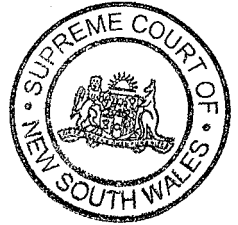


FILED

- 3 JUL 2019



FOURTH CROSS-CLAIM

COMMERCIAL LIST CROSS-CLAIM STATEMENT

(D.E.)

COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial
Registry	Sydney
Case number	2017/00294069 & 2018/00052431

TITLE OF PROCEEDINGS

~~Proceeding 2017/00294069~~

First Plaintiff	Haliburton Charles David Findlay
Second Plaintiff	Marian Jennifer Denny Findlay
First Defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of Defendants	457

Proceeding 2018/00052431

First Plaintiff	Epaminondas Mastoris
Second Plaintiff	Lena Mastoris
First Defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of Defendants	457

TITLE OF THIS CROSS-CLAIM

First Cross-Claimant	David Robert White t/as Deloitte Touche Tohmatsu (ABN 74 490 121 060)
Number of Cross-Claimants	455
First Cross-Defendant	DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)
Number of Cross-Defendants	3

FILING DETAILS

Filed for	David Robert White & Ors listed in Schedule 1 trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060), 1 st to 454 th Cross-Claimants to the Fourth Cross-Claim Deloitte Corporate Finance Pty Limited , 455 th Cross-Claimant to the Fourth Cross-Claim Fourth Cross-Claim
Filed in relation to	
Legal representative	Angela Pearsall, Clifford Chance
Legal representative reference	21-40668614 / 21-40675324
Contact name and telephone	Angela Pearsall / Jack Oakley, +61 2 8922 8000
Contact email	angela.pearsall@cliffordchance.com / jack.oakley@cliffordchance.com

INTRODUCTION / NOTE AS TO TERMINOLOGY AND PRIVILEGE

This Fourth Cross-Claim is filed on behalf of David Robert White and others trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060) (**Deloitte**) and Deloitte Corporate Finance Pty Limited (ACN 003 833 127) (**DCF**).

Each of the allegations in this Commercial List Cross-Claim Statement are made without admission, solely for the purposes of this Fourth Cross-Claim, and only in the event that: Deloitte is found liable to any of the Plaintiffs (which is denied); and/or Deloitte is found liable to any of the defendants who have each filed cross-claims against Deloitte, namely DSH, Abboud and Potts (which is denied); and/or DCF is found liable to the sole defendant who has filed a cross-claim against DCF, namely DSH (which is denied).

Unless otherwise indicated, terms used in this Commercial List Cross-Claim Statement have the same meaning as in: (1) Deloitte's Defence to the Plaintiffs' Claim; (2) Deloitte's and DCF's Commercial List Cross-Claim Response in respect of the First Cross-Claim; and (3) Deloitte's Defences to each of the Second and Third Cross-Claims (together, the **Responses**), or any one of them, including defined terms adopted from the Plaintiffs' Claim and the First to Third Cross-Claims, but not utilised, in the Responses. To the extent of any inconsistency (e.g. "FY13 Financial Statements" as used in the Plaintiffs' Claim and "FY13 Report" as used in each of the First, Second and Third Cross-Claims), defined terms used in the First, Second and Third Cross-Claims have been adopted.

Nothing in this Commercial List Cross-Claim Statement should be taken to amount to an express or implied waiver of any privilege against self-incrimination or privilege against self-exposure to penalty belonging to the Cross-Claimants on this Fourth Cross-Claim (or any one of them) or to any of their partners, directors, officers or employees.

PART A. NATURE OF THE DISPUTE

1. The first to 454th cross-claimants are persons who are, or were, partners in the firm trading as DTT.
2. The 455th cross-claimant is DCF.
3. Deloitte bring this Fourth Cross-Claim only in the event that:
 - (a) the claim by the Plaintiffs (the **Plaintiffs' Claim**); or
 - (b) the cross-claims of:
 - (i) DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation) (**DSH**) (**First Cross-Claim**); or
 - (ii) Nicholas Abboud (**Abboud**) (**Second Cross-Claim**); or

(iii) Michael Thomas Potts (**Potts**) (**Third Cross-Claim**),

(together, the **Cross-Claims against Deloitte**),

or any one of them, are successful in whole or in part.

4. DCF brings this Fourth Cross-Claim only in the event that the First Cross-Claim as against DCF (**Cross-Claim against DCF**) is successful in whole or in part.

5. The Plaintiffs allege against Deloitte (and Deloitte deny) that:

- (a) Deloitte engaged in misleading or deceptive conduct (or, relevantly, made false or misleading representations) in carrying out the FY13 Audit, the FY14 Audit and the FY15 Audit and/or engaged in misleading or deceptive conduct (or relevantly, made false or misleading representations) in making representations or expressing opinions concerning the FY13 Report, the FY14 Report and/or the FY15 Report;
- (b) the First Cross-Defendant, David Robert White (**White**) breached s 1041E of the Corporations Act;
- (c) to the extent that Abboud and/or Potts relied on Deloitte's representations, they would not have done so had Deloitte not conducted themselves and/or made the representations as alleged; and
- (d) Deloitte's activities affected the share price at which the Plaintiffs and Group Members purchased DSH shares such as to cause the Plaintiffs' / Group Members' loss or damage, such that the Plaintiffs / Group Members are entitled to damages or statutory compensation (as applicable) from Deloitte.

6. DSH alleges against Deloitte (and Deloitte deny) that:

- (a) Deloitte engaged in misleading or deceptive conduct (or, relevantly, made false or misleading representations) in carrying out the FY13 Audit, the FY14 Audit and the FY15 Audit and/or engaged in misleading or deceptive conduct (or relevantly, made false or misleading representations) in making representations or expressing opinions concerning the FY13 Report, the Prospectus, the FY14 Report and/or the FY15 Report;
- (b) Deloitte breached their contracts with, and their duty (or duties) of care to, DSH;
- (c) DSH relied on the work performed by Deloitte, and the representations made by Deloitte, regarding the FY13 Report, the Prospectus, the FY14 Report and/or the FY15 Report;
- (d) DSH suffered loss or damage as a result of Deloitte's conduct; and

- (e) in the event that DSH is found liable to the Plaintiffs or Group Members, then:
 - (i) DSH is entitled to damages or statutory compensation from Deloitte; and
 - (ii) DSH is entitled to contribution from Deloitte under the *Law Reform Miscellaneous Provisions Act 1946* (NSW) (**LRMP Act**) or in equity.

7. Abboud alleges against Deloitte (and Deloitte deny) that:

- (a) Deloitte engaged in misleading or deceptive conduct (or, relevantly, made false or misleading representations) in carrying out the FY13 Audit, the FY14 Audit and the FY15 Audit and/or engaged in misleading or deceptive conduct (or relevantly, made false or misleading representations) in making representations or expressing opinions concerning the FY13 Report, the FY14 Report and/or the FY15 Report;
- (b) Abboud and/or DSH relied on the work performed by Deloitte, and the representations made by Deloitte, regarding the FY13 Report, the FY14 Report and/or the FY15 Report;
- (c) Abboud and/or DSH suffered loss or damage as a result of Deloitte's conduct; and
- (d) in the event that Abboud is found liable to the Plaintiffs or Group Members:
 - (i) Abboud is entitled to damages or statutory compensation from Deloitte; and
 - (ii) Abboud is entitled to contribution from Deloitte in equity.

8. Potts alleges against Deloitte (and Deloitte deny) that:

- (a) Deloitte engaged in misleading or deceptive conduct (or, relevantly, made false or misleading representations) in carrying out the FY13 Audit, the FY14 Audit and the FY15 Audit and/or engaged in misleading or deceptive conduct (or relevantly, made false or misleading representations) in making representations or expressing opinions concerning the FY13 Report, the FY14 Report and/or the FY15 Report;
- (b) Potts and/or DSH relied on the work performed by Deloitte, and the representations made by Deloitte, regarding the FY13 Report, the FY14 Report and/or the FY15 Report;
- (c) Potts and/or DSH suffered loss or damage as a result of Deloitte's conduct; and

- (d) in the event that Potts is found liable to the Plaintiffs or Group Members:
 - (i) Potts is entitled to damages or statutory compensation from Deloitte; and
 - (ii) Potts is entitled to contribution from Deloitte in equity.
- 9. DSH alleges against DCF (and DCF deny) that:
 - (a) DCF engaged in misleading or deceptive conduct in connection with the Prospectus (including with respect to the Due Diligence Sign-Off and the Investigating Accountant's Report (**IAR**) (to which a copy of DCF's Financial Services Guide (**FSG**) was attached));
 - (b) DCF breached its contract with, and its duty (or duties) of care to, DSH;
 - (c) DSH relied on the work performed by DCF, and the representations made by DCF, regarding the Due Diligence Sign-Off and the IAR;
 - (d) DSH suffered loss or damage as a result of DCF's conduct; and
 - (e) in the event that DSH is found liable to the Plaintiffs or Group Members, then:
 - (i) DSH is entitled to damages or statutory compensation from DCF; and
 - (ii) DSH is entitled to contribution from Deloitte under the LRMP Act or in equity.
- 10. The Plaintiffs' Claim, the Cross-Claims against Deloitte and the Cross-Claim against DCF each raise both apportionable and non-apportionable claims. Deloitte and DCF (as applicable) have raised apportionment defences in respect of concurrent wrongdoers and contributory negligence defences in their respective Responses.
- 11. If which is denied:
 - (a) Deloitte are liable on any of the claims in the Plaintiffs' Claim or any of the claims in the Cross-Claims against Deloitte, or otherwise suffer any loss in respect of those claims; and/or
 - (b) DCF is liable on any of the claims in the Cross-Claim against DCF or otherwise suffers any loss in respect of those claims,

Deloitte and DCF make the claims in this Fourth Cross-Claim against each of DSH, Abboud and Potts, in respect of any loss suffered by Deloitte and/or DCF in connection with being found so liable.

12. This Commercial List Cross-Claim Statement sets out claims in the following nature:
- (a) claims for contribution against each of DSH, Abboud and Potts;
 - (b) against each of DSH, Abboud and Potts for damages or statutory compensation for:
 - (i) misleading or deceptive conduct in contravention of s 18 of the Australian Consumer Law (NSW) (**ACL NSW**), s 12DA of the ASIC Act and s 1041H of the Corporations Act; and
 - (ii) misrepresentations as to the standard or quality of a service / financial service (as applicable) in contravention to s 29 of the ACL NSW and s 12DB of the ASIC Act; and
 - (iii) contravention of s 1041E of the Corporations Act;
 - (c) against DSH, for damages for breach of contract;
 - (d) against each of DSH, Abboud and Potts:
 - (i) for equitable set off of the relief sought, respectively, in their Cross-Claims against Deloitte; and
 - (ii) for an injunction to prevent them pursuing their respective Cross-Claims against Deloitte, or from taking any step to enforce any judgment in respect of, the Cross-Claims against Deloitte; and
 - (e) against DSH:
 - (i) for equitable set off of the relief sought in the Cross-Claim against DCF; and
 - (ii) for an injunction to prevent it pursuing the Cross-Claims against DCF, or from taking any step to enforce any judgment in respect of, the Cross-Claim against DCF.

PART B. ISSUES LIKELY TO ARISE

If Deloitte is liable to any of the Plaintiffs or Group Members in respect of the Plaintiffs' Claim, or to the any of the claimants on the Cross-Claims against Deloitte, or if DCF is liable to DSH on the Cross-Claim against DCF:

1. Whether DSH or Abboud or Potts:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL NSW, s 12DA of the ASIC Act and s 1041H of the Corporations Act; and

- (b) made a false or misleading representation as to standard or quality in contravention to s 29 of the ACL NSW and s 12DB of the ASIC Act.
- 2. Whether DSH or Abboud or Potts contravened s 1041E of the Corporations Act.
- 3. Whether DSH breached its contracts with Deloitte.
- 4. Whether DSH breached its contract with DCF.
- 5. Whether Deloitte are entitled to:
 - (a) equitable set off against any of DSH, Abboud or Potts; or
 - (b) an injunction to prevent any of Abboud, Potts or DSH from pursuing the Cross-Claims against Deloitte, or any recovery in respect of any of them.
- 6. Whether DCF is entitled to:
 - (a) equitable set off against DSH; or
 - (b) an injunction to prevent DSH from pursuing the Cross-Claim against DCF, or any recovery in respect of that cross-claim.
- 5. Whether, if the answer to any of paragraphs 1, 2, 3 or 4 is yes, what damages did Deloitte or DCF (as relevant) suffer as a result of the contraventions.
- 6. Whether Deloitte or DCF (as relevant) are entitled to contribution against any of DSH, Abboud or Potts in respect of any finding of liability against Deloitte or DCF (as relevant).

PART C. CROSS-CLAIMANTS' CONTENTIONS

Introduction and parties

Each of the allegations in this pleading is made without admission, solely for the purposes of this Fourth Cross-Claim, and only in the event that Deloitte are found liable to any of the Plaintiffs or Group Members, DSH, Abboud or Potts (which is denied) and/or DCF is found liable to DSH (which is denied).

