Response;
and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 239. In answer to paragraph 239 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 63, 75, 89, 96, 105, 108 and 111 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 240. In answer to paragraph 240 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 232 to 239 of this Commercial List Response;
and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 241. In answer to paragraph 241 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 135 to 146, 155 to 174, 200 and 201 of this Commercial List Response; and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 242. In answer to paragraph 242 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 223 to 241 of this Commercial List Response;
and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 243. In answer to paragraph 243 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 232 to 242 of this Commercial List Response;
and
 - (b) otherwise does not admit the allegations in the said paragraph.
- 244. In answer to paragraph 244 of the Statement of Claim, DSHE:
 - (a) refers to and repeats paragraphs 241 to 243 of this Commercial List Response;
and

(b) otherwise denies the allegations in the said paragraph.

M. MISLEADING OR DECEPTIVE CONDUCT BY ABBOUD

M.1.1 2014 Half Yearly Results

- 245. DSHE does not plead to paragraph 245 of the statement of claim as it does not contain any allegation against it.
- 246. DSHE does not plead to paragraph 246 of the Statement of Claim as it does not contain any allegation against it.
- 247. DSHE does not plead to paragraph 247 of the Statement of Claim as it does not contain any allegation against it.
- 248. DSHE does not plead to paragraph 248 of the Statement of Claim as it does not contain any allegation against it.

M.1.2 2014 Yearly Results

- 249. DSHE does not plead to paragraph 249 of the Statement of Claim as it does not contain any allegation against it.
- 250. DSHE does not plead to paragraph 250 of the Statement of Claim as it does not contain any allegation against it.
- 251. DSHE does not plead to paragraph 251 of the Statement of Claim as it does not contain any allegation against it.
- 252. DSHE does not plead to paragraph 252 of the Statement of Claim as it does not contain any allegation against it.

M.1.3 2015 Half Yearly Results

- 253. DSHE does not plead to paragraph 253 of the Statement of Claim as it does not contain any allegation against it.
- 254. DSHE does not plead to paragraph 254 of the Statement of Claim as it does not contain any allegation against it .
- 255. DSHE does not plead to paragraph 255 of the Statement of Claim as it does not contain any allegation against it.

256. DSHE does not plead to paragraph 256 of the Statement of Claim as it does not contain any allegation against it.

M.1.4 2015 Yearly Results

257. DSHE does not plead to paragraph 257 of the Statement of Claim as it does not contain any allegation against it .
258. DSHE does not plead to paragraph 258 of the Statement of Claim as it does not contain any allegation against it.
259. DSHE does not plead to paragraph 259 of the Statement of Claim as it does not contain any allegation against it.
260. DSHE does not plead to paragraph 260 of the Statement of Claim as it does not contain any allegation against it.

N. MISLEADING OR DECEPTIVE CONDUCT BY POTTS

N.1.1 2014 Half Yearly Results

261. DSHE does not plead to paragraph 261 of the Statement of Claim as it does not contain any allegation against it.
262. DSHE does not plead to paragraph 262 of the Statement of Claim as it does not contain any allegation against it .
263. DSHE does not plead to paragraph 263 of the Statement of Claim as it does not contain any allegation against it.
264. DSHE does not plead to paragraph 264 of the Statement of Claim as it does not contain any allegation against it.

N.1.2 2014 Yearly Results

265. DSHE does not plead to paragraph 265 of the Statement of Claim as it does not contain any allegation against it .
266. DSHE does not plead to paragraph 266 of the Statement of Claim as it does not contain any allegation against it .
267. DSHE does not plead to paragraph 267 of the Statement of Claim as it does not contain any allegation against it.

268. DSHE does not plead to paragraph 268 of the Statement of Claim as it does not contain any allegation against it.

N.1.3 2015 Half Yearly Results

269. DSHE does not plead to paragraph 269 of the Statement of Claim as it does not contain any allegation against it .

270. DSHE does not plead to paragraph 270 of the Statement of Claim as it does not contain any allegation against it .

271. DSHE does not plead to paragraph 271 of the Statement of Claim as it does not contain any allegation against it.

272. DSHE does not plead to paragraph 272 of the Statement of Claim as it does not contain any allegation against it.

N.1.4 2015 Yearly Results

273. DSHE does not plead to paragraph 273 of the Statement of Claim as it does not contain any allegation against it .

274. DSHE does not plead to paragraph 274 of the Statement of Claim as it does not contain any allegation against it .

275. DSHE does not plead to paragraph 275 of the Statement of Claim as it does not contain any allegation against it.

276. DSHE does not plead to paragraph 276 of the Statement of Claim as it does not contain any allegation against it.

O. CAUSATION, LOSS AND DAMAGE

O.1 Prospectus Subscribers

O.1.1 Introduction

277. DSHE does not know and cannot admit the allegations in paragraph 277 of the Statement of Claim.

O.1.2 Market based causation for DSH IPO Purchasers

278. In answer to paragraph 278 of the Statement of Claim, DSHE:

- (a) admits subparagraph 278(a);
- (b) denies paragraph 278(c) and (d); and
- (c) otherwise does not admit the allegations in the said paragraph.

279. DSHE denies the allegations in paragraph 279 of the Statement of Claim.

280. DSHE does not admit the allegations in paragraph 280 of the Statement of Claim.

O.1.4 No transaction

281. DSHE denies the allegations contained in paragraph 281 of the Statement of Claim.

O.1.5 Loss and damage

282. DSHE denies the allegations contained in paragraph 282 of the Statement of Claim and further says that the Statement of Claim does not disclose a cause of action as against DSHE in relation to loss or damage allegedly suffered by the Plaintiffs or Group Members without establishing that each of the Plaintiffs and Group Members relied on the:

- (a) Prospectus Contraventions; and/or
- (b) Continuous Disclosure Contraventions; and/or
- (c) Misleading Conduct Contraventions.

O.2 Shares Purchased on the secondary market

O.2.1 Introduction

283. DSHE does not know and cannot admit the allegations in paragraph 283 of the Statement of Claim.

O.2.2 Market-based causation

284. In answer to paragraph 284 of the Statement of Claim, DSHE:

- (a) admits that the market in which DSHE shares were traded was:
 - (i) operated by the ASX; and
 - (ii) regulated by, inter alia, ASX Listing Rule 3.1 and section 674(2) of the *Corporations Act*;

- (b) admits paragraph 284(c);
- (c) denies subparagraph 284(d)-(e); and
- (d) otherwise does not admit the allegations in the said paragraph.

285. DSHE denies the allegations in paragraph 285 of the Statement of Claim.

O.2.3 Reliance

286. DSHE denies the allegations in paragraph 286 of the Statement of Claim.

O.2.4 Loss and Damage

287. DSHE denies the allegations in paragraph 287 of the Statement of Claim and:

- (a) further, or in the alternative, says that the Statement of Claim does not disclose a cause of action as against DSHE in relation to loss or damage allegedly suffered by the Plaintiffs or Group Members without establishing that each of the Plaintiffs and Group Members relied on the:
 - (i) Prospectus Contraventions; and/or
 - (ii) Continuous Disclosure Contraventions; and/or
 - (iii) Misleading Conduct Contraventions.
- (b) further, or in the alternative, says that if it is established that DSHE contravened sections 674(2) or of the *Corporations Act* (which is not admitted), DSHE relies on 1317S of the *Corporations Act* and says that it should be relieved from liability on the basis that it acted honestly and, having regard to all the circumstances of the case, it ought fairly to be excused for the alleged contraventions.

P. COMMON QUESTIONS

288. In answer to paragraph 288 of the Statement of Claim, DSHE:

- (a) admits some of the questions of law or fact pleaded in the Statement of Claim are common questions of fact between the Plaintiffs and the Group Members;
- (b) says that some of the questions of law or fact may only be common questions as between certain groups or sub-groups of the plaintiffs and Group members; and
- (c) otherwise denies the allegations contained in the said paragraphs.

Q. DEFENCES

Q.1 Section 1317S

289. If DSHE contravened section 674(2) of the *Corporations Act* (which is denied), DSHE relies on section 1371S of the *Corporations Act* and says that it should be relieved from liability on the basis that it acted honestly and, having regard to all the circumstances of the case, it ought fairly to be excused for the alleged contraventions.

Q.2 Proportionate Liability – Apportionable claims

290. In further answer to the whole of the Statement of Claim, DSHE says that if (which is denied) DSHE contravened s1041H of the *Corporations Act* or s12DA of the *ASIC Act* or s18 of the *Australian Consumer Law*, and is liable to the Plaintiffs or Group Members for any loss or damage resulting from any such contravention, then:

- (a) each of the claims of the Plaintiffs and Group Members against DSHE in respect of such loss or damage is an apportionable claim within the meaning of s1041L of the *Corporations Act*, s12GP of the *ASIC Act*, and s87CB of the *Competition and Consumer Act*; and
- (b) by reason of the matters pleaded in paragraphs 291 to 375 below, each of Abboud, Potts, the Other DSHE Directors, DTT and Deloitte Corporate Finance Pty Ltd (**DCF**) is a concurrent wrongdoer in respect of such loss or damage within the meaning of s1041L of the *Corporations Act*, s12GP of the *ASIC Act*, and s87CB of the *Competition and Consumer Act*; and
- (c) any liability of DSHE to the Plaintiffs or Group Members in relation to the apportionable claims is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of DSHE's responsibility for the damage or loss.

