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The Board of Directors  
iSignthis Ltd  
456 Victoria Parade  
East Melbourne VIC 3002

16 July 2020

## **ISX: Independent Expert Review of Continuous Disclosure Policy and Processes**

### **Background**

This letter sets out the results of our independent expert review of the disclosure policy and processes of iSignthis Ltd (ACN 075 419 715) (**ISX**) in accordance with the ASX directions issued to ISX on 1 May 2020 (**ASX Directions**) and with the scoping document that we have agreed with ISX (**Agreed Scope**).

Among other requirements, the ASX Directions included the following direction from ASX to ISX:

*In accordance with Listing Rule 18.8(l), ASX directs ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with Listing Rule 3.1 and to release to the market the findings of, and any changes ISX proposes to make to its compliance policies and processes in response to, the review. The review should also assess each contract that ISX has entered into since 1 January 2018 (other than the Key Contracts) to determine whether or not a reasonable person would have expected information about the contract to affect the price or value of ISX's shares and, if so, whether ISX has disclosed the matters set out in section 4.15 of GN 8 in relation to that contract. To the extent it hasn't, ISX will be expected to make corrective disclosure and, if it does not, ASX will give a further direction under Listing Rules 18.8(a) and (b) that ISX do so.*

The "**Key Contracts**" referred to in the ASX Directions have the same meaning as in the ASX Statement of Reasons dated 13 March 2020 and released by ASX to the market on 30 April 2020.

### **Purpose**

In accordance with the ASX Directions and the Agreed Scope, the purpose of this letter is to:

- identify any deficiencies in the ISX form of Continuous Disclosure Policy and the processes adopted by ISX having regard to best practice of ASX300 companies and the applicable regulatory requirements and recommendations for such policies; and
- in respect of contracts entered into by ISX with customers since 1 January 2018 (other than the Key Contracts) make an assessment of whether or not, in our opinion, a reasonable person would have expected information about the contract to affect the price or value of ISX's shares, and if so whether ISX made appropriate disclosure in that regard, having regard to the requirements of section 4.15 of ASX Guidance Note 8.

This letter also includes the assumptions and qualifications to which our review is subject, having regard to information provided to us by ISX and the extent of our role and expertise.

## Executive Summary and Recommendations

### 1. Summary of scope of review

1.1 In accordance with the ASX Direction and the Agreed Scope we have reviewed for the period from 1 January 2018 until May 2020:

- (a) ISX's Board minutes and papers (**Board minutes and papers**);
- (b) all 15 "Fintech" contracts entered into with customers of ISX (**Fintech Contracts**);
- (c) data regarding all "Processing" contracts entered into by ISX with customers, including a full customer list, historic processing volumes as disclosed by customers at application, service type and historical annual revenue generated under each contract during the relevant period and revenue for Q1 FY2021 (noting ISX has a financial year end of 31 December);
- (d) a sample set of 16 regulated services "Processing" contracts (either payment or electronic money services) entered into over the relevant time period (based on representations made to us by ISX that all such contracts are in substantially the same form, other than as to fees, and the level of actual fees to be derived under the relevant contract is usually not immediately apparent or ascertainable until some time after the customer 'goes live'), comprised of:
  - (i) 6 eMoney account Processing contracts; and
  - (ii) 10 payment facilitation & identity services Processing contracts,
 (the **Processing Contracts**) (together, the Processing Contracts and Fintech Contracts are the **Contracts**);
- (e) ISX's price sensitive announcements and other announcements made by ISX, in each case, regarding contractual arrangements only in the period from 1 January 2018 until 29 June 2020 (other than in respect of the Key Contracts) (**ASX Announcements**); and
- (f) ISX's continuous disclosure policy, which ISX has advised us has been in place for the duration of the relevant period (ie. since 1 January 2018) (**Policy**).

1.2 We have also conducted interviews with members of ISX's Board and senior management to assess ISX's practices with respect to compliance with its continuous disclosure obligations.

### 2. Summary of findings

2.1 Based on our review in accordance with the Agreed Scope, we did not identify any contract entered into by ISX with customers since 1 January 2018 that has not been disclosed and that, in our opinion, was of such a nature that a reasonable person would have expected information about the contract to affect the price or value of ISX's shares. In accordance with the ASX Direction and the Agreed Scope, we did not consider the Key Contracts.

2.2 Our review identified that there are a number of areas in which improvements are recommended in respect of ISX's approach to disclosure of potentially price sensitive information, in respect of the following matters:

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- (a) processes in respect of identification and approval of matters that require disclosure in accordance with ASX Listing Rule 3.1, to ensure that there is consistency in disclosure of contracts;
- (b) determination of the appropriate time for release of price sensitive announcements, particularly in relation to entry into material contracts; and
- (c) approach to disclosure of the terms of material contracts, to ensure that announcements of material contracts comply with ASX's guidance in Guidance Note 8.

2.3 While our review of the Policy found that it is largely compliant with the Regulatory Recommendations (as defined below) and best practice of ASX 300 companies (based on our review of the continuous disclosure policies of five ASX 300 companies, we did identify certain areas in which the Policy does not fully comply with one or more of the Regulatory Recommendations or is not consistent with common practice of ASX 300 companies, as follows:

- (a) clear delineation of the roles and responsibilities of the Board and employees in respect of ISX's disclosure obligations and processes for the review and approval of market announcements. In particular, the Policy does not address the role of the Board in ensuring compliance by ISX with its continuous disclosure obligations, and approval of announcements. In addition, the Policy does not detail ISX's processes for reviewing and authorising market announcements. However, we understand from ISX management that as a matter of practice, ISX's processes involve at least the Managing Director, the Company Secretary and Chairman reviewing each announcement, with the Board providing input on all strategic and material announcements, and automatically receiving copies of all announcements disclosed on the ASX Market Announcements Platform;
- (b) the Policy does not expressly require advance publication of new and substantive investor presentations, however we understand from ISX management that this occurs as a matter of practice;
- (c) the Policy does not clearly highlight the significance of confidentiality, or stipulate or cross refer to ISX's communications policy, however we understand from ISX management that confidentiality is sought to be maintained as a matter of practice; and
- (d) ISX's processes with respect to analyst briefings and shareholder queries. In particular, the Policy does not contemplate a review process following briefings or investor discussions, or require provision of presentation materials in advance to disclosure officers to ensure no price sensitive information is, or has been, disclosed in any such meetings. In addition, the Policy does not clearly stipulate how ISX spokespersons should respond to unexpected questions that arise in such briefings or discussions. However, we understand from ISX management that as a matter of practice, ISX spokespersons decline to respond to queries that extend beyond the presentation materials.