- 1. The first to 454th cross-claimants (i.e. Deloitte):
 - (a) are (or were, as applicable) partners in an Australian partnership trading as DTT, the membership of which changed from time to time;
 - (b) in respect of the subject matter of the proceedings, conducted themselves with the authority of DTT's partners at the relevant times;
 - (c) are the 4th to 457th defendants to the Plaintiffs' Claim; and

- (d) are the 1st to 454th cross-defendants in the First to Third Cross-Claim (i.e. in respect of the Cross-Claims against Deloitte).
2. The 455th cross-claimant (i.e. DCF):
- (a) is a corporation registered under the Corporations Act; and
 - (b) is the 455th cross-defendant in the First Cross-Claim (i.e. in respect of the Cross-Claim against DCF).
3. The first cross-defendant, DSH:
- (a) is duly registered as a corporation under the Corporations Act;
 - (b) was the parent company of its trading subsidiaries (which it controlled and of which it guaranteed the obligations) (together with its subsidiaries, the **DSE Group**);
 - (c) carried on business itself and through its trading subsidiaries comprising the DSE Group as a retailer of entertainment, communications, computer and electronics products and related accessories;
 - (d) was admitted to the official list of the Australian Securities Exchange (**ASX**) on 4 December 2013 following an initial public offering (**IPO**), and its shares commenced trading on a normal (T+3) basis on 12 December 2013;
 - (e) was placed into voluntary administration on 4 January 2016; and
 - (f) had liquidators appointed to it on 25 July 2016.
4. DSSH:
- (a) is duly registered as a corporation under the Corporations Act;
 - (b) was the ultimate holding company of the DSE Group at all relevant times until the Settlement of the Offer (as those terms are defined in the Prospectus) on or about 6 December 2013;
 - (c) carried on business itself and through its trading subsidiaries comprising the DSE Group as a retailer of entertainment, communications, computer and electronics products and related accessories;
 - (d) was placed into voluntary administration on 4 January 2016; and
 - (e) had liquidators appointed to it on 25 July 2016.

5. The second cross-defendant, Abboud:
- (a) was the chief executive officer (**CEO**) of DSSH from between on or about 31 August 2012 and 4 January 2016;
 - (b) was a director and officer of DSSH within the meaning of s 9 of the Corporations Act at all times between on or about 26 November 2012 and 4 January 2016;
 - (c) was the CEO of DSH between on or about 25 October 2013 and 4 January 2016; and
 - (d) was a director and officer of DSH within the meaning of s 9 of the Corporations Act at all times between on or about 25 October 2013 and 4 January 2016.
6. The third cross-defendant, Potts:
- (a) was the director of finance of DSSH from between on or about 18 September 2013 to 4 January 2016;
 - (b) was the company secretary and an officer of DSSH within the meaning of s 9 of the Corporations Act at all times between on or about 10 October 2013 and 12 August 2014;
 - (c) was a director and officer of DSSH within the meaning of s 9 of the Corporations Act at all times between on or about 12 August 2014 and 4 January 2016;
 - (d) was the finance director and/or chief financial officer (**CFO**) of DSH between on or about 25 October 2013 and 4 January 2016;
 - (e) was the company secretary and an officer of DSH between on or about 25 October 2013 and 12 August 2014; and
 - (f) was a director and officer of DSH within the meaning of s 9 of the Corporations Act at all times between on or about 12 August 2014 and 4 January 2016.
7. In this document where the term **DSSH Directors** is used, it refers to the persons who held office as directors and officers of DSSH (including, without limitation, Abboud and Potts) at the time relevant to the context in which the term is used.
8. The conduct and knowledge of the DSSH Directors was, at all material times, conduct and knowledge to be attributed to DSSH.
9. In this document where the term **DSH Directors** is used, it refers to the persons who held office as directors and officers of DSH (including, without limitation, Abboud and Potts) at the time relevant to the context in which the term is used.

10. The conduct and knowledge of the DSH Directors was, at all material times, conduct and knowledge to be attributed to DSH.

Retainers & responsibilities

DCF Retainer

11. On 10 September 2013, DCF was retained by DSSH (then known as Dick Smith Holdings Pty Limited (**DSHPL**)) to:
- (a) prepare an IAR to the DSH Directors in connection with the IPO of shares in DSH and its subsequent listing on the ASX (**DSH Offer**);
 - (b) participate as a member of the Due Diligence Committee (**DDC**) established by DSH in relation to the IPO and provide a due diligence sign off under Australian Professional and Ethical Standard 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 is in writing and is comprised of:

- (i) Letter of engagement dated 10 September 2013 from DCF to the DSSH Directors (insofar as the DSSH Directors were directors of the entity then known as DSHPL), and signed by Steve Shirliff on behalf of DCF (**DCF Engagement Letter**); and
 - (ii) Document entitled "Deloitte Standard Terms and Conditions" effective from 21 March 2013 (the **2013 Deloitte Standard Terms**).
12. On or about 13 November 2013, the DCF Retainer was novated from DSSH to DSH, as contemplated by the terms of the DCF Engagement Letter.

Particulars

The novation was in writing and comprised of:

- (i) DCF Engagement Letter; and
- (ii) Letter dated 13 November 2013 from DCF to the DSSH Directors and the DSH Directors, signed by Steve Shirliff on behalf of DCF.

13. The DCF Retainer provided that the engagement of DCF pursuant to that retainer was on the basis that:
- (a) the DSSH Directors or DSH Directors (as applicable) were solely responsible for:
 - (i) the preparation and presentation of the Financial Information (as defined in the DCF Retainer, which defined term is adopted in the balance of this paragraph) included in the Prospectus;
 - (ii) the determination, selection, development, adequate disclosure and consistent application, of the stated basis of preparation in the Prospectus;
 - (iii) complying with the requirements of all applicable laws and regulations in the preparation of the Financial Information and the Prospectus;
 - (iv) such internal control as determined necessary to enable the preparation of the Financial Information that was free from material misstatement;
 - (v) the DSSH Directors' or the DSH Directors' (as applicable) best estimate assumptions on which the forecast financial information was based;
 - (vi) selecting the unadjusted historical and forecast financial information used as the source for the pro forma historical and pro forma forecast financial information and selecting and determining the pro forma adjustments;
 - (b) DSSH and DSH were responsible for, amongst other things, providing DCF with accurate and complete information and all information that would be relevant to the services to be provided under the DCF Retainer; and
 - (c) the work performed pursuant to the DCF Retainer was solely for the purpose of assisting DSH and the DDC with the DSH Offer, and any reports or advice of DCF was to be used only by the directors of DSH, the DDC, the members of the DDC and their representatives for that purpose.

Deloitte Retainers

14. On 3 December 2012, DTT was retained by DSSH to (relevantly) audit the FY13 Report (the **FY13 Retainer**).

Particulars

The FY13 Retainer is in writing and is comprised of:

- (i) Letter of engagement dated 3 December 2012 from DTT to Tim Fawaz (in his capacity as CFO and company secretary of DSSH), and signed by White on behalf of DTT (the **FY13 Engagement Letter**); and
- (ii) Document entitled "Deloitte Standard Terms and Conditions" effective from 27 January 2010.

15. On 13 December 2013, DTT was retained by DSH to (relevantly) audit the FY14 Report (the **FY14 Retainer**).

Particulars

The FY14 Retainer is in writing and is comprised of:

- (i) Letter of engagement dated 13 December 2013 from DTT to William Paul Renton Wavish (in his capacity as a then-DSH Director and then-chair of DSH's Finance and Audit Committee (**FAC**)) (**Wavish**), and signed by White on behalf of DTT (the **FY14 Engagement Letter**); and
- (ii) the 2013 Deloitte Standard Terms.

16. On 13 November 2014, DTT was retained by DSH to (relevantly) audit the FY15 Report (the **FY15 Retainer**).

Particulars

The FY15 Retainer is in writing and is comprised of:

- (i) Letter of engagement dated 13 November 2014 from DTT to Wavish and signed by White on behalf of DTT (the **FY15 Engagement Letter**); and
- (ii) the 2013 Deloitte Standard Terms.

17. The FY13 Retainer provided that the engagement of DTT pursuant to that retainer was on the basis that, relevantly:

- (a) the DSSH Directors acknowledged and understood that they had the responsibility:
 - (i) for the preparation of (relevantly) the financial report which was the subject of the FY13 Retainer (namely, the FY13 Report) that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act;

- (ii) for such internal control as the directors determined was necessary to enable the preparation of the FY13 Report that was free from material misstatement, whether due to fraud or error; and
 - (iii) to provide DTT with:
 - (A) access to all information of which the directors and management were aware that was relevant to the preparation of the FY13 Report such as records, documentation and other matters;
 - (B) additional information that DTT may request from the directors and management for the purpose of the FY13 Audit; and
 - (C) unrestricted access to persons within DSSH from whom DTT determined it necessary to obtain evidence; and
 - (b) DSSH was responsible for, amongst other things, providing DTT with accurate and complete information and all information that was relevant to the services to be provided under the FY13 Retainer.
- 18. The FY14 Retainer and the FY15 Retainer each provided that the engagement of DTT pursuant to those retainers was on the basis that, relevantly:
 - (a) the DSH Directors acknowledged and understood that they had the responsibility:
 - (i) for the preparation of (relevantly) the financial report which was the subject of each of the FY14 Retainer and the FY15 Retainer (i.e. respectively, the FY14 Report and FY15 Report, together, the **FY14/FY15 Reports**) that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act;
 - (ii) for such internal control as the directors determined was necessary to enable the preparation of the FY14/FY15 Reports that were free from material misstatement, whether due to fraud or error; and
 - (iii) to provide DTT with:
 - (A) access to all information of which the directors and management were aware that was relevant to the preparation of the FY14/FY15 Reports such as records, documentation and other matters;

- (B) additional information that DTT may request from the directors and management for the purpose of each of the FY14 Audit and the FY15 Audit; and
 - (C) unrestricted access to persons within DSH from whom DTT determined it necessary to obtain evidence; and
- (b) DSH was responsible for, amongst other things, providing DTT with accurate and complete information and all information that was relevant to the services to be provided under the FY14 Retainer and the FY15 Retainer.

FY13: DSSH's/DSSH Directors' Obligations

19. At all material times with respect to the FY13 Retainer and FY13 Audit, DSSH and the DSSH Directors were responsible for the preparation and fair presentation of the FY13 Report in accordance with Accounting Standards (including the Australian Accounting Standards) and the Corporations Act, and such responsibility included establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report that was free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Particulars

Chapter 2M, Part 2M.3 of the Corporations Act (as applicable)

FY13 Retainer

20. At all material times, DSSH was obliged to keep written financial records that correctly recorded and explained its transactions and financial position and would enable true and fair financial statements to be prepared and audited.

Particulars

Section 286 of the Corporations Act

21. At all material times, the DSSH Directors, in relation to the publication of the FY13 Report, were required to:
- (a) give a directors' declaration, made in accordance with a resolution of the board, declaring whether, in their opinion:
 - (i) there were reasonable grounds to believe that DSSH would be able to pay its debts as and when they become due and payable; and

- (ii) the relevant financial statements and notes were in accordance with the Corporations Act, including by complying with applicable accounting standards (including the Australian Accounting Standards) (as required by s 296) and giving a true and fair view of the financial position and performance of DSSH (as required by s 297); and

Particulars

Section 295 of the Corporations Act

- (b) have a reasonable basis for, and to take steps to ensure they had a reasonable basis for, giving any directors' declaration required by s 295 of the Corporations Act.

22. At all material times, DSSH and the DSSH Directors were required to:

- (a) prepare and provide an annual directors' report for each financial year containing information prescribed by the Corporations Act; and

Particulars

Sections 298, 299 and 300 of the Corporations Act

- (b) have a reasonable basis for, and to take steps to ensure they had a reasonable basis for, all statements contained in the annual directors' report.

23. DSSH and the Directors of DSSH:

- (a) at all material times were required to report to members for the financial year by providing the financial report for the year, the directors' report for the year and the auditor's report on the financial report;

Particulars

Section 314(1) of the Corporations Act

- (b) on about 22 October 2013, issued the financial report and directors' report and auditor's report in respect of FY13;
- (c) were aware that the auditor's report in respect of FY13 issued as pleaded in subparagraph (b) above contained a statement to the effect that the DSSH Directors were responsible for the preparation of the FY13 Report that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determined necessary to enable the preparation of the FY13 Report that gave a true and fair view and was free from material misstatement, whether due to fraud or

error. In accordance with AASB 101, in Note 2, the DSSH Directors also stated that the consolidated financial statements complied with International Financial Reporting Standards (**IFRS**); and

- (d) by reason of the matters pleaded in paragraphs (a) to (c) above, acknowledged and represented that DSSH and the DSSH Directors had the responsibilities as stated in paragraph (c) above.

24. Each of the DSSH Directors had the same duties, in respect of DSSH, as the DSH Directors had, in respect of DSH, as set out in paragraphs 252 and 255 of the Plaintiffs' Claim.

Prospectus: DSH's/DSH Directors' Obligations

25. At all material times with respect to the DCF Retainer and the Prospectus, DSH:

- (a) was obliged to comply with all applicable disclosure requirements in accordance with the Corporations Act;

Particulars

Part 6D.2 Division 4 of the Corporations Act (as applicable)

DCF Retainer

- (b) was obliged to lodge the Prospectus with ASIC;

Particulars

Section 718 of the Corporations Act

- (c) was able to lodge a supplementary or replacement Prospectus if (relevantly) DSH or the DSH Directors became aware of any of the matters in s 719(1) of the Corporations Act;

Particulars

Section 719 of the Corporations Act

- (d) was obliged to obtain the consent of all persons described in item 1 of the table in s 720 of the Corporations Act (including, without limitation, the DSH Directors) prior to lodging the Prospectus with ASIC;

Particulars

Section 720 of the Corporations Act

- (e) was obliged to not offer securities if (relevantly):
 - (i) the Prospectus contained a misleading or deceptive statement;

- (ii) the Prospectus contained an omission of material required by ss 710, 711, 712, 713, 713C, 713D, 713E, 714 or 715 of the Corporations Act; and

Particulars

Section 728(1) of the Corporations Act

- (f) was required to have reasonable grounds for statements as to future matters.

Particulars

Section 728(2) of the Corporations Act

FY14/FY15: DSH's/DSH Directors' Obligations

- 26. At all material times with respect to the FY14 Retainer and the FY15 Retainer, DSH and the DSH Directors were responsible for the preparation and fair presentation of the FY14/FY15 Reports in accordance with Accounting Standards (including the Australian Accounting Standards) and the Corporations Act, and such responsibility included establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report that was free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies, and making accounting estimates that were reasonable in the circumstances.

Particulars

Chapter 2M, Part 2M.3 of the Corporations Act

- 27. At all material times, DSH was obliged to keep written financial records that correctly recorded and explained its transactions and financial position and would enable true and fair financial statements to be prepared and audited.

