

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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: 16/07/2020 8:57:38 AM 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.



Form 17  
Rule 8.05(1)(a)

## AMENDED STATEMENT OF CLAIM

(filed pursuant to orders of the Court made on 15 July 2020)

No. NSD220 of 2019

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

### **CARPENDERS PARK PTY LTD (as trustee of the Carpenders Park Pty Ltd Staff Superannuation Fund)**

Applicant

**SIMS LIMITED ACN 114 838 630**

Respondent

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## **A. INTRODUCTION**

1. The Applicant brings these proceedings on his own behalf and on behalf of represented persons (**Group Members**) pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**).
2. The Group Members are all persons who:
  - (a) acquired an interest in ordinary shares in the Respondent (**SGM Shares**) in the period from 23 July 2014 ~~21 August 2015~~ to 19 February 2016 (**Claim Period**);
  - (b) suffered loss or damage by, of that resulted from, the conduct of the Respondent (**SGM**) pleaded in this Statement of Claim; and
  - (c) were not during the Claim Period, and are not, any of the following:
    - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of SGM;
    - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of SGM;
    - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act* of SGM;
    - (iv) a director, an officer, or a close associate (as defined by s 9 of the *Corporations Act*) of SGM; or
    - (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.
3. As at the date of the commencement of this proceeding, seven or more Group Members have claims against SGM.

## B. PARTIES

### B.1. The Applicant

4. The Applicant:

- (a) is entitled to sue in his name and style; and
- (b) acquired (in its capacity as trustee of the Carpenders Park Pty Ltd Staff Superannuation Fund) SGM Shares on the financial market operated by the Australian Securities Exchange Limited (**ASX**) in the Claim Period.

#### Particulars

*Details of the applicant's transactions in the Claim Period are set out below.*

Date	Number of securities	Average price per security	Amount paid (\$) excluding GST and brokerage	Brokerage (\$)	GST (\$)	Amount paid (\$) (including brokerage)
24/11/2015	3,200	\$8	\$25,600	\$0	\$0	\$25,600
24/11/2015	800	\$8	\$6,400	\$0	\$0	\$6,400

### B.2. The Respondent

5. SGM is and was at all material times:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a listed company on the ASX under the ticker symbol SGM;
- (c) a person for the purposes of ss 1041E and 1041H of the Corporations Act;
- (d) a person for the purposes of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- (e) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

- (i) s 12 of the Australian Consumer Law and *Fair Trading Act 2012* (VIC);
  - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
  - (iii) s 16 of the *Fair Trading Act 1989* (QLD);
  - (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (TAS);
  - (v) s 19 of the *Fair Trading Act 2010* (WA);
  - (vi) s 14 of the *Fair Trading Act 1987* (SA);
  - (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
  - (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
- (individually, or together, the **ACL**).

6. At all material times, SGM's principal activities include:

- (a) buying ferrous and non-ferrous scrap metals from suppliers;
- (b) processing ferrous and non-ferrous scrap metals; and
- (c) selling recycled ferrous and non-ferrous metals.

#### **Particulars**

*Sims' Annual Report 2015 published and lodged with the ASX on or around 12 October 2015, p. 35.*

### **B.3. SGM's Officers**

7. Mr Geoffrey Brunson was:

- (a) appointed a director of SGM in November 2009, and remained in that office during the Claim Period;
- (b) appointed Chairperson of SGM on 1 March 2012, and remained in that office during the Claim Period; and
- (c) a member of the Risk, Audit & Compliance Committee and the Finance & Investment Committee during the Claim Period.

**Particulars**

*Appendix 4E Full Year Report for FY15, p 8; Appendix 4E Full Year Report for FY16, p8.*

8. Mr Galdino Claro:

- (a) was appointed Group Chief Executive Officer and Managing Director of SGM on 4 November 2013, and remained in that office during the Claim Period;
- (b) was a member of the Finance and Investment Committee during the Claim Period; and

**Particulars**

*Appendix 4E Full Year Report for FY15, p 8; Appendix 4E Full Year Report for FY16, p 9.*

- (c) oversaw, supervised and/or led the Project Management Office (**PMO**) during the Claim Period.

**Particulars**

*8 September 2015 Presentation p 5.*

9. Mr Fred Knechtel:

- (a) was appointed Group Chief Financial Officer of SGM on 28 October 2014, and remained in that office during the remainder of the Claim Period; and

**Particulars**

*Appendix 4E Full Year Report for FY15, p 17; Annual Report for FY15, p 40.*

- (b) oversaw, supervised and/or led the PMO under the supervision and/or leadership of Mr Galdino Claro during the Claim Period.

**Particulars**

*8 September 2015 Presentation p 5.*

10. Mr William Schmiedel:

- (a) held the position of “President – Global Trade” with SGM during the Claim Period; and

**Particulars**

*Appendix 4E Full Year Report for FY15, p 17; Appendix 4E Full Year Report for FY16, p 17.*

- (b) oversaw, supervised and/or led the PMO’s product quality and services streams for ferrous and non-ferrous products during the Claim Period.

**Particulars**

*SGM’s Q2 2015 Earnings Call 12 February 2015.*

11. Mr Stephen Skurnac held the position of “President – Global Sims Recycling Solutions” with SGM during the Claim Period.

**Particulars**

*Appendix 4E Full Year Report for FY15, p 17; Appendix 4E Full Year Report for FY16, p 17.*

12. Mr Darron McGree:

- (a) was the Managing Director – Australia and New Zealand Metals of SGM from a date unknown to the applicant to 30 June 2015;
- (b) led the operational excellence stream of the PMO during the Claim Period, or alternatively, until his duties were taken over by Mr Alistair Field; and

**Particulars**

*SGM’s Q2 2015 Earnings Call 12 February 2015*

- (c) was a consultant to SGM from 1 July 2015 to 30 June 2016, and in that capacity, performed the role, functions and/or duties of the Managing Director – Australia and New Zealand Metals of SGM with a view to transiting the Australia and New Zealand Metals business to Mr Alistair Field between 30 June 2015 and 1 October 2015.

## Particulars

*Appendix 4E Full Year Report for FY16, p17, footnote 1*

13. Mr Alistair Field:
- (a) was the Managing Director – Australia and New Zealand Metals of SGM from 1 October 2015 to the end of the Claim Period; and
  - (b) led the operational excellence stream of the PMO during the Claim Period, or alternatively, from the point he assumed Mr McGree’s duties in this role.

## Particulars

*On 20 August 2015, during an earnings call Mr Claro stated that SGM “look forward to Alistair building on the strong platform Darren has developing [sic] the region to achieve even greater success in the years ahead” (at page 5).*

*On 19 February 2016, during the earnings call for SGM’s 1H FY16 results, Mr Fields provided an update on “Operational excellence” which was the stream previously overseen by Mr McGree (p 8).*

*Further particulars will be provided following the Respondent’s discovery.*

14. By reason of the matters pleaded in paragraphs 7 to 13, any information which any director of SGM or any of Messrs Brunsdon, Claro, Knechtel, Schmiedel, Skurnac, McGree or Field (collectively, **SGM’s Officers**) became aware of, or which ought reasonably to have come into his possession in the course of the performance of his respective duties was information of which SGM was aware (as awareness is defined in ASX Listing Rule 19.12).

## C. THE RESPONDENT’S OBLIGATIONS

15. At all material times in the Claim Period, SGM was:
- (a) included in the official list of the financial market operated by ASX;
  - (b) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
  - (c) an entity whose securities are ED securities for the purposes of s 111AE of the Corporations Act;

- (d) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act; and
- (e) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning SGMSMG that a reasonable person would expect to have a material effect on the price or value of SGM Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

16. Further, at all material times, SGM was:

- (a) prohibited pursuant to s 1041H of the Corporations Act, from engaging in conduct in relation to SGM Shares (being financial products within the meaning of the Corporations Act) that is misleading or deceptive or is likely to mislead or deceive; and
- (b) prohibited, pursuant to s 1041E of the Corporations Act from making a statement, or disseminating information if:
  - (i) the statement or information is false in a material way or materially misleading;
  - (ii) the statement or information is likely to (A) induce persons in Australia to apply for, dispose of or acquire SGM Shares (being financial products within the meaning of the Corporations Act), or (B) to have the effect of increasing, reducing, maintaining or stabilising the price for trading on SGM Shares on the ASX; and
  - (iii) SGM knows or ought reasonably have known that the statement is false in a material particular or materially misleading.

## **D. SGM'S CONDUCT**

### **D.1. SGM's FY2013 Underlying EBIT**

17. On 23 August 2013, SGM stated that its underlying Earnings Before Income Tax (**EBIT**) for FY13 was \$67.9 million (**Reported FY13 Underlying EBIT**).

## Particulars

- (i) *SGM Appendix 4E Preliminary final report for the financial year ended 30 June 2013.*
- (ii) *SGM presentation entitled "Financial Results Full year ended 30 June 2013".*
- (iii) *SGM announcement entitled "Sims Metal Management Announces Fiscal 2013 Full Year Results".*

### D.2. SGM's Five Year Plan

17A. On 23 July 2014, SGM:

- (a) lodged with the ASX and publicly released a media release entitled "Sims Metal Management Announces Five Year Strategic Plan" (23 July 2014 Media Release);
- (b) lodged with the ASX and publicly released a slide-deck presentation entitled "Sims Metal Management Strategic Review" (23 July 2014 Presentation); and
- (c) provided by Mr Claro an oral presentation to accompany the 23 July 2014 Presentation (23 July 2014 Speech).

(together, 23 July 2014 Publications).

18. ~~On 23 July 2014,~~By the 23 July 2014 Publications, SGM ~~announced~~ made statements to the effect that:

- (a) it had developed a five year plan to increase annual underlying EBIT in FY18 by 350% over the Reported FY13 Underlying EBIT through internal initiatives without reliance upon external cyclical recovery or acquisitions (Five Year Plan);
- (b) the Five Year Plan was a "clear five-year strategic plan";
- (c) the Five Year Plan was an "[a]mbitious & realistic earnings growth pathway";
- (d) the Five Year Plan "does not depend on the market to achieve our EBIT target";  
and
- (e) the Five Year Plan was "not based on wishful, positive, macroeconomic projections" but rather "incorporates only what is in [SGM's] power to control, influence and most importantly to execute".

(together, Five Year Plan Statements).

### Particulars

(i) By the a media release lodged with the ASX and publicly released on 23 July 2014 entitled "Sims Metal Management Announces Five Year Strategic Plan" 23 July 2014 Media Release, SGM stated:

- (A) "Five year strategic plan developed to, through internal initiatives, lift earnings before interest and tax (EBIT) by 350% over the FY13 underlying result";
- (B) "Optimisation program to drive significantly higher return on capital without the requirement of macroeconomic or cyclical recovery;"
- (C) "We have completed a comprehensive review of the global operations of Sims Metal Management and developed a plan which will significantly improve operational performance and earnings, without relying on external cyclical recovery or acquisitions"; and
- (D) "Our five year plan includes three key stages of Streamlining, Optimising, and Growth, and we are already seeing the initial benefits where we have begun implementation. We expect streamlining actions, through cost reductions and exiting loss making businesses, will generate \$32 million in EBIT benefits, with 50% to be achieved in FY15 and fully realised during FY16".

(ii) By the 23 July 2014 Presentation, SGM stated:

- (A) "A clear five-year strategic plan" (p 4);
- (B) "Ambitious & realistic earnings growth pathway" (p 5); and
- (C) "5 year plan to grow EBIT over 350% through internal initiatives alone" (p 5).

(iii) By the 23 July 2014 Speech (SMM.001.244.2069), Mr Claro stated:

- (A) "Targets are ambitious but they are also realistic because they are also realistic because they play to the Company's strengths. Key target, our plan is to grow EBIT by 350% over five years. What I want to stress in that target is stress the fact that target is based on internal management initiatives alone. This is all about self-help. Our strategy is not based on wishful, positive, macroeconomic projections. It's not founded on potential industry consolidation [possibilities] and in any [other] major M&A activity. It's a strategy that incorporates only what is in our power to control, influence and most importantly to execute" (p 2);
- (B) "Now, there is something I want to be absolutely clear about, this strategy is about driving the levers of profitability which are within our control. It's not about waiting for the macroeconomic environment to

lead us to safety or buying our way out of our problems. This is about management managing effectively” (p 3);

- (C) “Of course, market conditions will change and, hopefully, for the better. But our strategy does not depend on the market to achieve our EBIT target. We are confident that over five years based on this plan we will be able to achieve returns at or above our cost of capital based on internal initiatives alone, without relying on a cyclical recovery and without reliance on acquisitive growth. In fact, from the results we have seen so far in fiscal '14 we are encouraged. We may even be able to front end many of these [gains]. Ambitious as those targets are you see from the next slide that the initial results have been encouraging” (p 4); and
- (D) “Now, I have seen very comprehensive, well-articulated strategies that have not been successful for the simple reason that they lack the necessary alignment and engagement of the management team to execute. This is not [how it came]... The strategy we have developed has had the input of my full management team. We are all aware that it is not enough to wait for the market to improve on its own. As the leader of our industry we must be the first to move” (pp 4-5).

18A. By the 23 July 2014 Publications, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) SGM had developed a detailed and comprehensive Five Year Plan incorporating realistic internal analysis and conservative macroeconomic assumptions and projections;
- (b) SGM's earnings performance was not substantially reliant on external economic conditions because of the Five Year Plan;
- (c) implementation of the Five Year Plan would lift SGM's EBIT by 350% in FY18 over the FY13 underlying result without reliance on external market conditions; and/or
- (d) SGM had reasonable grounds for each of the representations at paragraphs 18A(a) to 18A(c) above,

(separately and together, **Five Year Plan Representations**).

#### Particulars

- (i) The Five Year Plan Representations was partly express (from the statements pleaded and particularised in paragraph 18 above) and partly implied from:

- (A) the natural and ordinary meaning of the Five Year Plan Statements;
  - (B) the absence of any statement by SGM correcting those express statements; and
  - (C) the fact that the 23 July 2014 Publications were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.
- (ii) Paragraphs (c) and (d) of the Five Year Plan Representations were representations as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

### D.3. SGM's Statements made on 22 August 2014

19. On 22 August 2014, SGM lodged with the ASX and publicly released:
- (a) its Appendix 4E Preliminary final report for the financial year ended 30 June 2014 (**FY14 Half Year Report**);
  - (b) a slide-deck presentation entitled "Financial Results Full year ended 30 June 2014" (**22 August 2014 Presentation**); and
  - (c) an announcement entitled "Sims Metal Management Announces Fiscal 2014 Full Year Results" (**22 August 2014 Announcement**).
- ~~(together, **22 August 2014 Publications**).~~
20. By the 22 August 2014 Announcement and the 22 August 2014 Presentation, SGM stated that:
- (a) its underlying EBIT for FY14 was \$118.5 million ~~(**Reported FY14 Underlying EBIT Result**)~~; and

#### Particulars

- (i) *FY14 Half Year Report, p 5.*
- (ii) *22 August 2014 Announcement, p 1*
- (iii) *22 August 2014 Presentation, p 4*

- (b) the Five Year Plan was on track and had been accelerated to achieve over \$300 million of annual underlying EBIT in FY18.

