

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/05/2020 2:58:35 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD220/2019
File Title: CARPENDERS PARK PTY LTD (AS TRUSTEE OF THE CARPENDERS PARK PTY LTD STAFF SUPERANNUATION FUNF) v SIMS LIMITED
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 8/05/2020 3:48:59 PM AEST

Registrar

Important Information

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

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

Amended



Amended Defence

No. NSD 220 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations

Carpenders Park Pty Ltd (as trustee of the Carpenders Park Pty Ltd Staff Superannuation Fund)

Applicant

Sims Limited ACN 114 838 630

Respondent

Headings are used in this amended defence to the statement of claim filed on 15 February 2019 (**SoC**) for convenience only and do not form part of the amended defence. Unless the context requires otherwise, the respondent (**SGM**) uses the defined terms used in the SoC, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the SoC and repeated in this amended defence.

A INTRODUCTION

1. SGM admits that the Applicant has purported to commence this proceeding on its own behalf and on behalf of Group Members pursuant to Part IVA of the FCAA.
2. In answer to paragraph 2 of the SoC, SGM:
 - a. admits that the Applicant has defined the persons on whose behalf it has purported to commence this proceeding as pleaded in the paragraph;
 - b. denies that any person has suffered loss or damage as alleged in subparagraph (b);
 - c. otherwise does not know and therefore cannot admit the paragraph.

Filed on behalf of Sims Limited, the Respondent

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3. In answer to paragraph 3 of the SoC, SGM:
 - a. repeats paragraphs 1 and 2 herein;
 - b. otherwise does not know and therefore cannot admit the paragraph.

B PARTIES

B.1 The Applicant

4. In answer to paragraph 4 of the SoC, SGM:
 - a. admits subparagraph (a);
 - b. admits that the Applicant acquired (in its capacity as trustee of the Carpenters Park Pty Ltd Staff Superannuation Fund) SGM shares on the ASX in the claim period;
 - c. does not know and therefore cannot admit the details of the Applicant's transactions in the Claim Period set out in the particulars to paragraph 4 of the SoC.

B.2 The Respondent

5. SGM admits paragraph 5 of the SoC.
6. In answer to paragraph 6 of the SoC, SGM:
 - a. says that at all material times, its principal activities included:
 - i. buying ferrous and non-ferrous recycled metals;
 - ii. processing ferrous and non-ferrous recycled metals;
 - iii. selling ferrous and non-ferrous recycled metals;
 - b. otherwise denies the paragraph.

B.3 SGM's Officers

7. SGM admits paragraph 7 of the SoC and says further that:
 - a. in September 2011, Mr Brunsdon was appointed Deputy Chairperson of SGM, a position he held until March 2012 when he was appointed Chairperson of SGM;
 - b. at all material times, Mr Brunsdon was also the Chairperson of the Nomination/Governance Committee and the Remuneration Committee of SGM.
8. In answer to paragraph 8 of the SoC, SGM:
 - a. admits subparagraph (a);
 - b. admits subparagraph (b);

- c. in answer to subparagraph (c), says that Mr Claro was the Chair of the Steering Committee of the Project Management Office (**PMO**) during the Claim Period;
 - d. otherwise denies the paragraph.
- 9. In answer to paragraph 9 of the SoC, SGM:
 - a. admits subparagraph (a);
 - b. in answer to subparagraph (b), says that Mr Knechtel was a member of the Steering Committee of the PMO during the Claim Period;
 - c. otherwise denies the paragraph.
- 10. In answer to paragraph 10 of the SoC, SGM:
 - a. admits subparagraph (a);
 - b. in answer to subparagraph (b):
 - i. says that Mr Schmiedel was the Sponsor of the Product Quality and Service stream of the PMO in respect of ferrous products during the Claim Period;
 - ii. says that Mr Michael Lion was the Sponsor of the Product Quality and Service stream of the PMO for non-ferrous products until his contract of employment ended on 30 September 2015, with these duties then being overtaken by Mr Schmiedel for the remainder of the Claim Period;
 - c. otherwise denies the paragraph.
- 11. SGM admits paragraph 11 of the SoC.
- 12. In answer to paragraph 12 of the SoC, SGM:
 - a. admits subparagraph (a), and says further that:
 - i. Mr McGree's employment with SGM ended on 30 June 2015, after which he was a consultant to SGM from 1 July 2015 to 30 June 2016;
 - ii. Mr McGree entered into an agreement to transition the Australia and New Zealand Metals business of SGM to Mr Alistair Field;
 - iii. by reason of subparagraphs (i) and (ii) herein, Mr McGree continued his duties in respect of the position of Managing Director Australia and New Zealand Metals until Mr Field assumed the position on or about 1 October 2015;
 - b. in answer to subparagraph (b):
 - i. repeats subparagraph (a)(i) above;

- ii. says that prior to Mr McGree's employment ending, he was the Sponsor of the Operational Excellence stream of the PMO;
 - iii. says that after Mr McGree's employment ended, he continued his duties in respect of the position of Sponsor of the Operational Excellence stream of the PMO until Mr Peter Bird assumed that position on or about 11 September 2015;
 - c. otherwise denies the paragraph.
13. In answer to paragraph 13 of the SoC, SGM:
- a. admits subparagraph (a);
 - b. in answer to subparagraph (b):
 - i. denies the subparagraph;
 - ii. repeats subparagraph 12(b) above;
 - c. otherwise denies the paragraph.
14. In answer to paragraph 14 of the SoC, SGM:
- a. says that at all material times, Messrs Brunsdon, Claro, Knechtel, Schmiedel and Skurnac were officers of SGM within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12;
 - b. says that at all material times up to 30 June 2015, Mr McGree was an officer of SGM within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12;
 - c. says that at all material times from 1 October 2015, Mr Field was an officer of SGM within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12;
 - d. otherwise denies the paragraph.

C THE RESPONDENT'S OBLIGATIONS

15. In answer to paragraph 15 of the SoC, SGM:
- a. admits subparagraphs (a) to (d);
 - b. in answer to subparagraph (e):
 - i. admits that it was obliged to comply with s 674(1) of the Corporations Act and ASX Listing Rule 3.1;
 - ii. refers to those provisions for their full force and effect;

- iii. otherwise denies the subparagraph;
 - c. otherwise denies the paragraph.
16. In answer to paragraph 16 of the SoC, SGM:
- a. admits that it was obliged to comply with sections 1041H and 1041E of the Corporations Act;
 - b. refers to those provisions for their full force and effect;
 - c. otherwise denies the paragraph.

D SGM'S CONDUCT

D.1 SGM's FY2013 Underlying EBIT

17. In answer to paragraph 17 of the SoC, SGM:
- a. admits that on 23 August 2013, in its Appendix 4E Preliminary Final Report for the year ended 30 June 2013, SGM stated that its underlying EBIT for FY13 was \$67.9 million, which was stated to be a "non-IFRS measure that is presented to provide an understanding of the underlying performance of the Group. The measure excludes the impacts of impairments, disposals as well as items that are subject to significant variability from one period to the next. The non-IFRS financial information is unaudited however the reconciling items above (before tax) have been extracted from the audited financial statements";
 - b. admits that in the SGM presentation entitled "Financial Results Full year ended 30 June 2013", SGM stated that its underlying EBIT for FY13 was \$67.9 million, which was stated to "exclude goodwill and other intangible asset impairments & all other significant items";
 - c. admits that in the SGM announcement entitled "Sims Metal Management Announces Fiscal 2013 Full Year Results", SGM stated that its underlying EBIT for FY13 was \$67.9 million;
 - d. refers to the SGM Appendix 4E Preliminary Final Report, the SGM presentation and the SGM announcement for their full force and effect;
 - e. otherwise denies the paragraph.

D.2 SGM's Five Year Plan

18. In answer to paragraph 18 of the SoC, SGM:
- a. says on 23 July 2014, SGM announced in a media release entitled "Sims Metals Management Announces Five Year Strategic Plan" a five-year strategic plan to

grow underlying EBIT by 350% over the FY13 result, following a review of the company's global operating portfolio by Mr Claro, which included an optimisation program to drive a return on capital that was higher than FY13 without the requirement of macroeconomic or cyclical recovery (**23 July 2014 Media Release**);

- b. refers to the 23 July 2014 Media Release for its full force and effect;
- c. says that the 23 July 2014 Media Release contained a cautionary statement regarding forward-looking information (the **Cautionary Statement**), which stated:

"This release may contain forward-looking statements, including statements about Sims Metal Management's financial condition, results of operations, earnings outlook and prospects. Forward-looking statements are typically identified by words such as "plan", "believe", "expect", "anticipate", "intend", "outlook", "estimate", "forecast", "project" and other similar words and expressions.

These forward-looking statements involve certain risks and uncertainties. Our ability to predict results or the actual effects of our plans and strategies is subject to inherent uncertainty. Factors that may cause actual results or earnings to differ materially from these forward-looking statements include those discussed and identified in filings we make with the Australian Securities Exchange and the United States Securities and Exchange Commission ("SEC"), including the risk factors described in the Company's Annual Report on Form 20-F, which we filed with the SEC on 16 October 2013.

Because these forward-looking statements are subject to assumptions and uncertainties, actual results may differ materially from those expressed or implied by these forward-looking statement. You are cautioned not to place undue reliance on these statement, which speak only as of the date of this release.

All subsequent written and oral forward-looking statements concerning the matters addressed in this release and attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this release. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this release."

- d. says that in addition to the 23 July 2014 Media Release, SGM lodged with the ASX a presentation entitled "Sims Metal Management Strategic Review" presented by Mr Claro, which outlined SGM's Five Year Plan (**23 July 2014 Presentation**);
- e. refers to the 23 July 2014 Presentation for its full force and effect;
- f. says that the Five Year Plan was based on factors within the control of the management of the Company and did not rely upon improving external conditions or acquisitions to be achieved;

Particulars

In the SGM 2014 Annual Report, the Chairman stated:

“In July 2014, following approval by the Board of Directors, Galdino and a number of members of his leadership team presented the Company’s five year strategic plan. Based on a three stage model of Streamline, Optimise, and Grow, the strategic plan is a roadmap to increase underlying Company earnings before interest and tax (EBIT) by more than 350% over FY13. Importantly, this strategy is based only on factors within the control of management, and does not rely on improving external conditions or acquisitions to be achieved. This is in line with the Board’s view that, even at the bottom of the economic cycle, the Company must achieve a return equal to its cost of capital.”

- g. otherwise denies the paragraph.