We acknowledge that ISX was included in the ASX 300 Index for only a short time in 2019 before trading in its shares was suspended by ASX.

Further detail in respect of each of the above matters is set out in the detailed section of our report.

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In this report, "**Regulatory Recommendations**" means:

- (e) ASX Guidance Note 8;
- (f) ASX Corporate Governance Council Corporate Governance Principles & Recommendations (3rd edition);
- (g) ASX Corporate Governance Council Corporate Governance Principles & Recommendations (4th edition), which applied to ISX on and from 1 January 2020; and
- (h) ASIC Regulatory Guide 62.

### 3. Recommendations

3.1 Based on the findings of our review in accordance with the Agreed Scope, we provide the following recommendations:

- (a) ISX consider formalising a continuous disclosure committee which comprised of the Chief Executive Officer, the Non-Executive Chairman and the Company Secretary (for example) and which meets as needed to discuss matters for potential disclosure before those matters are then referred to the Board for decision;
- (b) ISX continue to access further external advice more frequently to ensure greater observance of ASXs guidance on key disclosure matters, including in responding to queries from, and dealings with, ASX;
- (c) the ISX Board and members of senior management continue to access further external advice in relation to its continuous disclosure obligations , including in respect of:
  - (i) identifying when a contract or matter may be sufficiently material so as to require disclosure for the purposes of ASX Listing Rule 3.1;
  - (ii) the timing of announcement of material contracts in accordance with ASX Listing Rule 3.1;
- (d) future announcements made by ISX in respect of entry into material contracts should more clearly articulate the significance of the contract to ISX and should state the term of the contract;
- (e) ISX amend its policy and approach to disclosure of material contracts such that, where a contract is identified as being strategically important (such that disclosure is required under ASX Listing Rule 3.1), ISX immediately release an announcement following execution of the contract (rather than at the point of integration or where ISX begins to earn revenue under the contract, which is its current practice). We further recommend that the announcement of entry into a strategically significant contract should clearly disclose any conditions, uncertainty or other contingencies in respect of the contract that must be satisfied or resolved before revenue can be generated under the contract;
- (f) to the extent that ISX is currently party to any contract that it considers to be material from a strategic (or other non-revenue related) perspective that has not

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yet been announced, ISX announce the terms of the contract(s) immediately, in an announcement that complies with paragraph 4.15 of ASX Listing Rule 3.1. We acknowledge that ISX has informed us that, as at 3 July 2020, no such contracts exist;

- (g) ISX improve its processes with respect to negotiation and execution of contracts that allow it to comply with its continuous disclosure obligations, particularly in respect of announcement of entry into material contracts where the counterparty is a foreign entity, or the contract is governed by foreign law and there is uncertainty regarding the validity of electronic execution;
- (h) in respect of the shareholder requisition referred to in ISX's announcement on 12 June 2020, if ISX considers that the shareholder requisition is a valid requisition, ISX immediately release a copy of that requisition (or a summary of its terms) to the market, in accordance with the requirements of ASX Listing Rule 3.17A; and
- (i) ISX consider and implement our recommended changes to its Policy, to address those matters referred to in section 2.3 above (as set out in more detail in the detailed section of our report).

#### **End of Executive Summary and Recommendations**

Clayton Utz  
16 July 2020

## Detailed Report

### Board minutes and papers

#### 4. Background and scope of review

4.1 In accordance with the ASX Direction and the Agreed Scope (as set out in Attachment 1) we have reviewed ISX's Board minutes and papers in the period from 1 January 2018 until May 2020, as set out in Attachment 2 (**Board minutes and papers**).

4.2 Set out below in section 5 are our findings in respect of our review of the Board minutes and papers and our recommendations arising from that review.

#### 5. Review of Board minutes and papers - findings and recommendations

5.1 Based on our review of ISX's Board minutes and papers, we identified the following practices adopted by ISX in respect of continuous disclosure matters:

(a) *Continuous disclosure as a standing agenda item*

Consideration of continuous disclosure matters is a standing agenda item at each Board meeting, which is consistent with what we consider to be standard market practice for an ASX-listed entity.

The minutes and supporting Board papers are brief, which is not inconsistent with common market practice for ASX-listed entities, however, we understand from our discussions with management that when potentially material matters are identified for potential disclosure in accordance with ISX's continuous disclosure obligations, robust discussion at Board meetings occurs.

We also understand from our discussions with management that the Board is kept informed regarding and is provided with the opportunity to discuss with management, material developments, for example, in relation to matters associated with the ongoing discussions with Visa and material contracts.

(b) *Approval of material contracts*

We understand from our discussions with management that the Board is provided with copies of material announcements for review and comment prior to release to the market (see section 11.3(a)).

We also understand from our discussions with management that:

- (i) as is common practice for ASX-listed entities with smaller management teams, significant responsibility for identifying matters which may require disclosure pursuant to ISX's continuous disclosure obligations (including in respect of entry into new contracts by ISX) rests primarily with the Chief Executive Officer of ISX, and the Board relies on his judgement to bring potential disclosure issues to the attention of the Board; and
- (ii) consideration of these matters is a standing agenda item at each Board meeting.