Particulars

Section 286 of the Corporations Act

- 28. At all material times, the DSH Directors, in relation to the publication of the FY14 Report and the FY15 Report, were required to:
 - (a) give a directors' declaration, made in accordance with a resolution of the board, declaring whether, in their opinion:
 - (i) there were reasonable grounds to believe that DSH would be able to pay its debts as and when they become due and payable; and
 - (ii) the relevant financial statements and notes were in accordance with the Corporations Act, including by complying with applicable accounting

standards (including the Australian Accounting Standards) (as required by s 296) and giving a true and fair view of the financial position and performance of DSH (as required by s 297); and

Particulars

Section 295 of the Corporations Act

- (b) have a reasonable basis for, and to take steps to ensure they had a reasonable basis for, giving any directors' declaration required by s 295 of the Corporations Act.
29. At all material times Abboud (as CEO) and Potts (as CFO), in relation to the publication of the FY14 Report and the FY15 Report, were required to:
- (a) give a declaration in relation to DSH's financial statements by the CEO and CFO, declaring whether, in their opinion:
 - (i) the financial records of DSH for the financial year had been properly maintained in accordance with s 286 of the Corporations Act;
 - (ii) the financial statements and the notes referred to in s 295(3)(b) of the Corporations Act complied with the accounting standards (including the Australian Accounting Standards);
 - (iii) the financial statements and notes for the financial year gave a true and fair view (as required by s 297 of the Corporations Act);
 - (iv) any other matters prescribed by the Corporations Regulations for the purposes of s 295A(2) of the Corporations Act were satisfied; and
 - (b) have a reasonable basis for, and take steps to ensure that they had a reasonable basis for, giving any declaration by the CEO and CFO (as required by s 295A of the Corporations Act).

Particulars

Section 295A of the Corporations Act

30. At all material times, DSH and the DSH Directors were required to:
- (a) prepare and provide an annual directors' report for each financial year containing information prescribed by the Corporations Act; and

Particulars

Sections 298 – 300A of the Corporations Act

- (b) have a reasonable basis for, and to take steps to ensure they had a reasonable basis for, all statements contained in the annual directors' report.

31. DSH and the DSH Directors:

- (a) at all material times, were required to report to members for the financial year by providing the financial report for the year, the directors' report for the year and the auditor's report on the financial report;

Particulars

Section 314(1) of the Corporations Act

- (b) on about 18 August 2014, issued the financial report and directors' report and auditor's report in respect of FY14;
- (c) were aware that the auditor's report in respect of FY14 issued as pleaded in subparagraph (b) above contained a statement to the effect that the DSH Directors were responsible for the preparation of the FY14 Report that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the DSH Directors determined was necessary to enable the preparation of the FY14 Report that gave a true and fair view and is free from material misstatement, whether due to fraud or error. In accordance with AASB 101, in Note 2, the DSH Directors also stated that the consolidated financial statements complied with IFRS;
- (d) by reason of the matters pleaded in paragraphs (a) to (c) above, acknowledged and represented that DSH and the DSH Directors had the responsibilities as stated in paragraph (c) above;
- (e) on about 17 August 2015, issued the financial report and directors' report and auditor's report in respect of FY15;
- (f) were aware that the auditor's report in respect of FY15 issued as pleaded in subparagraph (e) above contained a statement to the effect that the DSH Directors were responsible for the preparation of the FY15 Report that gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act and for such internal control as the directors determined necessary to enable the preparation of the FY15 Report that gave a true and fair view and was free from material misstatement, whether due to fraud or

error. In accordance with AASB 101, in Note 2, the DSH Directors also stated that the consolidated financial statements complied with IFRS; and

- (g) by reason of the matters pleaded in subparagraphs (a), (e) and (f) above, acknowledged and represented that DSH and the DSH Directors had the responsibilities as stated in subparagraph (f) above.

- 32. Each of the DSH Directors had the duties (in respect of DSH) as set out in paragraphs 252 and 255 of the Plaintiffs' Claim.

Declarations and representation letters given by Cross-Defendants

Prospectus Representations

- 33. On or around 13 November 2013, Abboud and Potts each provided a management sign-off certificate dated 13 November 2013 addressed to (*inter alios*) members of the DDC (which included DCF) (**Prospectus Management Certificates**).
- 34. On or around 14 November 2013, on behalf of the DSH Directors and management of DSH (including, without limitation, Abboud), Potts provided a representation letter to DCF dated 14 November 2013 as to matters the subject of the DCF Retainer (including, without limitation, the IAR) (**Prospectus Representation Letter**).
- 35. By the Prospectus Management Certificates, each of Abboud and Potts certified that as at the date of the Prospectus Management Certificates:
 - (a) as far as he was aware, the sign-offs being sought from management were being given by persons who would be expected to have, between them, knowledge and responsibility for all the material business operations and risks of DSH;
 - (b) to the best of his knowledge after due enquiry:
 - (i) 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 were based on reasonable grounds;
 - (ii) the Prospectus complied with the Disclosure Requirements (as that term is defined in the Prospectus Management Certificates);
 - (iii) the issue of the Prospectus did not involve conduct by any person that was misleading or deceptive or conduct that may be likely to mislead or deceive;
 - (iv) the Prospectus complied with the Presentation Requirement (as that term is defined in the Prospectus Management Certificates);

- (c) that he had answered, to the best of his knowledge and ability after due enquiry, all questions and requests for information submitted to him in the course of the Due Diligence Program (as that term is defined in the Prospectus Management Certificates), satisfied himself that all matters he considered to be material relating to his knowledge of DSH had been identified to the DDC, and he had made all reasonable enquiries to independently verify all information in the Prospectus related to his area of responsibility; and
 - (d) the Prospectus Management Certificates were addressed to and may be relied upon by, among others, the members of the DDC and their representatives (such members including DCF).
36. By the Prospectus Representation Letter, each of the DSH Directors (including Abboud and Potts) confirmed to DCF, among other matters, that, and as at the date of the Prospectus Representation Letter:
- (a) they had responsibility for the preparation, contents and issuance of the Prospectus, including:
 - (i) the preparation and presentation of all financial information contained therein, in accordance with the basis of preparation described in the Prospectus Representation Letter and the Corporations Act;
 - (ii) the determination, selection, development, adequate disclosure and consistent application of the stated basis of preparation of the Prospectus;
 - (iii) selecting the unadjusted historical and forecast financial information used as the source for the pro forma historical and pro forma forecast information and selecting and determining the pro forma adjustments;
 - (iv) complying with the requirements of all applicable laws and regulations in the preparation of the Financial Information (as defined in the Prospectus Representation Letter, which defined term is adopted in the balance of this paragraph) and the Prospectus;
 - (b) to the best of their knowledge and belief (having made such enquiries as they considered necessary for the purposes of appropriately informing themselves):
 - (i) all material financial information, financial records, related data and other information relevant to the Financial Information within the possession of DSSH or DSH (as applicable) had been provided to DCF;
 - (ii) DCF had been entitled to rely on the information provided to them and to assume that the information provided was, to the best knowledge and belief of DSSH or DSH's (as applicable) management and the DSSH

- Directors or DSH Directors (as applicable), accurate and, except where otherwise indicated, complete;
- (iii) all material events and transactions had been properly recorded in the accounting records underlying the Financial Information;
 - (iv) they were responsible for, and had established and maintained, an adequate internal control structure to facilitate the preparation of reliable financial information. They acknowledged their responsibility for implementation and operation of accounting and internal control systems that were designed to prevent and detect fraud and error;
 - (v) all material risks that may impact on DSSH or DSH's (as applicable) business had been adequately disclosed in the Prospectus and considered in relation to their impact on the Financial Information;
 - (vi) they believed that there were no uncorrected misstatements that were material, both individually and in aggregate, to any of the Financial Information under review;
- (c) with respect to the historical financial information and pro forma historical financial information of DSH or DSSH (as relevant) for FY11, FY12, FY13 and Q1FY14, they acknowledged their responsibility for the preparation and presentation of that financial information to which the IAR related;
- (d) to the best of their knowledge and belief, DSH or DSSH's (as applicable) historical financial information included in the Prospectus had been prepared in accordance with the stated bases of preparation, being the recognition and measurement principles contained in Australian Accounting Standards and the adopted accounting policies of DSH or DSSH (as applicable) as described in the Prospectus;
- (e) disclosures not included in the Prospectus with respect to the historical financial information and pro forma historical financial information had been determined by them to be not material to users of the Prospectus; and
- (f) they acknowledged their responsibility for the preparation and presentation of the statutory and pro forma forecasts prepared in respect of FY14, the best estimate assumptions used therein and that information's compliance with the stated basis of preparation.
37. Deloitte and DCF rely on the Prospectus Management Certificates and the Prospectus Representation Letter for their full content and meaning.

Audit CEO/CFO Declarations

38. On or around 18 August 2014, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY14 CEO/CFO Declaration**) for the year ended 29 June 2014.
39. On or around 17 August 2015, each of Abboud and Potts gave a declaration pursuant to s 295A of the Corporations Act (**FY15 CEO/CFO Declaration**) for the year ended 28 June 2015.
40. Deloitte rely on each of the FY14 CEO/CFO Declaration and the FY15 CEO/CFO Declaration (together, the **CEO/CFO Declarations**) for their full content and meaning.
41. Each of the CEO/CFO Declarations included statements to the effect that, to the best of each of Abboud's and Potts' knowledge:
 - (a) the financial records of DSH had have been properly maintained in accordance with s 286 of the Corporations Act;
 - (b) the financial statements and the accompanying notes complied with the appropriate accounting standards (including the Australian Accounting Standards);
 - (c) the financial statements and accompanying notes gave a true and fair view of the financial position and performance of DSH for the financial year;
 - (d) DSH had complied with all other matters prescribed by the Corporations Regulations in relation to the financial statements and notes;
 - (e) the financial report was founded on a sound system of risk management and internal compliance and control; and
 - (f) DSH's risk management and internal compliance and control system was operating efficiently and effectively in all material aspects.

Audit Management Representation Letters

42. On or around 22 October 2013, (relevantly) Abboud provided a management representation letter to DTT dated 22 October 2013 as to matters concerning the FY13 Report (**FY13 Management Representation Letter**).
43. On or around 18 August 2014, each of Abboud and Potts provided a management representation letter to DTT dated 18 August 2014 as to matters concerning the FY14 Report (**FY14 Management Representation Letter**).

44. On or around 17 August 2015, each of Abboud and Potts provided a management representation letter to DTT dated 17 August 2015 as to matters concerning the FY15 Report (**FY15 Management Representation Letter**).
45. Deloitte rely on each of the FY13 Management Representation Letter, the FY14 Management Representation Letter and the FY15 Management Representation Letter (together, the **Management Representation Letters**) for their full content and meaning.
46. The Management Representation Letters:
- (a) were provided for the purpose of DTT expressing an opinion as to whether, respectively, the FY13 Report, the FY14 Report and the FY15 Report gave a true and fair view in accordance with the Australian Accounting Standards and the Corporations Act;
 - (b) contained statements by Abboud and (in respect of the FY14 Audit / FY 14 Report and the FY15 Audit / FY15 Report) Potts that:
 - (i) they had fulfilled their responsibilities as set out in the relevant audit engagement (as to which see paragraphs 17 to 24 and 26 to 32 above, as applicable), for the preparation of, relevantly, the FY13 Report, the FY14 Report and the FY15 Report in accordance with Australian Accounting Standards and the Corporations Act, in particular that the relevant financial report gave a true and fair view in accordance therewith;
 - (ii) they had provided DTT with:
 - (A) access to all information of which they were aware was relevant to the preparation of, respectively, the FY13 Report, the FY14 Report and the FY15 Report, such as records, documentation and other matters;
 - (B) additional information DTT had requested from them for the purpose of the audit;
 - (C) unrestricted access to the persons within the entity from whom DTT determined it necessary to obtain audit evidence;
 - (D) all information required by the Corporations Act and all requested information, explanations and assistance for the purposes of the audit;

- (iii) all transactions had been recorded in the accounting records and were reflected in, respectively, the FY13 Report, the FY14 Report and the FY15 Report;
- (iv) they were responsible for the design, implementation and maintenance of internal control to prevent and detect fraud;
- (v) significant assumptions used by them in making accounting estimates, including those measured at fair value, were reasonable;
- (vi) the effects of uncorrected misstatements (in the case of the FY13 Audit and the FY14 Audit) or unadjusted misstatements and disclosure deficiencies (in the case of the FY15 Audit) were immaterial, individually and in aggregate, to the financial report as a whole, and a summary of such items was attached to, respectively, the FY13 Management Representation Letter, the FY14 Management Representation Letter and the FY15 Management Representation Letter;
- (vii) the selection and application of accounting policies as described in the notes in, respectively, the FY13 Report, the FY14 Report and the FY15 Report were appropriate;
- (viii) liabilities, both actual and contingent, had been properly recorded and, where appropriate, adequately disclosed in, respectively, the FY13 Report, the FY14 Report and the FY15 Report;
- (ix) they had communicated to DTT all deficiencies in internal control of which they were aware;
- (x) in respect of the FY14 Report and the FY15 Report, they had considered the requirements of Australian Accounting Standard AASB 136 *Impairment of Assets* (in the form in force at the relevant time) when assessing the impairment of assets and in ensuring that no assets were stated in excess of their recoverable amount, and that they had communicated to DTT all indicators of impairment and, where these existed, they had conducted appropriate impairment testing on the relevant asset;
- (xi) in respect of the FY13 Report, they had no plans or intentions that may affect the carrying value or classification of assets and liabilities;
- (xii) in respect of the FY14 Report and the FY15 Report, they had no plans to abandon lines of product or other plans or intentions that would result

in any excess or obsolete inventory, and no inventory was stated in an amount in excess of net realisable value;

- (xiii) in respect of the FY14 Report and the FY15 Report, where assets and liabilities were recorded at their fair value, the value attributed to those assets and liabilities was, in the opinion of directors and management, the fair value, and they were responsible for the reasonableness of any significant assumptions underlying the valuation, including consideration of whether they appropriately reflected their intent and ability to carry out specific courses of action;
- (xiv) in respect of the FY14 Report, they had raised a liability as at 29 June 2014 for management's best estimate of costs associated with existing leases on underperforming stores prior to the actual lease expiration date, including outstanding penalties and make good costs, they were reviewing the performance of those stores on a regular basis, and it was their current intention to exit those stores within the next 12 months;
- (xv) in respect of the FY14 Report and the FY15 Report, DSH (and its controlled entities) had not breached any covenants on its financing facility during any of the periods reported and did not expect to breach any covenants in future periods, and they had fully disclosed to DTT all covenants and information related to how they determined their compliance with the terms of the covenants;
- (xvi) in respect of the FY14 Report and the FY15 Report, they had performed a detailed review of the amount and nature of rebates received or owed from suppliers during the relevant year ended and confirmed that the rebates recognised in that period had been appropriately recognised and presented in the financial statements in accordance with Australian Accounting Standards (in particular they confirmed that the O&A rebates recognised as receivables as at:
 - (A) in the case of the FY14 Report, 29 June 2014 totalling \$16.9 million;
 - (B) in the case of the FY15 Report, 28 June 2015 totalling \$32.5 million;

were recoverable in full from the vendors, related to additional support received from vendors to market or clear products in the relevant year

ended, and were not to be deferred and recognised in future periods);
and

(c) upon the entire terms of which Deloitte rely for their full content and meaning.