#### Particulars

- (i) *FY14 Half Year Report, p 8.*
- (ii) *The 22 August 2014 Announcement stated, inter alia: “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.”*
- (iii) *The 22 August 2014 Presentation, p 5*

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

21. On 13 February 2015, SGM lodged with the ASX and publicly released:
- (a) its Appendix 4D Half Year Report for the first half of FY15 ~~(FY15 Half Year Report)~~;
- (b) a slide-deck presentation entitled “Financial Results Half year ended 31 December 2014” (**13 February 2015 Presentation**); and
- (c) an announcement entitled “*Sims Metal Management Announces Fiscal 2015 Half Year Results*” (**13 February 2015 Announcement**).
- ~~(together, **13 February 2015 Publications**).~~
22. By the 13 February 2015 Presentation, SGM stated that it was on track of achieving an earnings growth target of \$321 million annual EBIT in FY18 (**FY18 EBIT Target**).

#### Particulars

*13 February 2015 Presentation, p 4.*

23. By the 13 February 2015 Announcement, SGM made statements to the effect that:
- (a) the Five Year Plan was on track despite challenging external conditions in the entire metals recycling industry;
- (b) SGM had advanced the pace of implementation of the Five Year Plan across its global operations;

- (c) SGM had growing confidence that SGM's target to improve underlying EBIT by more than 350% over the Reported FY13 Underlying EBIT would be achieved; and
- (d) despite near-term commodity market headwinds the FY18 EBIT Target was prudently conservative.

### Particulars

*The 13 February 2015 Presentation stated, inter alia:*

- (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" (p 1);*
- (ii) *"While external conditions in the entire metals recycling industry remained challenging in HY15, we more than offset these headwinds through disciplined attention to our internal processes and earnings drivers" (p 2);*
- (iii) *"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" (p 3); and*
- (iv) *"While we believe the benefits from our strategic initiatives in 2H FY15 should assist in mitigating near-term commodity market headwinds, we remain prudently conservative in our outlook" (p 3).*

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

24. On 21 August 2015, SGM lodged with the ASX and publicly released:

- (a) its Appendix 4E Full Year Report for FY15 (**FY15 Full Year Report**);
- (b) a slide-deck presentation entitled "Financial Results Half year ended 30 June 2015" (**21 August 2015 Presentation**); and
- (c) an announcement entitled "*Sims Metal Management Announces Fiscal 2015 Full Year Results*" (**21 August 2015 Announcement**),

(together, **21 August 2015 Publications**).

25. By the 21 August 2015 Publications, SGM stated that its underlying EBIT for FY15 was \$141.7 million (**Reported FY15 Underlying EBIT Result**).

**Particulars**

- (i) *FY15 Full Year Report, p 5.*
- (ii) *21 August 2015 Presentation, p 4.*
- (iii) *21 August 2015 Announcement, p 2.*

26. On 21 August 2015, SGM stated that:

- (a) SGM expected that its underlying EBIT in FY16 would be higher than the Reported FY15 Underlying EBIT Result (**FY16 Guidance Statement**); and

**Particulars**

- (i) *FY15 Full Year Report, p 7: “Based on current expectations, the Company believes underlying EBIT in FY16 will be higher than the prior year”.*
  - (ii) *21 August 2015 Presentation:*
    - (A) *p5, diagram and statement “FY18 targets reviewed, realistic and reconfirmed”;*
    - (B) *p20, “we anticipate continued underlying EBIT improvement in FY16...”.*
  - (iii) *21 August 2015 Announcement, p 3: “we will continue to see further underlying EBIT growth in FY16 over the prior year”*
- (b) due to the Five Year Plan, SGM anticipated continued underlying EBIT improvement in FY16;

**Particulars**

- (i) *FY15 Full Year Report, p 7: “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 realised over the current fiscal year. Additionally, the Group expects to see significant further 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) *21 August 2015 Presentation:*
  - (A) *p5, diagram and statement “FY18 targets reviewed, realistic and reconfirmed”;*

(B) p20, "Despite external headwinds, due to internal strategic initiatives, we anticipate continued underlying EBIT improvement in FY16...FY18 earnings targets reviewed and reconfirmed to be achievable in full".

(iii) 21 August 2015 Announcement, p 3:

(A) p 2: "Improved earnings despite the external challenges presented by falling commodity prices, poor weather, and lower volumes, validates our ability to execute our internal initiatives."

(B) p 3, "In order to ensure our fixed cost base is correctly matched to external operating 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 ahead. 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."

(c) in relation to the FY18 EBIT Target:

(i) "FY18 targets reviewed, realistic, and reconfirmed";

(ii) "FY18 earnings targets reviewed and reconfirmed to be achievable in full";

(iii) "Five year targets reaffirmed and on track",

(together, **FY18 EBIT Target Statement**); and

#### **Particulars**

21 August 2015 Presentation, pp 5 and 20.

21 August 2015 Announcement, p 1.

(d) SGM had established a PMO Project Management Office (~~PMO~~) to drive implementation and reporting of the Five Year Plan across the group,

#### **Particulars**

(i) FY15 Full Year Report, p 6.

(ii) 21 August 2015 Presentation, p 20.

(together, **August 2015 Statements**).

27. By the August 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) SGM's underlying EBIT in FY16 would be higher than the Reported FY15 Underlying EBIT Result; and
- (b) SGM had reasonable grounds to believe that its underlying EBIT in FY16 would be higher than the Reported FY15 Underlying EBIT Result,

(together, August 2015 EBIT Representation).

#### Particulars

- (i) *The August 2015 EBIT Representation was partly express (from the statements pleaded and particularised in paragraphs 26(a), 26(b) and 26(c)) and partly implied from the fact that the FY15 Full Year Report, the 21 August 2015 Presentation and the 21 August 2015 Announcement were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*
- (ii) *The August 2015 EBIT Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

28. Further or in the alternative to paragraph 27 above, by the August 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) it anticipated that the Five Year Plan would continue to deliver improved earnings in FY16, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and
- (b) SGM had reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings in FY16, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes,

(together, August 2015 FY16 Earnings Representation).

#### Particulars

- (i) *The August 2015 FY16 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 23, 26(b), 26(c), 26(c)(iii) and 26(d) above) and partly implied from (A) the*

*absence of any statement by SGM correcting those express statements and (B) the fact that the FY15 Full Year Report, the 21 August 2015 Presentation and the 21 August 2015 Announcement were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*

*(ii) The August 2015 FY16 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

29. Further or in the alternative to paragraphs 27 and 28 above, by the August 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

(a) SGM considered that it was realistic to expect that through the Five Year Plan SGM would achieve the FY18 EBIT Target notwithstanding external market conditions; and

(b) SGM had reasonable grounds as a result of its review of the Five Year Plan to expect that it would achieve the FY18 EBIT Target notwithstanding external market conditions.

**(together, August 2015 FY18 Earnings Representation).**

#### **Particulars**

*(iii) The August 2015 FY18 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 22, 23, 26(b), 26(c), 26(c)(iii) and 26(d) above) and partly implied from (A) the absence of any statement by SGM correcting those express statements and (B) the fact that the FY15 Full Year Report, the 21 August 2015 Presentation and the 21 August 2015 Announcement were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*

*(iv) The August FY18 2015 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

**D.6. 8 September 2015: Investor Strategy Day**

30. On 8 September 2015, SGM lodged with the ASX and publicly released a slide-deck presentation entitled “Investor Strategy Day” (**8 September 2015 Presentation**).
31. By the 8 September 2015 Presentation, SGM stated:
- (a) the Five Year Plan was a “*Strategy to deliver above cost of capital returns – even at bottom of the cycle*”;
  - (b) the “*PMO reports to the Executive Leadership Team under direct supervision of the FCO*” and provides “*Oversight and management of internal initiatives at the highest levels*”;
  - (c) “*FY18 targets reviewed, realistic, and reconfirmed;*” and
  - (d) “*Results so far have been encouraging with five year FY18 targets on track... Less than half-way into five year plan with more gains to be realised.*”

**Particulars**

*8 September 2015 Presentation, pp 4, 5, 6 and 7.*

(together, **September 2015 Statements**).

32. By the September 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:
- (a) it anticipated that the Five Year Plan would continue to deliver improved earnings in FY16, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and
  - (b) SGM had reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings in FY16, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes.

(together, **September 2015 FY16 Earnings Representation**).

**Particulars**

- (i) *The September 2015 FY16 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 23, 26(b), 26(c), 26(c)(iii), 26(d) and 31 above) and partly implied from (A)*

*the absence of any statement by SGM correcting those express statements and (B) the fact that the 8 September 2015 Presentation was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*

(ii) *The September 2015 FY16 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

33. Further and in the alternative to paragraph 32, by the September 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) SGM considered that it was realistic to expect that through the Five Year Plan SGM would achieve the FY18 EBIT Target notwithstanding external market conditions; and
- (b) SGM had reasonable grounds as a result of its review of the Five Year Plan to expect that it would achieve the FY18 EBIT Target notwithstanding external market conditions.

(together, September 2015 FY18 Earnings Representation).

#### **Particulars**

- (i) *The September 2015 FY18 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 22, 23, 26(b), 26(c), 26(c)(iii), 26(d) and 31 above) and partly implied from (A) the absence of any statement by SGM correcting those express statements and (B) the fact that the 8 September 2015 Presentation was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*
- (ii) *The September 2015 FY18 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

#### **D.7. 12 October 2015: FY15 Annual Report**

34. On 12 October 2015, SGM lodged with the ASX and publicly released its annual report for FY15 (**FY15 Annual Report**).

35. By the FY15 Annual Report, SGM stated:

(a) *"FIVE-YEAR STRATEGIC PLAN*

*FY15 marked the second year of the Company's five-year strategic turnaround plan. The strategic roadmap to Streamline, Optimise and Grow the business is progressing well. Over the first two years of the plan, underlying earnings before interest and tax (EBIT) has more than doubled, from \$67 million in FY13, to \$142 million in FY15. The Company, meanwhile, remains on track to more than double underlying EBIT again to \$321 million, by the end of FY18.*

*Notably, the successes of the five-year plan have been delivered in the most difficult industry conditions in decades. The decline in commodity prices has seen contraction in the generation and collection of secondary metals, with lower volumes creating increased competition across metal recyclers for raw materials. Tough market conditions have necessitated greater operations discipline and an intensification of strategic initiatives.*

...

*As challenging as the Company's five-year targets may seem, they are essential, and consistent with the Board's view that, even at the bottom of the cycle, the Company must achieve a return equal to its cost of capital";*

(b) *"BUILDING ON OUR STRATEGIC INITIATIVES*

*We remain dedicated to our goal to achieve greater than cost of capital returns, regardless of economic conditions. During FY15 we intensified our strategic initiatives to streamline underperforming businesses, lower procurement costs of raw materials, and improve efficiencies across our operating platform";*

(c) *"As we near the half-way point of our five-year plan, we continue to see new ways to further enhance the business. Facilitated by our Group Project Management Office, and with executive level sponsorship and oversight at the highest levels, we are rapidly deploying our internal initiatives across the Group"; and*

(d) *"Five-year strategic plan...RESULTS SO FAR ON TRACK",*

**Particulars**

*FY15 Annual Report, pp 5, 6 and 8*

(together, **October 2015 Statements**).

36. By the October 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) it anticipated that the Five Year Plan would continue to deliver improved earnings, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and
- (b) SGM had reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes.

(together, **October 2015 FY16 Earnings Representation**).

#### Particulars

- (i) *The October 2015 FY16 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 23, 26(b), 26(c), 26(c)(iii), 26(d), 31 and 35 above) and partly implied from (A) the absence of any statement by SGM correcting those express statements and (B) the fact that the FY15 Annual Report was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*
- (ii) *The October 2015 FY16 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

37. Further and in the alternative to paragraph 36, by the October 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:

- (a) SGM considered that it was realistic to expect that through the Five Year Plan SGM would achieve the FY18 EBIT Target notwithstanding external market conditions; and
- (b) SGM had reasonable grounds as a result of its review of the Five Year Plan to expect that it would achieve the FY18 EBIT Target notwithstanding external market conditions.

(together, **October 2015 FY18 Earnings Representation**).

### Particulars

- (i) *The October 2015 FY18 Earnings Representation was partly express (from the statements pleaded and particularised in paragraphs 18, 20(b), 22, 23, 26(b), 26(c), 26(c)(iii), 26(d), 31 and 35 above) and partly implied from (A) the absence of any statement by SGM correcting those express statements and (B) the fact that the FY15 Annual Report was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*
- (ii) *The October 2015 FY18 Earnings Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

### D.8. Continuing conduct

38. Each of:

(aa) the information contained in the Five Year Plan Statements and Five Year Plan Representations;

(a) the information contained in the FY16 Guidance Statement and FY18 EBIT Target Statement;

(b) the information contained in the August 2015 Statements, August 2015 EBIT Representation, August 2015 FY16 Earnings Representation and August 2015 FY18 Earnings Representation;

(c) the information contained in the September 2015 Statements, September 2015 FY16 Earnings Representation and September 2015 FY18 Earnings Representation; and

(d) the information contained in the October 2015 Statements, October 2015 FY16 Earnings Representation and October 2015 FY18 Earnings Representation,

continued to be disseminated in the period between when that information and representations were first disseminated or made and 12 November 2015 inclusive.