Q.2.1 Proportionate Liability — Abboud and Potts

291. If the Plaintiffs establish that:

- (a) DSHE engaged in conduct in respect of any of the:
 - (i) Prospectus Misleading Statements;
 - (ii) 2014 Half Yearly Results,
 - (iii) 2014 Yearly Results,

- (iv) 2015 Half Yearly Results and/or
- (v) 2015 Yearly Results

which was misleading or deceptive conduct in contravention of s1041H(1) of the Corporations Act, s12DA(1) of the ASIC Act, and s18 of the Australian Consumer Law (as pleaded in paragraphs 202-240, which is denied or not admitted);

- (b) Abboud engaged in conduct in respect of any of the -

- (i) 2014 Half Yearly Results,
- (ii) 2014 Yearly Results,
- (iii) 2015 Half Yearly Results and/or
- (iv) 2015 Yearly Results

which was misleading or deceptive conduct in contravention of s1041H(1) of the Corporations Act, s12DA(1) of the ASIC Act, and s18 of the Australian Consumer Law (as pleaded in paragraphs 245-260);

- (c) Potts engaged in conduct in respect of any of the

- (i) 2014 Half Yearly Results,
- (ii) 2014 Yearly Results,
- (iii) 2015 Half Yearly Results and/or
- (iv) 2015 Yearly Results

which was misleading or deceptive conduct in contravention of s1041H(1) of the Corporations Act, s12DA(1) of the ASIC Act, and s18 of the Australian Consumer Law (as pleaded in paragraphs 261-276 of the Statement of Claim);

- (d) the Plaintiffs or some of the Group Members have suffered loss or damage as a result of any of the alleged Misleading Conduct Contraventions in respect of the

- (i) Prospectus Misleading Statements;
- (ii) 2014 Half Yearly Results,
- (iii) 2014 Yearly Results,

(iv) 2015 Half Yearly Results and/or

(v) 2015 Yearly Results

(as pleaded in paragraphs 284-287 of the Statement of Claim, which is denied or not admitted);

then each of DSHE, Abboud and Potts is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs and/or some Group Members which is the subject of their claim, and therefore, each is a concurrent wrongdoer within the meaning of s.1041L of the Corporations Act, s.12GP of the ASIC Act and s.87CB of the CCA.

292. Further or in the alternative, for the purpose only of this proportionate liability defence, and without admission, DSHE repeats paragraphs 56 to 134 and 221 to 226 Statement of Claim as allegations against Abboud and Potts.

293. If the matters referred to in paragraph 292 above (which are the subject of denials and non-admissions pleaded above) are established, then DSHE says:

(a) in relation to the Prospectus Misleading Statements;

(i) each of Abboud and Potts were members of the Due Diligence Committee (**DDC**) with respect to the initial public offering (**Offer**);

(ii) the DDC was responsible for:

(A) supervising the preparation of the Prospectus and making sure, so far as possible, that it complied with the content requirements set out in the Corporations Act (including being worded and presented in a clear, concise and effective manner) and the NZ Mutual Recognition Regulations; and

(B) planning, implementing and overseeing the Due Diligence Program, being all necessary due diligence investigations. Enquiries and procedures to satisfy the Due Diligence Objectives.

Particulars

Due Diligence Planning Memorandum

(iii) each of Abboud and Potts as members of the DDC, were required to satisfy themselves that:

- (A) they had no unresolved query concerning any statement included in or any matter omitted from the Prospectus or the material generated in the course of implementing the Due Diligence Program;
- (B) in reliance on the Due Diligence Program, there was no statement in the Prospectus that was misleading or deceptive (including by omission) or was untrue and there were no omissions from the Prospectus of material required by the Disclosure Requirements and every expert or other person whose statements are relied on was competent and trustworthy to make those statements;
- (C) in reliance on the Due Diligence Program, there was no forecast, estimate, guidance or other forward-looking statement in the Prospectus that did not have a reasonable basis;
- (D) to the best of their knowledge, Due Diligence Process and verification process has been implemented consistently with this Planning Memorandum;

Particulars

Due Diligence Planning Memorandum

- (iv) each of Abboud and Potts represented that:
 - (A) all potentially material issues identified during the course of the Due Diligence Program were either appropriately disclosed in the Prospectus or resolved as not being material and there were no outstanding issues at the end of the Due Diligence Program.
 - (B) nothing had come to their attention that caused them to believe, and they did not believe, that the Prospectus did not comply with Disclosure Requirements, and in particular:
 - (1) the Prospectus did not omit required information and;
 - (2) each statement in the Prospectus, in the context in which it appeared:
 - (i) if one of fact, was true and nothing had been omitted from it;

- (ii) if one of opinion or forward looking, was fair and reasonable;
- (iii) was not misleading or deceptive; and
- (iv) having regard to the requirements of s715A of the Corporations Act, the Prospectus Complied with the Presentation Requirement.

Particulars

Final Committee Report dated 13 November 2013

- (C) the Prospectus did not contain any statement that was misleading or deceptive (including by omission) or untrue and all forward-looking statements in the Prospectus are based on reasonable grounds
- (D) Prospectus complies with the Disclosure Requirements;
- (E) issue of the Prospectus did not involve conduct by any person that is misleading or deceptive or conduct that may be likely to mislead or deceive;
- (F) Prospectus complies with the Presentation Requirement;

Particulars

- (1) Management sign-off certificate signed by Abboud dated 13 November 2013
- (2) Management sign-off certificate signed by Potts dated 13 November 2013
- (3) Verification certificate signed by Abboud
- (4) Verification certificate signed by Potts
- (v) on 13 November 2013 each of Abboud and Potts, as part of the DDC, approved the Prospectus subject to:
 - (A) the Financial Information section of the Prospectus being updated to reflect the revised DTA calculations and consequential implications arising from that revision;

- (B) the provision by the Tax Adviser of its taxation due diligence report and steps plan in final form as required by the Planning Memorandum; and
- (C) confirmation by each Member for the lodgement of the Prospectus with ASIC following the making of the above noted changes,

Particulars

Minutes of Due Diligence Committee Meeting No. 11

- (vi) each of Abboud and Potts advised that they were not aware of any misleading or deceptive statements in the Prospectus or omissions of any required information from them and confirmed that there were no new circumstances.

Particulars

- (1) Minutes of Due Diligence Committee Meeting No. 12

- (2) No new circumstances certificate dated 6 December 2013

- (vii) each of Abboud and Potts gave their consent to lodgement of the Prospectus with ASIC under section 718 of the *Corporations Act* and to the making of the Offer;
- (viii) by reason of the matters pleaded in subparagraphs (i) to (vii) above, each of Abboud and Potts engaged in conduct in relation to a financial product within the meaning of s.1041H of the *Corporations Act*, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the *ASIC Act*, and/or in trade or commerce within the meaning of s.4 of the *ACL*;
- (ix) by reason of the matters pleaded in paragraphs 221 to 226 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(viii) above, each of Abboud and Potts contravened s.1041H of the *Corporations Act*, s.12DA of the *ASIC Act*, and/or s.18 of the *ACL*, and so engaged in a Misleading Conduct Contravention; and
- (x) the Plaintiffs and some Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of Abboud and Potts pleaded in subparagraph(ix) above;

294. By reason of the matters pleaded in paragraphs 291 to 293 above, and pursuant to s.1041N of the Corporations Act, s.12GR of the ASIC Act and/or s.87CD of the CCA, any liability (which is denied) of DSHE to the Plaintiffs and/or some of the Group Members is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of DSHE's responsibility, and the extent of responsibility of Abboud and Potts, for such loss or damage.

Q.2.2 Proportionate Liability — Other DSHE Directors

295. In the period from 25 October 2013, the directors of DSHE in addition to Abboud and Potts were:

- (a) Phillip John Cave (**Cave**) (from 25 October 2013 until 28 February 2015, when he ceased to be a director of DSHE); and
- (b) William Paul Renton Wavish (**Wavish**) (from 25 October 2013 until 25 March 2015, when he ceased to be a director of DSHE)
- (c) Lorna Kathleen Raine (**Raine**) (from 25 October 2013 until 4 January 2016, when she ceased to be a director of DSHE);
- (d) Robert Ishak (**Ishak**) (from 25 October 2013 until 4 January 2016, when he ceased to be a director of DSHE);

(the persons in paragraphs (a)-(d) are referred to as the **Other Original DSHE Directors**)

296. Robert Murray (**Murray**) was a director of DSHE from 12 August 2014 until 4 January 2016, when he ceased to be a director of DSHE and Jamie Clifford Tomlinson (**Tomlinson**) was a director of DSHE from 10 April 2015 until 4 January 2016, when he ceased to be a director of DSHE (referred to as **Subsequent DSHE Directors**).
297. For the purpose only of this proportionate liability defence, and without admission, DSHE repeats paragraphs 56 to 183, 200 to 201, 221 to 226 and 231 to 244 and 284-287 of the Statement of Claim as allegations against the other Original DSHE Directors.
298. If the matters referred to in paragraph 297 above (which are the subject of denials and non-admissions pleaded above) are established, then:
- (a) in relation to the Prospectus Misleading Statements;
 - (i) each of the Other Original DSHE Directors were members of the Due Diligence Committee (**DDC**) with respect to the initial public offering (**Offer**);

- (ii) the DDC was responsible for:
 - (A) supervising the preparation of the Prospectus and making sure, so far as possible, that it complied with the content requirements set out in the Corporations Act (including being worded and presented in a clear, concise and effective manner) and the NZ Mutual Recognition Regulations; and
 - (B) planning, implementing and overseeing the Due Diligence Program, being all necessary due diligence investigations. Enquiries and procedures to satisfy the Due Diligence Objectives.