**Recommendation:** We recommend that consideration be given to formalising a continuous disclosure committee which is comprised of the Chief Executive Officer, the Non-Executive Chair and the Company Secretary and which meets as needed to discuss matters for potential disclosure before those matters are then referred to the Board for decision.

**Recommendation:** We also recommend that ISX continue to access external advice more frequently to ensure greater observance of ASX's guidance on key disclosure matters, including in responding to queries from, and dealings with, ASX.

## “Fintech” and “Processing” contracts

### 6. Background and scope of review

6.1 In accordance with the ASX Direction and the Agreed Scope we have reviewed the:

- (a) Fintech Contracts;
- (b) data regarding all “Processing” Contracts entered into by ISX with customers in the period from 1 January 2018 until May 2020, including a full customer list, historic processing volumes as disclosed by customers at application, service type and historical annual revenue generated under each contract during the relevant period and revenue for Q1 FY2021 (noting ISX has a financial year end of 31 December); and
- (c) the Processing Contracts.

6.2 Set out below in section 7 are our findings in respect of our review of the Contracts and our recommendations arising from that review.

### 7. Review of Contracts and data regarding Processing Contracts - findings

7.1 Based on our review of the Contracts, the data regarding the Processing Contracts and our discussions with management, we understand as follows:

- (a) at the time of entry into these contracts, it is not possible to reliably forecast likely revenue to be received by ISX under these contracts, given that they are volume-driven;
- (b) ISX has processes in place to identify sudden and material increases in volumes being processed by ISX under the contracts (and therefore the potential for an increase in fees to be earned by ISX under the contracts), and to raise queries with the relevant merchant in relation to the increase;
- (c) it is not currently possible for ISX to establish reliable assumptions on which ISX could forecast revenue that is likely to be generated under specific types of contracts, to then allow ISX to accurately assess whether a contract may be material on the basis of anticipated revenue at the time of entry into the relevant contract;
- (d) ISX also considers the strategic importance of contracts in assessing its disclosure obligations; and

- (e) ISX has amended its prior practice of announcing all contracts, consistent with ASX's guidance that an entity should not use an announcement under ASX Listing Rule 3.1 to publish material that is really promotional in nature, as opposed to being information that a reasonable person would expect to have a material effect on the price or value of its securities.
- 7.2 Our review of the Contracts and the data provided did not indicate that any of those Contracts reviewed may be material. As noted below at section 9, we identified a number of announcements of specific contracts, which management indicated had been announced on the basis of the strategic importance of those contracts (for example, Windsor Brokers, Management Financial Group and Currency One SA).
- 7.3 We consider that ISX has appropriately formed the view that in respect of contracts which:
- (a) it is not possible to reliably forecast revenue that is likely to be generated (such that materiality of the contract can't be ascertained on the basis of revenue contributions); and
- (b) are not otherwise strategically important,

disclosure at the time of entry into those contracts could be potentially misleading and is not required. We also consider it appropriate that ISX has in place processes to identify increases in revenue earned under a contract, to enable it to consider whether an agreement may subsequently become material from a revenue perspective (such that an announcement may be required under ASX Listing Rule 3.1). We consider that the general approach taken by ISX here is appropriate, and is consistent with ASX guidance.

***Recommendation: Refer to our recommendations below at section 9 in respect of ISX's practices regarding announcement of material contracts.***

## ASX Announcements

### 8. Background and scope of review

- 8.1 In accordance with the ASX Direction and the Agreed Scope we have reviewed ISX's ASX Announcements (as set out in Attachment 3).
- 8.2 Set out below in section 9 are our findings in respect of our review of the ASX Announcements and our recommendations arising from that review.

### 9. Review of ASX Announcements - findings and recommendations

- 9.1 Based on our review of the ASX Announcements and our discussions with management, it appears that ISX's practices regarding disclosure of entry into contracts has evolved over time, as set out above in section 7.
- 9.2 Our review of the ASX Announcements regarding contractual arrangements, and responses provided by ISX to our queries in respect of certain ASX Announcements, identified a number of potential non-compliances, as follows:
- (a) *Identification of material information and deficiencies in announcements*

Our review of the ASX Announcements and our correspondence with management highlighted certain inconsistencies as to the application of ASX Listing Rule 3.1.

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We understand that, in considering the materiality of a particular contract, ISX appropriately considers materiality from both:

- (i) a quantitative perspective, having regard to the revenue expected to be generated from a particular contract; and
- (ii) a qualitative perspective, having regard to the strategic importance of a particular contract.

As noted in section 7 above, based on our review of the Contracts, we did not identify any Contracts that appeared to be material based on revenue and that have not been disclosed. However, our review process identified potential inconsistencies in the identification by ISX of the basis on which contracts may require disclosure under ASX Listing Rule 3.1 and the way in which material information regarding contracts is disclosed.

Visa disclosures

ISX's correspondence with ASX as released to the market by ASX on 25 May 2020 notes ISX's view that the Visa principal membership is not material and ASX Listing Rule 3.1 does not apply.

However, based on information provided to us by ISX, we understand as follows:

- (i) at the time of entry into the contract with Visa, the Visa principal membership was considered strategically important by ISX and was disclosed to the market at that time;
- (ii) at the time of the initial suspension, the suspension was not considered by ISX to be material on the basis that:
  - A. the suspension was not anticipated to last for an extended period;
  - B. the Visa relationship was no longer considered to be material (either on the basis of revenue contributions or on the basis of its strategic importance);
  - C. following the initial suspension, ISX continued to (and continues to) process transactions with Visa; and
  - D. termination of the contract with Visa was considered by ISX to be an unlikely outcome for a period of time following the initial suspension;
- (iii) ISX subsequently determined that, as a consequence of delays by Visa in responding to ISX's correspondence around the suspension, primarily due to COVID-19, it was prudent to make an announcement in respect of the suspension, given the time that had elapsed since the initial suspension and the fact that it may lead to a material event (being the termination of the Visa arrangement). ISX then provided the update on the suspension in the Appendix 4C lodged on 29 April 2020;

- (iv) ISX was withholding, based on legal advice, the potential termination (not the suspension itself) from the market in reliance on ASX Listing Rule 3.1A; and
- (v) ISX sought to release a letter to its shareholders on 24 May 2020 via the ASX Market Announcements Platform regarding the status of the Visa relationship, including the expected timing for termination of the contract. We understand from ISX that this letter was not initially approved for release by the ASX Market Announcements Platform. However, we note that the letter was subsequently included in the correspondence released by ASX on 25 May 2020.