### Particulars

*The continuing nature of the dissemination of the information in subparagraphs (aa) to (d) arises from:*

- (i) *the omission by SGM to modify, qualify or contradict any of that information prior to 12 November 2015; and*
- (ii) *the statements made by SGM pleaded and particularised in paragraphs 18A, 18, 20(b), 22, 23, 26(a), 26(b), 26(c), 26(d), 31 and 35 above and the failure by SGM to modify, qualify or contradict those statements.*

*Certain of the information in subparagraphs (aa) to (d) continued to be disseminated after 12 November 2015, as pleaded in paragraph 45 below.*

## **E. CORRECTIVE DISCLOSURES**

### **E.1. 12 November 2015 Trading Update**

39. On 12 November 2015, SGM lodged with the ASX and publicly released a media release entitled slide-deck “Chairman’s and CEO’s Address to Shareholders and Trading Update” (**12 November 2015 Trading Update**).
40. By the 12 November 2015 Trading Update, SGM stated that:
- (a) the extreme challenges SGM were facing from external market conditions had intensified during the beginning of FY16, with volumes and prices of secondary metals at the lowest level of the last decade, representing a new-norm and are not expected to improve in the short term;
  - (b) during the first half of FY16, ferrous prices collapsed by 42% or \$114 per tonne, including a 30% or \$66 per tonne drop after 21 August 2015;
  - (c) lower ferrous scrap prices have jeopardised the economic appeal of collection of more marginal material by suppliers and in turn, the metals recycling industry globally had experienced a further drop of intake volumes since the end of FY15; and
  - (d) the sharp deterioration in market conditions experienced in the first half of FY16 had placed significant downward pressure on underlying EBIT, and based on the results to the end of October 2015, SGM expected first half FY16 underlying EBIT to be around break-even with underlying EBIT improving to an annualized rate similar to the FY15 result by the end of FY16 (**Revised FY16 Guidance Statement**).
41. By the 12 November 2015 Trading Update, SGM further stated that:

- (a) to address the matters at paragraph 40(a) to (d) above 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 the “new norm”;
  - (b) the process of “resetting” was difficult but necessary, and SGM would thereby be better placed to manage the “new norm”;
  - (c) *“FY15 marked the second year of the Company’s five-year strategic turnaround plan. The strategic roadmap to Streamline, Optimise and Grow the business is progressing. Over the first two years of the plan, underlying EBIT has more than doubled, from \$67 million in FY13 to \$142 million in FY15”*; and
  - (d) *“Based on a swift response through our “resetting plan”, Sims Metal Management will be significantly better placed to manage the “new-norm” conditions, and ultimately to reach our FY18 return on capital targets”*,
- (together, **November 2015 Statements**).

#### **Particulars**

*12 November 2015 Trading Update pp 8 and p 9.*

- 42. On 12 November 2015, the price of SGM Shares on the ASX fell from a closing price of \$9.58 on 11 November 2015 to a closing price of \$7.00 on 13 November 2015, being a decline of \$2.58 on a volume of approximately 13.9 million shares.
- 43. By the November 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that:
  - (a) SGM's underlying EBIT in 1H16 would be around break-even; and
  - (b) SGM had reasonable grounds to believe that its underlying EBIT in 1H16 would be around break-even.

(together, **November 2015 EBIT Representation**).

#### **Particulars**

- (i) *The November 2015 EBIT Representation was partly express (from the statement pleaded and particularised in paragraph 40(d)) and partly implied from the fact that the 12 November 2015 Trading Update was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect*

*that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*

- (ii) *The November 2015 EBIT Representation was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

44. Further to paragraph 43, by the November 2015 Statements, SGM represented to the market of actual and potential investors in SGM Shares that despite the Revised FY16 Guidance Statement:

- (a) SGM considered that it was realistic to expect that through the Five Year Plan SGM would achieve the FY18 EBIT Target notwithstanding external market conditions; and
- (b) SGM had reasonable grounds as a result of its review of the Five Year Plan to expect that it would achieve the FY18 EBIT Target notwithstanding external market conditions,

(together, November 2015 FY18 Earnings Representation).

#### **Particulars**

- (i) *The November 2015 FY18 Earnings Representation ~~November Five Year Plan Representations~~ was partly express (from the statements pleaded and particularised in paragraphs 41(a), 41(b), 41(c) and 41(d) above) and partly implied from:*
- (A) *the absence of any statement by SGM correcting those express statements;*
- (B) *the absence of any statement by SGM correcting the statements pleaded and particularised at paragraphs 18, 20(b), 22, 23, 26(b), 26(c), 26(c)(iii), 26(d), 31 and 35 except in relation to the Revised FY16 Guidance Statement; and*
- (C) *the fact that the 12 November 2015 Trading Update was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.*
- (ii) *The November 2015 FY18 Earnings Representation ~~November Five Year Plan Representations~~ was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

45. Each of:

(aa) the information contained in the Five Year Plan Statements and Five Year Plan Representations;

(a) the information contained in the August 2015 FY18 Earnings Representation, September 2015 FY18 Earnings Representation and October 2015 FY18 Earnings Representation and FY18 EBIT Target Statement; and

(b) the information contained in the November 2015 Statements, November 2015 EBIT Representation and November 2015 FY18 Earnings Representation,

continued to be disseminated in the period between when that information and representations were first disseminated or made and 19 February 2016 inclusive.

### Particulars

*The continuing nature of the dissemination of the information arises from:*

(i) *the omission by SGM to modify, qualify or contradict any of that information prior to 19 February 2016;*

(ii) *the statements made by SGM pleaded and particularised in paragraphs 18, 18A, 40(d) 41(a), 41(b), 41(c) and 41(d) above and the failure by SGM to modify, qualify or contradict those statements; and*

(iii) *the statements made by SGM pleaded and particularised in paragraphs 18, 18A, 20(b), 22, 23, 26(a), 26(b), 26(c), 26(c)(iii), 26(d), 31 and 35 above and the failure by SGM to modify, qualify or contradict those statements except in relation to the Revised FY16 Guidance Statement.*

### E.2. 19 February 2016 Publications

46. On 19 February 2016, SGM lodged with the ASX and publicly released:

(a) its Appendix 4D Half Year Report for FY16 (**FY16 Half Year Report**);

(b) a slide-deck presentation entitled "Financial Results Half year ended 31 December 2015" (**19 February 2016 Presentation**); and

(c) an announcement entitled "Sims Metal Management Announces Fiscal 2016 Half Year Results" (**19 February 2016 Announcement**),

(together, **19 February 2016 Publications**).

47. By the 19 February 2016 Publications, SGM stated that:

- (a) it had incurred “*underlying EBIT loss of \$4.8 million drive by sharply lower sales volumes and falling commodity prices, leading to compressed margins across all businesses*” and its 1H16 underlying NPAT was a loss of \$17.6 million (**1H16 Result**);

**Particulars**

*FY16 Half Year Report, p 6; 19 February 2016 Presentation, p 5; 19 February 2016 Announcement, p 1.*

- (b) The 1H16 Result had been “*driven by sharply lower sales volumes and falling commodity prices*”;

**Particulars**

*FY16 Half Year Report, p 2; 19 February 2016 Presentation, pp 28 and 30; 19 February 2016 Announcement, p 2.*

- (c) its “*sales revenue of \$2,412 million in 1H FY16 was down 28% compared to 1H FY15, primarily due to lower sales volumes and prices for ferrous and non-ferrous metals*”;

**Particulars**

*19 February 2016 Announcement, p 2.*

- (d) “*We continue to advance our strategic initiatives and lower our volume break-even point. However, the steep decline in ferrous and non-ferrous commodity prices is placing downward pressure on volumes and EBIT margins. Overcapacity of steel production in China, coupled with declining Chinese domestic demand, has pushed exported steel into the markets of many of the Group’s traditional customers. This has significantly depressed demand for ferrous scrap metal globally.*

*At the same time, the drop in ferrous scrap demand has pushed prices to extremely low levels. This price compression has reduced the available margin to be shared across the supply chain, leading to lower available supply for processing.*

*Near-term, we expect industry conditions for metals and electronic recycling to continue to be challenging and volatile”; and*

### Particulars

*19 February 2016 Announcement, pp 3 to 4.*

- (e) it had adjusted its Five Year Plan so that the FY18 EBIT Target no longer applied and a new EBIT target for FY18 based upon stable sales volumes and a return on capital of >10% was adopted (**Revised FY18 EBIT Target**).

### Particulars

(i) *19 February 2016 Presentation, pp 11 to 15.*

(ii) *The Revised FY18 EBIT Target Statement implied a Revised FY18 EBIT Target of approximately \$183m (Credit Suisse, SGM, "Reality calls as tonnes fall. FY18F cut", 19 February 2016) to \$214m (Morgan Stanley, SGM, "Are market volumes really going to stabilize? 19 February 2016).*

48. On 19 February 2016, the price of SGM Shares on the ASX fell from a closing price of \$7.76 on 18 February 2016 to a closing price of \$6.65 on 22 February 2016, being a decline of \$1.10 on a volume of approximately 5 million shares.

## F. THE TRUE POSITION

### F.1A Five Year Plan Information

48A. At all material times, SGM's Five Year Plan:

(a) was no more than a market presentation contained in the 23 July 2014 Presentations containing aspirational targets;

(b) was not a realistic "clear five-year strategic plan";

(c) was not detailed and comprehensive (and was not underlain by any detailed or comprehensive plan); and/or

(d) did not incorporate realistic internal analysis (and was not underlain by any realistic internal analysis),

(separately and together, **Five Year Plan Presentation Information**).

### Particulars

Transcript (Federal Court No. NSD 220/2019, Rares J, 14 April 2020), T12:43-45.

MS BATHURST: "... the five year plan, less there be any confusion about it, is what was announced to the market on 23 July 2014".

48B. At all material times, SGM's Five Year Plan:

- (a) was built on the assumption that SGM was experiencing the bottom of the market cycle at the time it was announced;
- (b) assumed SGM's sales volume and revenue would grow in each year of the Five Year Plan; and/or
- (c) was not based on, and did not incorporate, conservative macroeconomic projections.

(separately and together, **Five Year Plan Assumption Information**).

#### **Particulars**

- (i) On 16 July 2014, Mr Scott sent a spreadsheet titled "FY18 forecast assumptions v2" to Robert Kelman (SGM's Managing Director of European Metals) (SMM.001.708.4144) in which it was assumed that sales volume will increase by 10% for FY18 from the FY13 figure.
- (ii) On 16 December 2014, Mr Scott sent a spreadsheet titled "Model SGM" (SMM.001.055.3614) to Mr Claro in which it was assumed that sales volume and revenue would grow in each year of the Five Year Plan.
- (iii) On 17 November 2015, Mr Brunsdon sent an email to Mr Scott (SMM.001.607.4726) in which he stated that "the strategy was built on the assumption that we were at the bottom of the market".
- (iv) On 18 November 2015, Mr Scott sent an email to an analyst at Colonial First State (SMM.001.607.4872) that "10% volume growth was always there [in the Five Year Plan]. It was in the original presentations. It assumes 2% pa system growth in line with GDP."

48C. At all material times, SGM's earnings performance was substantially reliant on external economic conditions despite the Five Year Plan (**Five Year Plan Inefficacy Information**).

#### **Particulars**

The Applicant repeats the matters pleaded and particularised at paragraphs 48A and 48B above and says further:

- (i) On 15 September 2014, Mr Claro provided a strategy update to the board (board meeting minutes, SMM.001.001.5898) where he "warned that two

factors may hold [our strategy] back, namely a drop in ferrous prices (which would affect second half results), and a winter more severe than last year's".

- (ii) On 17 March 2015, Mr Claro informed the board (board meeting minutes, SMM.001.073.5296) that the "critical unknown issue is what will be the new scrap volume levels going forward... if Q3 volumes and prices are the new reality, we will need to reduce our costs by \$50m to \$70m per annum at a minimum to maintain profitability, and accelerate the initiatives in our PMO to speed up the strategy implementation".
- (iii) On 9 June 2015, Mr Claro presented to the board (board pack, SMM.001.002.2970) and on slide 10 of the presentation titled "FY15/Q4 – Business Update" it stated that "Recent market headwinds are challenging the industry. Competitors recently announced disappointing performance and restructuring initiatives. Sims is not immune, a restructuring of Corporate Functions, ANZ Overhead and NAM Central operations will be required during FY16".

Further, the Applicant relies on the following particulars after 21 August 2015:

- (iv) On 21 September 2015, Mr Claro sent an email titled "New Norm - CONFIDENTIAL" to senior SGM management (SMM.001.041.2221) in which he stated that "[t]he continuous aggravating challenges of our industry, the descending trends of commodity prices and its impact on the global economy are suggesting that a "New Norm" is being established for our business conditions going forward" [sic].
- (v) On 17 November 2015, Mr Brunsdon sent an email to Mr Scott (SMM.001.607.4726) in which he stated that "given the strategy was built on the assumption that we were at the bottom of the market we may have to adjust the [FY18] target to take account of the diminished volumes".
- (vi) On 18 November 2015, Mr Scott sent an email to an analyst at Colonial First State (SMM.001.607.4872) that "10% volume growth was always there [in the Five Year Plan]. It was in the original presentations. It assumes 2% pa system growth in line with GDP. Volumes have instead dropped 25% in the past 2 ½ years. Without self-help we would be losing significant money (like most other in the industry)".
- (vii) In December 2015, Mr Claro and Mr Brunsdon presented to the board of directors regarding the market reaction in November 2015. The presentation titled "Board Conference FY15 H1 Results Discussions" [sic] (SMM.001.002.4289) at slide 18 stated that:
  - (A) SGM's "[m]anagement did not realize the degree of "invulnerability" attributed to Sims by the investment community. To both, gross margins and volumes"; and
  - (B) "Management wrongly assumed that at a shortfall in FY16 – H1 profit was to be expected by shareholders as a natural consequence of the severity of the most recent market deterioration".

## F.1. Steel Oversupply Information

49. By 21 August 2015, there was an oversupply of steel on the world market that would continue for at least the near term.