Particulars

Due Diligence Planning Memorandum

- (iii) each of the Other Original DSHE Directors as members of the DDC, were required to satisfy themselves that:
 - (A) they had no unresolved query concerning any statement included in or any matter omitted from the Prospectus or the material generated in the course of implementing the Due Diligence Program;
 - (B) in reliance on the Due Diligence Program, there was no statement in the Prospectus that was misleading or deceptive (including by omission) or was untrue and there were no omissions from the Prospectus of material required by the Disclosure Requirements and every expert or other person whose statements are relied on was competent and trustworthy to make those statements;
 - (C) in reliance on the Due Diligence Program, there was no forecast, estimate, guidance or other forward-looking statement in the Prospectus that did not have a reasonable basis;
 - (D) to the best of their knowledge, Due Diligence Process and verification process has been implemented consistently with this Planning Memorandum;

Particulars

Due Diligence Planning Memorandum

- (iv) each of the Other Original DSHE Directors represented that:
 - (A) all potentially material issues identified during the course of the Due Diligence Program was either appropriately disclosed in the Prospectus or resolved as not being material and there were no outstanding issues at the end of the Due Diligence Program.
 - (B) nothing had come to their attention that caused them to believe, and they did not believe, that the Prospectus did not comply with Disclosure Requirements, and in particular:
 - (1) the Prospectus did not omit required information and;
 - (2) each statement in the Prospectus, in the context in which it appeared:
 - (i) if one of fact, was true and nothing had been omitted from it;
 - (ii) if one of opinion or forward looking, was fair and reasonable;
 - (iii) was not misleading or deceptive; and
 - (iv) having regard to the requirements of s715A of the Corporations Act, the Prospectus Complied with the Presentation Requirement.

Particulars

Final Committee Report dated 13 November 2013

- (v) on 13 November 2013 each of the Other Original DSHE Directors, as part of the DDC, approved the Prospectus subject to:
 - (A) the Financial Information section of the Prospectus being updated to reflect the revised DTA calculations and consequential implications arising from that revision;
 - (B) the provision by the Tax Adviser of its taxation due diligence report and steps plan in final form as required by the Planning Memorandum; and

- (C) confirmation by each Member for the lodgement of the Prospectus with ASIC following the making of the above noted changes,

Particulars

Minutes of Due Diligence Committee Meeting No. 11

- (vi) each of the Other Original DSHE Directors advised that they were not aware of any misleading or deceptive statements in the Prospectus or omissions of any required information from them and confirmed that there were no new circumstances.

Particulars

- (3) Minutes of Due Diligence Committee Meeting No. 12

- (4) No new circumstances certificate dated 6 December 2013

- (vii) each of the Other Original DSHE Directors gave their consent to lodgement of the Prospectus with ASIC under section 718 of the *Corporations Act* and to the making of the Offer;
- (viii) by reason of the matters pleaded in subparagraphs (i) to (vii) above, each of the Other Original DSHE Directors engaged in conduct in relation to a financial product within the meaning of s.1041H of the *Corporations Act*, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the *ASIC Act*, and/or in trade or commerce within the meaning of s.4 of the *ACL*;
- (ix) by reason of the matters pleaded in paragraphs 221 to 226 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(viii) above, each of the Other DSHE Directors contravened s.1041H of the *Corporations Act*, s.12DA of the *ASIC Act*, and/or s.18 of the *ACL*, and so engaged in a Misleading Conduct Contravention; and
- (x) the Plaintiffs and some Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other Original DSHE Directors pleaded in subparagraph (ix) above;
- (b) in relation to the 2014 Half Yearly Results:
- (i) on or about 19 February 2014, each of the Other Original DSHE Directors authorized, or participated in authorizing, the making and lodgment with

ASX by DSHE of the 2014 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representation;

- (ii) further or alternatively, on or about 19 February 2014 and at all material times thereafter, each of the Other Original DSHE Directors took no, or alternatively no adequate, steps to cause DSHE to withdraw or otherwise correct the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSHE Directors engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
 - (iv) by reason of the matters pleaded in paragraphs 232-233 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other DSHE Directors contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and some Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other Original DSHE Directors pleaded in subparagraph (iv) above;
- (c) in relation to the 2014 Yearly Results:
- (i) on or about 19 August 2014, each of the Other Original DSHE Directors and Murray authorized, or participated in authorizing, the making and lodgment with ASX by DSHE of the 2014 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representation;
 - (ii) further or alternatively, on or about 19 August 2014 and at all material times thereafter, each of the Other Original DSHE Directors and Murray took no, or alternatively no adequate, steps to cause DSHE to withdraw or

otherwise correct the 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representation;

- (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSHE Directors and Murray engaged in conduct in relation to a financial product within the meaning of s.1041H of the *Corporations Act*, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the *ASIC Act*, and/or in trade or commerce within the meaning of s.4 of the *ACL*;
 - (iv) by reason of the matters pleaded in paragraphs 234-235 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other Original DSHE Directors and Murray contravened s.1041H of the *Corporations Act*, s.12DA of the *ASIC Act*, and/or s.18 of the *ACL*, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and some Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other Original DSHE Directors and Murray pleaded in subparagraph (iv) above;
- (d) in relation to the 2015 Half Yearly Results:
- (i) on or about 17 February 2015, each of the Other Original DSHE Directors and Murray authorized, or participated in authorizing, the making and lodgment with ASX by DSHE of the 2015 Half Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the 2015 Half Yearly Results Representations and the 2015 Half Yearly Compliance Representation;
 - (ii) on or about 17 February 2015 and at all material times thereafter, each of the Other Original DSHE Directors and Murray took no, or alternatively no adequate, steps to cause DSHE to withdraw or otherwise correct the 2015 Half Yearly Results Representations and the 2015 Half Yearly Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSHE Directors engaged in conduct in relation to a financial product within the meaning of s.1041H of the *Corporations Act*, and/or in trade or commerce in relation to financial services within the

meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;

- (iv) by reason of the matters pleaded in paragraphs 236-237 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other Original DSHE Directors and Murray contravened s.1041H of the Corporations Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and
 - (v) the Plaintiffs and Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other Original DSHE Directors and Murray pleaded in subparagraph (iv) above;
- (e) in relation to the 2015 Yearly Results:
- (i) on or about 18 August 2015, each of the Other Original DSHE Directors (except Cave and Wavish) and the Subsequent DSHE Directors authorized, or participated in authorizing the making and lodgment with ASX by DSHE of the 2015 Yearly Results in the form, or in substantially the form, in which they were lodged with the ASX, including the inclusion therein of each of the 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representation;
 - (ii) on or about 18 August 2015 and at all material times thereafter, each of the Other Original DSHE Directors (except Cave and Wavish) and the Subsequent DSHE Directors took no, or alternatively no adequate, steps to cause DSHE to withdraw or otherwise correct the 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representation;
 - (iii) by reason of the matters pleaded in subparagraphs (i) and (ii) above, each of the Other Original DSHE Directors (except Cave and Wavish) and the Subsequent DSHE Directors engaged in conduct in relation to a financial product within the meaning of s.1041H of the Corporations Act, and/or in trade or commerce in relation to financial services within the meaning of s.12DA of the ASIC Act, and/or in trade or commerce within the meaning of s.4 of the ACL;
 - (iv) by reason of the matters pleaded in paragraphs 238-239 of the Statement of Claim, and the matters pleaded in subparagraphs (i)-(iii) above, each of the Other Original DSHE Directors (except Cave and Wavish) and the Subsequent DSHE Directors contravened s.1041H of the Corporations

Act, s.12DA of the ASIC Act, and/or s.18 of the ACL, and so engaged in a Misleading Conduct Contravention; and

- (v) the Plaintiffs and some Group Members have suffered loss or damage by reason of, or as a result of, the Misleading Conduct Contraventions of the Other Original DSHE Directors (except Cave and Wavish) and the Subsequent DSHE Directors pleaded in subparagraph (iv) above.

299. By reason of the matters pleaded in paragraph 297 to 298 above:

- (a) each of the Other Original DSHE Directors and the Subsequent DSHE Directors is a person whose acts or omissions caused all or some of the loss allegedly suffered by the Plaintiffs and/or Group Members which is the subject of their claim, and therefore each is a concurrent wrongdoer within the meaning of s.1041L of the Corporations Act, s.12GP of the ASIC Act and s.87CB of the CCA; and
- (b) pursuant to s.1041M of the Corporations Act, s.12GR of the ASIC Act and/or s.87CD of the CCA, any liability (which is denied) of DSHE to the Plaintiffs and/or Group Members is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of the responsibility of DSHE, and the extent of the responsibility of each of the Other Original DSHE Directors and the Subsequent DSHE Directors, for such loss or damage.

Q.2.3 Proportionate Liability — Deloitte Touche Tohmatsu

300. At all material times, DTT:

- (a) conducted business within Australia as accountants and auditors; and
- (b) had, and held itself out as having professional or expert competence in providing auditing and accounting services

301. For each of FY2013, HY2014, FY2014, HY2015 and FY2015 DSSH and/or DSHE retained DTT for the purpose of:

- (a) reviewing, as required by s302 of the *Corporations Act*, the consolidated financial statements to be included in the half year financial report for the periods ending 31 December 2013 and 31 December 2014; and

- (b) auditing, as required by s301 of the *Corporations Act*, the consolidated financial statements to be included in the full year financial report for the periods ending 30 June 2013, 30 June 2014 and 30 June 2015.

302. For each of FY2013, FY2014 and FY2015:

- (a) DTT was required to report to members of DSSH and/or DSHE as to whether the DTT was of the opinion that the financial report was in accordance with the *Corporations Act*, including:
 - (i) section 304 (compliance with accounting standards); and
 - (ii) section 305 (true and fair view).
- (b) If DTT was not of the opinion that the financial report was in accordance with the *Corporations Act*, DTT's report was required to say why.
- (c) if DTT was of the opinion that the financial reports did not comply with an accounting standard, to the extent that it was practicable to do so, DTT was required to quantify the effect any non-compliance had on the financial report.
- (d) DTT was required to describe in its report:
 - (i) Any defect or irregularity in the financial report; and
 - (ii) any deficiency, failure or shortcoming in respect of the matters referred to in s307(b), (c) or (d) of the *Corporations Act*.