Based on information provided to us and that is publicly available, we are unable to identify when the fact of the suspension was made publicly available on Visa's website (noting that the date referred to in the correspondence with ASX released on 25 May 2020 post-dates ISX's Appendix 4C (in which ISX referred to the suspension)).

#### Materiality of the suspension

In all the circumstances, we have formed the view that a decision as to whether the suspension of the Visa arrangement was of itself material required the ISX Board to make a judgement call, having regard to a range of circumstances at that time (as noted above at section (i) to (v)).

A conservative approach, given the surrounding circumstances, would have been to disclose the fact of the suspension in the context of ISX confirming its views that the Visa arrangement was no longer considered strategically material (together with any other disclosures considered appropriate at that time).

However, based on the information available to us, we are unable to conclude that the decision taken by ISX to not announce the Visa suspension at the time of the initial suspension constituted a breach of its continuous disclosure obligations.

#### Disclosure of the suspension

As noted above, ISX announced the fact of the suspension in its Appendix 4C on 29 April 2020 on the basis that it had formed the view that the suspension subsequently became material (as it could lead to a material event, being termination of the Visa arrangement).

We consider that the disclosure in the Appendix 4C in these circumstances was deficient. In particular, if the fact of the suspension was announced on the basis that ISX considered it to be potentially material information, the announcement did not fully disclose potentially material information. In particular, we consider that the disclosure should have included the following:

- (i) additional information regarding the potential impact of the suspension; and
- (ii) if the suspension was considered to be material at the time of announcement, a statement that ISX would continue to update the market in relation to material developments in respect of the ongoing

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discussions with Visa, or in respect of alternative arrangements that could be made by ISX.

We note that the correspondence between ASX and ISX, and the letter to shareholders dated 24 May 2020 in respect of the Visa arrangements that was released to the market on 25 May 2020 provides a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final.

***Recommendation: We recommend that ISX continue to access further external advice to assist its employees, senior management and Directors in enhancing their understanding of ISX's continuous disclosure obligations in respect of identifying when a contract or matter may be sufficiently material so as to require disclosure for the purposes of ASX Listing Rule 3.1, and the appropriate form of that disclosure.***

*Failure to disclose key terms*

In addition, we identified that a significant number of announcements in respect of specific contracts entered into:

- (i) did not clearly state the significance of the contract to ISX, although in many cases this could be implied from the announcement; and
- (ii) did not disclose the term of the contract (noting that, based on our review of the Contracts, we understand that most agreements have an initial term of 1-2 years and automatically renew until terminated).

***Recommendation: We recommend that future announcements should more clearly articulate the significance of the contract to ISX and should state the term of the contract.***

- (b) *Delays in releasing announcements*

*Delay between execution of a material contract and announcement of that contract*

Our review identified a number of instances where the entry by ISX into a contract with a specific counterparty was announced on the basis of the strategic importance of the contract to ISX, rather than on the basis of expected revenue.

In a number of those instances, we identified that there was a delay between execution of the contract and release by ISX of an announcement to the market. For example:

- (i) On 25 February 2019, ISX announced that "*Windsor Brokers...has now gone live on the ISXPay® unified platform*". However, no announcement was made at the time of entry into the contract.

Management have informed us that ISX have formed the view that it will only announce strategically important contracts once integration has commenced (being the point at which ISX begins to earn revenue under the relevant contract), which was the approach adopted in respect of the Windsor Brokers announcement.

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We understand that ISX is of the view that it would be premature and potentially misleading to disclose a contract, even if strategically important, before integration has commenced as that contract may not ultimately deliver material revenue for ISX (because the counterparty determines when and how much of its revenue is directed via ISX).

However, we consider this approach to disclosure of strategically important contracts to be inconsistent with the requirements of ASX Listing Rule 3.1. We consider that, if an agreement is considered to be sufficiently material to require disclosure for the purposes of ASX Listing Rule 3.1 on the basis of its strategic importance, the agreement should be announced on execution of the contract (not at some later time).

We understand that ISX is considering amending the structure of its contracts to include a condition precedent such that the contract does not formally commence until the first transaction is processed under the contract. This will assist ISX in announcing contracts that are strategically important immediately on execution of the contract, together with clear disclosure in the announcement of any such conditions or contingencies to be satisfied before revenue is likely to be generated under the contract.

***Recommendation: In respect of future announcements, we recommend that ISX amend its policy and approach to disclosure of material contracts such that, where a contract is identified as being strategically important (such that disclosure is required under ASX Listing Rule 3.1), ISX immediately release an announcement following execution of the contract (rather than at the point of integration or where ISX begins to earn revenue under the contract). Any such announcement should clearly disclose any conditions, uncertainty or other contingencies in respect of the contract that must be satisfied or resolved before revenue can be generated under the contract.***

***Recommendation: To the extent that ISX is party to any contract that it considers to be material from a strategic (or other non-revenue related) perspective that has not yet been announced, ISX announce the terms of the contract(s) immediately, in an announcement that complies with paragraph 4.15 of ASX Listing Rule 3.1. ISX has informed us that, as at 3 July 2020, no such contracts exist.***

- (ii) On 17 December 2019, ISX announced that it had "finalized licensing and support agreements with...Management Financial Group and Currency One SA", under the announcement titled "Probanx contracts further customers for Core Banking Services". However, these contracts were entered into on 26 November 2019 and 4 December 2019 respectively. Management of ISX informed us that this delay was due to ISX waiting for original counterparts of these contracts, given there was uncertainty as to the validity of the use of electronic signatures (due to the counterparties being foreign companies, and the contracts being governed by foreign law).