D.3 SGM’s Statements made on 22 August 2014

19. SGM admits paragraph 19 of the SoC.

20. In answer to paragraph 20 of the SoC, SGM:

- a. in respect of subparagraph (a):
- i. admits that in the 22 August 2014 Announcement, SGM stated that its underlying EBIT for FY14 was \$118.5 million;
 - ii. admits that in the 22 August 2014 Presentation, SGM stated on slide 13 of the presentation that its underlying EBIT for FY14 was \$118.5 million;
- b. in respect of subparagraph (b):
- i. says that the 22 August 2014 Announcement contained the following statements:
 - A. *“Five year strategic plan now in place to achieve over \$300 million EBIT annually through internal initiatives alone, with encouraging early stage gains beginning to be realised”;*
 - B. *“Remarking on the recent strategic progress at the Company, Mr Claro said, ‘As we begin fiscal 2015 we have accelerated our five year strategic plan to achieve over \$300 million of annual EBIT through internal initiatives alone. While still in the very early stages, our implementation timelines remain on track as we roll out the initiatives across the Group’”;*
 - C. *“Mr Claro stated on the outlook, ‘The year ahead will be an exciting time at Sims Metal Management. The work towards implementing our five year strategic plan is gathering pace, with*

further benefits from our Streamline and Optimise phases to be delivered in FY15”;

- D. the Cautionary Statement in the same terms as is set out in subparagraph 18(c) herein;
- ii. says that the 22 August 2014 Presentation contained:
 - A. a slide on page 5 headed “Progress towards 5 year strategic plan”, which set out what was described as a “clear pathway for further significant EBIT growth” to meet the “Target EBIT”;
 - B. a section entitled “Strategic Progress Update”, which included slides entitled “A clear five-year strategic plan”, “Implementation progress ramping up” and “Early stage gains from strategy being realised”;
 - C. a section entitled “Outlook”, which included a slide (slide 23) also entitled “Outlook” where it was stated, *inter alia*, “Implementation of five year strategic plan is gathering pace, with further benefits from our Streamline and Optimise phases to be delivered in FY15”;
 - D. on slide 2, the Cautionary Statement in the same terms as is set out in subparagraph 18(c) herein;
- c. refers to the 22 August 2014 Announcement and the 22 August 2014 Presentation for their full force and effect;
- d. otherwise denies the paragraph.

D.4 SGM’s Statements made on 13 February 2015

- 21. SGM admits paragraph 21 of the SoC and says further that on 13 February 2015 it presented the 13 February 2015 Presentation to an open investor briefing (**13 February 2015 Investor Briefing**).
- 22. In answer to paragraph 22 of the SoC, SGM:
 - a. admits that on slide 4 of the 13 February 2015 Presentation, SGM stated “on track to \$321 million of EBIT” by FY18;
 - b. says that on slide 16 headed “Summary & Outlook” of the 13 February 2015 Presentation, it was stated, *inter alia*:
 - i. *“Significant near-term downward pressure on ferrous scrap demand, as prices have fallen sharply since the start of 2H FY15”;*

- ii. *“Lower ferrous prices will negatively impact both demand and supply for ferrous scrap, as well as elevating competition in the short-term”;*
 - iii. *“As the ferrous scrap price relationship to iron ore normalises, demand from consumers and attractiveness of exports is anticipated to improve”;*
 - iv. *“Gains expected from strategic initiatives in 2H FY15 should assist in mitigating near-term commodity market headwinds”;*
- c. says that the 13 February 2015 Presentation, on slide 22, contained a disclaimer (the **Disclaimer**), which stated as follows:

“The material contained in this document is a presentation of information about the Group’s activities current at the date of the presentation, 13 February 2015. It is provided in summary form and does not purport to be complete. It should be read in conjunction with the Group’s periodic reporting and other announcements lodged with the Australian Securities Exchange (ASX).

To the extent that this document may contain forward-looking statements, such statements are not guarantees or predictions of future performance, and involve known and unknown risks, uncertainties and other factors, many of which are beyond our control, and which may cause actual results to differ materially from those expressed in the statements contained in this release.

This document is not intended to be relied upon as advice to investors or potential investors and does not take into account the investment objectives, financial satiation or needs or any particular investor”;

- d. refers to the 13 February 2015 Presentation for its full force and effect;
- e. says that when the 13 February 2015 Presentation was presented at the 13 February 2015 Investor Briefing:
- i. it was stated that the 13 February 2015 Presentation may contain forward looking statements including statements including financial conditions, results of operations, earnings outlooks and prospects for SGM;
 - ii. Mr Claro stated that SGM’s strategy was to generate “cost of capital returns for our shareholders based on clearly identified initiatives under our control ... we are here together today to restate our commitment to take Sims to an above cost of capital return by the end of fiscal year ‘18 even at current market conditions”;
 - iii. Mr Claro stated, in response to a question about the EBIT target of \$321 million by FY18, that SGM’s strategy was “to generate returns [above] cost of capital by fiscal year ‘18. Of course the dynamics of the market change. Commodity prices deteriorate, our working capital contracted and it’s become unprofitable and therefore had to be written off. That

changes the dynamics. The commitment is still the same.... I really want you to fix on the commitment of the strategy which is come to a return on capital [above] cost of capital by the end of fiscal year 18. The number is going to be whatever the number needs to be to generate that return.”;

- iv. Mr Knechtel stated that the minimum return that SGM was looking for with respect to its strategy was to “earn a return greater than our cost of capital”;
 - f. refers to the transcript of the 13 February 2015 Investor Briefing for its full force and effect;
 - g. otherwise denies the paragraph.
23. In answer to paragraph 23 of the SoC, SGM:
- a. says that the 13 February 2015 Announcement contained, *inter alia*, the following statements:
 - i. “Five year strategic plan on track and delivering tangible results in the form of higher EBIT margins per tonne and a meaningful earnings turnaround in the North America Metals and Global E-Recycling businesses”;
 - ii. “In announcing the result, Group CEO Galdino Claro said, ‘The earnings improvement achieved in HY15 is encouraging evidence of the traction being made through our Streamlining, Optimising, and Growth initiatives. While external conditions in the entire metal recycling industry remained challenging in HY15, we more than offset these headwinds through disciplined attention to our internal processes and earnings drivers”;
 - iii. “Referring to the progress of the strategic plan, Mr Claro stated, ‘We continue to advance the pace of implementation of our five year strategic plan across our global operations. As our new enhanced operating principles and practices become more firmly embedded within the Company our confidence grows that our ambitious target to improve underlying EBIT by more than 350% over FY13 will be achieved”;
 - iv. “Commenting on market conditions and the outlook, Mr Claro said... ‘While we believe the benefits from our strategic plan initiatives in 2H FY15 should assist in mitigating near-term commodity market headwinds, we remain prudently conservative in our outlook”;

- b. refers to the 13 February 2015 Announcement for its full force and effect;
- c. otherwise denies the paragraph.

D.5 21 August 2015: FY15 Full Year Report and FY16 Guidance

24. In answer to paragraph 24 of the SoC, SGM:

- a. admits the paragraph;
- b. says further that on 21 August 2015 it presented the 21 August 2015 Presentation at an open investor briefing (**21 August 2015 Investor Briefing**).

Particulars

Transcript of open investor briefing entitled "Financial Results Full Year Ended 20 June 2015" dated 21 August 2015.

25. In answer to paragraph 25 of the SoC, SGM:

- a. says that in the FY15 Full Year Report, it stated that its underlying EBIT (excluding discontinued operations) for FY15 was \$141.7 million;
- b. says that in the 21 August 2015 Presentation:
 - i. on slide 2, it stated that its underlying EBIT was \$142 million (which represented "underlying earnings from continued operations; excludes significant non-recurring items and earnings from discontinued businesses");
 - ii. on slide 3, it stated that it had underlying EBIT of \$142 million;
- c. says that in the 21 August 2015 Announcement, it stated:
 - i. on page 1, that its underlying EBIT for FY15 was \$141.7 million;
 - ii. on page 2, that "underlying EBIT from continuing operations was \$142 million in FY15";
- d. refers to the 21 August 2015 Publications and the 21 August 2015 Investor Briefing for their full force and effect;
- e. otherwise denies the paragraph.

26. In answer to paragraph 26 of the SoC, SGM:

- a. in respect of subparagraph (a):
 - i. says that in its FY15 Full Year Report, it said, *inter alia* "In order to ensure fixed costs are correctly matched to external operating conditions, the Company has initiated new Streamline actions, with related cost reduction

benefits to be released over the current fiscal year. Additionally, the Group expects to see gains as its Optimisation strategies are implemented further across the global operating footprint in the year ahead. Based on current expectations, the Company believes underlying EBIT in FY16 will be higher than the prior year”;

- ii. says that in the 21 August 2015 Presentation:
 - A. on the slide entitled “Summary & Outlook” (slide 20), it stated “Despite external headwinds, due to the internal strategic initiatives, we anticipate continued underlying EBIT improvement in FY16”;
 - B. there was a Disclaimer, on slide 27, in the same terms as is set out in subparagraph 22(c) herein;
- iii. says that the 21 August 2015 Announcement contained, *inter alia* a statement from Mr Claro where he said, “[i]n order to ensure our fixed cost base is correctly matched to external operation conditions, we have initiated new Streamline actions, with related cost reduction benefits to be realised over the current fiscal year. Additionally, we expect to see significant further gains as our Optimisation strategies are implemented further across our global operating footprint in the year aged. These actions give us confidence that, despite near-term headwinds, we will continue to see further underlying EBIT growth in FY16 over the prior year”;
- iv. says that at the start of the 21 August 2015 Investor Briefing there was a disclaimer (the **Investor Briefing Disclaimer**) in the following terms:

“Today’s presentation may contain forward-looking statements, including statements about financial conditions, results of operations, earnings outlook and prospects of Sims Metal Management Limited. Because these forward-looking statements are subject to assumptions and uncertainties, actual results may differ materially from those experienced or implied by these forward-looking statements. Those risk factors can also be found on the Company’s website, www.simsmm.com.”
- v. refers to the 21 August 2015 Publications and the 21 August 2015 Investor Briefing for their full force and effect;
- vi. otherwise denies the subparagraph;

- b. in respect of subparagraph (b):
 - i. repeats subparagraphs (a)(i) to (a)(iv) herein;
 - ii. refers to the 21 August 2015 Publications and the 21 August 2015 Investor Briefing for their full force and effect;
 - iii. otherwise denies the subparagraph;
- c. in respect of subparagraph (c):
 - i. says that in the 21 August 2015 Presentation:
 - A. on the slide entitled “Earnings Growth & Target” (slide 5), underneath a diagram set out there, it stated “FY18 targets reviewed, realistic and reconfirmed”;
 - B. on the slide entitled “Summary & Outlook” (slide 20), it stated “FY18 earnings targets reviewed and reconfirmed to be achievable in full”;
 - C. there was a Disclaimer, on slide 27, in the same terms as is set out in subparagraph 22(c) herein;
 - ii. says that in the 21 August 2015 Announcement (page 1), it stated “Five year targets reaffirmed and on track”;
 - iii. says that the statements in subparagraphs (i) and (ii) herein were not directed to the FY18 EBIT Target exclusively, but were also directed to the target of SGM achieving a return on capital of 10% or more by FY18 **(FY18 Return on Capital Target)**;
 - iv. says that, in the 21 August 2015 Investor Briefing:
 - A. Mr Claro stated that the FY18 Return on Capital Target was “the core goal of [SGM’s] strategic targets”;
 - B. Mr Claro specified that references to the FY18 EBIT Target and the FY18 Return on Capital Target being realistic and achievable were to that being the case “at current market conditions”;
 - C. there was, at the start, an Investor Briefing Disclaimer in the same terms as is set out in subparagraph (a)(iv) herein;
 - v. says that, by reason of the matters referred to in subparagraphs (i) and (ii) herein, it made the FY18 EBIT Target Statement, but that the statement was not made in isolation in the relevant 21 August 2015