Particulars

s309 of the *Corporations Act*

303. For each of HY2014 and HY2015:

- (a) DTT was required to report to members of DSHE on whether DTT became aware of any matter in the course of the review that made DTT believe that the financial report did not comply with Part 2M.3, Division 2 of the *Corporations Act*;
- (b) in its report, DTT was required to describe any matter which caused it to believe that the financial report did not comply with Part 2M.3, Division 2 of the *Corporations Act* and say why;
- (c) DTT's report was required to include any statements or disclosures required by the auditing standards; and

Particulars

s309 of the *Corporations Act*

- (d) DTT was required to comply with Australian Auditing Standard on *Review Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity* (ASRE 2410)

Particulars

s307A of the *Corporations Act*

FY2013 Retainer

304. On or about 3 December 2012, DTT was retained by DSSH to audit the financial report of DSSH for the year ending 30 June 2013 (**FY2013 retainer**).

Particulars

The FY2013 Retainer was in writing and was comprised of:

- (A) Letter of engagement dated 3 December 2012 from DTT to Tim Fawaz of Dick Smith Sub-Holdings (**2013 Engagement Letter**)
- (B) DTT's Standard Terms and Conditions

305. It was a term of the FY2013 Retainer that DTT would:
- (a) Perform its audit pursuant to the *Corporations Act 2001* requirements;
 - (b) Conduct its audit in accordance with Australian Auditing Standards;
 - (c) Perform audit procedures to obtain audit evidence about the amounts and disclosures in the financial report;
 - (d) Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial report;
 - (e) in making risk assessments, consider internal controls relevant to DSSH's preparation of the financial report in order to design audit procedures that are appropriate in the circumstances;

- (f) communicate to DSSH in writing concerning any significant deficiencies in internal controls relevant to the audit of the financial report identified during the audit.
- (g) Perform specific audit procedures in accordance with *Australian Auditing Standard 510 Initial Audit Engagements - Opening Balances*, to obtain sufficient audit evidence that the opening balance was not materially misstated and the accounting policies reflected in the opening balances have been consistently applied in the financial report.

Particulars

Letter of engagement dated 3 December 2012 from DTT to Tim Fawaz of Dick Smith Sub-Holdings

- (h) provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind

Particulars

Clause 3.1 of the Standard Terms and Conditions enclosed with the 2013 Engagement Letter

- (i) would use reasonable skill and care in providing services pursuant to the FY2013 Retainer

Particulars

The term was implied by law

FY2014 Retainer

306. On or about 13 December 2013, DTT was retained by DSHE as to:

- (a) review the interim financial report of DSHE for the half year ended 29 December 2013; and
- (b) audit the financial report of DSHE for the year 29 June 2014.

(the FY2014 Retainer)

Particulars

The FY2014 Retainer was in writing and was comprised of:

- (A) Letter of engagement dated 13 December 2013 from DTT to Bill Wavish of DSHE (**2014 Engagement Letter**)
- (B) DTT's Standard Terms and Conditions

307. It was a term of the FY2014 Retainer that, DTT would:

- (a) Perform its audit pursuant to the *Corporations Act 2001* requirements;
- (b) Conduct its audit in accordance with Australian Auditing Standards;
- (c) Perform procedures to obtain audit evidence about the amounts and disclosures in the financial report;
- (d) Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial report;
- (e) in making risk assessments, consider internal controls relevant to DSHE's preparation of the financial report in order to design audit procedures that are appropriate in the circumstances;
- (f) communicate to DSHE in writing concerning any significant deficiencies in internal controls relevant to the audit of the financial report identified during the audit.
- (g) review the interim financial report in accordance with the Australian Auditing Standard on *Review Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity*, issued by the Auditing and Assurance Standards Board;
- (h) provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind;

Particulars

Clause 3.1 of the Standard Terms and Conditions enclosed with the 2014 Engagement Letter

- (i) would use reasonable skill and care in providing services pursuant to the FY2014 Retainer;

Particulars

The term was implied by law

FY2015 Retainer

308. On or about 13 November 2014, DTT was retained by DSHE as to:

- (a) review the interim financial report of DSHE for the half year ended 28 December 2014; and
- (b) audit the financial report of DSHE for the year 28 June 2015.

(the FY2015 Retainer)

Particulars

The FY2014 Retainer was in writing and was comprised of:

- (A) Letter of engagement dated 13 November 2013 from DTT to Bill Wavish of DSHE
- (B) DTT's Standard Terms and Conditions

309. It was a term of the FY2015 Retainer that, DTT would:

- (a) Perform its audit pursuant to the *Corporations Act 2001* requirements;
- (b) Conduct its audit in accordance with Australian Auditing Standards;
- (c) Perform procedures to obtain audit evidence about the amounts and disclosures in the financial report;
- (d) Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial report;
- (e) in making risk assessments, consider internal controls relevant to DSHE's preparation of the financial report in order to design audit procedures that are appropriate in the circumstances;
- (f) communicate to DSHE in writing concerning any significant deficiencies in internal controls relevant to the audit of the financial report identified during the audit.
- (g) review the interim financial report in accordance with the Australian Auditing Standard on *Review Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity*, issued by the Auditing and Assurance Standards Board;

- (h) provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind;

Particulars

Clause 3.1 of the Standard Terms and Conditions enclosed with the 2014 Engagement Letter

- (i) would use reasonable skill and care in providing services pursuant to the FY2014 Retainer;

Particulars

The term was implied by law

FY2013 Audit

- 310. On or about 23 October 2013, DTT issued an Independent Auditor's Report to the Members of DSSH (**FY2013 Audit Report**).
- 311. DSSH's financial report for 10 month period ended 30 June 2013 containing the FY2013 Review Report was lodged with the ASX on or about 31 October 2013.
- 312. By issuing the FY2013 Audit Report, DTT represented that:
 - (a) based on its audit of DSSH's 2013 Full Year Financial Statements, DTT had not become aware of any matter that made it believe that the financial report of DSSH was not in accordance with the Corporations Act 2001, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 30 June 2013 and of its performance the period ended on that date; and
 - (ii) complying with Accounting Standard AASB 134 Interim Financial Reporting and the *Corporations Regulations 2001*.

Particulars

Independent Auditor's Report to the Members of DSSH dated 23 October 2013

- (b) it had exercised reasonable skill and care in undertaking the audit of the 2013 Full Year Financial Statements;

- (c) it had reasonable grounds based on an adequate examination of the books and records of DSHE for the opinions expressed in subparagraph 329(a) below;

(DTT FY2013 Representations)

- 313. By making the DTT FY2013 Representations, DTT engaged in conduct:
 - (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
 - (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
 - (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;
- 314. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 60-64, 69-75, 81-89, 91-96, 99-111 and 135-159 of the Statement of Claim.
- 315. If the Plaintiffs establish the matters pleaded at paragraph 314 above (which are not admitted), then DTT:
 - (a) in preparing the FY2013 Report, DSSH adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment;
 - (v) the Receivables Provision Adjustment;
 - (vi) the Warranty Sign On Liability Adjustment
 - (vii) the Capitalisation of Costs Approach;
 - (b) each of the matters referred to in subparagraphs (a)(i)-(vii) above did not comply with Australian Accounting Standards;
 - (c) the adoption of the matters in paragraphs (a)(i)-(vii) above had the effect of enabling DSSH to report, in the FY2013 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;

(d) the FY2013 Report did not disclose the existence of:

- (i) the Acquisition Accounting Information;
- (ii) the Sales Trend Information;
- (iii) the Sales Accounting Approach;
- (iv) the Retail Sales Information;
- (v) the O & A Rebate Information;
- (vi) the Inventory Obsolescence Approach;
- (vii) the matters referred to in subparagraphs (a)-(c) above;

which was information that should have accompanied the FY2013 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and

(e) by reason of the matters in paragraphs (a)-(d) above, the FY2013 Report:

- (i) did not comply with Australian Accounting Standards; and
- (ii) did not give a true and fair view of the financial position and performance of DSSH.

316. If the Plaintiffs establish the matters referred to in paragraph 315 above (which are denied), then DTT;

- (a) failed to become, in the course of conducting the audit for the period ended 30 June 2013, that the FY2013 Report was prepared on the basis of the matters pleaded in paragraph 315(a) above;
- (b) failed to appreciate or to report that the matters pleaded in paragraph 315(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and equity being overstated in the FY2013 Report; and/or
- (c) failed to appreciate or report that the FY2013 Report did not disclose the matters in paragraph 315(d) above, or that such non-disclosure and the matters in paragraphs (a)-(d) above meant that the FY2013 Report did not give a true and fair view of the financial position and performance of DSSH.