Audit Directors' Declarations

47. On or around 22 October 2013, the (relevant) DSSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY13 Report (**FY13 Directors' Declaration**).
48. On or around 18 August 2014, the (relevant) DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY14 Report (**FY14 Directors' Declaration**).
49. On or around 17 August 2015, the (relevant) DSH Directors gave a declaration pursuant to s 295(5) of the Corporations Act as to the FY15 Report (**FY15 Directors' Declaration**).
50. Deloitte rely on each of the FY13 Directors' Declaration, the FY14 Directors' Declaration and the FY15 Directors' Declaration (together, the **Directors' Declaration**) for their full content and meaning.
51. The Directors' Declarations each contained a statement that:
 - (a) in the directors' opinion, the financial statement and notes attached thereto were in accordance with the Corporations Act, including compliance with accounting standards (including the Australian Accounting Standards) and giving a true and fair view of the financial position and performance of DSSH or DSH (as applicable) and the consolidated entity; and
 - (b) in the directors' opinion, the financial statements and notes attached thereto were in compliance with the IFRS as stated in Note 2 of the financial statements.

The FY13 Audit

52. The (relevant) DSSH Directors, including Abboud, resolved to adopt the FY13 Report and provided it to DTT as DSSH's statutory financial statements for the purpose of DTT giving the audit report in respect of FY13 (**Directors' Adoption of the FY13 Report**).
53. After the giving of the FY13 Management Representation Letter and the FY13 Directors' Declaration, and after the Directors' Adoption of the FY13 Report, White (in

his capacity as lead auditor) signed the FY13 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act.

54. The FY13 Audit Report:

- (a) stated that DTT was of the opinion that the FY13 Report was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 30 June 2013 and of its performance for the year ended on that date; and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations; and
- (b) will be relied upon by Deloitte at trial for its full content and meaning.

55. Each of the (relevant) DSSH Directors participated in the issuance and publication of the FY13 Report by making the resolutions to approve the issue of the FY13 Report (**Directors' Issue of FY13 Report**).

The Prospectus

56. The (relevant) DSH Directors adopted the **Financial Information** (as that term is defined in the DCF Retainer and Due Diligence Sign-Off, including without limitation material comprising the FY13 Report) and provided it to DCF for the purpose of DCF giving the Due Diligence Sign-Off and the IAR (**Directors' Adoption of the Historical and Forecast Financial Information**).
57. After the Directors' Adoption of the Historical and Forecast Financial Information and the giving of the Prospectus Management Certificates, Steve Shirliff signed the Due Diligence Sign-Off on behalf of DCF in his capacity as a director of DCF, on the assumption that:
- (a) the representations made and the information (including responses to questions and questionnaires (and also, including, without limitation, the Prospectus Management Certificates) provided by directors, officers, personnel and agents of DSH, other members of the DDC, and other persons reporting to the DDC, had been complete, true and accurate in all respects and were not misleading or deceptive;
 - (b) all persons who were interviewed, questioned or sent questionnaires were competent to answer all questions put to them, made complete and accurate disclosures in all matters and that there were no other persons who should

have been interviewed, questioned or sent questionnaires in relation to the matters the subject of those questions;

- (c) there were no relevant documents or information other than those which were disclosed, or provided by or on behalf of DSH to DCF which were relevant to the Financial Information;
- (d) all corporate records and other documents examined by DCF were genuine, complete, up-to-date and accurate and, without limitation, any minutes of the meetings of DSH examined by DCF correctly recorded the business of, and resolutions passed at, any such meeting and no relevant corporate records have been withheld from DCF (whether deliberately or inadvertently);
- (e) all factual matters stated in any document provided to DCF were true and accurate; and
- (f) the Prospectus would be lodged with the Australian Securities and Investment Commission (**ASIC**).

58. On 13 November 2013:

- (a) each of the (relevant) DSH Directors made confirmations in connection with the Prospectus, including (without limitation):
 - (i) that the DSH Directors had carefully considered the contents of the Prospectus and each was satisfied that (*inter alia*) the information contained in the Prospectus (i.e. including the Financial Information) was:
 - (A) accurate and complete;
 - (B) not misleading or deceptive (including by omission); and
 - (C) contained all the information that investors and their professional advisers would reasonably require (and would reasonably expect to find in the Prospectus) to make an informed assessment of (*inter alia*) the assets and liabilities, financial position and performance, profits and losses and prospects of DSH;
 - (ii) as far as the (relevant) DSH Directors were aware, all forward-looking statements in the Prospectus were reasonable and based on reasonably grounds;
 - (iii) he or she had disclosed to the DDC all information actually known to him or her or which ought reasonably to have been obtained by making enquiries and which investors and their professional advisers would

- reasonably expect to find the Prospectus and raised any questions and made all enquiries as could reasonably be expected of him or her;
- (iv) each (relevant) DSH Director had reviewed the Financial Information including the assumptions underlying such forward-looking aspects of that information and, having regard to all relevant matters, confirmed that:
 - (A) he or she was not personally aware of any misleading or deceptive statement in, or omission of material required by law from, the Financial Information;
 - (B) he or she considered those assumptions were reasonable; and
 - (C) in respect of the forecast Financial Information, there were reasonable grounds for including that information in the Prospectus;
 - (v) each DSH Director consented to the lodgement of the Prospectus with ASIC for the purposes of s 720 of the Corporations Act,

(together, the **Directors' Prospectus Confirmations**);
 - (b) following the making of the Directors' Prospectus Confirmations:
 - (i) each (relevant) DSH Director signed a document recording his or her consent to the lodgement of the Prospectus with ASIC; and
 - (ii) the (relevant) DSH Directors resolved that:
 - (A) the offer by DSH to recipients of the Prospectus on the terms set out in the Prospectus be approved or ratified as applicable;
 - (B) (*inter alia*) the Prospectus be approved or ratified, as applicable, for use and the Prospectus be approved for lodgement with (*inter alios*) ASIC and the ASX;
 - (C) DSH's company secretary (i.e. then, Potts) was empowered and authorised to do all things which, in his opinion, were necessary, convenient or desirable to give effect to lodgement of the Prospectus with ASIC (including payment of any fees).

(**Directors' Approval of the Prospectus**);
 - (c) the (relevant) DSH Directors ratified the use of drafts of the Prospectus which had previously been provided to the DSH Directors, such use including provision to analysts and certain prospective institutional investors on a confidential basis (**Prospectus Drafts Ratification**); and
 - (d) prospective members of DSH's FAC (including DSH Directors, namely Wavish, Lorna Kathleen Raine and Robert Ishak) noted they were satisfied with the

financial information contained in the Prospectus (**Prospective FAC Members' Confirmation**).

59. On 13 November 2013, after each of: the Directors' Adoption of the Historical and Forecast Financial Information; the giving of the Prospectus Management Certificates and the Directors' Prospectus Confirmations; the Directors' Approval of the Prospectus; the Prospectus Drafts Ratification; and the Prospective FAC Members' Confirmation, DTT gave its consent to be named as DSH's auditor in the Prospectus in the form and context in which DTT's name appeared (**DTT Prospectus Consent**).

Particulars

Letter from DCF to DSH dated 13 November 2013.

The DTT Prospectus Consent was provided on the basis that DTT had not authorised or caused the issue of the Prospectus and had not made, nor purported to have made, any statement included in the Prospectus.

60. Deloitte and DCF rely on the DTT Prospectus Consent for its full content and meaning.
61. On 13 November 2013, after each of: the Directors' Adoption of the Historical and Forecast Financial Information; the giving of the Prospectus Management Certificates and the Directors' Prospectus Confirmations; the Directors' Approval of the Prospectus; the Prospectus Drafts Ratification; and the Prospective FAC Members' Confirmation, DCF gave its consent to be named as, the investigating accountant in the Prospectus and to the inclusion of the IAR dated 14 November 2013 (and attached FSG) in the Prospectus, in each case in the form and context in which DCF's name and the IAR / FSG appeared (**DCF Prospectus Consent**).

Particulars

Letter from DCF to DSH dated 13 November 2013.

The DCF Prospectus Consent was provided on the basis that DCF had not authorised or caused the issue of the Prospectus and had not made, nor purported to have made, any statement included in the Prospectus other than the IAR / FSG.

62. Deloitte and DCF rely on the DCF Prospectus Consent for its full content and meaning.
63. On 14 November 2013, after each of: the Directors' Adoption of the Historical and Forecast Financial Information; the giving of the Prospectus Management Certificates and the Directors' Prospectus Confirmations; the Directors' Approval of the

Prospectus; the Prospectus Drafts Ratification; and the Prospective FAC Members' Confirmation, Steve Shirliff signed the IAR (and attached FSG) on behalf of DCF in his capacity as a director of DCF, on the basis that (*inter alia*) nothing had come to the attention of DCF that caused DCF to believe that:

- (a) the Pro Forma Historical Financial Information (as that term is defined in the IAR) was not presented fairly in all material respects, on the basis of the pro forma adjustments described in the Prospectus, and in accordance with the recognition and measurement principles contained in the Australian Accounting Standards and the accounting policies;
- (b) the DSH Directors' best estimate assumptions used in the preparation of the Statutory Forecast Financial Information and the Pro forma Forecast Financial Information (as those terms are defined in the IAR and adopted in the balance of this paragraph) did not provide reasonable grounds for, respectively, the Statutory Forecast Financial Information or the Pro forma Forecast Financial Information;
- (c) in all material respects, the Statutory Forecast Financial Information and the Pro Forma Forecast Financial Information (respectively) were not prepared on the basis of the DSH Directors' best estimate assumptions as described in the Prospectus or presented fairly in accordance with the stated basis of preparation, being the accounting policies adopted and used by DSH and recognition and measurement principles contained in the Australian Accounting Standards;
- (d) the Statutory Forecast Financial Information itself was unreasonable.

- 64. The IAR (and attached FSG) will be relied upon by Deloitte and DCF at trial for its full content and meaning.
- 65. Each of the (relevant) DSH Directors participated in the issuance and publication of the Prospectus by the Prospectus Representation Letter and/or the Directors' Prospectus Confirmations and/or the Directors' Approval of the Prospectus and/or the Prospectus Drafts Ratification and/or the Prospective FAC Members' Confirmation (**Directors' Issue of the Prospectus**).

The FY14 Audit

- 66. The (relevant) DSH Directors resolved to adopt the FY14 Report and provided it to DTT as DSH's statutory financial statements for the purpose of DTT giving the audit report in respect of FY14 (**Directors' Adoption of the FY14 Report**).

67. After the giving of the FY14 Management Representation Letter, the FY14 CEO/CFO Declaration and the FY14 Directors' Declaration, and after the Directors' Adoption of the FY14 Report, White (in his capacity as lead auditor) signed the FY14 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act.
68. The FY14 Audit Report:
- (a) stated that DTT was of the opinion that the FY14 Report was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended on that date; and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations; and
 - (b) will be relied upon by Deloitte at trial for its full content and meaning.
69. Each of the (relevant) DSH Directors participated in the issuance and publication of the FY14 Report by making the resolutions to approve the issue of the FY14 Report (**Directors' Issue of FY14 Report**).

The FY15 Audit

70. The (relevant) DSH Directors resolved to adopt the FY15 Report and provided it to DTT as DSH's statutory financial statements for the purpose of DTT giving the audit report in respect of FY15 (**Directors' Adoption of the FY15 Report**).
71. After the giving of the FY15 Management Representation Letter, the FY15 CEO/CFO Declaration, the FY15 Directors' Declaration, and after the Directors' Adoption of the FY15 Report, White (in his capacity as lead auditor) signed the FY15 Audit Report, in his name and in the name of DTT pursuant to s 324AB(3) of the Corporations Act.
72. The FY15 Audit Report:
- (a) stated that DTT was of the opinion that the FY15 Report was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations; and

- (b) will be relied upon by Deloitte at trial for its full content and meaning.
73. Each of the (relevant) DSH Directors participated in the issuance and publication of the FY15 Report by making the resolutions to approve the issue of the FY15 Report (**Directors' Issue of FY15 Report**).