### Particulars

*Particulars will be provided separately.*

- (i) SGM December 2014 board report (SMM.001.001.7159) (page 19), “As we look into 2015... China will continue to produce over a 100 million tons more steel than they will be able to consume and the Russians will be in need of foreign currency and therefore will probably increase steel exports. These and other factors will create many challenges for Sims”.
- (ii) SGM February 2015 board report (SMM.001.987.3010) (page 11), “Chinese steel exports are continuing at an annualized pace of 120 million MT and are continuing the rebate on elemental additive steel exports. This along with other macro indicators does not lead to a conclusion that the increases in pricing we have enjoyed will continue. We should anticipate that prices will test new lows once the scrap flows returns”.
- (iii) SGM May 2015 board report (SMM.001.082.7956) (page 18), “[a]s we look forward into fiscal 16, there appears to be some bearish times ahead. Chinese semi-finished and finished steel exports are climbing monthly (even as Iron Ore increased and steel prices decreased) which will adversely affect our consumer base”.
- (iv) SGM June 2015 board report (SMM.001.160.4065) (page 18), “[f]iscal 16 will be a difficult year as the world struggles with overcapacity and production of almost all commodities as well as anemic GDP growth. For instance, the Chinese PMI Flash for July was at a 15 week low and the Shanghai Exchange continues its volatile gyrations. The USD is likely to remain strong which is also bearish for commodities. Our basic challenge will be to drive costs down to cope with reduced arisings as well as finding homes for our products in a shrinking demand climate, and additional sources of revenue. So far this year we have seen Ferrous prices drop to levels we have not experienced since the GFC. While we may experience a “dead cat bounce”, nevertheless, there is no reason to think that prices will rebound even to Q4 '15 levels anytime soon”.
- (v) FY15 Full Year Report, (p 7), “Slowing internal demand in China has pushed exported steel into the markets of many of our traditional customers”.
- (vi) 21 August 2015 Announcement (p 3), “external market conditions for metals recycling remain as difficult as we have experienced in many years. Slowing internal demand in China has pushed exported steel into the markets of many of our traditional customers. China’s recent currency devaluation seems likely to only add more pressure on export markets.”

- (vii) On 22 June 2015, an SGM competitor, Steel Dynamics, Inc. (STLD) reported that “improved second quarter 2015 shipments will be offset by unexpected metal margin compression, driven by steel imports remaining much higher than originally anticipated, resulting in average quarterly steel prices decreasing more than average quarterly scrap prices” (STLD Q2 2015 Earnings Guidance 22 June 2015, page 1; see also SEC Filing Form 10-Q 30 June 2015).
- (viii) On 21 July 2015, STLD stated that “the current unimpressive global growth expectation combined with severe worldwide steel production overcapacity will continue to be an industry headwind to steel pricing” (STLD Q2 2015 Earnings Call 21 July 2015, page 8).
- (ix) On 6 August 2015, a major producer of coal and iron ore, Rio Tinto Limited (Rio Tinto), stated that “China’s crude steel production run-rate has been around 815 million tonnes per annum so far in 2015, a slight decrease from 2014 levels. Domestic consumption of steel in China is maturing, but taking into account risking exports of steel as well as steel-containing goods, we continue to project long term growth in Chinese crude steel production, reaching around 1 billion tonnes towards 2030” (Rio Tinto 2015 Half Year Results, page 4).

50. By 21 August 2015, 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 market price for ferrous scrap metal (**Scrap Price**), the market price for iron ore and the market price for coking coal); and, or alternatively
- (b) reduce the demand for ferrous scrap and the Scrap Price;

(separately and together, **Steel Oversupply Information**).

### Particulars

~~Particulars will be provided separately.~~

- (i) Steel is produced by processing pig iron (primarily produced by smelting iron ore with coking coal) and/or smelting heavy melting steel (a ferrous scrap metal product). Accordingly, the global supply and demand for steel is a factor in the price for the raw materials required to produce it.
- (ii) Steel exported from China was the primary cause of worldwide steel oversupply. China produced its steel primarily from iron ore rather than recycled scrap. To be competitive, the price of scrap plus the cost of conversion into steel billet must be equal to, or lower than, the price of steel billet (Credit Suisse, SGM “AGM could downgrade guidance”, 6 November 2015).
- (iii) FY15 Full Year Report, (p 7), “Lower commodity prices have subdued scrap metal collection rates”.

- (iv) FY15 Annual Report (p 7), “Slowing internal demand in China has pushed exported steel into the markets of many of our traditional customers, reducing both ferrous scrap demand and prices”.
- (v) In a presentation to analysts accompanying the 15 August 2015 Presentation, Mr Claro stated, “Near-Term external conditions are still challenging. High Levels of steel exports from China have reduced demand for many of our customers.”
- (vi) On 22 June 2015, STLD reported that “improved second quarter 2015 shipments will be offset by unexpected metal margin compression, driven by steel imports remaining much higher than originally anticipated, resulting in average quarterly steel prices decreasing more than average quarterly scrap prices” (STLD Q2 2015 Earnings Guidance 22 June 2015, page 1; see also SEC Filing Form 10-Q 30 June 2015).

## **F.2. Iron Ore Price Information**

51. By 21 August 2015, the global market price of iron ore was depressed by abundant supply and would continue to be depressed for at least the near term (**Iron Ore Price Information**).

### **Particulars**

*Particulars will be provided separately.*

- (i) Iron ore futures contracts as of 21 August 2015 were trading on the basis of a decline in the price of iron in the order of 11.8% by 12 November 2015 (Iron Ore 62% Fe CFR China (TSI) Futures (Continuous Contract) as at 21 August 2015).
- (ii) Iron ore futures contracts as of 12 November 2015 were trading on the basis of a decline in the price of iron order of 5.5% by 12 February 2016 (Iron Ore 62% Fe CFR China (TSI) Futures (Continuous Contract) as at 21 November 2015).
- (iii) On 20 July 2015, STLD stated that “the strength of the U.S. dollar and world iron ore supply support lower pig iron prices for the foreseeable future” (STLD Q2 2015 Results 20 July 2015, page 2).
- (iv) In an email sent by “Argus Alerts” to Mr Schmiedel dated 24 July 2015, it is stated: “London, 24 July (Argus) – US bank Goldman Sachs forecast a drop in iron ore prices in the first two quarters of next year in its latest iron ore forecasts published this week. It forecast an average iron ore price of \$46/t in January-March 2016 and \$44/t in April-June 2016, down from a projected \$49/t in the third quarter of 2015 and \$48/t in the fourth quarter. A slight recovery in Chinese steel demand is likely in the second half of 2015 – with a focus on infrastructure over property for the construction industry making it the largest end market for steel, the bank said. But it does not expect this to support iron ore prices, as it

expects the market to remain heavily oversupplied as a result of the new capacity being brought online by iron ore producers” (SMM.001.128.1750).

- (v) On 6 August 2015, Rio Tinto stated that:
- (A) “New iron ore supply totaling 110 million tones is expected to enter the market in 2015. Despite efforts across the industry to cut costs, recent low prices will continue to put pressure on marginal supply” (Rio Tinto 2015 Half Year Results, page 4); and
  - (B) “The Iron Ore group’s underlying earnings of \$2,099 in 2015 first half were down 55 per cent of \$2,584 million down on 2014 first half. This was driven by the impact of lower prices, down 46 per cent, on average, half on half...” (Rio Tinto 2015 Half Year Results, page 13).

### F.3. Coking Coal Price Information

52. By 21 August 2015, the global supply of coking coal was increasing and as a result the market price was steady or falling and was likely to continue to trend that for at least the near term (**Coal Price Information**).

#### Particulars

~~Particulars will be provided separately.~~

- (i) Australian Department of Industry, Innovation and Science – Metallurgical Coal (High quality) data for June Quarter 2015 – December Quarter 2015.
- (ii) World Bank Commodity Price Data (“The Pink Sheet”) (for Australian, Columbian and South African coal August 2015 – February 2016)
- (iii) In a report titled “Argus Steel Feedstocks” which was attached to an email sent by “Argus Alerts” to Mr Schmiedel dated 30 June 2015, it is stated: “The Australian federal government has revised down its average hard coking coal price for 2015 and 2016, as well as cutting its export expectations. The Office of the Chief Economist (OCE), which has taken over the forecasting role of the Bureau of Resource and Energy Economics, cut its 2015 average hard coking coal price to \$103.60/t fob Australia from a previous forecast of \$116/t made three months ago. It now predicts coking coal prices will fall further to \$100.70/t in 2016, down from a previous assessment that they would be at \$114/t in 2015-dollar terms until 2020. The OCE forecasts the coking coal market to remain in oversupply for the next 18 months at least, as demand growth remains sluggish and announced mining capacity cuts take time to materialise” (p 7, SMM.001.122.9120).
- (iv) In an email sent by Lyndon Fagan (JP Morgan) to Todd Scott (SGM’s Vice President, Investor Relations) dated 30 June 2015, it is stated: “We’ve marked our coking coal price deck to the new market reality and

have lowered our 2015 and 2016 price forecasts by 4.4% and 5.5% respectively to \$104/t for both years” (SMM.001.603.8084).

- (v) In a quarterly market report titled “Quarterly commodities review mixed for steel companies” dated 2 July 2015 from Deutsche Bank which was sent by Mr Scott to Mr Claro and senior SGM management on 7 July 2015, it is stated: “Our coking coal forecasts have declined based on DB’s quarterly commodities review. We now expect Premium and Standard Hard Coking Coal prices to decline by -14.9% yoy for both in FY16 (vs. our previous forecasts for a decline of -6.1% yoy for both). Hence, our forecasts for Premium and Standard Hard Coking Coal prices have declined by -9.4% each in FY16 to US\$99/t and US\$86.5/t respectively (compared to our previous forecasts of US\$109.3/t and US\$95.5/t respectively in FY16)” (p 8, SMM.001.001.2901).
- (vi) In an email sent by “Morningstar Institutional Research Team” to Mr Scott dated 10 July 2015, it is stated: “all ASX-listed companies with material exposure to iron ore and coking coal under review. We expect to lower our near and long-term iron ore and coking coal forecasts by approximately USD 5 to USD 10 per tonne to account for currency movements and the general reduction in mining costs, which have been greater than expected” (p 2, SMM.001.606.2488).
- (vii) On 6 August 2015, Rio Tinto stated that “Thermal and metallurgical coal prices have continued along the declining trend they followed through most of 2014. Global supply continues to expand rather than contract as widespread cost reduction initiatives across the industry have resulted in additional tonnes being placed into the market. In both products the influence of Chinese supply has also been key, resulting in reduced net-import levels.” (Rio Tinto 2015 Half Year Results, pages 4 to 5).
- (viii) In an email sent by “Argus Alerts” to Mr Schmiedel dated 17 August 2015, it is stated: “[t]he yuan weakness is likely to have only a muted impact on iron ore prices but is likely to move coking coal prices downward... coking coal is significantly exposed and the currency movements could accelerate the existing trend for Chinese steelmakers to increasingly rely on domestic supplies” (SMM.001.129.3566).

#### **F.4. New Normal Information**

- 53. By 21 August 2015, the global commodity outlook was in a period of cyclical weakness and would only recover at a rate characterised by slower commodity demand growth for the foreseeable future (**New Normal Information**).

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) On 9 June 2015, Mr Claro updated the board of SGM and noted that “the drop in volumes is affecting FY15 and the budget for FY16”. He “expected a structural downturn with little likelihood, in his opinion, of volumes recovering in FY16 and perhaps not in FY17” (board meeting minutes, SMM.003.111.7475).
- (ii) In an email sent by Keith Chau (JP Morgan) to Mr Knechtel dated 14 June 2015, it is stated: “The materials sector in Asia continues to face headwinds as China transitions toward its ‘new normal’. Demand for early-cycle commodities is falling, exposing significant industry overcapacity” (p 2, SMM.001.038.5960).
- (iii) In an email sent by Keith Chau (JP Morgan) to Mr Knechtel dated 29 June 2015, it is stated: “As an early cycle commodity, steel has been hard hit by China’s economic transition into its ‘New Normal’ shifting away from investment-driven growth. Chinese steel demand hit a peak of 765mt in 2013, before falling 3.4% to 739mt in 2014. Assuming a mild recovery in 2H15, our Asia Metals & Mining team forecasts demand to fall 4% in 2015 to 709mt with a further fall of 2% in 2016 to 695mt before stabilising in 2017. Looking ahead, near-term lead indicators remain uninspiring, while in the medium-term, the team forecasts utilisation rates to remain below 70% through to 2020” (p 2, SMM.001.038.7971).
- (iv) On 30 June 2015, an SGM competitor, Schnitzer Steel Industries, Inc. (**Schnitzer**) stated that in in “the face of rapid price declines and lower demand, we are taking substantial steps to improve our profitability.... As we look ahead, we are not relying on the market to drive improved performance... [we have] taken this opportunity to reset our productivity targets and commercial strategies in order to operate efficiently at lower levels”. (Schnitzer Q3 2015 Earnings Call 30 June 2015, page 6 and investor slides).
- (v) On 6 August 2015, Rio Tinto stated:
- “As expected at the start of the year, the macro environment and commodity outlook facing the mining industry has been challenging. Commodity prices are under pressure, in some cases falling to levels not seen since 2009 in the aftermath of the Global Financial Crisis. Moderating Chinese demand, continued supply growth and downward shifts in industry cost curves are all contributing to weaker markets. Global macroeconomic risks have also added to short-term volatility, and China’s equity market correction and Greece’s debt negotiations have resulted in concerns of financial markets impacting commodity trading.
- As with all cycles, we expect the current cyclical weakness will pass as global economic growth picks up and commodity markets rebalance. However, the recovery will be characterised by slower commodity demand growth compared to the past decade and a likely continued focus on productivity and costs over capital project development. This is the industry’s ‘New Normal’, in which producers at the lower end of the cost curve will maintain their competitive advantage, but higher cost producers will be exposed.” (Rio Tinto 2015 Half Year Results, page 4).

- (vi) In a presentation to analysts accompanying the 15 August 2015 Presentation, Mr Claro stated in relation to the prospect of prolonged low price environment for scrap, "If you look at that you'll see that there is a lag in terms of material collection and flow in relation to price. When the prices go down, volumes go down almost proportionately and at the same time. But if prices remain low it takes a while for the whole collection mechanism of the industry to realize that this is going to be the new norm and then it starts going back again and flowing naturally again."

Further, the Applicant relies on the following particulars after 21 August 2015:

- (vii) On 9 September 2015, Mr Claro stated in an email to board members and senior management of SGM regarding the market conditions for the scrap industry, "Terrible isn't it? Our last sales are around 215 but won't be sustainable. We are dropping buy prices again today to keep the budgeted margin but volume is frozen and will get worse... the fiscal year start is worse than last year q3. I need a vacation!!!" (Email 9 September 2015, SMM.001.040.7574)
- (viii) On 15 September 2015, in response to a question from Mr Sato, a board member of SGM, as to whether this was the new industry 'norm', Mr Claro replied at the board meeting that "it possibly was, and we need to adapt very quickly to what we are facing" (Minutes of board meeting, 15 September 2015, p 1, SMM.001.001.6264).

## **F.5. Iron and Scrap Price Parity Information**

54. At all material times, there was 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 (being the market price for iron ore in addition to the market price for coking coal adjusted for the cost of production and freight) (**Iron and Scrap Price Parity Information**).