DTT thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the FY2013 Audit, in that:

- (d) DTT failed to obtain an adequate understanding of the DSSH's business and its environment, including its internal control as it relates to the preparation of financial reports, sufficient to plan and conduct the FY2013 Audit (ASA 315, paragraphs 11, 27, 28) and/or
- (e) DTT failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the matters pleaded in subparagraphs 315(a) and 315(d) above (ASA 500 paragraphs 4-6, A1-A3, A10, A14-A15) and/or
- (f) by reason of having failed to obtain sufficient appropriate audit evidence so as to reduce audit risk to an acceptably low level, DTT failed to obtain reasonable assurance about whether the FY2013 Report as a whole was free from material misstatement (ASA 200 paragraph 5 and 17) and was unable to draw reasonable conclusions on which to base DTT's opinion on whether the FY2013 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2013 Report in accordance with DTT's findings (ASA 200 paragraphs 11 and 17); and/or
- (g) DTT failed to obtain an adequate understanding of the application of accounting policies adopted by DSSH in respect of the matters pleaded in paragraphs 315(a) and 315(d) above sufficient to evaluate whether those policies were appropriate for its business and were consistent with the applicable financial reporting framework (ASA 315 paragraph 11); and/or
- (h) DTT failed to obtain an adequate understanding of DSSH's internal controls in respect of the recording of rebates or the provisioning for inventory or of the activities undertaken by DSSH to monitor such controls (ASA 315 paragraphs 11-15, 113, 20-22); and/or
- (i) DTT failed to design and perform tests of controls in relation to the recording of rebates and inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paragraphs 8-10, 16); and/or
- (j) DTT, having determined that there was a significant risk of material misstatement in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2013 Report, failed to perform substantive

procedures that are specifically responsive to that risk (ASA 330 paragraph 21); and/or

- (k) DTT failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2013 Report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25), and/or
- (l) in circumstances where DTT had not obtained sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 315(a) and 315(d) above, DTT failed to express a qualified opinion or disclaim an opinion on the FY2013 Report (ASA 330 paragraphs 26-27).

317. By reason of the matters pleaded in paragraphs 315 and 316 above, DTT, in issuing the FY2013 Audit Report and thereby making the DTT FY2013 Representations engaged in conduct that was misleading or deceptive or likely or mislead or deceive in contravention of s18 of the ACL or alternatively s1041H of the Corporations Act or alternatively s12DA of the ASIC Act.

Particulars

If the matters in paragraphs 315 and 316 above are established, DTT did not have a reasonable basis for the opinion pleaded in paragraph 312(a) above, and that opinion was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2013 Audit.

Prospectus

318. The Prospectus issued by DSHE on 21 November 2013 contained Pro forma Historical Financial Information, comprised of:

- (a) Pro forma Historical Consolidated Income Statements of DSSH for the financial years ended 26 June 2011, 24 June 2012 and 30 June 2013 and for the three months ended 29 September 2013;
- (b) the Pro forma Consolidated Balance Sheet of the Company as at 30 June 2013

(Pro forma Historical Financial Information)

Particulars

- (1) Prospectus, p 53
- (2) Letter from Deloitte Corporate Finance to DSSH dated 13 November 2013

319. The Prospectus stated that financial statements for the period ended 30 June 2013 were audited by DTT, which had issued an unqualified opinion.

Particulars

- (1) Prospectus, p 53
- (2) Investigating Accountant's Report and Financial Services Guide dated 13 November 2013

320. The Pro forma Historical Financial Information was derived from:

- (a) the audited financial statements of DSHE for the period from 26 November 2012 to 30 June 2013;
- (b) unaudited accounting records of DSHE Holdings Pty Ltd for the period from 28 June 2010 to 26 November 2012;
- (c) the pro forma adjustments applied to the Historical Financial Information to illustrate the effect of events and transactions related to the initial public offering.

321. On 13 November 2013, DTT gave its written consent to the inclusion in the Prospectus of statements specifically attributed to DTT in the text of the Prospectus, in the form and context in which they are included (and all other references to those statements) in this Prospectus.

Particulars

- (1) Prospectus, p 139
- (2) Letter from DTT to DSSH dated 13 November 2013

322. DTT did not withdraw its consent to be named in the Prospectus prior to the lodgement with ASIC.

323. By giving its consent to be named in the Prospectus, save for adjustments to DSSH's pro forma consolidated Historical Financial Information disclosed in the Prospectus, DTT confirmed the DTT FY2013 Representations (**DTT Prospectus Representations**).

324. By making the DTT Prospectus Representations, DTT engaged in conduct:
- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
 - (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
 - (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;
325. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 27-32, 48-50, 56-77, 79-90, 96-115, 125-128 and 133-134 of the Statement of Claim.
326. If the Plaintiffs establish the matters pleaded at paragraph 325:
- (a) refers to and repeats paragraphs 315 to 317 above;
 - (b) says that by reason of the matters pleaded in paragraphs 315 and 316 above, DTT, in:
 - (i) issuing the FY2013 Audit Report;
 - (ii) giving its written consent to the inclusion in the Prospectus of statements specifically attributed to DTT; and
 - (iii) making the DTT Prospectus Representations
- engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the ACL or alternatively s1041H of the Corporations Act or alternatively s12DA of the ASIC Act.

Particulars

If the matters in paragraphs 325 and 326 above are established, DTT did not have a reasonable basis for the opinion pleaded in paragraph 312(a) above, and that opinion was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2013 Audit.

HY2014 Review

327. On or about 18 February 2014, DTT issued an Independent Auditor's Review Report to the Members of DSHE (**HY2014 Review Report**).

328. DSHE's half-year financial report for the period 26 weeks ended 29 December 2013 containing the HY2014 Review Report was lodged with the ASX on or about 19 February 2014.
329. By issuing the HY2014 Review Report, DTT represented that:
- (a) based on its review of DSHE's 2014 Half Year Financial Statements, DTT had not become aware of any matter that made it believe that the half-year financial report of DSHE was not in accordance with the Corporations Act 2001, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 29 December 2013 and of its performance for the 26 weeks then ended; and
 - (ii) complying with Accounting Standard AASB 134 Interim Financial Reporting and the *Corporations Regulations 2001*.

Particulars

Independent Auditor's Review Report to the Members of DSHE dated 18 February 2014

- (b) it had exercised reasonable skill and care in undertaking the review of the 2014 Half Year Financial Statements;
 - (c) it had reasonable grounds based on an adequate examination of the books and records of DSHE for the opinions expressed in subparagraph 329(a) above;
- (In conducting its review of DSHE's 2014 Half Year Financial Statements **DTT HY2014 Representations**)
330. By making the DTT HY2014 Representations, DTT engaged in conduct:
- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
 - (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
 - (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;
331. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 60-64, 69-75, 81-89, 91-96, 99-111 and 135-159 of the Statement of Claim.

332. If the Plaintiffs establish the matters pleaded at paragraph 331 above then:

- (a) in preparing the HY2014 Report, DSHE adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach.
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment;
 - (v) the Receivables Provision Adjustment;
 - (vi) the Warranty Sign On Liability Adjustment; and
 - (vii) the Capitalisation of Casts Approach.
- (b) each of the matters referred to in subparagraphs (a)(i)-(vii) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in subparagraphs (a)(i)-(vii) above had the effect of enabling DSHE to report, in the HY2014 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the HY2014 Report did not disclose the existence of:
 - (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;
 - (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information.
 - (v) the O & A Rebate Information,
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in subparagraphs (a)-(c) above

which was information that should have accompanied the HY2014 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and

- (e) by reason of the matters in subparagraphs (a)-(d) above, the HY2014 Report:
 - (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSHE as at 29 December 2013;

333. If the Plaintiffs establish the matters referred to in paragraph 332 above (which are denied), then DTT:

- (a) failed to become aware, in the course of conducting the HY2014 Review, that the HY2014 Report was prepared on the basis of the matters pleaded in paragraph 332(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 332(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, value of inventories and equity being overstated in the HY2014 Report; and/or
- (c) failed to appreciate or report that the HY2014 Report did not disclose the matters in paragraph 332(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the HY2014 Report did not give a true and fair view of the financial position and performance of DSHE; and

DTT thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards in conducting the HY2014 Review, in that:

- (d) DTT failed to obtain an adequate understanding of DSHE and its environment, including its internal control as it relates to the preparation of financial reports (including in respect of the matters referred to in paragraphs 332(a) and 332(d) above), sufficient to plan and conduct the HY2014 Review (ASRE 2410 paragraphs 13 and A11); and/or
- (e) DTT failed adequately to make enquiries or to perform analytical and other review procedures to enable DTT to conclude whether, on the basis of the procedures performed, anything had come to their attention that caused DTT to believe that the HY2014 Report (including in respect of the matters referred to in paragraphs 332(a) and 332(d) above) was not prepared, in all material respects in accordance

with the applicable financial accounting framework (ASRE 2410 paragraph 16):
and/or

- (f) as DTT, in the course of the HY2014 Review, identified any of the matters referred to in paragraph 332(a) above as an area where a material adjustment might have to be made to the HY2014 Report DTT failed to make additional enquiries or perform other procedures sufficient to enable DTT to conclude whether, on the basis of the procedures performed, anything had come to DTT's attention that caused DTT to believe that the HY2014 Report (including in respect of the matters referred to in paragraphs 332(a) and 332(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 20)

334. By reason of the matters pleaded in paragraphs 332 and 333 above, DTT, in issuing the HY2014 Review Report and thereby making the DTT HY2014 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the ACL or alternatively s1041H of the Corporations Act or alternatively s12DA of the ASIC Act.

Particulars

If the matters in paragraphs 332 and 333 above are established, then DTT did not have a reasonable basis for the representation in paragraph 329(a) above, and the representation in paragraph 329(a) above was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2014 Review.

FY2014 Audit

335. On or about 18 August 2014, DTT issued an Independent Auditor's Report to the Members of DSHE (**FY2014 Audit Report**).
336. DSHE's Annual Financial Report for the year ended 28 June 2014 containing the FY2014 Review Report was lodged with the ASX on or about 19 August 2014.
337. By issuing the FY2014 Audit Report, DTT represented that:
- (a) based on its review of DSHE's 2014 Full Year Financial Statements, DTT had not become aware of any matter that made it believe that the FY2014 Annual Report of DSHE was not in accordance with the Corporations Act 2001, including:

- (i) giving a true and fair view of DSHE's financial position as at 28 June 2014 and of its performance for the year ended on that date; and
- (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001.