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**Recommendation:** *Given these contracts were governed by foreign law, and the counterparties were located in foreign jurisdictions, we are unable to comment on the validity of the use of electronic signatures. However, we would recommend that in future, ISX improve its processes with respect to negotiation and execution of contracts that allow it to comply with its continuous disclosure obligations, particularly in respect of announcement of entry into material contracts. For example, if ISX's policy is to require original signed copies of the customers counterpart before it considers there to be an enforceable contract, ISX should only countersign and exchange the contract once it has received the original counterpart. Alternatively, we recommend that ISX obtain advice in the relevant governing law jurisdictions as to the validity of electronic signatures (to allow ISX to immediately announce entry into contracts that are signed and exchanged electronically).*

Delay in announcement of shareholder requisition

While the Agreed Scope focused on ISX's ASX Announcements with respect to contractual arrangements, we also identified deficiencies in ISX's approach to disclosure of the shareholder requisition received by ISX under section 249N of the Corporations Act. In particular, there was a delay beyond 2 business days of releasing the requisition to the market, and we consider that ISX failed to comply with the disclosure requirements of ASX Listing Rule 3.17A. While ISX provided a draft of the Notice of AGM which included resolutions proposed in accordance with shareholder requisitions, this did not meet the disclosure requirements of ASX Listing Rule 3.17A.

**Recommendation:** *If ISX considers that the shareholder requisition is a valid requisition, ISX immediately release a copy of that requisition (or a summary of its terms) to the market, in accordance with the requirements of ASX Listing Rule 3.17A.*

**Recommendation:** *We also recommend that ISX seek further external advice to assist its employees, senior management and Directors in strengthening their understanding of ISX's continuous disclosure obligations in accordance with the ASX Listing Rules.*

## Continuous Disclosure Policy Review

10. **Background and scope of review**
- 10.1 In accordance with the ASX Direction and the Agreed Scope we have reviewed ISX's Policy:
- (a) for compliance with:
- (i) ASX Guidance Note 8 (**ASX GN 8**);
- (ii) ASX Corporate Governance Council Corporate Governance Principles & Recommendations (3rd edition) (**3rd Edition Principles & Recommendations**);

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- (iii) ASX Corporate Governance Council Corporate Governance Principles & Recommendations (4th edition), which applied to ISX on and from 1 January 2020 (**4th Edition Principles & Recommendations**); and
- (iv) ASIC Regulatory Guide 62 (**ASIC RG 62**),  
**(Regulatory Recommendations)**; and
- (b) against the continuous disclosure policies of five ASX 300 companies (**Sample Policies**).
- 10.2 We have also conducted interviews with members of ISX's Board and senior management to assess ISX's practices with respect to compliance with its continuous disclosure obligations.
- 10.3 Set out below in section 11 are our findings in respect of our review of the Policy and our recommendations arising from that review.
11. **Review of Policy - findings and recommendations**
- 11.1 Overall, subject to the matters noted below, the Policy is largely compliant with the Regulatory Recommendations and best practice of ASX 300 companies (based on our review of the Sample Policies). While the Policy was comparatively brief when compared to the Sample Policies, most of the key issues identified in the Regulatory Recommendations are covered (in summary form). We also acknowledge that ISX was included in the ASX 300 Index for only a short time in 2019 before trading in its shares was suspended by ASX.
- 11.2 We identified that there are certain areas in which the Policy does not fully comply with one or more of the Regulatory Recommendations or is inconsistent with common practice of ASX 300 companies (based on our review of the Sample Policies), noting that certain Regulatory Recommendations (in the 4th Edition Principles & Recommendations) only came into effect in respect of ISX on and from 1 January 2020.
- 11.3 Those areas in which we consider the Policy could be improved are summarised below and we would strongly recommend that the changes be made to align with Regulatory Requirements or common approach under the Sample Policies (as applicable):
- (a) *Clear delineation of responsibility in relation to announcements to be approved by the Board and management (ASX GN 8; Sample Policies)*
- By recommending that a continuous disclosure policy include a delineation of responsibility for authorising announcements as between the Board and management of a company, the Regulatory Recommendations assume that there will be certain matters requiring approval by the Board. Similarly, each of the Sample Policies reviewed contemplate varying levels of Board oversight, but at a minimum, require the Board of the relevant company to approve announcements regarding significant matters.
- The Policy delegates all responsibility for determining what information requires disclosure and the process for making disclosure to the Managing Director and Company Secretary of ISX (designated as "disclosure officers") (sections 1.1, 1.4 and 1.6). However, the Policy does not contemplate approval of any announcements by the Board of ISX (even significant announcements).

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Based on our discussions with management, we understand that the Board receives copies of, and is provided with an opportunity to comment on, all material announcements prior to release as a matter of practice.

**Recommendation: We recommend that the Policy be amended to formalise the Board's existing practice of approving announcements regarding significant matters, and incorporate contingency processes in the event that the Board is unable to approve an announcement in accordance with ISX's continuous disclosure obligations.**

- (b) *Outline roles and responsibilities of directors, officers and employees in complying with the entity's disclosure obligations (3rd and 4th edition Principles & Recommendations; Sample Policies)*

The 3rd and 4th edition Principles & Recommendations suggest that a disclosure policy should outline the roles and responsibilities of directors, officers and employees in complying with the entity's disclosure obligations. Each of the Sample Policies briefly but clearly sets out these roles and responsibilities.

The Policy sets out the responsibilities of disclosure officers, and obliges employees to notify the disclosure officers of potentially price sensitive information (sections 1.1, 1.6 and 1.4). However, the Policy does not set out the role of the Board.