### **Particulars**

Particulars will be provided separately.

- (i) The primary global market for processed ferrous scrap metal are steel manufacturers. Steel is produced by processing pig iron (primarily produced by smelting iron ore with coking coal) and/or smelting heavy melting steel (a ferrous scrap metal product). Because the same product may be produced by alternative means and because the market for steel is global, there is a parity relationship between the raw materials required by each process (see Credit Suisse, "SGM: FY15 preview: Market may have bottomed; reports on 21 Aug", p 11, 14 August 2015)

- (ii) The price correlation of scrap and iron ore between December 2008 and August 2015 was 92% (Deutsche Bank, SGM “AGM: Scrap price declines more negative than we thought”, 12 November 2015).
- (iii) On 13 February 2015, SGM CEO Galdino Claro stated, "In the near term we expect the decline in ferrous scrap prices will have a negative impact on supply, leading to elevated levels of competition. As the price relationship between ferrous scrap and iron ore rebalances we expect the demand from customers and availability of supply will improve. As we ramp up our strategic initiatives in the second half of this year we expect improved operating and commercial efficiencies to be realized, which should assist in mitigating near term commodity market headwinds" (SGM 1H15 result call, 13 February 2015).
- (iv) On 25 June 2015, an SGM competitor, Commercial Metals Company (CMC) stated that “we believe that our key market indicators point toward a strong finish to our fiscal 2015. Based on recent reports and historical trends, we believe that scrap prices are beginning to stabilize. We expect reduced volatility in scrap prices and we also expect scrap prices to more closely correlate with iron ore pricing” (CMC Q3 2015 Earnings Call 25 June 2015, page 5).

#### **F.6. Anomalous Scrap Price Information**

55. On 21 August 2015, 8 September 2015, 12 October 2015 and, or alternatively, 12 November 2015, the Scrap Price was at an anomalous premium to the cost to produce pig iron (being the market price for iron ore in addition to the market price for coking coal adjusted for the cost of production) and, because of the Steel Oversupply Information, Iron Ore Price Information, and/or Coal Price Information, was by reason of the Iron and Scrap Price Parity Information likely to correct down to parity (**Anomalous Scrap Price Information**).

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) The applicant repeats paragraphs 51, 52 and 54.
- (ii) As at 21 August 2015, the Scrap Price was trading at an anomalous US\$50/t premium to iron ore (Credit Suisse, SGM “AGM could downgrade guidance”, 6 November 2015).

## F.7. Scrap Price Intake Profit Information

56. At all material times:

- (a) a reduction in the Scrap Price would have an adverse effect on the volume of scrap metals available for purchase by SGM; and

### Particulars

~~Particulars will be provided separately.~~

- (i) SGM's slide-deck presentation published and lodged with the ASX on or around 13 February 2015, in which it stated (p 16), "Lower ferrous prices will negatively impact both demand and supply for ferrous scrap, as well as elevating competition in the short-term."
- (ii) At SGM's 9-11 June 2015 board meeting, a presentation was made which included slides that stated: "lower scrap prices result in lower intake volume" and "lower ferrous prices tend to lead to lower ferrous volumes" (pages 76-77, SMM.001.002.2970).
- (iii) SGM's Media Release published and lodged with the ASX on or around 21 August 2015 stated: "Low ferrous scrap metal prices have diminished the economic appeal for collection of more marginal material by our suppliers. As a consequence, we have witnessed deterioration in intake volumes, particularly in North America."
- (iv) SGM's Appendix 4E Preliminary final report for the financial year ended 30 June 2014 lodged with the ASX on 21 August 2014 stated (p 9): "Lower commodity prices have subdued scrap metal collection rates...Low ferrous scrap metal prices have diminished the economic appeal for collection of more marginal material by the Company's suppliers. As a consequence, the Company has witnessed deterioration in intake volumes, particularly in North America."
- (v) On 14 August 2015, Credit Suisse commented, "In management's view, scrap flows will be maintained and margins not impacted, despite scrap price declines, and any impact would be only temporary because scrap cannot be stockpiled. In the long term, this may be correct, but in our experience, scrap flows and margins can be severely impacted by scrap price movements." (Credit Suisse, "SGM: FY15 preview: Market may have bottomed; reports on 21 Aug", p 3, 14 August 2015).
- (vi) In a presentation to analysts accompanying the 15 August 2015 Presentation, Mr Claro stated, "current low commodity prices have decreased the level of intake material while at the same time competition is high for what material is available"
- (b) 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,

(together, **Scrap Price Intake Information**).

#### Particulars

~~Particulars will be provided separately.~~

- (i) SGM Annual Report 2015 published and lodged with the ASX on or around 12 October 2015, p 35.
- (ii) Sims' announcement titled "Sims Metal Management Announces Fiscal 2015 Half Year Results" lodged with the ASX and publicly released on 13 February 2015, p 2.

#### F.8. Scrap Price Profit Information

57. At all material times, a decrease in the Scrap Price and, or alternatively, 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 (**Scrap Price Profit Information**).

#### Particulars

~~Particulars will be provided separately.~~

The Applicant repeats the matters pleaded at paragraph 6 and says further:

- (i) On 30 June 2015, an SGM competitor, Schnitzer Steel Industries, Inc. (Schnitzer) stated that due "to the rapid decline in ferrous selling prices in February [2015]... average inventory costs did not decline as quickly as selling prices, which led to an estimated \$14 per ton [sic], or \$13 million, adverse impact" (Schnitzer News Release 30 June 2015, page 1; see also SEC Filing Form 10-Q 30 June 2015).
- (ii) On 14 August 2015, Credit Suisse commented, "SGM's new management team has likely learned a few market lessons from the scrap cycle. Management's ability to influence earnings is limited by their scale of operations and broad macro factors they cannot influence but that have a very material influence on the price of scrap, the supply of scrap, demand for scrap and what margin is potentially available." (Credit Suisse, "SGM: FY15 preview: Market may have bottomed; reports on 21 Aug", p 4, 14 August 2015).
- (iii) On 14 August 2015, Credit Suisse commented, "During the tenure of former CEO, Dan Dienst, who led SGM through the traumatic GFC period, the strategy of foregoing volume to improve margin was trialled, with adverse results. Margins were demonstrated to fall with volumes, with scrap representing perhaps 75% of the cost base while the other 25% of costs was, in the short term, fixed." (Credit Suisse, "SGM: FY15 preview: Market may have bottomed; reports on 21 Aug", p 7, 14 August 2015).

## F.9. Scrap Price Decline Information

58. ~~Because of the:~~

- ~~(a) Steel Oversupply Information;~~
- ~~(b) Iron Ore Price Information;~~
- ~~(c) Coal Price Information;~~
- ~~(d) New Normal Information;~~
- ~~(e) Iron and Scrap Price Parity Information; and~~
- ~~(f) Anomalous Scrap Price Information;~~

By 21 August 2015, the Scrap Price was likely to continue to fall in the remainder of FY16 (**Scrap Price Decline Information**).

### Particulars

~~Particulars will be provided separately.~~

The Applicant repeats the pleadings and particulars at paragraphs 49 to 56 above and says further:

- (i) On 14 August 2015, Credit Suisse commented, “The collapse in the Chinese steel price continues to generally make iron ore derived billet a cheaper re-rolling input than the purchase and conversion of scrap.” (Credit Suisse, “SGM: FY15 preview: Market may have bottomed; reports on 21 Aug”, p 5, 14 August 2015).
- (ii) On 14 August 2015, Credit Suisse commented “Certainly the USD strength, abundance of low cost iron ore, gross Chinese over- production of very low cost, negative margin steel, and now Chinese currency devaluation are not good forward indicators for the scrap market. There is no expectation of a sustained recovery in scrap prices or sign of a recovery in demand.” (Credit Suisse, “SGM: FY15 preview: Market may have bottomed; reports on 21 Aug”, p 5, 14 August 2015).
- (iii) On 21 August 2015, Mr Claro reported to the board of SGM (board meeting minutes, SMM.001.001.6270) that “business conditions remain very challenging. Since the FY16 budget was finalised, ferrous prices have decreased \$35-\$40/t. Non-ferrous prices are also substantially down”.

## **F.10. Non Ferrous Scrap Price Information**

59. By 12 November 2015, the global market price of copper and aluminium was depressed and was likely to continue to trend downwards for at least the near term **(Non Ferrous Scrap Price Information)**.

### **Particulars**

~~Particulars will be provided separately.~~

- (i) As at 12 November 2015, the commodity price of copper and aluminium had been in decline since at least August 2014 (Credit Suisse, SGM "Schnitzer's 1Q16 signals continuing scrap pain", 8 January 2016, figure 4).
- (ii) On 21 August 2015, Mr Claro reported to the board of SGM (board meeting minutes, SMM.001.001.6270) that "business conditions remain very challenging. Since the FY16 budget was finalised, ferrous prices have decreased \$35-\$40/t. Non-ferrous prices are also substantially down".

## **F.10A FY16 Budget Assumption Information**

- 59A. On and from 21 August 2015, SGM's FY16 Guidance Statement was based upon a FY16 budget that assumed a substantially higher Scrap Price than the current Scrap Price (FY16 Budget Assumption Information).

### **Particulars**

In CEO's Report, 21 August 2015 Board Meeting SMM.001.001.6270, Mr Claro stated: "business conditions remain very challenging. Since the FY16 budget was finalised, ferrous prices have decreased \$35-\$40/t. Non-ferrous prices are also substantially down".

## **F.11 Earnings Information**

60. By 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015, SGM was likely to would experience materially reduced earnings in FY16 against FY15 **(Earnings Information)**.

### **Particulars**

~~Particulars will be provided separately.~~

The Applicant repeats the matters pleaded and particularised at paragraphs 48A to 48C and 59A above and says further:

- (i) By reason of the matters pleaded and particularised at paragraphs 49 to 56, global commodity market conditions were unfavourable to the Scrap Price and,

by reason of the Scrap Price Intake Information, the volumes of ferrous scrap available for SGM to purchase and process would be reduced in the near term.

- (ii) As a result of the matters in particular (i) above and the Scrap Price Profit Information, global commodity market conditions foreseeable for FY16 meant SGM's sales volumes would be materially reduced.
- (iii) As a result of the matters in particulars (i) and (ii) above, the Five Year Plan Presentation Information, Five Year Plan Assumption Information and/or the Five Year Plan Inefficacy Information, continued implementation of the Five Year Plan would not be sufficient to increase SGM's earnings year-by-year.
- (iv) Further, by reason of particulars (i) through (iii) above and the FY16 Budget Assumption Information, SGM would deliver materially reduced earnings in FY16 by reason of processing lower volumes and recovering lower prices for ferrous scrap.
- (v) On 21 August 2015, Mr Claro reported to the board of SGM (board meeting minutes, SMM.001.001.6270) that "business conditions remain very challenging. Since the FY16 budget was finalised, ferrous prices have decreased \$35-\$40/t. Non-ferrous prices are also substantially down".

Further, the Applicant relies on the following particulars after 21 August 2015:

- (vi) On 23 October 2015, Mr Claro provided an update to the board (board meeting minutes, SMM.001.001.6278) regarding the preliminary draft results for FY16 Q1 which he considered to be "extremely disappointing, but not surprising given the reduction in volumes to a current financial break-even run rate of 8.5m tonnes in FY16. Further, margins have also deteriorated by approximately \$6/tonne... non-ferrous margins are completely driven by external commodity pricing, and both the Zorba and aluminium decreased".
- (vii) On 10 November 2015, Mr Claro confirmed to the board (board meeting minutes, SMM.001.001.6226) that it was necessary to implement the "resetting plan" due to the "very significant fall in prices... which had resulted in volume contraction" in the market. Mr Claro informed the board that his view was that "this is the new industry norm and we cannot continue with our existing installed capacity and wait for better market conditions".

## F.12 No Reasonable Basis Information

61. Because of the:

- (a) ~~Scrap Price Intake Information;~~
- (b) ~~Scrap Price Profit Information;~~
- (c) ~~Scrap Price Decline Information;~~ and/or
- (d) ~~Earnings Information;~~

On and from 21 August 2015, SGM did not have a reasonable basis for making or maintaining the FY16 Guidance Statement (**No Reasonable Basis Information**).

### Particulars

~~Particulars will be provided separately.~~

The Applicant repeats the matters pleaded and particularised at paragraphs 48A to 48C and 59A to 60 above and says further:

- (i) The reasons given in the 12 November 2015 Trading Update (as set out in paragraph 40) for the Revised FY16 Guidance Statement by 21 August 2015 were the:
  - (A) Scrap Price Intake Information;
  - (B) Scrap Price Profit Information;
  - (C) Steel Oversupply Information;
  - (D) New Normal Information; and
  - (E) Scrap Price Decline Information.
- (ii) It may be reasonably inferred from:
  - (A) the absence of any statement in the 12 November 2015 Trading Update identifying additional reasons to those stated in paragraph 40; and
  - (B) the fact that the 12 November 2015 Trading Update was published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares,

that there were no additional reasons for the Revised FY16 Guidance Statement other than those disclosed in the 12 November 2015 Trading Update.

- (iii) It may be reasonably inferred from the existence of the information identified at particular (ii) above as and from 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015 that SGM did not in fact have a reasonable basis for making the FY16 Guidance Statement.

### **F.13 Further No Reasonable Basis Information**

62. ~~Because of the:~~

- ~~(a) Scrap Price Intake Information;~~
- ~~(b) Scrap Price Profit Information;~~
- ~~(c) Non-Ferrous Scrap Price Information;~~
- ~~(d) Scrap Price Decline Information; and/or~~
- ~~(e) Earnings Information;~~

On and from 12 November 2015, SGM did not have a reasonable basis for making or maintaining the Revised FY16 Guidance Statement (**Further No Reasonable Basis Information**).

#### **Particulars**

~~Particulars will be provided separately.~~

The Applicant repeats the matters pleaded and particularised at paragraphs 48A to 48C and 59A to 60 above and says further:

- (i) The reasons given in the 19 February 2016 Publications (as set out in paragraph 47) for the 1H16 Result were the:
- (A) Scrap Price Intake Information;
  - (B) Scrap Price Profit Information;
  - (C) Steel Oversupply Information;
  - (D) Scrap Price Decline Information; and
  - (E) Non Ferrous Scrap Price Information.
- (ii) It may be reasonably inferred from:

- (A) the absence of any statement in the 19 February 2016 Publications identifying additional reasons to those stated in paragraph 40; and
- (B) the fact that the 19 February 2016 Publications were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.

that there were no additional reasons for the Revised FY16 Guidance Statement other than those disclosed in the 19 February 2016 Publications.