Particulars

FY2014 Audit Report, p 2.

- (b) based on its review of DSHE's 2014 Full Year Financial Statements, DTT had not become aware of any matter that made it believe that the FY2014 Annual Report of DSHE was not in accordance with International Financial Reporting Standards;

Particulars

FY2014 Audit Report, p 2.

- (c) it had exercised reasonable skill and care in undertaking the review of the 2014 Full Year Financial Statements; and
- (d) it had reasonable grounds based on an adequate examination of the books and records of DSHE for the opinion expressed in subparagraph 337(a) above

(the **DTT FY2014 Representations**).

338. By making the DTT FY2014 Representations, DTT engaged in conduct:

- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
- (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
- (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;

339. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 60-64, 69-75, 81-89, 91-96, 99-111, 135-154 and 160-164 of the Statement of Claim.

340. If the Plaintiffs establish the matters pleaded at paragraph 339 above

- (a) in preparing the FY2014 Report, DSHE adopted:
 - (i) the Rebate Accounting Approach;

- (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment;
 - (v) the Receivables Provision Adjustment,
 - (vi) the Warranty Sign On Liability Adjustment; and
 - (vii) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in subparagraphs (a)(i) to (vii) above did not comply with Australian Accounting Standards.
- (c) the adoption of the matters in paragraphs (a)(i) to (vii) above had the effect of enabling DSHE to report, in the FY2014 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the FY2014 Report did not disclose the existence of:
- (i) the Acquisition Accounting Information,
 - (ii) the Sales Trend Information;
 - (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information;
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in subparagraphs (a)-(c) above;
- which was information that should have accompanied the FY2014 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and
- (e) by reason of the matters in subparagraphs (a)-(d) above, the FY2014 Report:

- (i) did not comply with Australian Accounting Standards, and
- (ii) did not give a true and fair view of the financial position and performance of DSHE as at 29 June 2014.

341. If the Plaintiffs establish the matters referred to in paragraph 340 above (which are denied), then DTT:

- (a) failed to become aware, in the course of conducting the FY2014 Audit, that the FY2014 Report was prepared on the basis of the matters pleaded in paragraph 340(a) above; and/or
- (b) failed to appreciate or to report that the matters pleaded in paragraph 340(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and equity being overstated in the FY2014 Report: and/or
- (c) failed to appreciate or report that the FY2014 Report did not disclose the matters in paragraph 340(d), or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the FY2014 Report did not give a true and fair view of the financial position and performance of DSHE; and

DTT thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the FY2014 Audit, in that

- (d) DTT failed to obtain an adequate understanding of the DSHE business and its environment, including its internal control as it relates to the preparation of financial reports, sufficient to plan and conduct the FY2014 Audit (ASA 315, paragraphs 11, 27, 28), and/or
- (e) DTT failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 340(a) and 340(d) above (ASA 500 paragraphs 4-6, A1-A3, A10, A14-A15), and/or
- (f) DTT failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (including in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2014 Report), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3, 5-7); and/or

- (g) by reason of having failed to obtain sufficient appropriate audit evidence so as to reduce audit risk to an acceptably low level DTT failed to obtain reasonable assurance about whether the FY2014 Report as a whole was free from material misstatement (ASA 200 paragraph 5 and 17) and was unable to draw reasonable conclusions on which to base DTT's opinion on whether the FY2014 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2014 Report in accordance with DTT's findings (ASA 200 paragraphs 11 and 17); and/or
- (h) DTT failed to obtain an adequate understanding of the application of accounting policies adopted by DSH in respect of the matters pleaded in paragraphs 340(a) and 340(d) above, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11); and/or
- (i) DTT failed to obtain an adequate understanding of DSHE's internal controls in respect of the recording of rebates or the provisioning for inventory or of the activities undertaken by DSHE to monitor such controls (ASA 315 paragraphs 11-15, 113, 20-22); and/or
- (j) DTT failed to design and perform tests of controls in relation to the recording of rebates and inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paragraphs 8-10, 16); and/or
- (k) DTT, having determined that there was a significant risk of material misstatement in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2014 Report, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 paragraph 21); and/or
- (l) DTT failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2014 Report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25), and/or
- (m) in circumstances where DTT had not obtained sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 340(a) and 340(d) above, DTT failed to express a qualified opinion or disclaim an opinion on the FY2014 Report (ASA 330 paragraphs 26-27)

342. By reason of the matters pleaded in paragraphs 340 and 341 above, DTT, in issuing the FY2014 Audit Report and thereby making the DTT FY2014 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s. 18 of the ACL or alternatively s. 1041H of the Corporations Act or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 340 and 341 above are established, then DTT did not have a reasonable basis for the opinion pleaded in paragraph 337(a) above, and that opinion was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2014 Audit.

HY2015 Review

343. On or about 16 February 2015, DTT issued an Independent Auditor's Review Report to the Members of DSHE (**HY2015 Review Report**).
344. DSHE's half-year financial report for the period 26 weeks ended 28 December 2014 containing the HY2015 Review Report was lodged with the ASX on or about 17 February 2015.
345. By issuing the HY2015 Review Report, DTT represented that:
- (a) based on its review of DSHE's 2015 Half Year Financial Statements, DTT had not become aware of any matter that made it believe that the half-year financial report of DSHE was not in accordance with the Corporations Act 2001, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 December 2014 and of its performance for the 26 weeks then ended; and
 - (ii) complying with Accounting Standard AASB 134 Interim Financial Reporting and the *Corporations Regulations 2001*.

Particulars

Independent Auditor's Review Report to the Members of DSHE dated 16 February 2015

- (b) it had exercised reasonable skill and care in undertaking the review of the 2015 Half Year Financial Statements;

- (c) it had reasonable grounds based on an adequate examination of the books and records of DSHE for the opinions expressed in subparagraph 345(a);

(the DTT HY2015 Representations)

346. By making the DTT HY2015 Representations, DTT engaged in conduct:

- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
- (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
- (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;

347. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 60-64, 69-75, 81-89, 91-96, 99-111, 135-154 and 165-169 of the Statement of Claim.

348. If the Plaintiffs establish the matters pleaded at paragraph 347 above, then:

- (a) in preparing the HY2015 Report, DSHE adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment; and
 - (v) the Capitalisation of Costs Approach;
- (b) each of the matters referred to in paragraphs (a)(i)-(v) above did not comply with Australian Accounting Standards;
- (c) the adoption of the matters in paragraphs (a)(i)-(v) above had the effect of enabling DSHE to report, in the HY2015 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
- (d) the HY2015 Report did not disclose the existence of
 - (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information;

- (iii) the Sales Accounting Approach;
 - (iv) the Retail Sales Information,
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus inventory Information;
 - (viii) the Post Prospectus Debt Information; or
 - (ix) the matters referred to in paragraphs (a)-(c) above
- (e) which was information that should have accompanied the HY2015 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and
- (f) by reason of the matters in paragraphs (a)-(d) above, the HY2015 Report
- (i) did not comply with Australian Accounting Standards; and
 - (ii) did not give a true and fair view of the financial position and performance of DSHE as at 28 December 2014

349. If the Plaintiffs establish the matters referred to in paragraph 348 above (which are not admitted), then:

- (a) DTT failed to become aware, in the course of conducting the HY2015 Review, that the HY2015 Report was prepared on the basis of the matters pleaded in paragraph 348(a) above and/or
- (b) DTT failed to appreciate or to report that the matters pleaded in paragraph 348(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and equity being overstated in the HY2015 Report; and/or
- (c) DTT failed to appreciate or report that the HY2015 Report did not disclose the matters in paragraph 348(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the HY2015 Report did not give a true and fair view of the financial position and performance of DSHE; and

thereby DTT thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the HY2015 Review, in that

- (d) DTT failed to obtain an adequate understanding of DSHE and its environment, including its internal control as it relates to the preparation of financial reports (including in respect of the matters referred to in paragraphs 348(a) and 348(d) above), sufficient to plan and conduct the HY2015 Review (ASRE 2410 paragraphs 13 and A11); and/or
 - (e) DTT failed adequately to make enquiries or to perform analytical and other review procedures to enable DTT to conclude whether, on the basis of the procedures performed, anything had come to its attention that caused DTT to believe that the HY2015 Report (including in respect of the matters referred to in paragraphs 348(a) and 348(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 16); and/or
 - (f) insofar as DTT, in the course of the HY2015 Review, identified any of the matters referred to in paragraph 348(a) above as an area where a material adjustment might have to be made to the HY2015 Report, DTT failed to make additional enquiries or perform other procedures sufficient to enable DTT to conclude whether, on the basis of the procedures performed, anything had come to DTT's attention that caused it to believe that the HY2015 Report (including in respect of the matters referred to in paragraphs 348(a) and 348(d) above) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 paragraph 20).;
350. By reason of the matters pleaded in paragraphs 348 and 349 above, DTT, in issuing the HY2015 Review Report and thereby making the DTT HY2015 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the ACL, or alternatively s1041H of the Corporations Act, or alternatively s. 12DA of the ASIC Act.

Particulars

If the matters in paragraphs 348 and 349 above are established, then DTT did not have a reasonable basis for the representation in paragraph 345(a) above, and the representation in paragraph 345(a) above was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the HY2015 Review.

FY2015 Review

351. On or about 17 August 2015, DTT issued an Independent Auditor's Review Report to the Members of DSHE (**FY2015 Audit Report**).
352. DSHE's Annual Financial Report for the year ended 28 June 2015 containing the FY2015 Review Report was lodged with the ASX on or about 18 August 2015.
353. By issuing the FY2015 Audit Report, DTT represented that:
- (a) based on its review of DSHE's 2015 Full Year Financial Statements, DTT had not become aware of any matter that made it believe that the FY2015 Annual Report of DSHE was not in accordance with the Corporations Act 2001, including:
 - (i) giving a true and fair view of DSHE's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
 - (ii) complying with the Australian Accounting Standards and the Corporations Regulations 2001.