**Recommendation: Refer to our comments and recommended changes at section 11.3(a) regarding the role of the Board in approving significant announcements.**

**Recommendation: We also recommend that the Policy be formalised to make clear that the obligation to notify disclosure officers of matters potentially requiring disclosure extends to Non-Executive Directors (as well as employees), which we understand from ISX management reflects the current practice of ISX.**

We also understand from our discussions with management that:

- (i) as is common practice in listed companies with smaller management teams, significant responsibility for identifying matters which may require disclosure pursuant to ISX's continuous disclosure obligations (including in respect of entry into new contracts by ISX) rests with the Chief Executive Officer of ISX;
- (ii) consideration of these matters is a standing agenda item at each Board meeting.

**Recommendation: Refer to our recommendation at section 5.1(b). While this is not uncommon for listed companies similar in size to ISX, we recommend that consideration be given to formalising a continuous disclosure committee which comprised of the Chief Executive Officer, the Non-Executive Chairman and the Company Secretary (for example) and which meets as needed to discuss matters for potential disclosure before those matters are then referred to the Board for decision, and that such process be reflected in the Policy.**

- (c) *Processes to review and authorise market announcements (3rd and 4th edition Principles & Recommendations; Sample Policies)*

The 3rd and 4th edition Principles & Recommendations suggest that a listed entity's disclosure policy should set out the entity's processes to review and authorise market announcements. In addition, a majority of the Sample Policies set out a clear and relatively detailed process that should be followed in preparing, reviewing and authorising market announcements for release.

While the Policy allocates responsibility to the disclosure officers to ensure announcements are full and accurate and comply with ISX's obligations (section 1.4), the Policy does not set out what processes will be followed by the disclosure officers (including where Board approval or consultation is required).

***Recommendation: We refer to our comments above at section 11.3(a) regarding the role of the Board in preparing and approving material announcements. We also understand from our discussions with management that the Board is provided with all core materials on which an ASX announcement has been based, to allow the Board to review the announcement in context.***

***Recommendation: We recommend that the Policy be updated to expand on ISX's existing processes that the disclosure officers follow as a matter of practice in preparing and approving (or, where appropriate, obtaining approval of the Board to) the announcement for release. Refer also to our recommendations at sections 11.3(a) and 11.3(b).***

- (d) *Copies of material announcements to be provided to the Board promptly after announcement (4th edition Principles and Recommendations; Sample Policies)*

The 4th edition Principles & Recommendations suggest that a listed entity should ensure that its Board receives copies of all material market announcements promptly after they have been made. All of the Sample Policies of companies to which the 4th edition Principles & Recommendations apply contain this requirement.

The Policy does not require the Board to receive copies of announcements following release to the market, although we understand that all Directors automatically receive copies of all market releases made through the Market Announcements Platform. This recommendation only became applicable to ISX on and from 1 January 2020. ISX's Board minutes indicate that the Board receives a copy of each announcement made by ISX since the date of the last Board meeting.

***Recommendation: We recommend that the Policy be amended to reflect the current practice that the Board receives copies of all material announcements promptly following release to the market.***

- (e) *Advance publication of new and substantive investor presentations (4th edition Principles & Recommendations; Sample Policies; ASIC RG 62)*

The 4th edition Principles & Recommendations suggests that a listed entity should ensure that any new and substantive investor presentations are released to the ASX Market Announcements Platform in advance of the presentation. All of the Sample Policies of companies to which the 4th edition Principles &

Recommendations apply contain this requirement. In addition, ASIC RG 62 recommends that the senior officer responsible for disclosure should be aware of information disclosures in advance, including information to be presented at private briefings, to minimise the risk of continuous disclosure briefings.

While the Policy provides that written materials containing new price sensitive information to be used in briefings must be lodged prior to the meeting (section 1.9), this requirement doesn't extend to all new and substantive investor presentations (that may not contain any new price sensitive information). The Policy also provides that all presentations to analysts and investors will be released to the ASX and then on ISX's website (section 1.4), however, does not require these presentations to be disclosed in advance of any briefings.

Based on our discussions with management, we understand that ISX's practice is to release any new substantive investor presentation ahead of any investor or analyst briefings.

***Recommendation: As a new presentation may not contain new price sensitive information, but may contain substantively new information, we recommend that the Policy be amended to reflect ISX's current practice of advance publication of any new and substantive investor presentations at section 1.4 of the Policy.***

This recommendation only became applicable to ISX on and from 1 January 2020.

11.4 In addition to those areas where we consider amendments are required, we also identified more minor amendments that are recommended to improve or clarify the operation of the Policy (even where such changes are not strictly necessary), as follows:

- (a) *Highlight the importance of confidentiality to safeguard against premature disclosure (3rd and 4th edition Principles and Recommendations)*

The 3rd and 4th edition Principles & Recommendations suggest that a listed entity's disclosure policy should address safeguarding confidentiality of corporate information to avoid premature disclosure. In addition, a majority of the Sample Policies include an express reference to the importance of maintaining confidentiality to prevent inadvertent or premature disclosure.

While the Policy prohibits employees from disclosing confidential information (section 1.5) and limits ISX's ability to comment on analyst reports to avoid premature disclosure of price sensitive information (section 1.12), it does not expressly highlight the importance of maintaining confidentiality more broadly as a safeguard against premature disclosure.

This is particularly important in the context of reliance on the exception under ASX Listing Rule 3.1A to the obligation to immediately disclose information to the market.

***Recommendation: We recommend that the Policy be amended to highlight the importance of ISX's current practice of maintaining confidentiality of information against premature disclosure, particularly in circumstances where ISX is relying on the exception under ASX Listing Rule 3.1A.***

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- (b) *Cross refer or set out communications policy (3rd and 4th edition Principles and Recommendations; Sample Policies)*

The 4th edition Principles & Recommendations suggest that a listed entity's disclosure policy should set out or cross-refer to the entity's policy on media contact and comment. The 3rd edition Principles & Recommendations provided that a listed entity's disclosure policy should address media contact and comment. A majority (but not all) of the Sample Policies reviewed set out a detailed media relations policy (or equivalent).