- (iii) It may be reasonably inferred from the existence of the information identified at particular (ii) above as and from 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015 that SGM did not in fact have a reasonable basis for making the Revised FY16 Guidance Statement.

#### **F.14 FY18 EBIT Target Information**

63. Because of the:

- (a) ~~Scrap Price Intake Information;~~
- (b) ~~Scrap Price Profit Information;~~
- (c) ~~Non-Ferrous Scrap Price Information;~~
- (d) ~~Scrap Price Decline Information; and/or~~
- (e) ~~Earnings Information;~~

On and from 21 August 2015, SGM did not have a reasonable basis for making or maintaining the FY18 EBIT Target Statement (FY18 EBIT Target Information).

#### **Particulars**

*Particulars will be provided separately.*

The Applicant repeats the matters pleaded and particularised at paragraphs 48A to 48C and 59A to 60 above and says further:

- (i) External market conditions were likely to continue to depress SGM's sales volumes so as to make the FY18 EBIT Target unrealistic despite any reduction in break-even point by internal initiatives through the Five Year Plan.
- (ii) The reasons given in the 19 February 2016 Publications (as set out in paragraph 47) for the Revised FY18 EBIT Target were the:

- (A) Scrap Price Intake Information;
- (B) Scrap Price Profit Information;
- (C) Steel Oversupply Information;
- (D) Scrap Price Decline Information; and
- (E) Non Ferrous Scrap Price Information.

(iii) It may be reasonably inferred from:

- (A) the absence of any statement in the 19 February 2016 Publications identifying additional reasons to those stated in paragraph 40; and
- (B) the fact that the 19 February 2016 Publications were published to the ASX in circumstances where, by reason of the Continuous Disclosure Obligations, the market would reasonably expect that it contained information that a reasonable person would expect to have a material price on the price or value of SGM Shares.

that there were no additional reasons for the Revised FY16 Guidance Statement other than those disclosed in the 19 February 2016 Publications.

(iv) It may be reasonably inferred from the existence of the information identified at particular (ii) above as and from 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 that SGM did not have a reasonable basis for making the FY18 EBIT Target Statement.

(v) In a presentation to analysts accompanying the 15 August 2015 Presentation, Mr Claro stated:

“If you would come back to – come to me at the end of – or the beginning of 2014, when we put this strategy together and, if you recall, we said the strategy would have a growth component of 10% to get us to where we need to be. And if at that stage if you would asked me, Galdino, would you believe you can deliver that strategy and if you had a crystal ball and tell me with scrap prices that will be a AUD150 lower than what you assume today and volumes that are going to be 30% contracted, I would look at that and say, wow, man, I have doubts now.”

## **G. SGM'S MISLEADING OR DECEPTIVE CONDUCT**

### **G.1. Introduction**

64. SGM's conduct, as pleaded in paragraphs 18 to 18A and 24 to 38, including:

(aa) publishing and lodging with the ASX the 23 July 2014 Publications (including the Five Year Plan Statements) and making the Five Year Plan Representations and not subsequently modifying, qualifying or correcting them;

(a) publishing and lodging with the ASX the August 2015 Statements and FY16 Guidance Statement and making the August 2015 EBIT Representation, August 2015 FY16 Earnings Representation and August 2015 FY18 Earnings Representation and not subsequently modifying, qualifying or correcting them;

(b) publishing and lodging with the ASX the September 2015 Statements and making the September 2015 FY16 Earnings Representation and September 2015 FY18 Earnings Representation and not subsequently modifying, qualifying or correcting them;

(c) publishing and lodging with the ASX the October 2015 Statements and making the October 2015 FY16 Earnings Representation and October 2015 FY18 Earnings Representation and not subsequently modifying, qualifying or correcting them; and

(d) publishing and lodging with the ASX the November 2015 Statements and making the November 2015 EBIT Representation and November 2015 FY18 Earnings Representation and not subsequently modifying, qualifying or correcting them;

was conduct in relation to a financial product (being SGM Shares) within the meaning of s 1041H of the Corporations Act, in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act and in trade or commerce within the meaning of s 18 of the ACL.

#### **G.1A Misleading or deceptive conduct: Five Year Plan Representations**

64A. By reason of the matters pleaded in paragraphs 48A, 48B and, or alternatively, 48C, as and from 23 July 2014, making and maintaining the Five Year Plan Statements and making the Five Year Plan Representations was misleading or deceptive, or likely to mislead or deceive.

64B. Further, or alternatively, by reason of the matters pleaded in paragraphs 48A, 48B and, or alternatively, 48C:

(a) SGM did not have reasonable grounds to believe the matters pleaded in paragraphs 18A(a), 18A(b) and/or 18A(c); and

(b) making and maintaining the Five Year Plan Statements and the Five Year Plan Representations was misleading and deceptive, or likely to mislead or deceive.

64C. By reason of the matters pleaded in paragraphs 64(aa), 64A and/or 64B, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a **Misleading Conduct Contravention**).

## **G.2. Misleading or deceptive conduct: August 2015 EBIT Representation**

65. By reason of the matters pleaded in paragraphs 48A to 48C , 59A, 60 and, or alternatively, 61, as and from 21 August 2015:

(a) SGM did not have reasonable grounds to believe that the underlying EBIT in FY16 would be higher than the Reported FY15 Underlying EBIT Result; and

(b) making and maintaining the August 2015 Statements, FY16 Guidance Statement and August 2015 EBIT Representation was misleading or deceptive, or likely to mislead or deceive.

66. By reason of the matters pleaded in paragraphs 64(a) and 65, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

## **G.3. Misleading or deceptive conduct: August 2015 FY16 Earnings Representation**

67. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 61, as and from 21 August 2015:

(a) SGM did not have reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and

- (b) making and maintaining the August 2015 Statements and August 2015 FY16 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

68. By reason of the matters pleaded in paragraphs 64(a) and 67, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.4. Misleading or deceptive conduct: August 2015 FY18 Earnings Representation**

69. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 63, as and from 21 August 2015:

- (a) SGM did not have reasonable grounds to believe that it would achieve the FY18 EBIT Target notwithstanding external market conditions; and
- (b) making and maintaining the August 2015 Statements, FY18 EBIT Target Statement and August 2015 FY18 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

70. By reason of the matters pleaded in paragraphs 64(a) and 69, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.5. Misleading or deceptive conduct: September 2015 FY16 Earnings Representation**

71. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 61, as and from 8 September 2015:

- (a) SGM did not have reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and
- (b) making and maintaining the September 2015 Statements and September 2015 FY16 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

72. By reason of the matters pleaded in paragraphs 64(b) and 71, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.6. Misleading or deceptive conduct: September 2015 FY18 Earnings Representation**

73. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 63, as and from 8 September 2015:

(a) SGM did not have reasonable grounds to believe that it would achieve the FY18 EBIT Target notwithstanding external market conditions; and

(b) making and maintaining the September 2015 Statements and September 2015 FY18 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

74. By reason of the matters pleaded in paragraphs 64(b) and 73, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.7. Misleading or deceptive conduct: October 2015 FY16 Earnings Representation**

75. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 61, as and from 12 October 2015:

(a) SGM did not have reasonable grounds to believe that the Five Year Plan would continue to deliver improved earnings, including the FY16 Guidance Statement, despite external challenges presented by falling commodity prices and lower volumes; and

(b) making and maintaining the October 2015 Statements and October 2015 FY16 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

76. By reason of the matters pleaded in paragraphs 64(c) and 75, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.8. Misleading or deceptive conduct: October 2015 FY18 Earnings Representation**

77. By reason of the matters pleaded in paragraphs 48A to 48C, 59A to 60 and, or alternatively, 63, as and from 12 October 2015:

(a) SGM did not have reasonable grounds to believe that it would achieve the FY18 EBIT Target notwithstanding external market conditions; and

(b) making and maintaining the October 2015 Statements and October 2015 FY18 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

78. By reason of the matters pleaded in paragraphs 64(c) and 77, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Misleading Conduct Contravention).

**G.9. Misleading or deceptive conduct: November 2015 EBIT Representation**

79. By reason of the matters pleaded in paragraphs 48A to 48C, 60, 62 and, or alternatively, 63, as and from 12 November 2015:

(a) SGM did not have reasonable grounds to believe that its underlying EBIT in FY16 would be around break-even; and

(b) making and maintaining the November 2015 Statements and November 2015 EBIT Representation was misleading or deceptive, or likely to mislead or deceive.

80. By reason of the matters pleaded in paragraphs 64(d) and 79, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a **Further Misleading Conduct Contravention**).

**G.10. Misleading or deceptive conduct: November 2015 FY18 Earnings Representation**

81. By reason of the matters pleaded in paragraphs 48A to 48C, 60, 62 and, or alternatively, 63, and from 12 November 2015:

(a) SGM did not have reasonable grounds to believe that it would achieve the FY18 EBIT Target notwithstanding external market conditions; and

- (b) making and maintaining the November 2015 Statements and November 2015 FY18 Earnings Representation was misleading or deceptive, or likely to mislead or deceive.

82. By reason of the matters pleaded in paragraphs 64(d) and 81, SGM contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the ACL (and thereby engaged in a Further Misleading Conduct Contravention).

#### **H. INFORMATION OF WHICH SGM WAS AWARE**

82A. By 23 July 2014, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Five Year Plan Presentation Information.

##### **Particulars**

SGM was aware of the Five Year Plan Presentation Information because the Five Year Plan was announced in the 23 July 2014 Publications and it may be reasonably inferred that Mr Claro and/or other of SGM's Officers were aware that it comprised only what was announced to the ASX.

82B. By 23 July 2014, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Five Year Plan Assumption Information.

##### **Particulars**

It may be reasonably inferred from the contents of the documents referred to in particulars (i) to (iv) to paragraph 48B that one or more of SGM's Officers was aware of the Five Year Plan Assumption Information prior to 21 August 2015.

82C. By 23 July 2014, 13 February 2015, 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Five Year Plan Inefficacy Information.

##### **Particulars**

(i) SGM was aware of the Five Year Plan Presentation Information and Five Year Plan Assumption Information, from which the Five Year Plan Inefficacy Information could be reasonably inferred.

(ii) SGM was aware of the Five Year Plan Inefficacy Information from time to time because it was contained in, or could be reasonably inferred from, the information in particulars (i) to (vi) to paragraph 48C because it was communicated to one or more of SGM's Officers.

(iii) Further, it may be reasonably inferred from the contents of the documents referred to in particular (vii) to paragraph 48C that one or more of SGM's

Officers was aware of the Five Year Plan Inefficacy Information prior to 12 November 2015.

83. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Steel Oversupply Information.

#### **Particulars**

*Particulars will be provided separately.*

- (i) SGM was actually aware of this information because Mr Claro made the statement referred to in particular (v) of paragraph 50.
- (ii) SGM was actually aware of this information because it published the ASX document referred to in particulars (v) and (vi) of paragraph 49 and particulars (iii) and (iv) of paragraph 50.
- (iii) Further, SGM was aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information identified in particulars (vii) to (ix) of paragraph 49 and particular (vi) of paragraph 50 in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 because it was publicly available and published by significant competitors or sector peers.

84. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Iron Ore Price Information.

#### **Particulars**

*Particulars will be provided separately.*

- (i) SGM was actually aware of this information because information referred to in particulars (i) and (ii) of paragraph 51 was publicly available and important to the nature of the industry in which SGM operated (as pleaded in paragraph 6).
- (ii) Further, SGM was aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information identified in particulars (iii) and (v) of paragraph 51 in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 because it was publicly available and published by significant competitors or sector peers.
- (iii) Further, SGM was aware of this information because it was contained in the email received by Mr Schmiedel identified in particular (iv) of paragraph 51.

85. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Coal Price Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information identified in particulars (i), (ii) and (vii) of paragraph 52 in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 because it was publicly available and published by significant competitors or sector peers.
- (ii) Further, SGM was aware of this information because it was contained in the documents received and communicated by SGM's Officers identified in particulars (iii) to (vi) and (viii) of paragraph 52.

86. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the New Normal Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was actually aware of this information because Mr Claro made the statements referred to in particular (i) and (vi) of paragraph 53.
- (ii) Further, SGM was aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information identified in the particulars (iv) and (v) to paragraph 53 in the course of their duties prior to 21 August 2015 because it was publicly available and published by significant competitors or sector peers.
- (iii) Further, SGM was aware of this information because it was contained in the documents received by SGM's Officers identified in particulars (i) to (iii) and (vii) to (viii) of paragraph 53.

87. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Iron and Scrap Price Parity Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was actually aware of the information because Mr Claro referred to the “the price relationship between ferrous scrap and iron ore” (SGM 1H15 result call, 13 February 2015)) as referred to in particular (iii) of paragraph 54.
- (ii) Alternatively, one or more of SGM’s Officers ought reasonably to have come into possession of the information referred to in:
  - (A) particulars (i) to (ii) of paragraph 54 because it was publicly available and important to the nature of the industry in which SGM operated (as pleaded in paragraph 6); and
  - (B) particular (iv) of paragraph 54 in the course of their duties prior to 21 August 2015 because it was publicly available and published by significant competitors or sector peers.
- (iii) SGM was aware of the Iron and Scrap Price Parity Information because it was contained in the information identified at particulars (i) to (iv) of paragraph 54.

88. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Anomalous Scrap Price Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was aware of the Scrap Price from time to time because one or more of SGM’s Officers ought reasonably to have into possession of that information because it was SGM’s primary product.
- (ii) SGM was aware of the:
  - (A) Iron Ore Price Information;
  - (B) Coal Price Information; and
  - (C) Iron and Scrap Price Parity Information.
- (iii) The Anomalous Scrap Price Information was contained in, or could reasonably be inferred from, the information referred to in particulars (i) to (ii) above and one or more of SGM’s Officers ought reasonably to have into possession of that information in the course of their duties.

89. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Scrap Price Intake Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was actually aware of this information because it published the ASX documents referred to in particulars (i), (iii) and (iv) of paragraph 56(a) and in the particulars to paragraph 56(b), and Mr Claro made the statement referred to in particular (vi) of paragraph 56(a).
- (ii) Further, SGM ought to have been aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information referred to in particular (v) of paragraph 56(a) in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 as it was publicly available and important to the nature of the industry in which SGM operated (as pleaded in paragraph 6).
- (iii) Further, SGM ought to have been aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information referred to in in particular (ii) of paragraph 56(a) of it in the course of their duties prior to 21 August 2015 as it was contained in a Board presentation.

90. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Scrap Price Profit Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM ought to have been aware of the information in particulars (i) to (iii) to paragraph 57 because it was publicly available and one or more of SGM's Officers ought reasonably to have come into possession of it in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015.
- (ii) Further, SGM was aware of the Scrap Price Profit Information because was it SGM's previous CEO had been aware of it, as particularised at (iii) to paragraph 57.

91. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Scrap Price Decline Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was or ought to have been aware of the information because it was aware of the:
  - (A) Steel Oversupply Information;
  - (B) Iron Ore Price Information;

- (C) Coal Price Information;
- (D) New Normal Information;
- (E) Iron and Scrap Price Parity Information;
- (F) Anomalous Scrap Price Information; and
- (G) Statement of Mr Claro to the Board in particular (iii) to paragraph 58,  
from which the Scrap Price Decline Information could be reasonably inferred.

- (ii) Further, SGM ought to have been aware of the Scrap Price Decline Information because the one or more of SGM's Officers ought reasonably to have come into possession of the information identified in particulars (i) and (ii) to paragraph 58 and of it in the course of their duties prior to 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015 as it was publicly available and important to the nature of the industry in which SGM operated (as pleaded in paragraph 6).

92. By 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Non Ferrous Scrap Price Information.

#### **Particulars**

~~Particulars will be provided separately.~~

- (i) SGM was aware of the Non Ferrous Scrap Price Information from time to time because of the information identified in particular (ii) to paragraph 59, and one or more of SGM's Officers ought reasonably to have come into possession of that information in relation to the historical and futures price of aluminium and copper because they were two of SGM's primary products.
- (ii) Further, SGM was aware of this information because one or more of SGM's Officers ought reasonably to have come into possession of the information identified in particular (i) to paragraph 59 in the course of their duties prior to 12 November 2015 because it was publicly available.

- 92A. By 21 August 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the FY16 Budget Assumption Information.

#### **Particulars**

SGM was aware of the FY16 Budget Assumption because was it was contained in or could be reasonable inferred from Mr Claro's statement to the Board at referred to in the particulars to paragraph 59A.

93. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Earnings Information.

## Particulars

~~Particulars will be provided separately.~~

- (i) SGM was aware of the Earnings Information because it could be reasonably inferred from the Scrap Price Decline Information, Scrap Price Intake Information, Five Year Plan Presentation Information, Five Year Plan Assumption Information, Five Year Plan Inefficacy Information and/or FY16 Budget Assumption Information, taken individually and together, of which information SGM was aware.
- (ii) Further, SGM was aware of the:
  - (A) Scrap Price Decline Information,
  - (B) Scrap Price Intake Information; and
  - (C) New Normal Information.
- (iii) By reason of being aware of the information identified in particulars (ii)(A)-(C) above, one or more of SGM's Officers ought to have known that the global commodity market conditions were unfavourable to the Scrap Price and, by reason of the Scrap Price Intake Information, the volumes of ferrous scrap available for SGM to purchase and process would be reduced, and so ought to have been aware of the Earnings Information.
- (iv) Further, by reason of being aware of the information identified in particular (ii)(A)-(C) above, those of SGM's Officers with responsibility for overseeing its budget and forecasting processes and/or the PMO ought to have known that the Five Year Plan would not deliver increased earnings in FY16 against the foreseeable economic conditions, and so ought to have been aware of the Earnings Information.
- (v) Further, by reason of being aware of the information identified in particular (iii) and (iv) above, those of SGM's Officers with responsibility for overseeing its budget and forecasting processes and/or PMO ought to have known that the SGM would deliver materially reduced earnings in FY16 by reason of processing lower volumes and recovering lower prices for ferrous scrap, and so ought to have been aware of the Earnings Information.

94. By 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the No Reasonable Basis Information.

## Particulars

~~Particulars will be provided separately.~~

- (i) SGM ought to have been aware of the reasons given in the 12 November 2015 Trading Update for the Revised FY16 Guidance Statement by 21 August 2015 by reason of it being aware of the:

- (A) Scrap Price Intake Information;
  - (B) Scrap Price Profit Information;
  - (C) Scrap Price Decline Information;
  - (D) Five Year Plan Presentation Information;
  - (E) Five Year Plan Assumption Information;
  - (F) Five Year Plan Inefficacy Information;
  - (G) FY16 Budget Assumption Information; and/or
  - (H) Earnings Information.
- (ii) It may be reasonably inferred from the information identified at particular (i) above that SGM did not in fact have a reasonable basis for making the FY16 Guidance Statement on 21 August 2015.
- (iii) SGM ought to have been aware of the No Reasonable Basis Information because those of SGM's Officers with responsibility for overseeing its budget and forecasting processes ought reasonably have been aware of the information identified at particular (i), and so ought to have been aware of the No Reasonable Basis Information.

95. By 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Further No Reasonable Basis Information.

### **Particulars**

*Particulars will be provided separately.*

- (i) SGM ought to have been aware of the reasons given in the 19 February 2016 February Publications for the 1H16 Result by reason of it being aware of the:
- (A) Scrap Price Intake Information;
  - (B) Scrap Price Profit Information;
  - (C) Five Year Plan Presentation Information;
  - (D) Five Year Plan Assumption Information;
  - (E) Five Year Plan Inefficacy Information; and/or
  - (F) Earnings Information.
- (ii) It may be reasonably inferred from the information identified at particular (i) above that SGM did not in fact have a reasonable basis for making the Revised FY16 Guidance Statement on 12 November 2015.

(iii) SGM ought to have been aware of the Further No Reasonable Basis Information because those of SGM's Officers with responsibility for overseeing its budget and forecasting processes ought reasonably have been aware of the information identified at particular (i), and so ought to have been aware of the Further No Reasonable Basis Information.

96. By 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the FY18 EBIT Target Information.

### Particulars

~~Particulars will be provided separately.~~

(i) SGM was aware of the:

(A) Scrap Price Decline Information;

(B) Scrap Price Intake Information;

(C) Five Year Plan Presentation Information;

(D) Five Year Plan Assumption Information; and

(E) Five Year Plan Inefficacy Information.

(ii) SGM had, or ought to have had, visibility over the implementation of the Five Year Plan because of establishing the PMO which "reports to the Executive Leadership Team under direct supervision of the FCO" and provides "Oversight and management of internal initiatives at the highest level" (paragraphs 26(d) and 31(b) above).

(iii) By reason of being aware of the information identified in particular (i) above, those of SGM's Officers with responsibility for overseeing its budget and forecasting processes and/or PMO ought to have known that the global commodity market conditions were unfavourable to the Scrap Price and, by reason of the Scrap Price Intake Information, the volumes of ferrous scrap available for SGM to purchase and process would be reduced, and so ought to have been aware of the FY18 EBIT Target Information.

(iv) Further, by reason of being aware of the information identified in particular (i) and (ii) above, those of SGM's Officers with responsibility for overseeing its budget and forecasting processes and/or PMO ought to have known that the global commodity market conditions foreseeable for FY16 meant that continued implementation of the Five Year Plan would not be sufficient to increase earnings, and so ought to have been aware of the FY18 EBIT Target Information.

(v) Further or in the alternative, SGM ought to have been aware of the reasons given in the 19 February 2016 February Publications for the Revised FY18 EBIT Target by reason of it being aware of the:

- (A) Scrap Price Intake Information;
  - (B) Scrap Price Profit Information;
  - (C) Steel Oversupply Information;
  - (D) Scrap Price Decline Information; and
  - (E) Non Ferrous Scrap Price Information
- (vi) It may be reasonably inferred from the information identified at particular (v) above that those of SGM's Officers with responsibility for overseeing its budget and forecasting processes and/or PMO ought to have been aware that of the FY18 EBIT Target Information.
- (vii) Further, SGM was ought to have been aware of this information because Mr Claro made the statement referred to in particular (v) of paragraph 63, from which the FY18 EBIT Target Information could be reasonably deduced.

## **I. SGM'S SECTION 1041E CONTRAVENTIONS**

### **I.1A Section 1041E contravention: Five Year Plan Representations**

96A. By causing the Five Year Plan Statements to be published and lodged with the ASX and the Five Year Plan Representations to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.

96B. By reason of the matters pleaded in paragraphs 48A, 48B and, or alternatively, 48C, as and from 23 July 2014, the Five Year Plan Statements and the Five Year Plan Representations were materially misleading, and paragraphs 64A and/or 64B are repeated.

96C. The Five Year Plan Statements and the Five Year Plan Representations were likely to:

- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
- (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.

- (ii) *The content of the Five Year Plan Statements and the Five Year Plan Representations was positive information about the financial performance and financial position of SGM.*

96D. By reason of the matters pleaded in paragraphs 82A, 82B and, or alternatively 82C, as at 23 July 2014, 13 February 2015, 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM ought reasonably have known that the Five Year Plan Statements and the Five Year Plan Representations were materially misleading.

96E. By reason of the matters pleaded in paragraphs 96A to 96D, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a **Section 1041E Contravention**).

#### **I.1. Section 1041E contravention: August 2015 EBIT Representation**

97. By causing the FY16 Guidance Statement to be published and lodged with the ASX and the August 2015 EBIT Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.

98. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 61, as and from 21 August 2015, the FY16 Guidance Statement and the August 2015 EBIT Representation were materially misleading, and paragraph 65 is repeated.

99. The FY16 Guidance Statement and the August 2015 EBIT Representation were likely to:

- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
- (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

(iii) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*

(iv) *The content of the FY16 Guidance Statement and the August 2015 EBIT Representation was positive information about the financial performance and financial position of SGM.*

100. By reason of the matters pleaded in paragraphs 90, 91, 92, 92A, 93 and, or alternatively 94, as at 21 August 2015, SGM ought reasonably have known that the FY16 Guidance Statement and the August 2015 EBIT Representation were materially misleading.
101. By reason of the matters pleaded in paragraphs 97 to 100, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

## **I.2. Section 1041E contravention: August 2015 FY16 Earnings Representation**

102. By causing the August 2015 Statements to be published and lodged with the ASX and the August 2015 FY16 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
103. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 61, as and from 21 August 2015, the August 2015 Statements and the August 2015 FY16 Earnings Representation were materially misleading, and paragraph 67 is repeated.
104. The August 2015 Statements and the August 2015 FY16 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
  - (ii) *The content of the August 2015 Statements and the August 2015 FY16 Earnings Representation was positive information about the financial performance and financial position of SGM.*
105. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 92A, 93 and, or alternatively, 94, as at 21 August 2015, SGM ought reasonably have known that the August 2015 Statements and the August 2015 FY16 Earnings Representation were materially misleading.
106. By reason of the matters pleaded in paragraphs 102 to 105, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

### **I.3. Section 1041E contravention: August 2015 FY18 Earnings Representation**

107. By causing the August 2015 Statements to be published and lodged with the ASX and the August 2015 FY18 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
108. By reason of the matters pleaded in paragraph 60 and, or alternatively, 63, as and from 21 August 2015, the August 2015 Statements and the August 2015 FY18 Earnings Representation were materially misleading, and paragraph 69 is repeated.
109. The August 2015 Statements and the August 2015 FY18 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
  - (ii) *The content of the August 2015 Statements and the August 2015 FY18 Earnings Representation was positive information about the financial performance and financial position of SGM.*
110. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 94 and, or alternatively, 95, as at 21 August 2015, SGM ought reasonably have known that the August 2015 Statements and the August 2015 FY18 Earnings Representation were materially misleading.
111. By reason of the matters pleaded in paragraphs 107 to 110, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

### **I.4. Section 1041E contravention: September 2015 FY16 Earnings Representation**

112. By causing the September 2015 Statements to be published and lodged with the ASX and the September 2015 FY16 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.

113. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 61, as and from 8 September 2015, the September 2015 Statements and the September 2015 FY16 Earnings Representation were materially misleading, and paragraph 71 is repeated.
114. The September 2015 Statements and the September 2015 FY16 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
  - (ii) *The content of the September 2015 Statements and the September 2015 FY16 Earnings Representation was positive information about the financial performance and financial position of SGM.*
115. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 92A, 93 and, or alternatively, 94, as at 8 September 2015, SGM ought reasonably have known that the September 2015 Statements and the September 2015 FY16 Earnings Representation were materially misleading.
116. By reason of the matters pleaded in paragraphs 112 to 115, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

#### **I.5. Section 1041E contravention: September 2015 FY18 Earnings Representation**

117. By causing the September 2015 Statements to be published and lodged with the ASX and the September 2015 FY18 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
118. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 63, as and from 8 September 2015, the September 2015 Statements and the September 2015 FY18 Earnings Representation were materially misleading, and paragraph 73 is repeated.

119. The September 2015 Statements and the September 2015 FY18 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
  - (ii) *The content of the September 2015 Statements and the September 2015 FY18 Earnings Representation was positive information about the financial performance and financial position of SGM.*
120. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 94 and, or alternatively 95, as at 8 September 2015, SGM ought reasonably have known that the September 2015 Statements and the September 2015 FY18 Earnings Representation were materially misleading.
121. By reason of the matters pleaded in paragraphs 117 to 120, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

#### **I.6. Section 1041E contravention: October 2015 FY16 Earnings Representation**

122. By causing the October 2015 Statements to be published and lodged with the ASX and the October 2015 FY16 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
123. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 61, as and from 12 October 2015, the October 2015 Statements and the October 2015 FY16 Earnings Representation were materially misleading, and paragraph 75 is repeated.
124. The October 2015 Statements and the October 2015 FY16 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and

- (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
- (ii) *The content of the October 2015 Statements and the October 2015 FY16 Earnings Representation was positive information about the financial performance and financial position of SGM.*

- 125. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 92A, 93 and, or alternatively 94, as at 12 October 2015, SGM ought reasonably have known that the October 2015 Statements and the October 2015 FY16 Earnings Representation were materially misleading.
- 126. By reason of the matters pleaded in paragraphs 122 to 125, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

#### **I.7. Section 1041E contravention: October 2015 FY18 Earnings Representation**

- 127. By causing the October 2015 Statements to be published and lodged with the ASX and the October 2015 FY18 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
- 128. By reason of the matters pleaded in paragraphs 60 and, or alternatively, 63, as and from 12 October 2015, the October 2015 Statements and the October 2015 FY18 Earnings Representation were materially misleading, and paragraph 77 is repeated.
- 129. The October 2015 Statements and the October 2015 FY18 Earnings Representation were likely to:
  - (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*

(ii) *The content of the October 2015 Statements and the October 2015 FY18 Earnings Representation was positive information about the financial performance and financial position of SGM.*

130. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 90, 91, 92, 94 and, or alternatively 95 as at 12 October 2015, SGM ought reasonably have known that the October 2015 Statements and the October 2015 FY18 Earnings Representation were materially misleading.