Factual allegations repeated

74. For the avoidance of doubt, without admission and solely for the purposes of this Fourth Cross-Claim, and only in the event that:
- (a) Deloitte are found liable to the Plaintiffs in respect of the Plaintiffs' Claim or to any Cross-Claimant in the Cross-Claims against Deloitte; or
 - (b) DCF is found liable to DSH in the Cross-Claim against DCF,
- Deloitte and/or DCF (as relevant) repeat the allegations of fact against the DSH Directors, the DSSH Directors and DSH (as applicable) in:
- (c) Parts A to E of the Plaintiffs' Claim;
 - (d) the Third Amended Commercial List Statement filed 19 March 2018 in NSW Supreme Court Proceeding No. 2017/81927 (the **Company Claim**); and
 - (e) the Third Amended Commercial List Statement filed 19 March 2018 in NSW Supreme Court Proceeding No. 2017/81938 (the **Bank Claim**).
75. If the allegations in the Plaintiffs' Claim are made out, each of Abboud and Potts knew, and it was the fact, that:
- (a) there were shortcomings in and problems with DSH's planning, tracking, and recording of rebates accrued and received from vendors and suppliers as alleged in the particulars to [249] of the Plaintiffs' Claim;
 - (b) from at least the time the Rebate Maximisation Practice developed, DSH did not have a system in place for the reliable planning, tracking and recording of rebates accrued and received from vendors and suppliers as alleged in paragraphs [188] and [265(f)] of the Plaintiffs' Claim;
 - (c) meetings had been convened by John Skellern in the manner alleged in the Plaintiffs' Claim (in the particulars to paragraph [249]) and that a whiteboard was used to record O&A Rebates, as particularised in the particulars to paragraph [249];
 - (d) DSH had (as set out in particulars to paragraph [249] of the Plaintiffs' Claim):
 - (i) failed to write down inventory;

- (ii) purchased excess inventory; and
 - (iii) had the method of recording or making provision for inventory, as alleged in sections C.2. and C.3.1. of the Plaintiffs' Claim;
- (e) the limitations of DSH's inventory ageing system had been identified in the Deloitte Project Yellow Report, as alleged in paragraphs [252(g)] and [255(l)] of the Plaintiffs' Claim;
- (f) on or about 25 September 2015, DSH engaged consultants to investigate stock levels and undertake a review of inventory within DSH, as alleged in paragraph [138] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);
- (g) levels of poor quality, obsolete and inactive stock had significantly accumulated prior to the retainer of the consultants, as alleged in paragraph [143] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);
- (h) from at least 27 October 2015, DSH was carrying too much stock, the stock mix was poor, the stock mix had got progressively worse during 2015, lower levels of remaining good stock were having to work harder to support sales and even amongst the good stock there was a lot of excess and slow moving inventory, as alleged in paragraph [139] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);
- (i) DSSH's and DSH's provisioning of inventory did not take into consideration whether inventory was saleable in the future at or above its cost, or take into consideration the impact of holding levels of excess inventory, or record inventory at the lower of the inventory at the lower of the inventory cost or its net realisable value as alleged in paragraph [145] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);
- (j) from at least May 2014, DSH embarked upon the Rebate Maximisation Practice as defined in [152] of the Plaintiffs' Claim, which manifested itself through the conduct by DSH management as alleged in paragraph [153] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);
- (k) from at least June 2014, the Rebate Maximisation Practice led to the Rebate Maximisation Consequences alleged at paragraph [154] of the Plaintiffs' Claim (see also in the particulars to paragraph [249] of the Plaintiffs' Claim);

- (l) during, at least FY15, DSH employed a procedure that resulted in the Switched Invoice Rebates as pleaded in paragraph [155] of the Plaintiffs' Claim, and DSH recorded them in the manner alleged in paragraph [157] of the Plaintiffs' Claim;
- (m) from at least May 2014, DSH entered into agreements with suppliers to receive discounts and rebates from those suppliers in exchange for agreeing to purchase and sell large volumes of the suppliers' products as alleged in paragraph [163] of the Plaintiffs' Claim, and recorded those rebates incorrectly in accordance with paragraph [164] of the Plaintiffs' Claim, and that the recording of the Volume Rebates had the consequences alleged at paragraph [165] of the Plaintiffs' Claim;
- (n) from at least May 2014, DSH obtained O&A Rebates as described in paragraphs [170]-[171] of the Plaintiffs' Claim, which were recorded in the FY14/FY15 Reports in the manner alleged in paragraph [172] of the Plaintiffs' Claim;
- (o) in FY14 and FY15, DSH made journal entries which had the effect of transferring income from CODB to the Cost of Goods Sold without proper justification, with the effect of overstating DSH's reported gross profit and gross profit margin and to understate its Cost of Goods Sold as alleged in paragraphs [173]-[175] of the Plaintiffs' Claim;
- (p) in the Q1FY14 financial accounts presented in the Prospectus, DSH did not include certain expenses of approximately \$1.6million (before tax) which had been incurred in that period, with the effect that DSH's expenses were understated, and Net Profit was overstated during that period as alleged in paragraphs [208]-[209] of the Plaintiffs' Claim;
- (q) in FY14, DSH capitalised \$2.7 million of wages and salaries into property, plant and equipment as alleged in paragraph [212] of the Plaintiffs' Claim;
- (r) in FY14, DSH released the Onerous Lease Provision which had the effect of improving DSH's reported NPAT in its FY14 statutory results as alleged in paragraph [214]-[215] of the Plaintiffs' Claim;
- (s) DSH paid StarTrack approximately \$1.4 million which was incurred in FY15 but was deferred to FY16 as alleged in paragraphs [219]-[220] of the Plaintiffs' Claim.

76. If the allegations in the Company Claim are made out, each of Abboud and Potts knew, and it was the fact, that:
- (a) from at least May 2014, the Rebate Maximisation Policy (as that term is deployed at [30] of the Company Claim) led to perverse business practices, including those alleged at paragraphs [34] and [35] of the Company Claim, resulting in the \$60m non-cash impairment with respect to obsolete or unsaleable inventory on 29 November 2015 (as alleged in paragraphs [36], [48], [63] and [83]-[84] of the Company Claim);
 - (b) from at least December 2014, DSH had concerns about substantial or excess quantities of stock, including Bad Stock (as that term is deployed at paragraph [35] of the Company Claim) due to the Rebate Driven Buying Practices (as alleged in paragraph [34], [42]-[43], [48] and [63] of the Company Claim);
 - (c) from at least March 2015, DSH had too much inventory and had not been able to reduce it, and that the size of the problem was unknown, and that DSH was considering engagement of, or had engaged, external advisors 2015 (including as alleged in paragraph [69] of the Company Claim) to investigate issues concerning Bad Stock (as that term is deployed at paragraph [35] of the Company Claim) and matters giving rise to the \$60m non-cash impairment with respect to obsolete or unsaleable inventory on 29 November 2015 (including as alleged in paragraphs [83]-[84] of the Company Claim);
 - (d) from at least 30 April 2015, DSH had failed to reduce inventory levels in accordance with its projections (as alleged in paragraph [57(g)] and [63] of the Company Claim);
 - (e) from at least 28 June 2015, DSH should make provisions or write-offs with respect to Bad Stock but failed to do so (as alleged in paragraph [61] and [63] of the Company Claim);
 - (f) from at least December 2014, the DSE Group engaged in the Rebate Uplift Practice (as alleged at paragraph [37] of the Company Claim);
 - (g) from a time unknown to Deloitte, DSH had engaged in the practice of entering O&A rebate claims without properly checking the support for the claim (as alleged in paragraphs [38], [48] and [63] of the Company Claim);
 - (h) from at least 12 February 2015 (or alternatively 30 April 2015), DSH's cashflow projections were unreliable and that there was no proper or adequate basis for them (as alleged in paragraph [46], [48] and [62]-[63] of the Company Claim);
 - (i) from at least 12 February 2015 (or alternatively 30 April 2015), DSH required an extension of its overdraft limit in order to pay an interim dividend of 7 cents

- which extension, at that date, had not been agreed to by Westpac (as alleged at paragraph [47], [48] and [62]-[63] of the Company Claim);
- (j) from at least 30 April 2015 (or alternatively 17 August 2015), DSH had since 12 February 2015 (or alternatively 30 April 2015):
 - (i) exceeded the limit of its finance facilities; and
 - (ii) required further extensions of its finance facilities in order to meet cash flow difficulties and to pay its debts as and when they fell due, (as alleged in paragraphs [57] and [62]-[63] of the Company Claim);
 - (k) from at least 17 August 2015, DSH had since 30 April 2015 used certain funds advanced by or on behalf of NAB and HSBC to repay Westpac rather than for the purpose for which the funds were advanced (as alleged in paragraph [62]-[63] of the Company Claim);
 - (l) from at least 30 April 2015 (or alternatively 17 August 2015), DSH had since 12 February 2015 (or alternatively 30 April 2015) engaged in some or all of the following conduct in relation to supplier arrangements (as alleged at paragraphs [57] and [62]-[63] of the Company Claim):
 - (i) failing to pay suppliers on time and that at least one supplier (Samsung) had refused to supply DSH until its account was regularised;
 - (ii) seeking extensions of time for payment of certain invoices; and
 - (iii) delaying paying suppliers; and
 - (m) from at least 17 August 2015, DSH had since 30 April 2015 insufficient cash reserves or available cash inflows from trading to purchase high turnover or attractive inventory (as alleged in paragraph [62]-[63] of the Company Claim).

Representations

FY13 Representations

77. In respect of FY13:

- (a) Abboud represented, on or about 22 October 2013, that the statements contained in FY13 Management Representation Letter, including (where applicable) those pleaded in paragraph 46 above were true (the **FY13 Management Representation Letter Representation**);
- (b) alternatively, if the FY13 Management Representation Letter Representation was a representation of opinion only, then Abboud represented that he had reasonable grounds for making the FY13 Management Representation Letter Representation (the **FY13 Management Representation Letter Opinion Representation**);

- (c) each of the (relevant) DSSH Directors including Abboud represented, on or about 22 October 2013, that the statements contained in the FY13 Directors' Declaration, including (where applicable) those pleaded in paragraph 51 above were true (the **FY13 Directors' Declaration Representation**);
 - (d) alternatively, if the FY13 Directors' Declaration Representation was a representation of opinion only, then each of the (relevant) DSSH Directors including Abboud represented that they had reasonable grounds for making the FY13 Directors' Declaration Representation (the **FY13 Directors' Declaration Opinion Representation**);
 - (e) by the representations set out at subparagraphs (a)-(d) above, by the Directors' Adoption of the FY13 Report as pleaded at paragraph 52 above, and by the Directors' Issue of the FY13 Report as pleaded in paragraph 55 above, each of the (relevant) DSSH Directors including Abboud represented that:
 - (i) the FY13 Report had been prepared in accordance with Australian Accounting Standards;
 - (ii) the FY13 Report gave a true and fair view of the financial position and performance of DSSH as at 30 June 2013,
 (the **FY13 Statements Representation**); and
 - (f) alternatively, if the FY13 Statements Representation was a representation of opinion only, then each of the (relevant) DSSH Directors including Abboud represented that they had reasonable grounds for making the FY13 Directors' Declaration Representation (the **FY13 Statements Opinion Representation**),
- (together, the **FY13 Representations**).

Prospectus Representations

78. In respect of the Prospectus:

- (a) Abboud and Potts represented, on or about 13 November 2013, that the statements contained in the Prospectus Management Certificates, including those pleaded in paragraph 35 above, were true (in each case, a **Prospectus Management Certificate Representation**);
- (b) alternatively, if the Prospectus Management Certificates Representation was a representation of opinion only, then Abboud and Potts each represented that he had reasonable grounds for making the Prospectus Management Certificate

Representation (in each case, a **Prospectus Management Certificate Opinion Representation**);

- (c) each of the (relevant) DSH Directors (or, alternatively, Abboud and Potts, or, further in the alternative, Potts) represented, on or about 14 November 2013, that the statements contained in the Prospectus Representation Letter, including those pleaded in paragraph 36 above, were true (the **Prospectus Representation Letter Representation**);
- (d) alternatively, if the Prospectus Representation Letter Representation was a representation of opinion only, then each of the DSH Directors (or, alternatively, Abboud and Potts, or, further in the alternative, Potts) represented that he or she had reasonable grounds for making the Prospectus Representation Letter Representation (the **Prospectus Representation Letter Opinion Representation**);
- (e) by the representations set out at subparagraphs (a)-(d) above, by the Directors' Adoption of the Historical and Forecast Financial Information as pleaded at paragraph 56 above, by the Directors' Issue of the Prospectus as pleaded at paragraph 65 above, in the premises of paragraphs 13 and 25 above, each of the (relevant) DSH Directors represented that:
 - (i) the Prospectus did not contain any misleading or deceptive statement and
 - (ii) the statements contained in the Directors' Prospectus Confirmations and the resolutions comprising the Directors' Approval of the Prospectus were true; and
 - (iii) the drafts referred to in the Prospectus Drafts Ratification did not contain any misleading or deceptive statement; and
 - (iv) the statements used in the prospectus were presented fairly and were in accordance with the recognition and measurement contained in the Australian Accounting Standards;

(jointly and severally, the **Prospectus Issue Representations**);

- (f) alternatively, if the Prospectus Issue Representations were (jointly and severally) representations of opinion only, then each of the DSH Directors represented that they had reasonable grounds for making the (relevant) Prospectus Issue Representation (jointly and severally, the **Prospectus Issue Opinion Representations**),

(together, the **Prospectus Representations**).