The Policy appoints specified persons as authorised spokespersons of ISX and prohibits employees or consultants from publicly commenting on confidential information (section 1.5). The Policy also states that ISX generally has a 'no comments' policy with which employees must comply (section 1.7). This high-level approach is consistent with one of the Sample Policies reviewed.

***Recommendation: ISX may wish to include a more detailed media relations policy to more closely align with the majority of the Sample Policies reviewed, although we do not consider that this is strictly required.***

- (c) *Analyst briefings and shareholder questions (3rd and 4th edition Principles and Recommendations; Sample Policies)*

The 4th edition Principles & Recommendations suggest that a listed entity's disclosure policy should address the potential disclosure issues associated with analyst briefings and responses to security holder questions. The 3rd edition Principles & Recommendations provided that a listed entity's disclosure policy should address external communications such as analyst briefings and responses to security holder questions. A majority (but not all) of the Sample Policies reviewed set out a detailed process for managing issues that may arise in the context of these external communications.

While the Policy covers certain aspects of the processes to be followed in analyst briefings (section 1.9) and largely complies with the Regulatory Recommendations and Sample Policies, there are certain areas which were covered by all or a majority of the Sample Policies that are not contained in the Policy. These include the following:

- (i) processes of review following briefings or discussions to identify and address any inadvertent leak of price sensitive information;
- (ii) provision of presentation materials in advance to the disclosure officers to ensure no price sensitive material is to be disclosed (refer to our comments at section 11.3(e)); and
- (iii) more clearly stipulate how ISX responds to unexpected questions that arise in briefings or discussions.

***Recommendation: We recommend that the Policy be amended to cover those matters referred to in sections (c)(i) to (iii) above, to formalise ISX's current practice.***

## Assumptions and Qualifications

### 12. Assumptions and Qualifications

- 12.1 This letter is strictly limited to the matters stated in it and does not apply by implication to other matters.
- 12.2 This letter sets out the issues identified from our review of the information referred to in Attachment 4 conducted in accordance with the Agreed Scope. We have not reviewed any other documents in the preparation of this letter, including the Key Contracts.
- 12.3 This letter is given on the basis of the laws and regulations in the Commonwealth, States and Territories of Australia which are in force as at 9.00am (Melbourne time) on the date of this letter, and is given on the basis that it will be construed in accordance with those laws.
- 12.4 The opinions and analysis contained in this letter are provided on the basis of the information given to us by ISX and that is publicly available on ISX's website and the ASX Market Announcements Platform.
- 12.5 We are Australian lawyers with expertise in Australian law only, and express no opinion on any other matter in relation to any business, operational, commercial, market or industry related, financial, accounting, statistical, taxation or stamp duty matters.
- 12.6 We have reviewed the Continuous Disclosure Policy, Board minutes and papers, Contracts, Processing Contracts data and ASX Announcements solely for the purposes of assessing ISX's compliance or otherwise with its continuous disclosure obligations in respect of announcement of material contracts (other than the Key Contracts). We have not reviewed those documents, and do not otherwise comment on, the terms of those documents (including in relation to their enforceability or compliance with applicable laws).
- 12.7 In providing the advice expressed in this letter we have made the following assumptions:
- (a) that there are no material documents or other material information other than those which were disclosed to us, which are relevant to the matters dealt with in this letter;
  - (b) that all information (in whatever form) and responses (to questions) provided to or by ISX and its directors, officers, employees, advisers and agents, is true, complete and accurate;
  - (c) no material changes have been made to the contracts provided to us for review;
  - (d) none of the Contracts provided for our review have been terminated (noting that the initial term of many have expired, but that the terms of the agreements provide for an automatic rollover for further terms of 1 year unless and until terminated in accordance with their terms); and
  - (e) where the issue of eMoney is covered by and subject to the terms of third parties (e.g. Card Scheme Rules), ISX and any counterparty to the relevant Contract or arrangement is in compliance with such third party terms.
- 12.8 The information contained in this letter reflects the results of our independent expert review as at 5.00pm on the date of this letter.

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The Board of Directors, iSignthis Ltd

16 July 2020

Yours sincerely



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**Attachment 1 Scope of review**

See **attached**.

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**ISX: INDEPENDENT EXPERT REVIEW OF DISCLOSURE POLICY AND PROCESSES****SCOPE OF REVIEW**

Clayton Utz will act as an independent expert in reviewing the policies and processes of ISX to comply with LR3.1 in accordance with the ASX direction issued to ISX on 1 May 2020 (**ASX Direction**). As also contemplated by the ASX Direction, the Clayton Utz review will also involve reviewing (as referred to below) the contracts entered into by ISX with customers since 1 January 2018 (other than the Key Contracts, as defined in the ASX Direction) to make an assessment, in our opinion, of whether or not a reasonable person would have expected information about the contract to affect the price or value of ISX's shares, and if so whether ISX made appropriate disclosure in that regard.

Clayton Utz will conduct the review, and prepare an independent expert report setting out the findings of the review (**Expert Report**), having regard, amongst other things, to best practice of ASX300 companies at the relevant time or times.

The scope of the Clayton Utz review will comprise:

- review of ISX Continuous Disclosure Policy (including any prior versions in place from 1 January 2018);
- review of price sensitive announcements and any other announcements made by ISX regarding contractual arrangements since 1 January 2018;
- review ISX Board minutes and papers since 1 January 2018;
- separate discussions with relevant ISX directors and management, including each of John Karantzis (CEO), Tim Hart (Chair), Elizabeth Warrell (CFO and Company Secretary), Todd Richards (Joint Company Secretary) and Chris Northwood (Investor Relations), to obtain an understanding of the internal processes followed by ISX in assessing and determining the need for market announcements, the form of such announcements and generally in respect of the application of the ISX Continuous Disclosure Policy;
- review of the "Fintech" contracts entered into with customers of ISX since 1 January 2018, with a view to identifying:
  - up-front/establishment fees payable;
  - estimated revenue (including GPTV) and monthly revenue; and
  - whether the entry into of the contract was disclosed to the market at the time, or whether subsequent disclosure was made, and whether the form of such disclosure was consistent with the terms of the arrangement evidenced by the relevant contract;
- review of data regarding the number of "Processing" contracts entered into by ISX with customers from 1 January 2018; and
- review of a sample set (5-10) of such "Processing" contracts entered into over the relevant time (based on our understanding that all such contracts are in substantially the same form, other than as to fees, and the level of fees to be derived under the relevant contract is usually not immediately apparent or ascertainable).