Particulars

FY2015 Audit Report, p 2.

- (b) based on its review of DSHE's 2015 Full Year Financial Statements, DTT had not become aware of any matter that made it believe that the FY2015 Annual Report of DSHE was not in accordance with International Financial Reporting Standards;

Particulars

FY2015 Audit Report, p 2.

- (c) it had exercised reasonable skill and care in undertaking the review of the 2015 Full Year Financial Statements; and
 - (d) it had reasonable grounds based on an adequate examination of the books and records of DSHE for the opinion expressed in subparagraph 353(a) above
- (the **DTT FY2015 Representations**).

354. By making the DTT FY2015 Representations, DTT engaged in conduct:
- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;

- (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
 - (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;
355. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 60-64, 69-75, 81-89, 91-96, 99-111, 135-154 and 170-174 of the Statement of Claim.
356. If the Plaintiffs establish the matters pleaded at paragraph 355 above:
- (a) in preparing the FY2015 Report, DSHE adopted:
 - (i) the Rebate Accounting Approach;
 - (ii) the Sales Accounting Approach;
 - (iii) the Inventory Obsolescence Approach;
 - (iv) the Onerous Leases Adjustment; and
 - (v) the Capitalisation of Costs Approach.
 - (b) each of the matters referred to in subparagraphs (a)(1)-(v) above did not comply with Australian Accounting Standards .
 - (c) the adoption of the matters in paragraphs (a)(i)-(v) above had the effect of enabling DSHE to report, in the FY2015 Report, Gross Profit, EBITDA, NPAT, the value of inventories and equity, at levels in excess of what should have been reported had those matters not been adopted;
 - (d) the FY2015 Report did not disclose the existence of:
 - (i) the Acquisition Accounting Information;
 - (ii) the Sales Trend Information,
 - (iii) the Sales Amounting Approach,
 - (iv) the Retail Sales Information;
 - (v) the O & A Rebate Information;
 - (vi) the Inventory Obsolescence Approach;
 - (vii) the Prospectus Inventory Information;

(viii) the Post Prospectus Debt Information; or

(ix) the matters referred to in paragraphs (a)-(c) above;

which was information that had to accompany the FY2015 Report if it was not to be misleading or deceptive, or likely to mislead or deceive; and

(e) by reason of the matters in subparagraphs (a)-(d) above, the FY2015 Report:

(i) did not comply with Australian Accounting Standards; and

(ii) did not give a true and fair view of the financial position and performance of DSHE as at 28 June 2015.

357. If the Plaintiffs establish the matters referred to in paragraph 356 above (which are not admitted), then:

(a) DTT failed to become aware in the course of conducting the FY2015 Audit, that the FY2015 Report was prepared on the basis of the matters pleaded in paragraph 356(a) above; and/or

(b) DTT failed to appreciate or to report that the matters pleaded in paragraph 356(a) above did not comply with Australian Accounting Standards, and resulted in Gross Profit, EBITDA, NPAT, the value of inventories and equity being overstated in the FY2015 Report and/or

(c) failed to appreciate or report that the FY2015 Report did not disclose the matters in paragraph 356(d) above, or that such non-disclosure and the matters in paragraphs (a)-(b) above meant that the FY2015 Report did not give a true and fair view of the financial position and performance of DSHE;

and DTT thereby failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in conducting the FY2015 Audit, in that:

(d) DTT failed to obtain an adequate understanding of the DSHE business and its environment, including its internal control as it relates to the preparation of financial reports, sufficient to plan and conduct the FY2015 Audit (ASA 315, paragraphs 11, 27, 28); and/or

(e) DTT failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 356(a) and 356(d) above (ASA 500 paragraphs 4-6. A1-A3, A10, A14-A15); and/or

- (f) DTT failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (including in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2015 Report), through designing and implementing appropriate responses to those risks (ASA 330 paragraphs 3 and 5-7), and/or
- (g) by reason of having failed to obtain sufficient appropriate audit evidence so as to reduce audit risk to an acceptably low level, DTT failed to obtain reasonable assurance about whether the FY2015 Report, as a whole, was free from material misstatement, whether due to fraud or error (ASA 200 paragraph 5 and 17) and was unable to draw reasonable conclusions on which to base DTT's opinion on whether the FY2015 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2015 Report in accordance with Deloitte's findings (ASA 200 paragraphs 11 and 17); and/or
- (h) DTT failed to obtain an adequate understanding of the application of accounting policies adopted by DSHE in respect of the matters pleaded in paragraphs 356(a) and 356(d) above, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 paragraph 11); and/or
- (i) DTT failed to obtain an adequate understanding of DSHE's internal controls in respect of the recording of rebates or the provisioning for inventory or of the activities undertaken by DSHE to monitor such controls (ASA 315 paragraphs 11-15, 18, 20-22); and/or
- (j) DTT failed to design and perform tests of controls in relation to the recording of rebates and inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paragraphs 8-10, 16); and/or
- (k) DTT, having determined that there was a significant risk of material misstatement in respect of the recording of rebates, the inventory provisions and the capitalisation of costs in the FY2015 Report, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 paragraph 21), and/or
- (l) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2015 Report was in accordance with the applicable financial reporting framework (ASA 330 paragraph 24) and to evaluate whether

the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 paragraph 25); and/or

- (m) in circumstances where DTT had not obtained sufficient appropriate audit evidence in respect of the matters pleaded in paragraphs 356(a) and 356(d) above, DSHE failed to express a qualified opinion or disclaim an opinion on the FY2015 Report (ASA 330 paragraphs 26-27);
358. By reason of the matters pleaded in paragraphs 356 and 357 above, DTT, in issuing the FY2015 Audit Report and thereby making the DTT FY2015 Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL, or alternatively s104H of the Corporations Act, or alternatively s12DA of the ASIC Act.

Particulars

If the matters in paragraphs 356 and 357 above are established, then DTT did not have a reasonable basis for the representation in paragraph 353(a) above, and the representation in paragraph 353(a) above was not the result of DTT having exercised reasonable skill and care and having complied with Auditing Standards in conducting the FY2015 Audit.

Loss and Damage

359. For the purposes only of this proportionate liability defence, and without any admission, Abboud repeats paragraphs 283-287 of the Statement of Claim (which are the subject of the denials and non-admissions pleaded in paragraphs 283-287 above).
360. If the matters referred to in paragraph 359 above are established, then the allegedly misleading conduct DSHE:
- (a) by publishing the Prospectus and thereby making the alleged Prospectus Misleading Statements;
 - (b) by publishing the HY2014 Report and thereby making the 2014 Half Yearly Results Representations and the 2014 Half Yearly Compliance Representations, including the representation that the HY2014 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSHE and the DSH Group as at 29 December 2013;
 - (c) by publishing the FY2014 Report and thereby making the 2014 Yearly Results Representations and the 2014 Annual Report Compliance Representations,

including the representation that the FY2014 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSHE and the DSH Group as at 29 June 2014;

- (d) by publishing the HY2015 Report and thereby making the 2015 Half Yearly Results Representations and the 2015 Half Year Compliance Representations, including the representation that the HY2015 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSHE and the DSH Group as at 28 December 2014; and
- (e) by publishing the FY2015 Report and thereby making the 2015 Yearly Results Representations and the 2015 Annual Report Compliance Representations, including the representation that the FY2015 Report was prepared in accordance with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSHE and the DSH Group as at 28 June 2015

caused the market price of DSHE Shares to be, or materially contributed to the market price of DSHE Shares being, substantially greater than their true value and/or the market price that would have applied but for that misleading conduct, and thereby caused loss and damage to the Plaintiffs and those Group Members who acquired interests in DSHE Shares on the secondary market operated by the ASX.

361. If the matters in paragraph 360 are established (which are denied), then it follows that the misleading conduct of DTT in:

- (a) giving its consent to be named in the Prospectus, confirming the DTT 2013 Representations and making the DTT Prospectus Representations;
- (b) issuing the HY2014 Review Report and making the DTT HY2014 Representations;
- (c) issuing the FY2014 Audit Report and making the DTT FY2014 Representations.
- (d) issuing the HY2015 Review Report and making the DTT HY2015 Representations;
- (e) issuing the FY2015 Audit Report and making the DTT FY2015 Representations

caused the market price of DSHE Shares to be, or materially contributed to the market price of DSHE Shares being, substantially greater than their true value and/or the market price that would have applied but for that misleading conduct, and thereby caused loss

and damage to the Plaintiffs and those Group Members who acquired interests in DSHE Shares on the secondary market operated by the ASX

362. Further, or in the alternative, if the matters referred to in paragraph 359 above are established, then the Plaintiffs and some Group Members acquired their interests in DSHE Shares at the prices and in the volumes that they were acquired, in reliance on the reports and the representations referred to in paragraph 361(a)-(e) above, and thereby suffered loss and damage as the result of DSHE's alleged misleading conduct by issuing those reports and thereby make those representations.
363. If the matters referred to in paragraph 362 above are established (which is denied), then the Plaintiffs and the Group Members referred to in paragraph 362 above also acquired their interests in DSHE Shares, at the prices and in the volumes that they were acquired, in reliance on DTT's reports and the representations referred to in paragraph 361(a)-(e) above, and thereby suffered loss and damage as the result of DTT's misleading conduct in issuing those reports and thereby making those representations.
364. By reason of the matters pleaded in paragraphs 359-363 above, if it is established (which is denied) that DSHE is liable to the Plaintiffs or the Group Members for any loss or damage, then:
- (a) each of DSHE and DTT is a person whose acts or omissions caused the loss allegedly suffered by the Plaintiffs and/or Group Members which is the subject of their claim, and therefore each is a concurrent wrongdoer within the meaning of s.1041L of the *Corporations Act*, s.12GP of the *ASIC Act* and s 87CB of the *CCA*, and
 - (b) pursuant to s.1041L of the *Corporations Act*, s.12GP of the *ASIC Act* and/or s. 87CB of the *CCA*, any liability (which is denied) of Abboud to the Plaintiffs or Group Members for any such loss is to be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of DSHE's responsibility, and the extent of the responsibility of DTT, for that loss or damage.