FY14 Representations

79. In respect of FY14:

- (a) Abboud and Potts each represented on or about 18 August 2014 that the statements contained in the FY14 CEO/CFO Declarations, including those pleaded in paragraph 41 were true (the **FY14 CEO/CFO Declarations Representation**);
- (b) alternatively, if the FY14 CEO/CFO Declaration Representation was a representation of opinion only, then Abboud and Potts each represented that they had reasonable grounds for making the FY14 CEO/CFO Declaration Representation (the **FY14 CEO/CFO Declarations Opinion Representation**);
- (c) Abboud and Potts each represented on or about 18 August 2014, that the statements contained in FY14 Management Representation Letter, including (where applicable) those pleaded in paragraph 46 above were true (the **FY14 Management Representation Letter Representation**);
- (d) alternatively, if the FY14 Management Representation Letter Representation was a representation of opinion only, then Abboud and Potts each represented that they had reasonable grounds for making the FY14 Management Representation Letter Representation (the **FY14 Management Representation Letter Opinion Representation**);
- (e) each of the (relevant) DSH Directors represented on or about 18 August 2014, that the statements contained in the FY14 Directors' Declaration, including those pleaded in paragraph 51 above were true (the **FY14 Directors' Declaration Representation**);
- (f) alternatively, if the FY14 Directors' Declaration Representation was a representation of opinion only, then each of the (relevant) DSH Directors represented that they had reasonable grounds for making the FY14 Directors' Declaration Representation (the **FY14 Directors' Declaration Opinion Representation**);
- (g) by the representations in subparagraphs (a)-(f) above, by the Directors' Adoption of the FY14 Report as pleaded in paragraph 66 above, and the Directors' Issue of the FY14 Report as pleaded in paragraph 69 above, each of the (relevant) DSH Directors represented that:

- (i) the FY14 Report had been prepared in accordance with Australian Accounting Standards;
 - (ii) the FY14 Report gave a true and fair view of the financial position and performance of DSH as at 29 June 2014,
- (the **FY14 Statements Representation**); and
- (h) alternatively, if the FY14 Statements Representation was a representation of opinion only, then each of the (relevant) DSH Directors represented that they had reasonable grounds for making the FY14 Statements (the **FY14 Statements Opinion Representation**),
- (together, the **FY14 Representations**).

FY15 Representations

80. In respect of FY15:

- (a) Abboud and Potts each represented on or about 17 August 2015 that the statements contained in the FY15 CEO/CFO Declaration, including those pleaded in paragraph 41 were true (the **FY15 CEO/CFO Declaration Representation**);
- (b) alternatively, if the FY15 CEO/CFO Declaration Representation was a representation of opinion only, then Abboud and Potts each represented that they had reasonable grounds for making the FY15 CEO/CFO Declaration Representation (the **FY15 CEO/CFO Declaration Opinion Representation**);
- (c) Abboud and Potts each represented on or about 17 August 2015, that the statements contained in FY15 Management Representation Letter, including (where applicable) those pleaded in paragraph 46 above were true (the **FY15 Management Representation Letter Representation**);
- (d) alternatively, if the FY15 Management Representation Letter Representation was a representation of opinion only, then Abboud and Potts each represented that they had reasonable grounds for making the FY15 Management Representation Letter Representation (the **FY15 Management Representation Letter Opinion Representation**);
- (e) each of the (relevant) DSH Directors represented on or about 17 August 2015, that the statements contained in FY15 Directors' Declaration, including those pleaded in paragraph 51 above were true (the **FY15 Directors' Declaration Representation**);

- (f) alternatively, if the FY15 Directors' Declaration Representation was a representation of opinion only, then each of the (relevant) DSH Directors represented that they had reasonable grounds for making the FY15 Directors' Declaration Representation; (the **FY15 Directors' Declaration Opinion Representation**);
 - (g) by the representations set out in subparagraphs (a)–(f) above, by the Directors' Adoption of the FY15 Report as pleaded at paragraph 70 above, and by the Directors' Issue of the FY15 Report as pleaded in paragraph 73 above, each of the (relevant) DSH Directors represented that:
 - (i) the FY15 Report had been prepared in accordance with Australian Accounting Standards;
 - (ii) the FY15 Report gave a true and fair view of the financial position and performance of DSH as at 28 June 2015,
 (the **FY15 Statements Representation**); and
 - (h) alternatively, if the FY15 Statements Representation was a representation of opinion only, then each of the (relevant) DSH Directors represented that they had reasonable grounds for making the FY15 Statements Representation (the **FY14 Statements Opinion Representation**),
- (together, the **FY15 Representations**).

Statutory provisions engaged

81. By making:

- (a) the FY13 Representations, Abboud; and
- (b) the Prospectus Representations, the FY14 Representations and/or the FY15 Representations, Abboud and Potts,

each engaged in conduct:

- (c) in relation to a financial product or a financial service within the meaning of s 1041H of the Corporations Act;
- (d) in trade or commerce in relation to financial services within the meaning of s 12DA of the ASIC Act; and/or
- (e) in trade or commerce within the meaning of s 18 of the ACL NSW.

82. Further or alternatively, by making:

- (a) the FY13 Representations, Abboud; and

- (b) the Prospectus Representations, the representations set out in subparagraphs (b), (c) (d), (e), (f), (g) and (h) of paragraph 78 (the **FY14 Standard or Quality Representations**), and/or the representations set out in subparagraphs (b), (c), (d), (e), (f), (g) and (h) of paragraph 80 (the **FY15 Standard or Quality Representations**), Abboud and Potts,

each made representations:

- (c) in trade or commerce, in connection with the supply of services, that those services were of a particular standard or quality, within the meaning of s 29(1)(b) of the ACL NSW; and/or
- (d) in trade or commerce, in connection with the supply of financial services, that those financial services were of a particular standard or quality, within the meaning of s 12DB(1)(a) of the ASIC Act.

Particulars

The services/financial services (as applicable) supplied by Abboud and Potts (as relevant) were their services as a DSSH Director (in the case of Abboud only) and DSH Directors at the relevant times in the discharge of their obligations and responsibilities as directors, including in relation to the preparation, proposed publication and publication of DSSH's FY13 Report, and DSH's FY14 Report and FY15 Report (as relevant) in their terms.

The representations in relation to the FY13 Report, FY14 Report and the FY15 Report pleaded in this paragraph above, were representations that the DSSH Directors / DSH Directors (as applicable) had exercised reasonable skill and care and had complied with their obligations as DSSH Directors / DSH Directors (as applicable) in respect of DSSH's and DSH's (as relevant) financial records and the matters connected with each of the FY13 Report, FY14 Report and FY15 Report (as relevant), and were representations regarding the standard or quality of the DSSH Directors' / DSH Directors' (as applicable) services as directors and officers of DSSH or DSH (as relevant) in respect of the FY13 Report, FY14 Report and FY15 Report.

The representations in relation to the Prospectus were representations that the DSH Directors' services as directors and officers of DSH had

been performed to the standard required by the Corporations Act in permitting the Prospectus to be published.

In addition, the representations included representations that Abboud and Potts (as relevant) had exercised reasonable skill and care and had complied with their obligations as CEO/CFO (respectively) in respect of DSSH's and DSH's (as applicable) financial records and the matters connected with each of the FY13 Audit, FY14 Audit and FY15 Audit (as relevant) and were representations regarding the standard or quality of their services as CEO/CFO of DSSH or DSH (as applicable) in respect of the FY13 Audit, FY14 Audit and FY15 Audit.

FY13 Conduct

83. Paragraph 74, 75 and 76 above are repeated insofar as the matters pleaded therein relate to FY13.
84. In the premises of paragraph 83 above:
- (a) the FY13 Management Representation Letter Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY13 Management Representation Letter; and
 - (b) the FY13 Directors' Declaration Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY13 Directors' Declaration.
85. In the premises of paragraph 83 above, the FY13 Statements Representation was false, misleading or deceptive because the FY13 Report had not been prepared in accordance with Australian Accounting Standards and/or the FY13 Report did not give a true and fair view of the financial performance of the financial position and performance of DSH as at 30 June 2013.
86. In the premises of paragraph 83 above, each of the FY13 Management Representation Letter Opinion Representation, the FY13 Directors' Declaration Opinion Representation and the FY13 Statements Opinion Representation was false or misleading or deceptive.

Particulars

- (i) The DSSH Directors each had the duties pleaded at paragraphs 19 to 24 above.

- (ii) A reasonable director (including as CEO or CFO) complying with their duties and obligations in the circumstances would not have made any of the FY13 Management Representation Letter Representation, the FY13 Directors' Declaration Representation, or the FY13 Statements Representation if they did not have reasonable grounds upon which to do so.
- (iii) In the premises set out at paragraph 83 above, the (relevant) DSSH Directors including Abboud did not have reasonable grounds upon which to make the relevant representations.

87. In the premises of paragraphs 83, 84, 85 and 86 above, if (which is denied) Deloitte engaged in contravening conduct in respect of the FY13 Audit and/or the FY13 Report as alleged in the Plaintiffs' Claim and in the Cross-Claims against Deloitte, then each of the FY13 Representations made by Abboud were misleading or deceptive or false.

Prospectus Conduct

88. Paragraph 74, 75 and 76 above are repeated insofar as the matters pleaded therein relate to the Prospectus (or matters prior to the Directors' Issue of the Prospectus).
89. In the premises of paragraph 88 above:
- (a) the Prospectus Representation Letter Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the Prospectus Representation Letter; and
 - (b) each Prospectus Management Certificate Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the Prospectus Management Certificates.
90. In the premises of paragraph 88 above, each Prospectus Issue Representation was false, misleading or deceptive because:
- (a) the Prospectus contained the misleading and deceptive statements pleaded in the Plaintiffs' Claim;
 - (b) the statements contained in the Directors' Prospectus Confirmations and the Directors' Approval of the Prospectus were other than as stated;
 - (c) the statements used in the Prospectus were not presented fairly; and
 - (d) the statements used in the Prospectus were not in accordance with the recognition and measurement contained in the Australian Accounting Standards.

91. In the premises of paragraph 88 above, each of the Prospectus Letter Opinion Representation and each Prospectus Management Certificate Opinion Representation, and each of the Prospectus Issue Opinion Representations, was false or misleading or deceptive.

Particulars

- (i) The DSH Directors each had the duties pleaded at paragraphs 25 and 32 above.
 - (ii) A reasonable director complying with their duties and obligations in the circumstances would not have made the Prospectus Letter Opinion Representation and a Prospectus Management Certificate Opinion Representation if they did not have reasonable grounds upon which to do so.
 - (iii) In the premises set out at paragraph 88 above, the (relevant) DSH Directors did not have reasonable grounds upon which to make the relevant representations.
92. In the premises of paragraph 88, 89, 90 and 91, if (which is denied) DCF or Deloitte engaged in contravening conduct in respect of the Due Diligence Sign-Off, the IAR and/or the Prospectus (as applicable) as alleged in the First Cross-Claim, then each of the Prospectus Representations made by Abboud and Potts were misleading or deceptive or false.

FY14 Conduct

93. Paragraph 74, 75 and 76 above are repeated insofar as the matters pleaded therein relate to FY14 or prior.
94. In the premises of paragraph 93 above:
- (a) the FY14 CEO/CFO Declaration Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY14 CEO/CFO Declaration;
 - (b) the FY14 Management Representation Letter Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY14 Management Representation Letter; and
 - (c) the FY14 Directors' Declaration Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY14 Directors' Declaration.

95. In the premises of paragraph 93 above, the FY14 Statements Representation was false, misleading or deceptive because the FY14 Report had not been prepared in accordance with Australian Accounting Standards and/or the FY14 Report did not give a true and fair view of the financial position and performance of DSH as at 29 June 2014.
96. In the premises of paragraph 93 above, each of the FY14 CEO/CFO Declarations Opinion Representation, the FY14 Management Representation Letter Opinion Representation, the FY14 Directors' Declaration Opinion Representation and the FY14 Statements Opinion Representation was false or misleading or deceptive.

Particulars

- (i) The DSH Directors each had the duties pleaded at paragraphs 26 to 32 above.
 - (ii) A reasonable director (including as CEO or CFO) complying with their duties and obligations in the circumstances would not have made any of the FY14 CEO/CFO Declaration Representation, the FY14 Management Representation Letter Representation, the FY14 Directors' Declaration Representation, or the FY14 Statements Representation if they did not have reasonable grounds upon which to do so.
 - (iii) In the premises set out at paragraph 93, above the (relevant) DSH Directors did not have reasonable grounds upon which to make the relevant representations.
97. In the premises of paragraph 93, 94, 95 and 96 above, if (which is denied) Deloitte engaged in contravening conduct in respect of the FY14 Audit and/or the FY14 Report as alleged in the Plaintiffs' Claim and in Cross-Claims against Deloitte, then each of the FY14 Representations made by Abboud and Potts was misleading or deceptive or false.

FY15 Conduct

98. Paragraph 74, 75 and 76 above are repeated insofar as the matters pleaded therein relate to FY15 or prior.

99. In the premises of paragraph 98 above:
- (a) the FY15 CEO/CFO Declaration Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY15 CEO/CFO Declaration;
 - (b) the FY15 Management Representation Letter Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY15 Management Representation Letter; and
 - (c) the FY15 Directors' Declaration Representation was false, misleading or deceptive because the true state of affairs was other than as presented in the FY15 Directors' Declaration.
100. In the premises of paragraph 98 above, the FY15 Statements Representation was false, misleading or deceptive because the FY15 Report had not been prepared in accordance with Australian Accounting Standards and/or the FY15 Report did not give a true and fair view of the financial position and performance of DSH as at 28 June 2015.
101. In the premises of paragraph 98 above, each of the FY15 CEO/CFO Declarations Opinion Representation, the FY15 Management Representation Letter Opinion Representation, the FY15 Directors' Declaration Opinion Representation and the FY15 Statements Opinion Representation was false or misleading or deceptive.

Particulars

- (i) The DSH Directors each had the duties pleaded at paragraphs 26 to 32 above.
 - (ii) A reasonable director complying with their duties and obligations in the circumstances would not have made any of the FY15 CEO/CFO Declaration Representation, the FY15 Management Representation Letter Representation, the FY15 Directors' Declaration Representation, or the FY15 Statements Representation if they did not have reasonable grounds upon which to do so.
 - (iii) In each case, the (relevant) DSH Directors did not have reasonable grounds upon which to make the representations referred to in subparagraph (b) in the premises set out at paragraph 98 above.
102. In the premises of paragraphs 98, 99, 100 and 101 above, if (which is denied) Deloitte engaged in contravening conduct in respect of the FY15 Audit and/or the FY15 Report

as alleged in the Plaintiffs' Claim and in the Cross-Claims against Deloitte, then each of the FY15 Representations made by Abboud and Potts was misleading or deceptive or false.