131. By reason of the matters pleaded in paragraphs 127 to 130, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Section 1041E Contravention).

#### **I.8. Section 1041E contravention: November 2015 EBIT Representation**

132. By causing the Revised FY16 Guidance Statement to be published and lodged with the ASX and the November 2015 EBIT Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.

133. By reason of the matters pleaded in paragraphs 60, 62 and, or alternatively, 63 as and from 12 November 2015, the November 2015 Statements and the November 2015 EBIT Representation were materially misleading, and paragraph 79 is repeated.

134. The Revised FY16 Guidance Statement and the November 2015 EBIT Representation were likely to:

- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
- (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

#### **Particulars**

(i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*

(ii) *The content of the Revised Guidance Statement and the November 2015 EBIT Representation was information about the future financial performance and financial position of SGM issued in connection with a forecast EBIT downgrade in circumstances where the information was likely to be relied upon.*

135. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 95 and ~~95~~96, as at 12 November 2015, SGM ought reasonably have known that the November 2015 Statements and the November 2015 EBIT Representation were materially misleading.
136. By reason of the matters pleaded in paragraphs 132 to 135, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a **Further Section 1041E Contravention**).

**I.9. Section 1041E contravention: November 2015 FY18 Earnings Representation**

137. By causing the November 2015 Statements to be published and lodged with the ASX and the November 2015 FY18 Earnings Representation to be made, SGM disseminated information to the market of actual or potential investors in SGM Shares.
138. By reason of the matters pleaded in paragraphs 60, and, or alternatively, 63 as and from 12 November 2015, the November 2015 Statements and the November 2015 FY18 Earnings Representation were materially misleading, and paragraph 81 is repeated
139. The November 2015 Statements and the November 2015 FY18 Earnings Representation were likely to:
- (a) induce, directly or indirectly, persons in Australia (including the Applicant and Group Members) to acquire SGM Shares; and
  - (b) further, or alternatively, to have the effect of increasing or maintaining the price for SGM Shares on the ASX.

**Particulars**

- (i) *Investors or potential investors were likely to rely upon official ASX announcements in deciding whether to invest in SGM Shares.*
  - (ii) *The content of the November 2015 Statements and the November 2015 FY18 Earnings Representation was positive information about the financial performance and financial position of SGM.*
140. By reason of the matters pleaded in paragraphs 82A, 82B, 82C, 95 and ~~95~~96, as at 12 November 2015, SGM ought reasonably have known that the November 2015 Statements and the November 2015 FY18 Earnings Representation were materially misleading.

141. By reason of the matters pleaded in paragraphs 137 to 140, SGM contravened s 1041E of the Corporations Act (and thereby engaged in a Further Section 1041E Contravention).

## **J. SGM'S CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **J.1A Five Year Plan Inefficacy Information**

141A. By reason of the matters pleaded in paragraph 82C, by 23 July 2014, 13 February 2015, 21 August 2015, 8 September 2015, 12 October 2015, or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Five Year Plan Inefficacy Information.

141B. As at and from 23 July 2014, the Five Year Plan Inefficacy Information was information that a reasonable person would expect to have a material effect on the price or value of SGM Shares within the meaning of ASX Listing Rules 3.1 and s 674(2)(c)(ii) of the Corporations Act.

141C. By reason of SGM's Continuous Disclosure Obligations and the matters pleaded in paragraphs 141A and 141B, on and from the time it became aware of it, SGM became obliged immediately to tell the ASX the Five Year Plan Inefficacy Information.

141D. SGM did not inform the ASX of the Five Year Plan Inefficacy Information immediately on becoming aware of it, or at all in the Claim Period, and the market of actual and potential investors in SGM Shares did not become aware of that information until 19 February 2016.

141E. By reason of the matters pleaded in paragraphs 141A to 141D, SGM contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (and thereby engaged in a **Continuous Disclosure Contravention**).

### **J.1. Earnings Information**

142. By reason of the matters pleaded in paragraph 93, by 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Earnings Information.

143. As at and from 21 August 2015, the Earnings Information was information that a reasonable person would expect to have a material effect on the price or value of SGM

Shares within the meaning of ASX Listing Rules 3.1 and s 674(2)(c)(ii) of the Corporations Act.

144. By reason of SGM's Continuous Disclosure Obligations and the matters pleaded in paragraphs 142 and 143, on and from the time it became aware of it, SGM became obliged immediately to tell the ASX the Earnings Information.
145. SGM did not inform the ASX of the Earnings Information immediately on becoming aware of it, or at all in the Claim Period, and the market of actual and potential investors in SGM Shares did not become aware of that information until 12 November 2015.
146. By reason of the matters pleaded in paragraphs 142 to 145, SGM contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (and thereby engaged in a Continuous Disclosure Contravention).

## **J.2. No Reasonable Basis Information**

147. By reason of the matters pleaded in paragraph 94, by 21 August 2015, 8 September 2015 or, alternatively, 12 October 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the No Reasonable Basis Information.
148. As at and from 21 August 2015, 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 within the meaning of ASX Listing Rules 3.1 and s 674(2)(c)(ii) of the Corporations Act.
149. By reason of SGM's Continuous Disclosure Obligations and the matters pleaded in paragraphs 147 and 148 on and from the time it became aware of it, SGM became obliged immediately to tell the ASX the No Reasonable Basis Information.
150. SGM did not inform the ASX of the No Reasonable Basis Information immediately on becoming aware of it, or at all in the Claim Period, and the market of actual and potential investors in SGM Shares did not become aware of that information until 12 November 2015.
151. By reason of the matters pleaded in paragraphs 147 to 150, SGM contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (and thereby engaged in a Continuous Disclosure Contravention).

### **J.3. Further No Reasonable Basis Information**

152. By reason of the matters pleaded in paragraph 95, from 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the Further No Reasonable Basis Information.
153. As at and from 12 November 2015, 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 within the meaning of ASX Listing Rules 3.1 and s 674(2)(c)(ii) of the Corporations Act.
154. By reason of SGM's Continuous Disclosure Obligations and the matters pleaded in paragraphs 152 and 153 on and from 12 November 2015, SGM became obliged immediately to tell the ASX the No Reasonable Basis Information.
155. SGM did not inform the ASX of the No Reasonable Basis Information immediately on 12 November 2015, or at all in the Claim Period, and the market of actual and potential investors in SGM Shares did not become aware of that information until 19 February 2016.
156. By reason of the matters pleaded in paragraphs 152 to 155, SGM contravened ASX Listing Rule 3.1 and s 674(w) of the Corporations Act (and thereby engaged in a **Further Continuous Disclosure Contravention** ).

### **J.4. FY18 EBIT Target Information**

157. By reason of the matters pleaded in paragraph 96, by 21 August 2015, 8 September 2015, 12 October 2015 or, alternatively, 12 November 2015, SGM was aware (within the meaning of ASX Listing Rule 19.12) of the FY18 EBIT Target Information.
158. As at and from 21 August 2015, 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 within the meaning of ASX Listing Rules 3.1 and s 674(2)(c)(ii) of the Corporations Act.
159. By reason of SGM's Continuous Disclosure Obligations and the matters pleaded in paragraphs 157 and 158 on and from the time it became aware of it, SGM became obliged immediately to tell the ASX the FY18 EBIT Target Information.

160. SGM did not inform the ASX of the No Reasonable Basis Information immediately on becoming aware of it, or at all in the Claim Period, and the market of actual and potential investors in SGM Shares did not become aware of that information until 19 February 2016.
161. By reason of the matters pleaded in paragraphs 157 to 160, SGM contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act (and thereby engaged in a Continuous Disclosure Contravention, or, in the alternative, a Further Continuous Disclosure Contravention if it became aware of the information on 12 November 2015).

## **K. CONTRAVENING CONDUCT CAUSED LOSS**

### **K.1. Market-based causation**

162. The Applicant and Group Members acquired SGM Shares in a market of investors or potential investors in SGM Shares:
- (a) operated by the ASX;
  - (b) regulated by, *inter alia*, s 674(2) and 1041H of the Corporations Act and ASX Listing Rule 3.1 and 4.3A, s 12DA of the ASIC Act and s 4 of the ACL;
  - (c) where the price or value of SGM Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1, and by the conduct by SGM alleged in his statement of claim to be in contravention of section 12DA of the ASIC Act and section 4 of the ACL;
  - (d) where misleading or deceptive conduct had occurred, namely the conduct the subject of the Misleading Conduct Contraventions or Further Misleading Conduct Contraventions, and the dissemination of the information the subject of the Section 1041E Contraventions or Further Section 1041E Contraventions, such conduct or information being of the kind that a reasonable person would expect to have a material effect on the price or value of SGM Shares, in that if they had not been made no investors or potential investors in SGM Shares would have been in a position to read or rely upon them;
  - (e) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect

on the price or value of SGM Shares (~~names~~ namely the information the subject of the Continuous Disclosure Contraventions or Further Continuous Disclosure Contraventions (or any of them)); and

- (f) in which during the Claim Period, each or a combination of any of the Misleading Conduct Contraventions, Further Misleading Conduct Contraventions, the Section 1041E Contraventions, Further Section 1041E Contraventions, the Continuous Disclosure Contraventions and/or Further Continuous Disclosure Contraventions (each being a **Market Contravention**), caused or materially contributed to the market price of SGM Shares being substantially greater than their true value and/or the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced, as pleaded in this statement of claim.

### Particulars

*The extent to which the Market Contraventions caused the market price for SGM Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Claim Period is a matter for evidence, particulars or which will be served immediately following the Applicant filing expert evidence in the proceeding.*

163. The decline in the price of SGM Shares pleaded in paragraphs 42 and 48:

- (a) was caused or materially contributed to by:
- (i) the market's reaction to the information communicated to the market of actual and potential investors in SGM Shares by the 12 November 2015 Trading Update and/or the 19 February 2016 Publications, in the context of what had been communicated to that market prior to those announcements; and/or
  - (ii) the Market Contraventions; and
- (b) would, to the extent they removed inflation from the price of SGM Shares, have occurred, or substantially occurred, earlier if:
- (i) SGM had not engaged in the Misleading Conduct Contraventions, Further Misleading Conduct Contraventions, Section 1041E Contraventions and/or Further Section 1041E Contraventions (or any of them); and/or

- (ii) SGM had disclosed to the market of actual and potential investors in SGM Shares the information that was not disclosed by reason of the Continuous Disclosure Contraventions or Further Continuous Disclosure Contraventions.

### **Particulars**

*The extent to which the inflation was removed from the price of SGM Shares, and would have been removed at earlier points in time during the Claim Period is a matter for evidence, particulars or which will be served immediately following the Applicant filing expert evidence in the proceeding.*

## **K.2. Reliance**

164. Further or in the alternative to paragraph 163, in the decision to acquire an interest in SGM Shares:

- (a) the Applicant and some Group Members would not have acquired interests in the SGM Shares if they had known the information the subject of the Continuous Disclosure Contraventions or Further Continuous Disclosure Contraventions; and/or

- (b) some Group Members relied directly on some or all of:

(ia) the Five Year Plan Statements and Five Year Plan Representations;

- (i) the August 2015 Statements, FY16 Guidance Statement, FY18 EBIT Target Statement, August 2015 EBIT Representation, August 2015 FY16 Earnings Representation and August 2015 FY18 Earnings Representation;

- (ii) the September 2015 Statements, September 2015 FY16 Earnings Representation and September 2015 FY18 Earnings Representation;

- (iii) the October 2015 Statements, October 2015 FY16 Earnings Representation and October 2015 FY18 Earnings Representation; and

- (iv) the Revised FY16 Guidance Statement, November 2015 Statements, November 2015 FY16 Earnings Representation and November 2015 FY18 Earnings Representation.

### Particulars

*The identity of all those Group Members which or who relied directly on any or all of the contravening representations and statements are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant takes detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

165. Further or in the alternative to paragraphs 162 to 164, one or more of the Market Contraventions materially contributed to the decision of the Applicant and some Group Members to purchase SGM Shares at the prevailing market price during the ~~Relevant Period~~ Claim Period and/or to retain SGM Shares during the ~~Relevant Period~~ Claim Period.

### Particulars

*The Applicant repeats the particulars to paragraph 164 above.*

### **K.3. Loss or damage suffered by the Applicant and Group Members**

166. By reason of the matters pleaded in paragraphs 162, 163, 164 and/or 165, the Applicant and the Group Members have suffered loss and damage in relation to their interest in SGM Shares by and resulting from the Market Contraventions.

### Particulars

- (i) *The loss suffered by the Applicant will be calculated by reference to:*
- (A) *the difference between the price at which SGM Shares were acquired by the Applicant during the ~~Relevant Period~~ Claim Period and the true value of that interest; or*
  - (B) *the difference between the price at which the Applicant acquired an interest in SGM Shares and the amount left in hand; or*
  - (C) *alternatively, the days during the Claim Period where the traded price of SGM Shares fell as a result of the disclosure information which had*

*not previously been disclosed because of the Market Contraventions, and the quantum of that fall; or*

*(D) alternatively, the days after the Claim Period where the traded price of SGM Shares fell as a result of the disclosure information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall; or*

*(E) alternatively, the difference between the price at which SGM Shares were acquired by the Applicant and the price left in hand.*

*(ii) Further particulars in relation to the Applicant's losses will be provided after the service of evidence in chief.*

167. Group Members have suffered loss and damage in relation to their interest in SGM Shares by and resulting from the Market Contraventions pleaded above (or any one or combination of those contraventions).

#### **Particulars**

*The loss suffered by Group Members will also be calculated in accordance with the particulars subjoined to paragraph 166 above. Particulars in relation to Group Members' losses will be provided following opt out and:*

*(i) service of the applicant's expert evidence in support of an order for aggregate damages in respect of Group Member loss and damage pursuant to sub-ss 33Z(1)(e) and/or (f) of the FCAA; or, alternatively*

*(ii) the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

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This pleading was prepared by Ding Pan of William Roberts Lawyers and Alexander H Edwards of counsel, and settled by William Edwards of counsel.

**Certificate of lawyer**

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

Date: 15 July 2020



Per

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Signed by Bill Petrovski  
Lawyer for the Applicant