Publications and refers to those publications and the 21 August 2015 Investor Briefing for their full force and effect;

- vi. otherwise denies the subparagraph;
 - d. in respect of subparagraph (d):
 - i. says that the FY15 Full Year Report stated, under the heading "Strategic Developments" on page 7, that "A Project Management Office (PMO) was established early in FY15 to assist in the development, implementation, and support of value enhancing strategic initiatives across the Group";
 - ii. says that the 21 August 2015 Presentation on page 4 stated that one of the "Optimisation" initiatives that had been implemented in FY15 was the establishment of the PMO "to drive strategy implementation";
 - iii. says that, by reason of the matters referred to in subparagraphs (i) and (ii) herein, it made the statement pleaded in subparagraph (d) of the SoC, but that the statement was not made in isolation in the relevant 21 August 2015 Publications and refers to those publications and the 21 August 2015 Investor Briefing for their full force and effect;
 - iv. otherwise denies the subparagraph;
 - e. otherwise denies the paragraph.
27. In answer to paragraph 27 of the SoC, SGM:
- a. repeats paragraph 26 herein;
 - b. denies the paragraph;
 - c. says further that, if the August EBIT Representation was made (which is denied):
 - i. the August EBIT Representation was a statement of opinion at a particular point in time (namely 21 August 2015), not a statement of fact;
 - ii. SGM in fact had reasonable grounds to make the August EBIT Representation;

Particulars

SGM refers to paragraph 60 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iii. the August EBIT Representation was a representation as to future matters;

- iv. because the August EBIT Representation was a “forward-looking statement”, SGM also represented by the Disclaimer and the Investor Briefing Disclaimer that the representation was not a guarantee or prediction of future performance, and involved known and unknown risks, uncertainties and other factors, many of which were beyond SGM’s control, and which could cause actual results to differ materially from those expressed by, *inter alia*, the representation.

28. In answer to paragraph 28 of the SoC, SGM;

- a. repeats paragraph 26 herein;
- b. denies the paragraph;
- c. says further that, if the August FY16 Earnings Representation was made (which is denied):
 - i. the August FY16 Earnings Representation was a statement of opinion at a particular point in time (namely 21 August 2015), not a statement of fact;
 - ii. SGM in fact had reasonable grounds to make the August FY16 Earnings Representation;

Particulars

SGM refers to paragraph 60 herein.

~~Further particulars will be provided with SGM’s evidence.~~

- iii. the August FY16 Earnings Representation was a representation as to future matters;
- iv. because the August FY16 Earnings Representation was a “forward-looking statement”, SGM also represented by the Disclaimer and the Investor Briefing Disclaimer that the representation was not a guarantee or prediction of future performance, and involved known and unknown risks, uncertainties and other factors, many of which were beyond SGM’s control, and which could cause actual results to differ materially from those expressed by, *inter alia*, the representation.

29. In answer to paragraph 29 of the SoC, SGM;

- a. repeats paragraph 26 herein;
- b. denies the paragraph;

- c. says further that, if the August FY18 Earnings Representation was made (which is denied):
 - i. the August FY18 Earnings Representation was a statement of opinion at a particular point in time (namely 21 August 2015), not a statement of fact;
 - ii. SGM in fact had reasonable grounds to make the August FY18 Earnings Representation;

Particulars

SGM refers to paragraph 63 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iii. the August FY18 Earnings Representation was a representation as to future matters;
- iv. because the August FY18 Earnings Representation was a “forward-looking statement”, SGM also represented by the Disclaimer and the Investor Briefing Disclaimer that the representation was not a guarantee or prediction of future performance, and involved known and unknown risks, uncertainties and other factors, many of which were beyond SGM’s control, and which could cause actual results to differ materially from those expressed by, *inter alia*, the representation.

D.6 8 September 2015: Investor Strategy Day

- 30. SGM admits paragraph 30 of the SoC.
- 31. In answer to paragraph 31 of the SoC, SGM:
 - a. admits it made the statements quoted in subparagraphs (a), (c) and (d);
 - b. in respect of subparagraph (b):
 - i. admits that it made the first statement quoted in that subparagraph;
 - ii. says that the second statement quoted in the subparagraph referred to the oversight and management provided not only by the PMO itself, but also by the executives who sponsored teams within the PMO and to whom the PMO reported, as summarised in the bullet points on slide 5;
 - c. says that the statements referred to in subparagraphs (a) and (b) herein were not made in isolation and refers to the 8 September 2015 Presentation for its full force and effect, including the Disclaimer referred to on slide 70 of the 8

September 2015 Presentation, which was in the same terms as the Disclaimer referred to in subparagraph 26(a)(iv) herein;

d. otherwise denies the paragraph.

32. In answer to paragraph 32 of the SoC, SGM:

a. repeats paragraph 31 herein;

b. denies the paragraph;

c. says further that, if the September FY16 Earnings Representation was made (which is denied):

i. the September FY16 Earnings Representation was a statement of opinion at a particular point in time (namely 8 September 2015), not a statement of fact;

ii. SGM in fact had reasonable grounds to make the September FY16 Earnings Representation;

Particulars

SGM refers to paragraph 60 herein.

~~Further particulars will be provided with SGM's evidence.~~

iii. the September FY16 Earnings Representation was a representation as to future matters;

iv. because the September FY16 Earnings Representation was a "forward-looking statement", SGM also represented by the Disclaimer that the representation was not a guarantee or prediction of future performance, and involved known and unknown risks, uncertainties and other factors, many of which were beyond SGM's control, and which could cause actual results to differ materially from those expressed by, *inter alia*, the representation.

33. In answer to paragraph 33 of the SoC, SGM:

a. repeats paragraph 31 herein;

b. denies the paragraph;

c. says further that, if the September FY18 Earnings Representation was made (which is denied):

- i. the September FY18 Earnings Representation was a statement of opinion at a particular point in time (namely 8 September 2015), not a statement of fact;
- ii. SGM in fact had reasonable grounds to make the September FY18 Earnings Representation;

Particulars

SGM refers to paragraph 63 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iii. the September FY18 Earnings Representation was a representation as to future matters;
- iv. because the September FY18 Earnings Representation was a “forward-looking statement”, SGM also represented by the Disclaimer that the statement was not a guarantee or prediction of future performance, and involved known and unknown risks, uncertainties and other factors, many of which were beyond SGM's control, and which could cause actual results to differ materially from those expressed by, *inter alia*, the representation.

D.7 12 October 2015: FY15 Annual Report

- 34. SGM admits paragraph 34 of the SoC.
- 35. In answer to paragraph 35 of the SoC, SGM:
 - a. admits it made the October Statements;
 - b. says that the October Statements were not made in isolation and refers to the FY15 Annual Report for its full force and effect;
 - c. otherwise denies the paragraph.
- 36. In answer to paragraph 36 of the SoC, SGM:
 - a. repeats paragraph 35 herein;
 - b. denies the paragraph;
 - c. says further that, if the October FY16 Earnings Representation was made (which is denied):
 - i. the October FY16 Earnings Representation was a statement of opinion at a particular point in time (namely 12 October 2015), not a statement of fact;

- ii. SGM in fact had reasonable grounds to make the October FY16 Earnings Representation;

Particulars

SGM refers to paragraph 60 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iii. the October FY16 Earnings Representation was a representation as to future matters.

37. In answer to paragraph 37 of the SoC, SGM:

- a. repeats paragraph 35 herein;
- b. denies the paragraph;
- c. says further that, if the October FY18 Earnings Representation was made (which is denied):
 - i. the October FY18 Earnings Representation was a statement of opinion at a particular point in time (namely 12 October 2015), not a statement of fact;
 - ii. SGM in fact had reasonable grounds to make the October FY18 Earnings Representation;

Particulars

SGM refers to paragraph 63 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iii. the October FY18 Earnings Representation was a representation as to future matters.

D.8 Continuing Conduct

38. SGM denies paragraph 38 of SoC.

E ALLEGED CORRECTIVE DISCLOSURES

E.1 12 November 2015 Trading Update

39. SGM admits paragraph 39 of the SoC.

40. In answer to paragraph 40 of the SoC, SGM:

- a. admits that, by the 12 November 2015 Trading Update:

- i. it made a statement to the effect of that set out in subparagraph (a), save that it stated that “external market conditions and dynamics” represented a “new-norm” and were not expected to improve in the short term;
 - ii. it made statements to the effect of those set out in subparagraphs (b) and (c);
 - iii. it made a statement to the effect of that set out in subparagraph (d), save that in respect of underlying EBIT improving to an annualised rate similar to the FY15 result by the end of FY16, it stated that that was anticipated to be the case as benefits from “resetting plan” initiatives were realised;
 - b. says that the statements referred to in subparagraph (a) herein were not made in isolation and refers to the 12 November 2015 Trading Update for its full force and effect;
 - c. otherwise denies the paragraph.
41. In answer to paragraph 41 of the SoC, SGM:
- a. repeats paragraph 40 herein;
 - b. subject to the matters referred to in paragraph 40 herein, admits that, by the 12 November 2015 Trading Update, it made statements to the effect of those set out in paragraph 41;
 - c. says that the statements referred to in subparagraph (b) herein were not made in isolation and refers to the 12 November 2015 Trading Update for its full force and effect;
 - d. otherwise denies the paragraph.
42. SGM admits paragraph 42 of the SoC.
43. In answer to paragraph 43 of the SoC, SGM:
- a. repeats paragraphs 40 and 41 herein;
 - b. denies the paragraph;
 - c. says further that:
 - i. by the November Statements, it represented only to the market of actual and potential investors in SGM Shares that:
 - A. it was SGM's current expectation, based on results to the end of October 2015, that SGM's underlying EBIT in 1H16 would be around break-even;

- B. SGM had reasonable grounds for the expectation pleaded in subparagraph (A) herein;
- ii. the representation pleaded in subparagraph (i) herein and, if SGM made the November EBIT Representation (which is denied), that representation, were statements of opinion at a particular point in time (namely 12 November 2015), not statements of fact;
- iii. SGM had reasonable grounds to make the representation pleaded in subparagraph (i) herein and, if SGM made the November EBIT Representation (which is denied), that representation;

Particulars

SGM refers to paragraph 62 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iv. the representation pleaded in subparagraph (i) herein and, if SGM made the November EBIT Representation (which is denied), that representation, were representations as to future matters.