Abboud and Potts Misleading Conduct Contraventions:

103. In the premises, if the Plaintiffs' Claim and/or the Company Claim and/or the Bank Claim is made out, then:
- (a) the conduct of Abboud pleaded in paragraph 81 above in respect of the Prospectus contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
 - (b) the conduct of Abboud pleaded in paragraph 81 above in respect of FY13 contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
 - (c) the conduct of Abboud pleaded in paragraph 81 in respect of FY14 contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
 - (d) the conduct of Abboud pleaded in paragraph 81 in respect of FY15 contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
 - (e) the conduct of Abboud pleaded in paragraph 82 in respect of the Prospectus contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;
 - (f) the conduct of Abboud pleaded in paragraph 82 in respect of FY13 contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;
 - (g) the conduct of Abboud pleaded in paragraph 82 in respect of FY14 contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;
 - (h) the conduct of Abboud pleaded in paragraph 82 in respect of FY15 contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act
- (together, the **Abboud Misleading Conduct Contraventions**).
104. In the premises, if the Plaintiffs' Claim and/or the Company Claim and/or the Bank Claim is made out, then:
- (a) the conduct of Potts pleaded in paragraph 81 above in respect of the Prospectus contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;

- (b) the conduct of Potts pleaded in paragraph 81 in respect of FY14 contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
- (c) the conduct of Potts pleaded in paragraph 81 in respect of FY15 contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL NSW;
- (d) the conduct of Potts pleaded in paragraph 82 above in respect of the Prospectus contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;
- (e) the conduct of Potts pleaded in paragraph 82 in respect of FY14 contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;
- (f) the conduct of Potts pleaded in paragraph 82 in respect of FY15 contravened s 29 of the ACL NSW and/or s 12DB of the ASIC Act;

(together, the **Potts Misleading Conduct Contraventions**).

105. If any of the Abboud Misleading Conduct Contraventions and/or the Potts Misleading Conduct Contraventions is made out, DSH also contravened the relevant legislative provision in the premises of paragraphs 8 or 10 above (as applicable) (**DSH Misleading Conduct Contraventions**).

BREACH OF S 728

106. In the premises, if the Plaintiffs' Claim is made out then, in the circumstances of paragraphs 88, 89, 90 and 91 above, the DSH Directors, including Abboud and Potts, in committing the Directors' Issue of the Prospectus as pleaded in paragraph 65 above, contravened s 728 of the Corporations Act (**DSH Directors' Section 728 Contravention**).
107. In the premises of paragraph 106 above, DSH also contravened s 728 of the Corporations Act, in the premises of paragraph 10 above (**DSH Section 728 Contravention**).
108. For the avoidance of doubt, without admission and solely for the purposes of this Fourth Cross-Claim, and only in the event that:
- (a) Deloitte are found liable to the Plaintiffs in respect of the Plaintiffs' Claim or to any Cross-Claimant in the Cross-Claims against Deloitte; or
 - (b) DCF is found liable to DSH in the Cross-Claim against DCF
- sections J.1 and R of the First Cross-Claim are repeated.

109. In the premises of paragraphs 106 to 108 above, Deloitte and/or DCF have suffered loss or damage in light of the DSH Directors' Section 728 Contravention and the DSH Section 728 Contravention and are entitled to recover the full amount of that loss and damage pursuant to s 729 of the Corporations Act.

BREACH OF S 1041E

110. By his acts described in paragraphs 58 and 65 above, Abboud and Potts each disseminated the Prospectus.
111. Abboud and Potts knew or ought reasonably to have known that Prospectus Representations were false or misleading in a material particular.

Particulars

- (i) Paragraphs 25 and 32 and 92 above are repeated.
 - (ii) In the discharge of the duties and obligations referred to at paragraphs 25 and 32 above, a reasonable director (and/or CEO or CFO) would have known that the Prospectus was false or misleading in a material particular.
 - (iii) In the premises of subparagraphs (i) and (ii) above, Abboud and Potts ought to have known that the Prospectus was false or misleading in a material particular.
112. When Abboud and Potts each made the Prospectus Representations, each of Abboud and Potts knew or ought reasonably to have known that the declarations and statements contained therein were false or misleading.

Particulars

The particulars to paragraph 111 above are repeated.

For the purposes of this Fourth Cross-Claim and without admission, paragraph 252 of the Plaintiffs' Claim is repeated.

113. In the premises of paragraphs 110, 111 and 112 above, Abboud and Potts each made statements or disseminated information which:
- (a) was or were (as applicable) false in a material particular or materially misleading;
 - (b) were likely to induce, directly or indirectly, a person or investor to dispose of or acquire financial products, or to have the effect of increasing, reducing,

maintaining or stabilising the price for trading in financial products on a financial market in Australia; and

Particulars

- (i) The Prospectus was intended to be published to the market, for the express purpose of informing the market about the release of securities in DSH and offering securities in DSH for acquisition and to provide information for the purpose of people making decisions as to whether to acquire securities in DSH and likely to influence the trading price of those securities.
 - (ii) The Prospectus Representation Letter and the Prospectus Management Certificates would reasonably be expected to have an effect on the price of DSH shares because, had those representations not been made, DCF would not have taken the actions set out in paragraph 57 and 63 above, with the result that the Prospectus would not have been published at all, or in the form in which it was published.
- (c) Abboud and Potts each knew or ought reasonably to have known was false or misleading.
114. The conduct and knowledge of each of Abboud and Potts pleaded at paragraph 117 is conduct attributable to DSH by reason of the matters set out in paragraph 10 above.
115. By his acts described in:
- (a) paragraphs 55, 69 and 73 above, Abboud disseminated (respectively) the FY13 Report, the FY14 Report and the FY15 Report; and
 - (b) paragraphs 69 and 73 above, Potts disseminated (respectively) the FY14 Report and the FY15 Report.
116. Abboud knew or ought reasonably to have known that each of the FY13 Report, the FY14 Report and the FY15 Report was false or misleading in a material particular, and Potts knew or ought reasonably to have known that each of the FY14 Report and the FY15 Report was false or misleading in a material particular.

Particulars

- (i) Paragraphs 19 to 24, 26 to 32, 74, 75, 76, 87, 95 and 100 are repeated.
- (ii) As at the dates referred to in paragraphs 55, 69 and 73, in the premises set out in paragraph 74, 75 and 76 above, each of Abboud and Potts:

- (A) knew or ought reasonably to have known of the Rebate Maximisation Practices and Rebate Maximisation Consequences;
 - (B) knew or ought reasonably to have known about Switched Invoices Rebates;
 - (C) knew or ought reasonably to have known about Volume Rebates and DSH's accounting treatment of them;
 - (D) knew or ought reasonably to have known about the O&A Rebates and DSH's accounting treatment of them;
 - (E) knew or ought reasonably to have known that DSH did not have a system for the reliable planning, tracking, and recording of rebates accrued and received from vendors and suppliers;
 - (F) knew or ought reasonably to have known that DSH and the DSE Group had Inadequate Inventory Management.
- (iii) In the discharge of the duties and obligations referred to paragraphs 19 to 24 above, a reasonable director (and/or CEO) would have known that the FY13 Report was false or misleading in a material particular.
 - (iv) In the premises of subparagraphs (i), (ii) and (iii) above, Abboud ought to have known that the FY13 Report was false or misleading in a material particular.
 - (v) In the discharge of the duties and obligations referred to paragraphs 26 to 32 above, a reasonable director (and/or CEO or CFO) would have known that each of the FY14/FY15 Reports was false or misleading in a material particular.
 - (vi) In the premises of subparagraphs (i), (ii) and (v) above, Abboud and Potts ought to have known that each of the FY14/FY15 Reports was false or misleading in a material particular.
117. When Abboud made the FY13 Representations, and when Abboud and Potts each made the FY14 Representations and FY15 Representations, each of Abboud and Potts (as relevant) knew or ought reasonably to have known that the declarations and statements contained therein were false or misleading.

Particulars

The particulars to paragraph 116 above are repeated.

For the purposes of this Fourth Cross-Claim only, paragraphs 255 and 265 of the Plaintiffs' Claim are repeated.

118. In the premises of paragraphs 115, 116 and 117 above, Abboud and Potts each made statements or disseminated information which:

- (a) was or were (as applicable) false in a material particular or materially misleading;
- (b) were likely to induce, directly or indirectly, a person or investor to dispose of or acquire financial products, or to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market in Australia; and

Particulars

- (i) In respect of the Directors' Declarations and the representations made in them, those declarations were, and were intended to be when given, published in the FY13 Report and the FY14/FY15 Reports, which were subsequently published to the ASX and thereby to the market.
- (ii) In respect of the FY13 Report, it was contemplated that the contents of that document would form part of the Financial Information to be included in the Prospectus and that document would otherwise be published to the ASX and thereby to the market upon the listing of DSH.
- (ii) In respect of the FY14/FY15 Reports, those documents were, and were intended to be when adopted, published to the ASX and thereby to the market.
- (iii) The announcement of the FY13 Report and the FY14/FY15 Reports containing the Directors' Declarations would reasonably be expected to have an effect on the price of DSH shares.
- (iv) In respect of the Management Representation Letters and the representations made in them, those documents would reasonably be expected to have an effect on the price of DSH shares because they were documents the giving of which led directly to the publication of the FY13 Report and the FY14/FY15 Reports, to the ASX and thereby the market.

Furthermore, had they not been given, DTT would not have given its audit opinions and the FY13 Report and the FY14/FY15 Reports would not have been published, or not published in their terms.

(v) In respect of the CEO/CFO Declarations and the representations made in them, those documents would reasonably be expected to have an effect on the price of DSH shares because they were documents the giving of which led directly to the publication of the FY14/FY15 Reports, to the ASX and thereby the market. Furthermore, had they not been given, DTT would not have given its audit opinions review negative assurance and the FY14/FY15 Reports would not have been published, or not published in their terms. Further in respect of the CEO/CFO Declarations, those declarations were referred to in the Annual Report for FY14 and FY15 respectively, which were published to the ASX and thereby the market.

(v) In respect of the FY13 Representations, the FY14 Representations and the FY15 Representations to DTT, those representations would reasonably be expected to have an effect on the price of DSH shares because, had those representations not been made, DTT would not have provided its audit opinions, and the FY13 Report and FY14/FY15 Reports could not have been published to the ASX.

(c) Abboud and Potts each knew or ought reasonably to have known was false or misleading.

119. The conduct and knowledge of each of Abboud and Potts pleaded at paragraph 118 is conduct attributable to DSH by reason of the matters set out in paragraphs 8 or 10 above (as applicable).

120. In the premises, each of:

- (a) Abboud, by each of the acts set out in paragraphs 110 and 115 above;
- (b) Potts, by each of the acts set out in paragraphs 110 and 115 above; and/or
- (c) DSH by each of the acts set out in paragraphs 110 and 115 above (by reason of the matters pleaded in paragraphs 114 and **Error! Reference source not found.** above),

breached s 1041E of the Corporations Act (the **1041E Contraventions**).

DSH's BREACH OF CONTRACT

121. Each of the matters pleaded in paragraphs 74, 75 and 76 above was, relevantly:
- (a) a matter that ought to have been disclosed to DTT pursuant to the terms of (as applicable) the FY14 Retainer/FY15 Retainer;
 - (b) a matter of the type which Abboud and Potts (as relevant) represented had been disclosed to DTT in Management Representation Letters;
 - (c) a matter of the type that a reasonable director or officer of a company in the position of Abboud or Potts (as relevant) would have disclosed to DTT; and
 - (d) a matter of the type that a reasonable auditor in the position of DTT would have expected would have been, in the circumstances, disclosed.
122. Neither Abboud nor Potts disclosed any of the matters pleaded in paragraphs 74, 75 and 76 above to DTT at the time Abboud or Potts became aware of each of those matters; or alternatively, at a reasonable time after becoming aware of each of those matters; or alternatively, at all.
123. In the premises of paragraphs 74, 75, and 76 above:
- (a) DSH did not prepare the FY14/FY15 Reports so that they gave a true and fair view in accordance with Australian Accounting Standards and the Corporations Act;
 - (b) DSH did not prepare the FY14/FY15 Reports so that they were free from material misstatement, whether due to fraud or error;
 - (c) DSH did not provide DTT with access to all information of which the directors and management were aware that was relevant to the preparation of the FY14/FY15 Reports such as records, documentation and other matters; and
 - (d) DSH did not provide DTT with accurate and complete information and all information that is relevant to the services to be provided under the FY14 Retainer and the FY15 Retainer.
124. By reason of the matters in paragraphs 10 and 121 to 123 above, DSH breached its contracts with DTT (**DSH Breaches of DTT Contracts**).
125. Each of the matters pleaded in paragraphs 74, 75 and 76 above, was:
- (a) a matter that ought to have been disclosed to DCF pursuant to the terms of the DCF Retainer;

- (b) a matter of the type which Abboud and Potts represented had been disclosed to DTT in the Prospectus Representation Letter as set out in paragraph 36(b) above;
 - (c) a matter of the type that a reasonable director and/or officer of a company in the position of Abboud or Potts (as relevant) would have disclosed to DCF; and
 - (d) a matter of the type that a reasonable assurance practitioner in the position of DCF would have expected would have been, in the circumstances, disclosed.
126. Neither Abboud nor Potts disclosed any of the matters pleaded in paragraphs 74, 75 and 76 above to DCF at the time Abboud or Potts became aware of each of those matters; or alternatively, at a reasonable time after becoming aware of each of those matters; or alternatively, at all.
127. In the premises of paragraphs 74, 75, and 76:
- (a) DSH Directors did not prepare and present the Financial Information included in the Prospectus in compliance with all applicable laws and regulations;
 - (b) DSH Directors did not achieve such internal control as was necessary to enable the preparation; and
 - (c) DSH did not provide Deloitte with accurate and complete information, or all information that would be relevant to the services to be provided under the DCF Retainer.
128. By reason of the matters in paragraphs 10 and 125 to 127 above, DSH breached its contract with DCF (**DSH Breach of DCF Contract**).