Q.2.4 Proportionate Liability — Deloitte Corporate Finance Pty Ltd

365. On or about 10 September 2013 Deloitte Corporate Finance Pty Ltd (**DCF**) was retained by DSHE to:

- (a) prepare an Investigating Accountant's Report to the board of directors (the Directors) of the Company in connection with the initial public offering of shares in DSHE and its subsequent listing on the ASX (**Offer**);
- (b) participate as a member of the Due Diligence Committee (**DDC**) established by the Company in relation to the Offer and provide a due diligence sign off under *Australian Professional and Ethical Standard 350 (APES 350)* addressed to and able to be relied on by the DDC, its members and their representatives; and
- (c) prepare a report summarising the results of the due diligence to the DDC.

(the DCF Retainer)

Particulars

The DCF Retainer was in writing and was comprised of:

- (A) Letter from DCF to DSHE dated 10 September 2013
- (B) DCF's standard terms and conditions

366. It was a term of the DCF Retainer that:

- (a) DCF would conduct its engagement in accordance with *ASAE 3450 Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*;
- (b) DCF would perform a review of the Pro forma Historical Financial Information in order to state whether, on the basis of the procedures described, anything came to its attention that would cause DCF to believe that the Pro forma Historical Financial Information is not presented fairly, in all material respects, by the Directors on the stated basis of preparation;
- (c) DCF would perform a review of the Forecast Financial Information and the underlying best-estimate assumptions of the Directors, including the pro forma adjustments incorporated into the Pro forma Forecast Financial Information, in order to state whether anything came to DCF's attention that caused it to believe that:
 - (i) the Directors' best-estimate assumptions did not provide reasonable grounds for the preparation of the Forecast Financial Information;
 - (ii) in all material respects the Forecast Financial Information was not:

- (A) prepared on the basis of the Directors' best-estimate assumptions;
 - (B) presented fairly in accordance with the stated basis of preparation, being the recognition and measurement principles contained in Australian Accounting Standards, applied to the Forecast Financial Information and DSHE's adopted accounting policies and the pro forma adjustments as disclosed in the Prospectus; and
- (iii) the Forecast Financial Information itself was unreasonable.
- (d) As a member of the DDC, DCF would:
 - (i) attend all DDC meetings;
 - (ii) consider, comment on and approve the Due Diligence Planning Memorandum (**DDPM**);
 - (iii) provide a materiality guidance letter addressed to members of the DDC and their representatives and the Directors which considered the appropriate level of quantitative materiality to be adopted in the due diligence process;
 - (iv) consider all information presented to the DDC;
 - (v) participate in the functions (including the decision making process) of the DDC including presenting to the DDC in connection with DCF's work, answering questions from the DDC in relation to that work and the Financial Information and carrying out our responsibilities as set out in the; DDPM;
 - (vi) read and comment on (where necessary) the minutes of DDC meetings;
 - (vii) read and comment on drafts of the Prospectus (including the final version) and in particular consider the disclosure of the Financial Information in the Prospectus in the form and context in which it was disclosed;
 - (viii) verify the IAR as included in the Prospectus;
 - (ix) perform those procedures considered necessary to enable DCF to provide a Due Diligence Sign Off in relation to the Financial Information to the DDC; and

- (x) sign the final report of the DDC and the new circumstances sign-off as contemplated in the DDPM
 - (e) DCF would provide a Due Diligence Sign Off as to whether, on the basis of the procedures performed and applying the materiality guidelines adopted by the DDC, anything had come to its attention in relation to the Financial Information, which caused it to believe that:
 - (i) the Financial Information was misleading or deceptive (including by omission) in the form and context in which it appeared; or
 - (ii) the due diligence enquiries set out in the DDPM as they relate to the Financial Information did not constitute all inquiries which were reasonable in the circumstances so far as the Financial Information was concerned.
367. On or about 13 November 2013, DCF Retainer was novated from DSSH to DSHE, pursuant to which:
- (a) DSSH novated absolutely to DSHE all its rights and obligations under the DCF Retainer; and
 - (b) consented to the novation and agreed to continue to perform its obligations under the DCF Retainer, as if the DCF Retainer had been with DSHE.

Particulars

The novation was in writing and was comprised of a letter from DCF to DSSH and DSHE dated 13 November 2013

368. On or about 14 November 2013, DCF issued an Investigating Accountant's Report and Financial Services Guide (**IAR**).
369. The Prospectus, which contained the IAR, was issued and lodged with ASIC by DSHE on or about 21 November 2013.
370. By issuing the IAR, DCF represented that based on its review:
- (a) nothing came to its attention that caused DCF to believe that the Pro forma Historical Financial Information was not presented fairly in all material respects, on the basis of the pro forma adjustments described in Section 5.3.1 of the Prospectus and in accordance with the recognition and measurement principles contained in the Australian Accounting Standards and the accounting policies adopted by DSHE as disclosed in the Prospectus;

- (b) nothing has come to its attention that caused DCF to believe that:
 - (i) the Directors' best estimate assumptions used in the preparation of the Statutory Forecast Financial Information did not provide reasonable grounds for the Statutory Forecast Financial Information;
 - (ii) in all material respects, the Statutory Forecast Financial Information was not:
 - (A) prepared on the basis of the Directors' best estimate assumptions as described in the Prospectus; or
 - (B) presented fairly in accordance with the stated basis of preparation, being the accounting policies adopted and used by the Company and the recognition and measurement principles contained in the Australian Accounting Standards; or
 - (iii) the Statutory Forecast Financial Information itself was unreasonable.
- (c) nothing has come to its attention that caused DCF to believe that:
 - (i) the Directors' best estimate assumptions used in the preparation of the Pro forma Forecast Financial Information did not provide reasonable grounds for the Pro forma Forecast Financial Information;
 - (ii) in all material respects, the Pro forma Forecast Financial Information was not:
 - (A) prepared on the basis of the Directors' best estimate assumptions as described in the Prospectus;
 - (B) presented fairly in accordance with the stated basis of preparation, being the accounting policies adopted and used by the Company and the recognition and measurement principles contained in the Australian Accounting Standards, and the Pro forma Adjustments as disclosed in the Prospectus; or
 - (iii) the Pro forma Forecast Financial Information itself was unreasonable.

(the IAR Representations)

371. On 13 November 2013, DCF gave its consent to be named as the Investigating Accountant in the Prospectus and to the inclusion of the Investigating Accountant's Report dated 14 November 2013 in the Prospectus.

Particulars

Letter from DCF to DSHE dated 13 November 2013

372. DCF did not withdraw its consent to be named in the Prospectus prior to the lodgement.
373. By making the IAR Representations, DCF engaged in conduct:
- (a) in relation to a financial product or a financial service within the meaning of s1041H of the *Corporations Act*;
 - (b) in trade or commerce in relation to financial services within the meaning of s12DA of the *ASIC Act*; and/or
 - (c) in trade or commerce within the meaning of s18 of the *Australian Consumer Law*;
374. For the purpose of this proportionate liability defence only, DSHE repeats paragraphs 45-134 and 221-223 of the Statement of Claim (which are either not-admitted or denied by DSHE).
375. If the Plaintiffs establish the matters pleaded at paragraph 374 above, then DSHE says:
- (a) the Pro forma Historical Financial Information was not presented fairly in all material respects, on the basis of the pro forma adjustments described in Section 5.3.1 of the Prospectus and in accordance with the recognition and measurement principles contained in the Australian Accounting Standards and the accounting policies adopted by DSHE as disclosed in the Prospectus;
 - (b) the Directors' best estimate assumptions used in the preparation of the Statutory Forecast Financial Information did not provide reasonable grounds for the Statutory Forecast Financial Information;
 - (c) in all material respects, the Statutory Forecast Financial Information was not:
 - (i) prepared on the basis of the Directors' best estimate assumptions as described in the Prospectus; or
 - (ii) presented fairly in accordance with the stated basis of preparation, being the accounting policies adopted and used by the Company and the

recognition and measurement principles contained in the Australian Accounting Standards; or

- (iii) reasonable.
- (d) the Directors' best estimate assumptions used in the preparation of the Pro forma Forecast Financial Information did not provide reasonable grounds for the Pro forma Forecast Financial Information;
- (e) in all material respects, the Pro forma Forecast Financial Information was not:
 - (i) prepared on the basis of the Directors' best estimate assumptions as described in the Prospectus;
 - (ii) presented fairly in accordance with the stated basis of preparation, being the accounting policies adopted and used by the Company and the recognition and measurement principles contained in the Australian Accounting Standards, and the Pro forma Adjustments as disclosed in the Prospectus; or
 - (iii) reasonable; and
- (f) in the premises, DCF did not have reasonable grounds for any of the IAR Representations and by making the IAR Representations contravened s1041H of the Corporations Act, s12DA of the ASIC Act, or s18 of the Australian Consumer Law.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1. There are no questions appropriate for referral to a referee.

E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME

1. The parties have not attempted to mediate.
2. DSHE is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

This commercial list response does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

Signature of legal representative

Capacity

Date of signature

 (Scott Hedge)

Solicitor

21 May 2018