44. In answer to paragraph 44 of the SoC, SGM:

- a. repeats paragraphs 40 and 41 herein;
- b. denies the paragraph;
- c. says further that:
 - i. by the November Statements, it represented only to the market of actual and potential investors in SGM Shares that:
 - A. in order to address external market conditions, and to ensure an above cost of capital return was achieved by FY18, SGM was in the process of “resetting” its fixed cost base and operational footprint to adjust to those external market conditions (**Resetting Plan**);
 - B. based on the Resetting Plan, SGM believed it would be better placed to manage external market conditions and ultimately to reach the FY18 Return on Capital Target;
 - C. SGM had reasonable grounds for the belief pleaded in subparagraph (B) herein;
 - ii. the representation pleaded in subparagraph (i) herein and, if SGM made the November FY18 Earnings Representation (which is denied), that

representation, were statements of opinion at a particular point in time (namely 12 November 2015), not statements of fact;

- iii. SGM had reasonable grounds to make the representation pleaded in subparagraph (i) herein and, if SGM made the November FY18 Earnings Representation (which is denied), that representation;

Particulars

SGM refers to paragraph 63 herein.

~~Further particulars will be provided with SGM's evidence.~~

- iv. the representation pleaded in subparagraph (i) herein and, if SGM made the November FY18 Earnings Representation (which is denied), that representation, were representations as to future matters.

45. In answer to paragraph 45 of the SoC, SGM:

- a. denies the paragraph;
- b. says further that:
 - i. on 18 November 2015 an investor briefing call was held in respect of the 12 November 2015 Trading Update (**18 November 2015 Investor Briefing**);

Particulars

Transcript of Sims Metal Management Limited Investor Briefing dated 18 November 2015 (**18 November 2015 Investor Briefing Transcript**).

- ii. at the start of the 18 November 2015 Investor Briefing there was an Investor Briefing Disclaimer in the same terms as set out in subparagraph 26(a)(iv) herein;
- iii. in the 18 November 2015 Investor Briefing, Mr Claro stated (18 November Investor Briefing Transcript, page 4):

“As we have consistently stated, since the beginning, the foundation of our strategic plan is to achieve our cost of capital regardless of external conditions. This financial goal is embedded in the 5 year target to achieve 10% return on invested capital by the fiscal year 2018. When we articulated the strategy the mathematics of the cost of capital in our capital base led us to a target fiscal year 2018 underlying EBIT of \$321 million.

...

“As our capital base changes up or down so will the calculation of the required EBIT associated with delivering a return on invested capital of 10%.”

- iv. subsequently, in the 18 November 2015 Investor Briefing, in answer to questions Mr Claro confirmed that SGM was looking at reducing its capital base by around \$300 million and that the FY18 Return on Capital Target would be based on SGM's capital base after that reduction (18 November 2015 Investor Briefing Transcript, pages 8-9);
- v. by the statements of Mr Claro referred to in subparagraphs (iii) and (iv) herein, SGM represented that it was not targeting FY18 EBIT of \$321 million.

E.2 19 February 2016 Publications

46. In answer to paragraph 46 of the SoC, SGM:

- a. admits the paragraph;
- b. says further that on 19 February 2016 (AEST) it presented the 19 February 2016 Presentation at an open investor briefing (**19 February 2016 Investor Briefing**).

Particulars

Transcript of Sims Metal Management Limited Investor Briefing dated 19 February 2016.

47. In answer to paragraph 47 of the SoC, SGM:

- a. admits that it made statements to the effect of those set out in subparagraphs 47(a) to (d) in the 19 February 2016 Announcement;
- b. says that the statements set out in subparagraphs 47(a) to (d) were not made in isolation in the 19 February 2016 Announcement and refers to that publication, the other 19 February 2016 Publications and the 19 February 2016 Investor Briefing for their full force and effect;
- c. otherwise denies the paragraph.

F THE ALLEGED TRUE POSITION

F.1 Alleged Steel Oversupply Information

48. SGM admits paragraph 48 of the SoC.

49. In answer to paragraph 49 of the SoC, SGM:

- a. admits that, as at 21 August 2015, there was an oversupply of steel on the world market;

- b. says that on 12 March 2019, SGM (through its solicitors) made a request for further and better particulars of the paragraph, including what was meant by the “near term”;
 - c. says that on 21 March 2019, the Applicant (through its solicitors) responded to that request for further and better particulars and indicated that “the near term” referred to the six to twelve months after 21 August 2015;
 - d. says that, as at 21 August 2015, it was not known that the oversupply of steel on the world market would continue for at least the near term;
 - e. otherwise denies the paragraph.
50. In answer to paragraph 50 of the SoC, SGM:
- a. says that the paragraph is embarrassing as it does not identify the period after 21 August 2015 in which it is alleged the continued oversupply of steel on the world market would lead to the matters pleaded in subparagraphs 50(a) and (b) of the SoC;
 - b. under the cover of that objection:
 - i. repeats paragraph 49 herein;
 - ii. says that because, as at 21 August 2015 it was not known that the oversupply of steel on the world market would continue, it was also not known that the continued oversupply of steel on the world market would:
 - A. reduce the demand and price for the raw materials required to produce steel including the Scrap Price, the market price for iron ore and the market price for coking coal; and/or
 - B. reduce the demand for ferrous scrap and the Scrap Price;
 - iii. says further that, even if it was known that the oversupply of steel on the world market would continue, that alone would not necessarily:
 - A. reduce the demand and price for the raw materials required to produce steel; and/or
 - B. reduce the demand for ferrous scrap and the Scrap Price,
as other market factors from time to time affected the demand and price for raw materials required to produce steel, and the demand for ferrous scrap and the Scrap Price;

Particulars

1. Other market factors which affected the demand and price for raw materials required to produce steel, and the demand for ferrous scrap and the Scrap Price included:
 - a. the activity of SGM and its competitors;
 - b. inventory positions of steel mills, regional steel and scrap market developments, and regional geopolitical and economic developments;
 - c. related commodities, relevant exchange rates, macro trends, and economic trends;
 - d. freight rates and anticipated freight supply; and
 - e. demand.
- ~~2. Further particulars will be provided with SGM's evidence.~~

c. otherwise denies the paragraph.

F.2 Alleged Iron Ore Price Information

51. In answer to paragraph 51 of the SoC, SGM:

- a. admits that, by 21 August 2015, the global price of iron ore was depressed by abundant supply;
- b. says that on 12 March 2019, SGM (through its solicitors) made a request for further and better particulars of the paragraph, including what was meant by the “near term”;
- c. says that on 21 March 2019, the Applicant (through its solicitors) responded to that request for further and better particulars and indicated that “the near term” referred to the six to twelve months after 21 August 2015;
- d. says that, as at 21 August 2015, it was not known that for at least the near term:
 - i. there would be a continued abundant supply of iron ore;
 - ii. the global price of iron ore would continue to be depressed;
- e. otherwise denies the paragraph.

F.3 Alleged Coking Coal Price Information

52. In answer to paragraph 52 of the SoC, SGM:

- a. admits that, as at 21 August 2015, the global supply of coking coal had increased from around the first quarter of 2014;

- b. says that on 12 March 2019, SGM (through its solicitors) made a request for further and better particulars of the paragraph, including what was meant by the “near term”;
- c. says that on 21 March 2019, the Applicant (through its solicitors) responded to that request for further and better particulars and indicated that “the near term” referred to the six to twelve months after 21 August 2015;
- d. says that as at 21 August 2015, it was not known that for at least the near term:
 - i. the global supply of coking coal was likely to continue to increase;
 - ii. that as a result the market price for coking coal was likely to continue to remain steady or fall in the near term;
- e. otherwise denies the paragraph.

F.4 Alleged New Normal Information

53. In answer to paragraph 53 of the SoC, SGM:

- a. says that paragraph 53 is embarrassing in that it does not identify with sufficient particularity:
 - i. what is meant by the “global commodity outlook”;
 - ii. what would amount to a “recovery” from this period;
 - iii. what is meant by “slower commodity demand growth”;
 - iv. what period of time is meant by “the foreseeable future”;
- b. under the cover of that objection, admits that by 21 August 2015, the global outlook for the commodities in which SGM traded at the time was in a period of cyclical weakness;
- c. otherwise denies the paragraph.

F.5 Alleged Iron and Scrap Price Parity Information

54. SGM denies paragraph 54 of the SoC.

Particulars

1. SGM denies that there was, at all material times, a parity relationship between the raw ingredients required for steel production, by which the Scrap Price increased or decreased at the same or similar rate to the cost to produce steel from iron ore and coking coal.
2. For example, historically, there were periods of time where the prices of iron ore and coking coal had increased, but the Scrap Price declined (see slide 18 of the presentation by Mr Schmiedel in June 2015 for the SGM Board entitled “Sims Group Global Trade”).

3. At all material times, the key determinant of the Scrap Price was the quantum and price of steel being exported, as opposed to produced, by China (see slide 20 of the presentation by Mr Schmiedel in June 2015 for the SGM Board entitled "Sims Group Global Trade").
4. ~~Further particulars will be provided with SGM's evidence.~~

F.6 Alleged Anomalous Scrap Price Information

55. In answer to paragraph 55 of the SoC, SGM:

- a. repeats paragraphs 50, 51, 52 and 54 herein;
- b. says that on 12 March 2019, SGM (through its solicitors) made a request for further and better particulars of the paragraph, including what was meant by the "anomalous premium";
- c. says that on 21 March 2019, the Applicant (through its solicitors) responded to that request for further and better particulars and indicated that "anomalous premium" referred to "an overvalue that is abnormal having regard to the Iron and Scrap Price Parity Information identified in paragraph 55 of the SOC";
- d. says that as at 21 August 2015, it was not known that the Scrap Price was at an overvalue that was abnormal having regard to the Iron and Scrap Price Parity Information;
- e. otherwise denies the paragraph.

F.7 Alleged Scrap Price Profit Information

56. In answer to paragraph 56 of the SoC, SGM:

- a. in respect of subparagraph (a):
 - i. admits that from time to time a reduction in the Scrap Price had an adverse effect on the volume of scrap metals available for purchase by SGM;
 - ii. denies that a reduction in the Scrap Price necessarily would have an adverse effect on the volume of scrap metals available for purchase by SGM;

Particulars

1. The relationship between Scrap Price and the volume of scrap metals available for purchase by SGM was not at all material times linear.
2. There were "tipping points" in the Scrap Price which would lead to a reduction in the volume of scrap metals available for purchase by SGM, but if the Scrap Price did not reduce to a level below these "tipping points" this would not necessarily result in a reduction in the volume of scrap

metals available for purchase by SGM. See for example, the January 2015 Financial Statements for the SGM Board stated at page 17 “while market levels have dropped over US\$140/mt in the last 9 months we are still above the theoretical tipping points where volume would substantially decline over long periods.”