CONTRIBUTION

129. For the purposes of this Fourth Cross-Claim, the contraventions of DSH, Abboud and Potts alleged in the Plaintiffs' Claim are referred to collectively as the **DSH/Abboud/Potts Contraventions**.

Plaintiffs' Claim

130. If Deloitte (or any of them) contravened s 1041H of the Corporations Act, and/or ss 12DA and/or 12DB of the ASIC Act, and/or ss 18 and/or 29 of the ACL NSW or engaged in any other wrongdoing against the Plaintiffs and/or Group Members as alleged in the Plaintiffs' Claim and/or if White contravened s 1041E of the Corporations Act as alleged in the Plaintiffs' Claim, then each of:
- (a) the DSH/Abboud/Potts Contraventions;

- (b) the Abboud Misleading Conduct Contraventions;
- (c) the Potts Misleading Conduct Contraventions;
- (d) the DSH Misleading Conduct Contraventions;
- (e) the 1041E Contraventions;
- (f) the DSH Breach of Deloitte Contract;
- (g) the DSH Directors' Section 728 Contravention; and
- (h) the DSH Section 728 Contravention,

caused and/or contributed to the loss and damage claimed by the Plaintiffs and/or Group Members.

131. In the premises of paragraph 130 above, each of Abboud, Potts and DSH are liable to the Plaintiffs and/or Group Members for that same loss and damage pursuant to ss 729, 1041I and/or 1325 of the Corporations Act, and/or ss 12GF and/or 12GM of the ASIC Act, and/or s 236 of the ACL NSW.
132. The liabilities set out in paragraph 131 above are coordinate with any liability of Deloitte to the Plaintiffs and/or Group Members arising from the Plaintiffs' Claim.
133. For the avoidance of doubt, without admission and solely for the purposes of this Fourth Cross-Claim, and only in the event that Deloitte (or any of them) are found liable to the Plaintiffs or to DSH, Deloitte repeats paragraph 159 of the First Cross-Claim.
134. In the premises, if Deloitte (or any of them) are liable to any of the Plaintiffs and/or Group Members in respect of the Plaintiffs' Claim and the loss or damage is as alleged in the Plaintiffs' Claim, then:
 - (a) each of the Cross-Defendants on this Fourth Cross-Claim are also liable to the Plaintiffs for the same loss and damage; and
 - (b) Deloitte are entitled to contribution and/or indemnity in equity from the Cross-Defendants to this Fourth Cross-Claim on the basis that it is just and equitable that they make contribution and/or give such an indemnity; and
 - (c) further or alternatively, in respect of DSH, in the premises of paragraph 133 above, Deloitte are entitled to contribution from DSH pursuant to s 5 of the LRMP Act.

Cross-Claims against Deloitte

135. If Deloitte (or any of them) contravened s 1041H, and/or ss 12DA or 12DB of the ASIC Act, and/or ss 18 or 29 of the ACL NSW or engaged in any other wrongdoing as alleged in the Cross-Claims against Deloitte or any one of them, then each of:
- (a) the DSH/Abboud/Potts Contraventions;
 - (b) the Abboud Misleading Conduct Contraventions;
 - (c) the Potts Misleading Conduct Contraventions;
 - (d) the DSH Misleading Conduct Contraventions;
 - (e) the 1041E Contraventions;
 - (f) the DSH Breach of Deloitte Contract;
 - (g) the DSH Directors' Section 728 Contravention; and
 - (h) the DSH Section 728 Contravention,
- caused and/or contributed to the loss and damage claimed by each of the Cross-Claimants in the Cross-Claims against Deloitte.
136. In the premises of paragraph 135 above:
- (a) in respect of the cross-claim brought by Abboud (i.e. the Second Cross-Claim), each of Potts and DSH are liable to Abboud for that same loss and damage pursuant to ss 729 and/or 1041I and/or 1325 of the Corporations Act, and/or ss 12GF and/or 12GM of the ASIC Act, and/or s 236 of the ACL NSW;
 - (b) in respect of the cross-claim brought by Potts (i.e. the Third Cross-Claim), each of Abboud and DSH are liable to Potts pursuant to ss 729 and/or 1041I and/or 1325 of the Corporations Act, and/or ss 12GF and/or 12GM of the ASIC Act, and/or s 236 of the ACL NSW; and
 - (c) in respect of the cross-claim brought by DSH (i.e. the First Cross-Claim, as against Deloitte), each of Abboud and Potts are liable to DSH pursuant to ss 729 and/or 1041I and/or 1325 of the Corporations Act, and/or ss 12GF and/or 12GM of the ASIC Act, and/or s 236 of the ACL NSW.
137. The liabilities set out in paragraph 136 above are coordinate with any liability of Deloitte (or any of them) to the relevant Cross-Claimant arising from the relevant Cross-Claim against Deloitte.

138. In the premises, if Deloitte (or any of them) are liable to any of the Cross-Claimants in respect of the Cross-Claims against Deloitte and the loss or damage is as alleged in the Cross-Claims against Deloitte, then:
- (a) the other Cross-Defendants to this Fourth Cross-Claim are also liable to that Cross-Claimant for the same loss and damage; and
 - (b) Deloitte are entitled to contribution and/or indemnity in equity on the basis that it is just and equitable that they make contribution and/or give such an indemnity.

Cross-Claim against DCF

139. If DCF contravened s 728 of the Corporations Act or engaged in any other wrongdoing as alleged in the Cross-Claim against DCF, then each of:
- (a) the DSH Directors' Section 728 Contraventions;
 - (b) the DSH Section 728 Contraventions; and
 - (c) the DSH Breach of DCF Contract,
- caused and/or contributed to the loss and damage claimed by DSH in the Cross-Claim against DCF.
140. In the premises of paragraph 139 above, each of Potts and Abboud are liable to DSH for that same loss and damage alleged in the Cross-Claim against DCF, pursuant to s 729 of the Corporations Act.
141. The liabilities set out in paragraph 140 above are coordinate with any liability of DCF to DSH arising from the Cross-Claim against DCF.
142. For the avoidance of doubt, without admission and solely for the purposes of this Fourth Cross-Claim, and only in the event that DCF is found liable to DSH, DCF repeats paragraph 202 of the First Cross-Claim.
143. In the premises, if DCF are liable to DSH in respect of the Cross-Claim against DCF and the loss or damage is as alleged in the Cross-Claim against DCF, then:
- (a) Abboud and Potts are also liable to DSH for the same loss and damage; and
 - (b) DCF is entitled to contribution and/or indemnity in equity on the basis that it is just and equitable that they make contribution and/or give such an indemnity;
 - (c) further and alternatively, in the premises of paragraph 142 above, DCF is entitled to contribution from DSH pursuant to s 5 of the LRMP Act.

CAUSATION

144. If, in respect of FY13:

- (a) Abboud had not committed the (relevant) Abboud Misleading Conduct Contraventions;
- (b) Abboud had not committed the (relevant) 1041E Contraventions;

White and DTT would not have taken the actions in paragraph 53 above.

145. If, in respect of the Prospectus:

- (a) Abboud had not committed the (relevant) Abboud Misleading Conduct Contraventions;
- (b) Potts had not committed the (relevant) Potts Misleading Conduct Contraventions;
- (c) DSH had not committed the (relevant) DSH Misleading Conduct Contraventions;
- (d) Abboud and/or Potts and/or DSH had not committed the (relevant) 1041E Contraventions;
- (e) Abboud and/or Potts had not committed the DSH Directors' Section 728 Contravention; and/or
- (f) DSH had not committed the DSH Section 728 Contravention;
- (g) DSH had not committed the DCF Breach of Contract;
- (h) DSH, Abboud and Potts had not committed the (relevant) DSH/Abboud/Potts Contraventions;

DCF would not have taken the actions set out in paragraph 57, 61 and 63 above and DTT would not have taken the actions set out in paragraph 59.

146. If, in respect of FY14:

- (a) Abboud had not committed the (relevant) Abboud Misleading Conduct Contraventions;
- (b) Potts had not committed the (relevant) Potts Misleading Conduct Contraventions;
- (c) DSH had not committed the (relevant) DSH Misleading Conduct Contraventions;

- (d) Abboud and/or Potts and/or DSH had not committed the (relevant) 1041E Contraventions;
- (e) DSH had not committed the (relevant) DSH Breaches of DTT Contracts;
- (f) DSH, Abboud and Potts had not committed the (relevant) DSH/Abboud/Potts Contraventions;

White and DTT would not have taken the actions set out in paragraph 67 above.

147. If, in respect of FY15:

- (a) Abboud had not committed the (relevant) Abboud Misleading Conduct Contraventions;
- (b) Potts had not committed the (relevant) Potts Misleading Conduct Contraventions;
- (c) DSH had not committed the (relevant) DSH Misleading Conduct Contraventions;
- (d) Abboud and/or Potts and/or DSH had not committed the (relevant) 1041E Contraventions;
- (e) DSH had not committed the (relevant) DSH Breaches of DTT Contracts;
- (f) DSH, Abboud and Potts had not committed the (relevant) DSH/Abboud/Potts Contraventions;

White and DTT would not have taken the actions set out in paragraph 71 above.

148. By reason of the matters set out in paragraphs 144, 144, 145, 146 and 147 above, each of Abboud, Potts, and DSH caused:

- (a) the damage to the Plaintiffs and/or Group Members referred to in the Plaintiffs' Claim;
- (b) the damage to each of DSH, Abboud and Potts referred to in the Cross-Claims against Deloitte; and
- (c) the damage to DSH referred to in the Cross-Claim against DCF.

149. If it is held that Deloitte are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claims against Deloitte, Deloitte would not have suffered that loss but for the FY13 Representations, Prospectus Representations, FY14 Representations and FY15 Representations by each of Abboud, Potts and DSH (as applicable), and Deloitte would not be liable in respect of any of the relief claimed in the Plaintiffs' Claim or on the Cross-Claims against Deloitte.

150. Further or in the alternative, if it is held that Deloitte are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claims against Deloitte, Deloitte would not have suffered that loss but for the 1041E Contraventions by each of Abboud, Potts and DSH (as applicable), and Deloitte would not be liable in respect of any of the relief claimed in the Plaintiffs' Claim or on the Cross-Claims against Deloitte.
151. Further or in the alternative, if it is held that that Deloitte are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claims against Deloitte, Deloitte would not have suffered that loss but for the DSH Breaches of DTT Contracts, and Deloitte would not be liable in respect of any of the relief claimed in the Plaintiffs' Claim or on the Cross-Claims against Deloitte.
152. If it is held that DCF are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claim against DCF, DCF would not have suffered that loss but for the Prospectus Representations by each of Abboud, Potts and DSH, and DCF would not be liable in respect of any of the relief claimed on the Cross-Claim against DCF.
153. Further or in the alternative, if it is held that DCF are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claim against DCF, DCF would not have suffered that loss but for the 1041E Contraventions by each of Abboud, Potts and DSH, and DCF would not be liable in respect of any of the relief claimed in the Cross-Claims against DCF.
154. Further or in the alternative, if it is held that that DCF are liable for any of the losses stemming from the Plaintiffs' Claim, including the loss pleaded in the Cross-Claim against DCF, DCF would not have suffered that loss but for the DSH Breach of DCF Contract, and DCF would not be liable in respect of any of the relief claimed on the Cross-Claim against DCF.

RELIEF

Damages

155. In the premises, Deloitte suffered loss and damage and are entitled to damages or compensation pursuant to ss 236 and 237 of the ACL NSW, ss 12GF and 12GM of the ASIC Act and/or ss 729, 1041I and 1325 of the Corporations Act.

Particulars

- (a) Any damages or compensation, costs or interest that Deloitte are ordered to pay in connection with the Plaintiffs' Claim or the Cross-Claims against Deloitte in this Proceeding.
- (b) The legal costs and disbursements that Deloitte have incurred in defending the Plaintiffs' Claim or the Cross-Claims against Deloitte.
- (c) Alternatively, such other amount or amounts as the Court may determine.

156. In the premises, DCF suffered loss and damage and is entitled to damages or compensation pursuant to ss 236 and 237 of the ACL NSW, ss 12GF and 12GM of the ASIC Act and/or ss 729, 1041I, 1317H and 1325 of the Corporations Act.

Particulars

- (a) Any damages or compensation, costs or interest that DCF is ordered to pay in connection with the Cross-Claim against DCF.
- (b) The legal costs and disbursements that DCF has incurred in defending these proceedings.
- (c) Alternatively, such other amount or amounts as the Court may determine.

Set-Off

157. Against Abboud, Potts and DSH, and in the premises of paragraphs 144 to 154 above, Deloitte is entitled to equitable set off of any amount awarded pursuant to this Fourth Cross-Claim and any amount awarded pursuant to the Cross-Claims against Deloitte.
158. Against Abboud, Potts and DSH, and in the premises of paragraphs 157 above, DCF is entitled to equitable set off of any amount awarded pursuant to this Fourth Cross-Claim and any amount awarded pursuant to the Cross-Claim against DCF.

Injunction

159. In the premises, pursuant to s 232 of the ACL NSW, s 12GD of the ASIC Act, s 1324 of the Corporations Act and/or the inherent jurisdiction of the Court, Deloitte are entitled to an injunction restraining the prosecution of the Cross-Claims against Deloitte and/or recovery in respect of any relief claimed in the Cross-Claims against Deloitte.
160. In the premises, pursuant to s 232 of the ACL NSW, s 12GD of the ASIC Act, s 1324 of the Corporations Act and/or the inherent jurisdiction of the Court, DCF is entitled to

an injunction restraining the prosecution of the Cross-Claim against DCF and/or recovery in respect of any relief claimed in the Cross-Claim against DCF.

PART D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

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

PART E. MEDIATION

162. The parties have attempted mediation of the underlying proceeding (i.e. not including this Fourth Cross-Claim) on 26-27 February 2019 and did not succeed in resolving the dispute. The Cross-Claimants are willing to proceed to further mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Name

Angela Louise Pearsall, Clifford Chance

Capacity

Solicitor for the Cross-Claimants

Date of signature

2 July 2019