~~3. Further particulars will be provided with SGM's evidence.~~

- b. admits subparagraph (b), namely that a reduction in the volume of scrap metals available for purchase by SGM would reduce the volume of processed metal SGM was able to sell;
- c. otherwise denies the paragraph.

F.8 Alleged Scrap Price Profit Information

57. In answer to paragraph 57 of the SoC, SGM:

- a. denies the paragraph;
- b. says further that whether a decrease in the Scrap Price and/or the volume of scrap metals available for purchase by SGM would have a materially adverse effect on the profitability of SGM's principal business activities in FY16 depended on a range of factors, including:
 - i. the magnitude and duration of any decrease in the Scrap Price; and/or
 - ii. the magnitude and duration of any decrease in the volume of scrap metals available for purchase by SGM;
 - iii. the effect of the following measures SGM had or was putting in place throughout FY15 and into FY16:
 - A. the Five Year Plan, which included:
 1. “Streamlining” initiatives including exiting non-strategic businesses and engaging in cost reductions;
 2. “Optimising” initiatives, which included strengthening supplier relationships; exploiting local and global logistics; sharing operational best practices amongst regions; leading on product quality and service;
 3. “Growth” initiatives, which included focusing on organic market share growth and feeder yard network expansion; engaging in selective acquisitive growth as well as a focus on return to growth in Global SRS with asset management and corporate service offerings;

Particulars

See Strategic Review presentation by Mr Claro to investors dated 23 July 2014, slide 4.

~~Further particulars will be provided with SGM's discovery and evidence.~~

- B. in connection with the Five Year Plan, the establishment of the PMO, an internal division within SGM which reported to a Steering Committee and ultimately, the Board on streamlining optimising and growth initiatives it had implemented or was implementing to drive the profitability of SGM's business;

Particulars

1. See, for example, "PMO Board Report" on slides 24 and 25 of the presentation June 2015 Board Reports (14 August 2015) where it was set out that one of the PMO's goals was to implement over \$86 million of streamline and optimise initiatives which were included in SGM's budget for FY16 (the **FY16 Budget**), with an increased focus on streamlining initiatives to offset the volume of scrap metals available for purchase.
2. See further, for example, "PMO Board Report" on slides 24 and 25 of the presentation July 2015 Board Reports (31 August 2015) where it was reported that FY15 delivered on the expected streamlining benefits and over \$77 million of improvement was driven by improved gross margins through supplier relationships and operations excellence initiatives. It was also reported that there was an expected value of \$92 million of initiatives for FY16 but at the time only approximately \$23 million seeing benefits, with the other not yet verified.
3. See further "PMO Board Report" on slides 25 and 26 of the presentation August 2015 Board Reports (22 September 2015).
4. ~~Further particulars will be provided with SGM's discovery and evidence.~~

- C. the budget for FY16, which reported on the various measures in place or proposed to be put in place to drive the profitability of SGM's business, including delivering on the Five Year Plan and the PMO's projects;

Particulars

See FY16 Budget Review presentation (presented at the June 2015 SGM Board Meeting), which reported on how the PMO

initiatives were designed to increase the profitability of SGM's business: see in particular slides 4, 5, 8, 15-17, 28 and 33.

~~Further particulars will be provided with SGM's discovery and evidence.~~

- D. the Resetting Plan, which was implemented on or around 12 November 2015, the nature of which is described in subparagraph 44(a) herein;

Particulars

See 12 November 2015 SGM Trading Update, p 8 under the heading "Strategy and Market Update".

~~Further particulars will be provided with SGM's discovery and evidence.~~

- c. otherwise denies the paragraph.

F.9 Alleged Scrap Price Decline Information

58. In answer to paragraph 58 of the SoC, SGM:

- a. repeats paragraphs 49 to 57 herein;
b. otherwise denies the paragraph.

F.10 Alleged Non Ferrous Scrap Price Information

59. In answer to paragraph 59 of the SoC, SGM:

- a. admits that, by 12 November 2015, the global price of copper and aluminium was depressed;
b. says that on 12 March 2019, SGM (through its solicitors) made a request for further and better particulars of the paragraph, including what was meant by the "near term";
c. says that on 21 March 2019, the Applicant (through its solicitors) responded to that request for further and better particulars and indicated that "the near term" referred to the six to twelve months after 21 August 2015;
d. says that, as at 12 November 2015, it was not known that the global market price of copper and aluminium was likely to continue to trend downwards for at least the near term;
e. otherwise denies the paragraph.

F.11 Alleged Earnings Information

60. In answer to paragraph 60 of the SoC, SGM:

- a. denies the paragraph;
- b. says further that, as at 21 August 2015, it had reasonable grounds to believe that the company was not likely to experience materially reduced earnings in FY16 against FY15;

Particulars of reasonable grounds as at 21 August 2015

1. Each of the matters pleaded in subparagraphs (57)(b)(iii)(1) to 57(b)(iii)(3) above, namely the Five Year Plan, the establishment of the PMO, and the budget for FY16.
2. The testing of the Five Year Plan which took place prior to its implementation.
3. The experience of the SGM team responsible for implementation of the Five Year Plan.
4. The successful implementation of and results achieved by the Five Year Plan from its commencement to 21 August 2015.
5. That SGM's FY16 Budget:
 - a. budgeted for FY16 an underlying EBIT of \$166 million (24% higher than FY15 forecast statutory results and 28% higher than FY15 underlying results);
 - b. budgeted for higher underlying EBIT for FY16 as compared to FY15 based on a continued focus on margin and fixed cost initiatives to drive performance, including:
 - i. the implementation of the Five Year Plan;
 - ii. the implementation of the "Streamlining" initiatives of the PMO, including direct cost reductions which were expected to drive around \$86 million in profit;
 - iii. a \$55 million reduction in SGM's costs from direct costs initiatives;
6. That SGM's FY16 Budget was compiled using a rigorous process which included the taking of the following steps:
 - a. the setting of a timeline for the compilation of the budget which was distributed to SGM's regional businesses (**Regional Business Units**) in or around March 2015;
 - b. the distribution to Regional Business Units of a "capex plan template" along with instructions requiring the Regional Business Units to set out a schedule which showed the Regional Business Unit's projects, ranked in order of importance and also classified as either "PMO", "SHEC" (Safety, Health, Environment and Community), "Replacement" or "New Business" and how the project(s) contributed to towards achieving the Five Year Plan;
 - c. the collection by SGM's finance team of inputs to the budget from the Regional Business Units including the "capex plan templates";

- d. the review of the “capex plan templates” submitted by the Regional Business Units to the SGM finance team and by the SGM finance team to Mr Knechtel and Mr Claro;
 - e. preparation of budgets for each of the Regional Business Units (**Regional Business Unit Budgets**), which involved analysis of each project being undertaken, or expected to be undertaken, by those Regional Business Units in FY16, where such Regional Business Unit Budgets were required to be accompanied by commentary that addressed: any high level assumptions that materially affected the budget; a listing of PMO initiatives and their effect on the Regional Business Unit Budget; an analysis of the cost reductions and where those cost reductions resided in the Regional Business Unit Budget; and a statement of the impact of the FY16 capex budget;
 - f. scrutiny of the Regional Business Unit Budgets by SGM’s finance team and Mr Knechtel;
 - g. the consolidation by SGM’s finance team of the Regional Business Unit Budgets into a draft global functions budget (**Draft Budget**), which was then provided to Mr Knechtel and Mr Claro;
 - h. a review of the Draft Budget by the Executive Leadership Team, which occurred on 27 and 28 May 2015;
 - i. the preparation of final FY16 Budget by the finance team and Mr Knechtel and Mr Claro for the meeting of the SGM Finance and Investment Committee which occurred on 9 June 2015;
 - j. the resolution by the Finance and Investment Committee at its meeting on 9 June 2015 to recommend the FY16 Budget to the Board for approval; and
 - k. the approval of the FY16 Budget by the Board on 29 July 2015.
- ~~7. Further particulars will be provided with SGM’s evidence.~~

- c. says further that, as at 8 September 2015, it had reasonable grounds to believe that the company was not likely to experience materially reduced earnings in FY16 against FY15;

Particulars of reasonable grounds as at 8 September 2015

- 1. The particulars to subparagraph (b) herein are repeated.
- 2. The successful implementation of and results achieved by the Five Year Plan from its commencement to 8 September 2015.
- 3. The fact that, as at 8 September 2015, as disclosed in the 8 September 2015 Presentation:
 - a. the FY16 results were “encouraging with five year FY18 targets on track”;
 - b. there were various portfolio options for growth, including those referred to on slide 9 of the 8 September 2015 Presentation;

- c. various “Streamline” initiatives had been put in place including:
 - i. in North America, the following actions had been taken: idling of the shredder in Memphis, TN; the closure of two additional facilities; and the consolidation of office support functions;
 - ii. in Australia and New Zealand, a new back-office technology platform had been implemented to allow for “leaner work”;
- d. various “Optimisation” initiatives had been put in place, or were being put in place, which had driven or were being implemented to drive up the earnings of SGM in FY16 as compared to FY15, including initiatives with respect to supplier relationships, logistics, operational excellence and product quality and services;
- e. various “Growth” initiatives were planned to be put in place, which aimed to increase earnings in FY16 as compared to FY15, including plans for market share expansion, the leveraging of technology from its electronics recycling business to capitalise on future material supply, including, for example the rapid sales growth of electric vehicles.

4. ~~Further particulars will be provided with SGM’s evidence.~~

- d. says further that, as at 12 October 2015, it had reasonable grounds to believe that the company was not likely to experience materially reduced earnings in FY16 against FY15.

Particulars of reasonable grounds as at 12 October 2015

- 1. The particulars to subparagraphs (b) and (c) herein are repeated.
- 2. The successful implementation of and results achieved by the Five Year Plan from its commencement to 12 October 2015.
- 3. By 12 October 2015, SGM had determined to implement the Resetting Plan immediately which would offset the external conditions being experienced at that time.
- 4. Further, SGM repeats the particulars to paragraph 62 below regarding the Resetting Plan.
- 5. ~~Further particulars will be provided with SGM’s evidence.~~

F.12 Alleged No Reasonable Basis Information

61. In answer to paragraph 61 of the SoC, SGM

- a. repeats paragraphs 26, 56, 57, 58 and 60 herein;
- b. denies the paragraph;
- c. says further that, if SGM made the FY16 Guidance Statement (which is denied), it had reasonable grounds for doing so.

Particulars of reasonable grounds

SGM repeats the particulars to paragraph 60 herein.

~~Further particulars will be provided with SGM's evidence.~~

F.13 Alleged Further No Reasonable Basis Information

62. In answer to paragraph 62 of the SoC, SGM:

- a. repeats paragraphs 39, 40, 56, 58, 59, 60 and 61 herein;
- b. denies the paragraph;
- c. says further that SGM had reasonable grounds for believing that:
 - i. first half FY16 underlying EBIT would be around break-even;
 - ii. as benefits from "resetting plan" initiatives were realised, underlying EBIT would improve to an annualised rate similar to the FY15 result by the end of FY16;
- d. says further that, if SGM made the Revised FY16 Guidance Statement (which is denied), it had reasonable grounds for doing so.

Particulars of reasonable grounds

1. SGM repeats the particulars to paragraphs 60 and 61 herein.
2. The successful implementation of and results achieved by the Five Year Plan from its commencement to 12 November 2015.
3. In around early October 2015, SGM developed the Resetting Plan with a view to the company achieving an above cost of capital return in FY16.
4. With a view to implementing the Resetting Plan, Mr Claro and Mr Knechtel required of the Regional Business Units the preparation and presentation to them and the Executive Leadership Team of the following information so they could collectively make decisions with respect to unprofitable facilities within the Regional Business Units:
 - a. ROCE (return on capital employed) and PBIT (profit before interest and tax) pareto charts for all of the facilities within the Regional Business Units whereby those facilities were divided into two groups: sites that could return to profitability within 90 days and sites which could not (and which were therefore proposed to be divested);
 - b. a financial summary and a closure impact summary of each of the facilities that had a negative profitability in the first quarter of FY16;
 - c. a clear action plan with respect to those facilities whereby it was anticipated there could be a return to profitability within 90 days;
 - d. a high level forecast (using an initiative model template) of the impact of each Regional Business Unit's proposed actions on the

half year and full year FY16 earnings for the Regional Business Unit.

5. There was a meeting of the Executive Leadership Team and the heads of each of the Regional Business Units on 2 November 2015 during which each of the Regional Business Units presented their proposed actions with respect to the Resetting Plan and the financial impact of such proposed actions on SGM's expected earnings for the 1H16 and the full year FY16.
6. In or around late October 2015 and early November 2015, SGM's finance team (together with Mr Knechtel) prepared top-down reforecasts for FY16, incorporating the information provided by the Regional Business Units in respect of their action plans for the Resetting Plan, which:
 - a. showed that 1H16 underlying EBIT was expected to be around break-even; and
 - b. ultimately formed the basis for the Revised FY16 Guidance.
7. On 10 November 2015, at the meeting of the SGM Board:
 - a. Mr Claro briefed the SGM Board regarding the Resetting Plan;
 - b. a draft of the 12 November 2015 Update was discussed, and Mr Claro noted that SGM "had incurred a PBIT loss of \$16 million for the first three months of FY16 and an early-bird profit of \$4 million was expected for the month of October" and "based on [SGM's] sales program, [SGM] should get back to breakeven by the end of the first half [of FY16]";
 - c. the Board was told that, subsequent to the drafting of the 12 November 2015 Trading Update that was before the Board, the finance team and Mr Knechtel had completed "a re-forecast for FY16 and carried out further work on both the anticipated underlying and statutory losses (including actual numbers) for the first half of FY16 based on the [Resetting Plan]." The minutes of the meeting record that "Mr Knechtel briefed the Board on the reforecast and added the financial information to the outlook statement [in the draft 12 November 2015 Trading Update]" and that Board members would "pass final comments on the draft [12 November 2015 Trading Update] including Outlook commentary" by the morning of 11 November 2015 so that a final version might be lodged with the ASX before the market opened.
8. No member of the Board of SGM subsequently provided any comment on the Revised FY16 Guidance as it appeared in the draft of the 12 November 2015 Trading Update that was before it at the meeting on 10 November 2015.
9. Underlying EBIT for 1H16 was in fact "around break-even" being only negative \$4.8 million, and underlying EBIT for 1H16 excluding operations to be discontinued was significantly in excess of break-even, being \$14.9 million.
- ~~10. Further particulars will be provided with SGM's evidence.~~

F.14 Alleged FY18 EBIT Target Information

63. In answer to paragraph 63 of the SoC, SGM:

- a. repeats paragraphs 26, 56, 57, 58, 59, 60, 61 and 62 herein;
- b. denies the paragraph;
- c. says further that SGM had reasonable grounds for making the FY18 EBIT Target Statement.

Particulars of reasonable grounds for making the FY18 EBIT Target Statement

1. SGM repeats the particulars to paragraphs 60, 61 and 62 herein.
2. That SGM's FY16 Budget budgeted that the PMO initiatives, including SGM's "Streamlining" activities (involving direct cost reductions) would drive an \$86.1 million improvement for FY16, which was on track or ahead of what was proposed in the Five Year Plan, namely "Streamlining expected to deliver annual benefits of A\$32m, 50% to be realised in FY15, and 100% in FY16".
3. Over \$86 million of "Streamlining" and "Optimising" initiatives had been included in the FY16 Budget with the goal of supporting the achievement of the Five Year Plan, and by 21 August 2015 the "pipeline summary" for those initiatives showed that all of them were "in an implementation stage" and that "approximately \$23M of initiatives are already seeing benefits".
4. ~~Further particulars will be provided with SGM's evidence.~~

G SGM'S ALLEGED MISLEADING OR DECEPTIVE CONDUCT

G.1 Introduction

64. In answer to paragraph 64 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 herein;
- b. admits that, to the extent SGM's conduct pleaded in paragraphs 24 to 38 of the SoC is admitted, it was:
 - i. conduct in relation to a financial product (being SGM Shares) within the meaning of s 1041H of the Corporations Act;
 - ii. conduct in trade or commerce within the meaning of s 18 of the ACL;
- c. otherwise denies the paragraph.

G.2 Alleged misleading or deceptive conduct: August EBIT Representation

65. In answer to paragraph 65 of the SoC, SGM:

- a. repeats paragraphs 26, 27, 60 and 61 herein;
- b. otherwise denies the paragraph.

66. In answer to paragraph 66 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 65 herein;
- b. otherwise denies the paragraph.

G.3 Alleged misleading or deceptive conduct: August FY16 Earnings Representation

67. In answer to paragraph 67 of the SoC, SGM:

- a. repeats paragraphs 26, 28, 60 and 61 herein;
- b. otherwise denies the paragraph.

68. In answer to paragraph 68 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 67 herein;
- b. otherwise denies the paragraph.

G.4 Alleged misleading or deceptive conduct: August FY18 Earnings Representation

69. In answer to paragraph 69 of the SoC, SGM:

- a. repeats paragraphs 26, 29, 60 and 63 herein;
- b. otherwise denies the paragraph.

70. In answer to paragraph 70 of the SoC, SGM

- a. repeats paragraphs 24 to 38 and 69 herein;
- b. otherwise denies the paragraph.

G.5 Alleged misleading or deceptive conduct: September FY16 Earnings Representation

71. In answer to paragraph 71 of the SoC, SGM:

- a. repeats paragraphs 31, 32, 60 and 61 herein;
- b. otherwise denies the paragraph.

72. In answer to paragraph 72 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 71 herein;
- b. otherwise denies the paragraph.

G.6 Alleged misleading or deceptive conduct: September FY18 Earnings Representation

73. In answer to paragraph 73 of the SoC, SGM:

- a. repeats paragraphs 31, 33, 60 and 63 herein;
- b. otherwise denies the paragraph.

74. In answer to paragraph 74 of the SoC, SGM

- a. repeats paragraphs 24 to 38 and 73 herein;
- b. otherwise denies the paragraph.

G.7 Alleged misleading or deceptive conduct: October FY16 Earnings Representation

75. In answer to paragraph 75 of the SoC, SGM:

- a. repeats paragraphs 35, 36, 60 and 61 herein;
- b. otherwise denies the paragraph.

76. In answer to paragraph 76 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 75 herein;
- b. otherwise denies the paragraph.

G.8 Alleged misleading or deceptive conduct: October FY18 Earnings Representation

77. In answer to paragraph 77 of the SoC, SGM:

- a. repeats paragraphs 35, 37, 60 and 63 herein;
- b. otherwise denies the paragraph.

78. In answer to paragraph 78 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 77 herein;
- b. otherwise denies the paragraph.

G.9 Alleged misleading or deceptive conduct: November EBIT Representation

79. In answer to paragraph 79 of the SoC, SGM:

- a. repeats paragraphs 40, 43, 60, 62 and 63 herein;
- b. otherwise denies the paragraph.

80. In answer to paragraph 80 of the SoC, SGM:

- a. repeats paragraphs 24 to 38 and 79 herein;
- b. otherwise denies the paragraph.

G.10 Alleged misleading or deceptive conduct: November FY18 Earnings Representation

81. In answer to paragraph 81 of the SoC, SGM:

- a. repeats paragraphs 40, 44, 60, 62 and 63 herein;
- b. otherwise denies the paragraph.

82. In answer to paragraph 82 of the SoC, SGM:
- a. repeats paragraphs 24 to 38 and 81 herein;
 - b. otherwise denies the paragraph.

H INFORMATION OF WHICH IT IS ALLEGED SGM WAS AWARE

83. In answer to paragraph 83 of the SoC, SGM:
- a. repeats paragraph 49 herein;
 - b. admits that it was aware (within the meaning of ASX Listing Rule 19.12) as at 21 August 2015, 8 September 2015, 12 October 2015 and 12 November 2015 that there was (at those dates) an oversupply of steel on the world market;
 - c. otherwise denies the paragraph.
84. In answer to paragraph 84 of the SoC, SGM:
- a. repeats paragraph 51 herein;
 - b. admits that it was aware (within the meaning of ASX Listing Rule 19.12) as at 21 August 2015, 8 September 2015, 12 October 2015 and 12 November 2015 that the global price of iron ore was (at those dates) depressed by abundant supply;
 - c. otherwise denies the paragraph.
85. In answer to paragraph 85 of the SoC, SGM:
- a. repeats paragraph 52 herein;
 - b. otherwise denies the paragraph.
86. In answer to paragraph 86 of the SoC, SGM:
- a. repeats paragraph 53 herein;
 - b. admits that it was aware (within the meaning of ASX Listing Rule 19.12) that, as at 21 August 2015, 8 September 2015 and 12 November 2015 the global outlook for the commodities in which SGM traded was (at those dates) in a period of cyclical weakness;
 - c. otherwise denies the paragraph.
87. In answer to paragraph 87 of the SoC, SGM:
- a. repeats paragraph 54 herein;
 - b. otherwise denies the paragraph.
88. In answer to paragraph 88 of the SoC, SGM:

- a. repeats paragraph 55 herein;
 - b. otherwise denies the paragraph.
89. In answer to paragraph 89 of the SoC, SGM:
- a. repeats paragraph 56 herein;
 - b. admits that it was aware (within the meaning of ASX Listing Rule 19.12) as at 21 August 2015, 8 September 2015 and 12 October 2015 that:
 - i. from time to time, but not at all times, a reduction in the Scrap Price could have an adverse effect on the volume of scrap metals available for purchase by SGM;
 - ii. a reduction in the volume of scrap metals available for purchase by SGM would reduce the volume of processed metal SGM was able to sell;
 - c. otherwise denies the paragraph.
90. In answer to paragraph 90 of the SoC, SGM:
- a. repeats paragraph 57 herein;
 - b. otherwise denies the paragraph.
91. In answer to paragraph 91 of the SoC, SGM:
- a. repeats paragraph 58 herein;
 - b. otherwise denies the paragraph.
92. In answer to paragraph 92 of the SoC, SGM:
- a. repeats paragraph 59 herein;
 - b. admits that, by 12 November 2015, it was aware (within the meaning of ASX Listing Rule 19.12) that the global price of copper and aluminium was (at that date) depressed;
 - c. otherwise denies the paragraph.
93. In answer to paragraph 93 of the SoC, SGM:
- a. repeats paragraph 60 herein;
 - b. otherwise denies the paragraph.
94. In answer to paragraph 94 of the SoC, SGM:
- a. repeats paragraphs 60 and 61 herein;
 - b. otherwise denies the paragraph.

95. In answer to paragraph 95 of the SoC, SGM:
- a. repeats paragraphs 60, 61 and 62 herein;
 - b. otherwise denies the paragraph.

96. In answer to paragraph 96 of the SoC, SGM:
- a. repeats paragraph 63 herein;
 - b. otherwise denies the paragraph.

I SGM'S ALLEGED SECTION 1041E CONTRAVENTIONS

I.1 Alleged section 1041E contravention: August EBIT Representation

97. In answer to paragraph 97 of the SoC, SGM:
- a. repeats paragraphs 26 and 27 herein;
 - b. says that, if SGM caused the FY16 Guidance Statement to be published and lodged with ASIC (which is denied) and/or the August EBIT Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.
98. In answer to paragraph 98 of the SoC, SGM:
- a. repeats paragraphs 26, 27, 60, 61 and 65 herein;
 - b. otherwise denies the paragraph.
99. In answer to paragraph 99 of the SoC, SGM
- a. repeats paragraphs 26 and 27 herein;
 - b. otherwise denies the paragraph.
100. In answer to paragraph 100 of the SoC, SGM:
- a. repeats paragraphs 26, 27, 60, 61, 65, 90, 91, 92, 93 and 94 herein;
 - b. otherwise denies the paragraph.
101. In answer to paragraph 101 of the SoC, SGM
- a. repeats paragraphs 97 to 100 herein;
 - b. otherwise denies the paragraph.

I.2 Alleged section 1041E contravention: August FY16 Earnings Representation

102. In answer to paragraph 102 of the SoC, SGM:
- a. repeats paragraphs 26 and 28 herein;
 - b. says that, if SGM caused the August Statements to be published and lodged with the ASX (which is denied) and/or the August FY16 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.
103. In answer to paragraph 103 of the SoC, SGM:
- a. repeats paragraphs 26, 28, 60, 61 and 67 herein;
 - b. otherwise denies the paragraph.
104. In answer to paragraph 104 of the SoC, SGM:
- a. repeats paragraphs 26 and 28 herein;
 - b. otherwise denies the paragraph.
105. In answer to paragraph 105 of the SoC, SGM:
- a. repeats paragraphs 26, 28, 90, 91, 92, 93 and 94 herein;
 - b. otherwise denies the paragraph.
106. In answer to paragraph 106 of the SoC, SGM:
- a. repeats paragraphs 102 to 105 herein;
 - b. otherwise denies the paragraph.

I.3 Alleged section 1041E contravention: August FY18 Earnings Representation

107. In answer to paragraph 107 of the SoC, SGM:
- a. repeats paragraphs 26 and 29 herein;
 - b. says that, if SGM caused the August Statements to be published and lodged with the ASX (which is denied) and/or the August FY18 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.
108. In answer to paragraph 108 of the SoC, SGM:
- a. repeats paragraphs 26, 29, 60, 63 and 69 herein;

- b. otherwise denies the paragraph.
109. In answer to paragraph 109 of the SoC, SGM:
- a. repeats paragraphs 26 and 29 herein;
 - b. otherwise denies the paragraph.
110. In answer to paragraph 110 of the SoC, SGM:
- a. repeats paragraphs 26, 29, 90, 91, 92, 94 and 95 herein;
 - b. otherwise denies the paragraph.
111. In answer to paragraph 111 of the SoC, SGM:
- a. repeats paragraphs 107 to 110 herein;
 - b. otherwise denies the paragraph.

I.4 Alleged section 1041E contravention: September FY16 Earnings Representation

112. In answer to paragraph 112 of the SoC, SGM:
- a. repeats paragraphs 31 and 32 herein;
 - b. says that, if SGM caused the September Statements to be published and lodged with the ASX (which is denied) and/or the September FY16 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph,
113. In answer to paragraph 113 of the SoC, SGM:
- a. repeats paragraphs 31, 32, 60, 61 and 71 herein;
 - b. otherwise denies the paragraph.
114. In answer to paragraph 114 of the SoC, SGM:
- a. repeats paragraphs 31 and 32 herein;
 - b. otherwise denies the paragraph.
115. In answer to paragraph 115 of the SoC, SGM:
- a. repeats paragraphs 31, 32, 90, 91, 92, 93 and 94 herein;
 - b. otherwise denies the paragraph.
116. In answer to paragraph 116 of the SoC, SGM:
- a. repeats paragraphs 112 to 115 herein;
 - b. otherwise denies the paragraph.

I.5 Alleged section 1041E contravention: September FY18 Earnings Representation

117. In answer to paragraph 117 of the SoC, SGM:
- a. repeats paragraphs 31 and 33 herein;
 - b. says that, if SGM caused the September Statements to be published and lodged with the ASX (which is denied) and/or the September FY18 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.
118. In answer to paragraph 118 of the SoC, SGM:
- a. repeats paragraphs 31, 33, 60, 63 and 73 herein;
 - b. otherwise denies the paragraph.
119. In answer to paragraph 119 of the SoC, SGM:
- a. repeats paragraphs 31 and 33 herein;
 - b. otherwise denies the paragraph.
120. In answer to paragraph 120 of the SoC, SGM:
- a. repeats paragraphs 31, 33, 90, 91, 92, 94 and 95 herein;
 - b. otherwise denies the paragraph.
121. In answer to paragraph 121 of the SoC, SGM:
- a. repeats paragraphs 117 to 120 herein;
 - b. otherwise denies the paragraph.

I.6 Alleged section 1041E contravention: October FY16 Earnings Representation

122. In answer to paragraph 122 of the SoC, SGM:
- a. repeats paragraphs 35 and 36 herein;
 - b. says that, if SGM caused the October Statements to be published and lodged with the ASX (which is denied) and/or the October FY16 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.

123. In answer to paragraph 123 of the SoC, SGM:
- a. repeats paragraphs 35, 36, 60, 61 and 75 herein;
 - b. otherwise denies the paragraph.
124. In answer to paragraph 124 of the SoC, SGM:
- a. repeats paragraphs 35 and 36 herein;
 - b. otherwise denies the paragraph.
125. In answer to paragraph 125 of the SoC, SGM:
- a. repeats paragraphs 35, 36, 90, 91, 92, 93 and 94 herein;
 - b. otherwise denies the paragraph.
126. In answer to paragraph 126 of the SoC, SGM:
- a. repeats paragraphs 122 to 125 herein;
 - b. otherwise denies the paragraph.

I.7 Alleged section 1041E contravention: October FY18 Earnings Representation

127. In answer to paragraph 127 of the SoC, SGM:
- a. repeats paragraphs 35 and 37 herein;
 - b. says that, if SGM caused the October Statements to be published and lodged with the ASX (which is denied) and/or the October FY18 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
 - c. otherwise denies the paragraph.
128. In answer to paragraph 128 of the SoC, SGM:
- a. repeats paragraphs 35, 37, 60, 63 and 77 herein;
 - b. otherwise denies the paragraph.
129. In answer to paragraph 129 of the SoC, SGM:
- a. repeats paragraphs 35 and 37 herein;
 - b. otherwise denies the paragraph.
130. In answer to paragraph 130 of the SoC, SGM:
- a. repeats paragraphs 35, 37, 90, 91, 92, 94 and 95 herein;
 - b. otherwise denies the paragraph.
131. In answer to paragraph 131 of the SoC, SGM:

- a. repeats paragraphs 127 to 130 herein;
- b. otherwise denies the paragraph.

I.8 Alleged section 1041E contravention: November EBIT Representation

132. In answer to paragraph 132 of the SoC, SGM:

- a. repeats paragraphs 39 and 40 herein;
- b. says that, if SGM caused the Revised FY16 Guidance Statement to be published and lodged with the ASX (which is denied) and/or the November EBIT Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
- c. otherwise denies the paragraph.

133. In answer to paragraph 133 of the SoC, SGM:

- a. repeats paragraphs 39, 40, 60, 62, 63 and 79 herein;
- b. otherwise denies the paragraph.

134. In answer to paragraph 134 of the SoC, SGM:

- a. repeats paragraphs 39 and 40 herein;
- b. otherwise denies the paragraph.

135. In answer to paragraph 135 of the SoC, SGM:

- a. repeats paragraph 39, 40 and 95 herein;
- b. otherwise denies the paragraph.

136. In answer to paragraph 136 of the SoC, SGM:

- a. repeats paragraphs 132 and 135 herein;
- b. otherwise denies the paragraph.

I.9 Alleged section 1041E contravention: November FY18 Earnings Representation

137. In answer to paragraph 137 of the SoC, SGM:

- a. repeats paragraphs 39 and 41 herein;
- b. says that, if SGM caused the November Statements to be published and lodged with the ASX (which is denied) and/or the November FY18 Earnings Representation to be made (which is denied), SGM thereby disseminated information to the market of actual or potential investors in SGM shares;
- c. otherwise denies the paragraph.

138. In answer to paragraph 138 of the SoC, SGM:
- a. repeats paragraphs 39, 41, 60, 63 and 81 herein;
 - b. otherwise denies the paragraph.
139. In answer to paragraph 139 of the SoC, SGM:
- a. repeats paragraphs 39 and 41 herein;
 - b. otherwise denies the paragraph.
140. In answer to paragraphs 140 of the SoC, SGM:
- a. repeats paragraphs 39, 41 and 95 herein;
 - b. otherwise denies the paragraph.
141. In answer to paragraph 141 of the SoC, SGM:
- a. repeats paragraphs 137 to 140 herein;
 - b. otherwise denies the paragraph.

J SGM'S ALLEGED CONTINUOUS DISCLOSURE CONTRAVENTIONS

J.1 Alleged Earnings Information

142. In answer to paragraph 142 of the SoC, SGM:
- a. repeats paragraphs 60 and 93 herein;
 - b. otherwise denies the paragraph.
143. In answer to paragraph 143 of the SoC, SGM:
- a. repeats paragraph 60, 93 and 142 herein;
 - b. denies the paragraph;
 - c. says further that:
 - i. to the extent that the Applicant relies on matters or information which it is alleged SGM or officers of SGM ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;
 - ii. if the Earnings Information existed (which is denied) and SGM was aware of the Earnings Information from 21 August 2015 (which is denied), it denies that such Earnings Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares as pleaded;

iii. if the Earnings Information existed (which is denied) and SGM was aware of such Earnings Information from 21 August 2015 (which is denied) and the Earnings Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares (which is denied), then the Earnings Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

A. the information as pleaded:

1. comprises matters of supposition or was insufficiently definite to warrant disclosure; and/or
2. was generated for the internal management purposes of SGM;

B. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

C. a reasonable person would not have expected SGM to disclose that information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

144. In answer to paragraph 144 of the SoC, SGM:

- a. repeats paragraphs 60, 93 and 143 herein;
- b. otherwise denies the paragraph.

145. In answer to paragraph 145 of the SoC, SGM:

- a. repeats paragraphs 60, 93, 143 and 144 herein;
- b. otherwise denies the paragraph.

146. In answer to paragraph 146 of the SoC, SGM:

- a. repeats paragraphs 60, 93, 143, 144 and 145 herein;
- b. otherwise denies the paragraph.

J.2 Alleged No Reasonable Basis Information

147. In answer to paragraph 147 of the SoC, SGM:

- a. repeats paragraphs 61 and 94 herein;
- b. otherwise denies the paragraph.

148. In answer to paragraph 148 of the SoC, SGM:

- a. repeats paragraphs 61, 94 and 147 herein;
- b. denies the paragraph;
- c. says further that:
 - i. to the extent that the Applicant relies on matters or information which it is alleged SGM or officers of SGM ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;
 - ii. if the No Reasonable Basis Information existed (which is denied) and SGM was aware of the No Reasonable Basis Information from 21 August 2015 (which is denied), it denies that such No Reasonable Basis Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares as pleaded;
 - iii. if the No Reasonable Basis Information existed (which is denied) and SGM was aware of such No Reasonable Basis Information from 21 August 2015 (which is denied) and the No Reasonable Basis Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares (which is denied), then the No Reasonable Basis Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
 - A. the information as pleaded:
 1. comprises matters of supposition or was insufficiently definite to warrant disclosure; and/or
 2. was generated for the internal management purposes of SGM;
 - B. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - C. a reasonable person would not have expected SGM to disclose that information,and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

149. In answer to paragraph 149 of the SoC, SGM:

- a. repeats paragraphs 61, 94, 147 and 148 herein;
- b. otherwise denies the paragraph.

150. In answer to paragraph 150 of the SoC, SGM:
- a. repeats paragraphs 61, 94, 147, 148 and 149 herein;
 - b. otherwise denies the paragraph.

151. In answer to paragraph 151 of the SoC, SGM:
- a. repeats paragraphs 61, 94 and 147 to 150 herein;
 - b. otherwise denies the paragraph.

J.3 Alleged Further No Reasonable Basis Information

152. In answer to paragraph 152 of the SoC, SGM:

- a. repeats paragraphs 62 and 95 herein;
- b. otherwise denies the paragraph.

153. In answer to paragraph 153 of the SoC, SGM:

- a. repeats paragraphs 62, 95 and 152 herein;
- b. denies the paragraph;
- c. says further that:
 - i. to the extent that the Applicant relies on matters or information which it is alleged SGM or officers of SGM ought to have been (but were not) aware, such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;
 - ii. if the Further No Reasonable Basis Information existed (which is denied) and SGM was aware of the Further No Reasonable Basis Information from 12 November 2015 (which is denied), it denies that such Further No Reasonable Basis Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares as pleaded;
 - iii. if the Further No Reasonable Basis Information existed (which is denied) and SGM was aware of such Further No Reasonable Basis Information from 12 November 2015 (which is denied) and the Further No Reasonable Basis Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares (which is denied), then the Further No Reasonable Basis Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

- A. the information as pleaded:
 - 1. comprises matters of supposition or was insufficiently definite to warrant disclosure; and/or
 - 2. was generated for the internal management purposes of SGM;
 - B. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
 - C. a reasonable person would not have expected SGM to disclose that information,
- and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

154. In answer to paragraph 154 of the SoC, SGM:
- a. repeats paragraphs 62, 95, 152 and 153 herein;
 - b. otherwise denies the paragraph.
155. In answer to paragraph 155 of the SoC, SGM:
- a. repeats paragraphs 62, 95, 152, 153 and 154 herein;
 - b. otherwise denies the paragraph.
156. In answer to paragraph 156 of the SoC, SGM:
- a. repeats paragraphs 62, 95 and 152 to 155 herein;
 - b. otherwise denies the paragraph.

J.4 Alleged FY18 EBIT Target Information

157. In answer to paragraph 157 of the SoC, SGM:
- a. repeats paragraphs 63 and 96 herein;
 - b. otherwise denies the paragraph.
158. In answer to paragraph 158 of the SoC, SGM:
- a. repeats paragraphs 63, 96 and 157 herein;
 - b. denies the paragraph;
 - c. says further that:
 - i. to the extent that the Applicant relies on matters or information which it is alleged SGM or officers of SGM ought to have been (but were not) aware,

such matters or information was not information required to be disclosed under section 674(2) of the Corporations Act;

- ii. if the FY18 EBIT Target Information existed (which is denied) and SGM was aware of the FY18 EBIT Target Information from 21 August 2015 (which is denied), it denies that such FY18 EBIT Target Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares as pleaded;
- iii. if the FY18 EBIT Target Information existed (which is denied) and SGM was aware of such FY18 EBIT Target Information from 21 August 2015 (which is denied) and the FY18 EBIT Target Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares (which is denied), then the FY18 EBIT Target Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:

A. the information as pleaded:

- 1. comprises matters of supposition or was insufficiently definite to warrant disclosure; and/or
- 2. was generated for the internal management purposes of SGM;

B. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and

C. a reasonable person would not have expected SGM to disclose that information,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

159. In answer to paragraph 159 of the SoC, SGM:

- a. repeats paragraphs 63, 96, 157 and 158 herein;
- b. otherwise denies the paragraph.

160. In answer to paragraph 160 of the SoC, SGM:

- a. repeats paragraphs 63, 96, 157, 158 and 159 herein;
- b. otherwise denies the paragraph.

K ALLEGATION THAT ALLEGED CONTRAVENING CONDUCT CAUSED LOSS**K.1 Alleged market-based causation**

161. In answer to paragraph 156 of the SoC, SGM:
- a. repeats paragraphs 63, 96 and 157 to 160 herein;
 - b. otherwise denies the paragraph.

162. SGM denies paragraph 162 of the SoC.

163. SGM denies paragraph 163 of the SoC.

K.2 Alleged Reliance

164. SGM denies paragraph 164 of the SoC.

165. SGM denies paragraph 165 of the SoC.

K.3 Alleged loss or damage suffered by Applicant and Group Members

166. SGM denies paragraph 166 of the SoC.

167. SGM denies paragraph 167 of the SoC.

168. In further answer to the SoC insofar as the Applicant and Group Members make claims pursuant to:

- a. section 1041I(1) of the Corporations Act in relation to economic loss caused by conduct of SGM that was allegedly done in contravention of section 1041H of the Corporations Act;
- b. section 12GF(1) of the ASIC Act in relation to economic loss caused by conduct of SGM that was allegedly done in contravention of section 12DA of the ASIC Act; and
- c. section 236 of the Australian Consumer Law in relation to economic loss caused by conduct of SGM that was allegedly done in contravention of section 18 of the Australian Consumer Law,

SGM pleads as follows:

- d. if and to the extent that the Applicant or Group Member failed to have adequate regard to the 22 August 2014 Publications, the 13 February 2015 Publications, the 13 February 2015 Investor Briefing, the 21 August 2015 Publications, the 21 August 2015 Investor Briefing, the 8 September 2015 Presentation, the FY15 Annual Report, the 12 November 2015 Trading Update and/or the 18 November 2015 Investor Briefing in full, including any disclaimers contained in any of them, then, if the Applicant or Group Member suffered the loss claimed or any loss at

- all (which is denied), the Applicant or Group Member did so as a result partly of the Applicant's or Group Member's failure to take reasonable care;
- e. SGM did not intend to cause the loss claimed by the Applicant or Group Member or any loss at all and, if SGM caused that loss (which is denied), it did not do so fraudulently; and
 - f. in the premises, if the Applicant or Group Member suffered the loss claimed or any loss at all (which is denied), the damages which the Applicant or Group Member may recover in relation to the loss are to be reduced to the extent to which the Court thinks just and equitable having regard to the Applicant's or Group Member's share in the responsibility for the loss.

Particulars

SGM relies on section 1041I(1B) of the Corporations Act, section 12GF(1B) of the ASIC Act, and section 137B of the *Competition and Consumer Act 2010* (Cth).

169. In further answer to the SoC, insofar as:

- a. the Applicant and Group Members make claims to compensation pursuant to section 1317HA(1) of the Corporations Act for damage resulting from one or more of SGM's alleged contraventions of section 674(2) of the Corporations Act; and
- b. it appears to the Court that SGM has, or may have, contravened section 674(2) of the Corporations Act (which is denied),

SGM pleads as follows:

- c. SGM has acted honestly;
- d. having regard to all the circumstances of the case, SGM ought fairly be excused for any contravention of section 674(2) of the Corporations Act; and
- e. in the premises, the Court should relieve SGM wholly or partly from the liability to which it would otherwise be subject, or which might otherwise be imposed of it, because of any contravention of section 674(2) of the Corporations Act.

Particulars

SGM relies on section 1317S of the Corporations Act.

170. In further answer to the whole of the SoC, SGM denies that the Applicant and Group Members are entitled to the relief sought or to any relief at all.

Date: 8 May 2020

A handwritten signature in black ink, appearing to read 'Jason Betts', followed by a small horizontal dash.

Signed by Jason Betts

Lawyer for the Respondent

This pleading was prepared by Emma Bathurst and settled by Matthew Darke SC.

(Filed pursuant order 5 of this Court's orders dated 14 April 2020)

Certificate of lawyer

I, Jason Betts, certify to the Court that, in relation to the amended defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 8 May 2020

A handwritten signature in black ink, appearing to read 'Jason Betts', followed by a horizontal line.

.....
Signed by Jason Betts

Lawyer for the Respondent