We will need to obtain, in addition to the information referred to above, further details of key financial operating metrics of the business of on a quarterly basis since 1 January 2018 for the purpose of assessing the materiality of the potential financial impact of contracts entered into in that period.

Clayton Utz will then issue a report which:

- identifies any deficiencies, having regard to best practice of ASX300 companies, in the ISX form of Continuous Disclosure Policy and processes adopted by ISX;
- makes an assessment, in our opinion, in respect of contracts entered into by ISX with customers since 1 January 2018, whether or not a reasonable person would have expected information about the contract to affect the price or value of ISX's shares, and if so whether ISX made appropriate disclosure in that regard, having regard to the requirements of section 4.15 of ASX Guidance Note 8; and
- includes assumptions and qualifications having regard to information provided to us by ISX and the extent of our role and expertise.

Clayton Utz will issue an initial draft Report for review by ISX in respect of factual or other inaccuracies. Clayton Utz will consider any submissions made by ISX in response to the draft Report, but will ultimately issue a final report as independent expert.

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**Attachment 2 Board minutes and papers**

## 2018

1. Minutes and Board Papers of Board Meeting 27 February 2018
2. Minutes and Board Papers of Board Meeting 19 June 2018
3. Minutes and Board Papers of Board Meeting 27 August 2018
4. Minutes of Board Sub-Committee Meeting 29 August 2018
5. Minutes and Board Papers of Board Meeting 6 December 2018

## 2019

1. Minutes and Board Papers of Board Meeting 21 March 2019
2. Minutes of Board Sub-Committee Meeting 29 March 2019
3. Minutes and Board Papers of Board Meeting 24 June 2019
4. Minutes and Board Papers of Board Meeting 27 August 2019
5. Minutes and Board Papers of Board Meeting 30 October 2019
6. Minutes of Board Meeting 6 November 2019
7. Minutes of Board Meeting 21 November 2019
8. Minutes and Board Papers of Board Meeting 3 December 2019

## 2020

6. Minutes of Board Meeting 29 January 2020
7. Minutes of Board Meeting 27 February 2020
8. Minutes of Board Meeting 10 March 2020
9. Minutes and Board Papers of Board Meeting 30 March 2020
10. Minutes of Board Meeting 5 May 2020

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**Attachment 3 ASX Announcements**

<b>Date of announcement</b>	<b>Price sensitive?</b>	<b>Announcement title</b>
18/06/2020 1:02 PM	Y	Correction of Statements in ISX Letter to Shareholders
17/06/2020 8:29 AM	Y	Release of correspondence by ASX with ISX
12/06/2020 6:19 PM	N	Requisition of Resolutions Under Section 249N of Corporation
11/06/2020 9:26 AM	Y	SEPA Instant Upgrade & ISO27001 Re-Certification
28/05/2020 10:27 AM	Y	iSignthis increases stake in NSX Limited via placement
25/05/2020 3:53 PM	Y	ASX query letter and ISX's responses
15/05/2020 1:00 PM	Y	Appendix 4C Updated
05/05/2020 11:51 AM	Y	Appendix 4C with ASX Direction Included
04/05/2020 3:29 PM	N	Release of Correspondence by ASX with ISX
04/05/2020 3:16 PM	N	Letter to Shareholders
30/04/2020 4:47 PM	N	Letter to Shareholders - Federal Court Action
29/04/2020 4:44 PM	Y	Appendix 4C - quarterly
20/03/2020 5:49 PM	N	Operational Update
05/03/2020 1:13 PM	N	ISXPAY now processing SEPA Instant Payments across the EEA
28/02/2020 4:28 PM	Y	Appendix 4E and 2019 Annual Report
27/02/2020 9:38 AM	Y	ClearPay, NSX, NSXA & Probanx Agreement
20/02/2020 1:48 PM	N	iSignthis strategic investment into NSX Limited

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20/02/2020 1:47 PM	N	iSignthis and NSX Limited enter into ClearPay Joint Venture
20/02/2020 1:46 PM	Y	NSX: Strategic Investment by iSignthis Limited
31/01/2020 1:17 PM	Y	Appendix 4C - quarterly
17/12/2019 10:45 AM	N	Probanx contracts further customers for Core Banking Service
09/12/2019 9:24 AM	Y	Revised Earnings Guidance FY2019
06/12/2019 1:19 PM	Y	SWIFT Operational Update
05/12/2019 3:02 PM	Y	Response to ASX Query Letter
25/11/2019 12:01 PM	Y	October GPTV Update
20/11/2019 9:11 AM	N	Probanx Solutions & New Facilities
18/11/2019 10:16 AM	Y	Response to ASX Query Letter
11/11/2019 1:02 PM	Y	Shareholder Update
28/10/2019 10:13 AM	Y	Response to ASX Query Letter
24/10/2019 8:39 AM	Y	Appendix 4C - 3Q FY19
11/10/2019 10:44 AM	Y	Response to ASX Query
01/10/2019 8:49 AM	Y	Annualised Paydentity GPTV Exceeds A\$1.9bn in Sept 2019
24/09/2019 12:30 PM	Y	iSignthis restates funds held on behalf of merchants
19/09/2019 2:19 PM	Y	Response to ASX Price Query
16/09/2019 9:34 AM	Y	EPO Patent for PSD2 SCA & KYC
13/09/2019 9:31 AM	Y	Response to ASX Price Query

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09/09/2019 8:26 AM	Y	Annualised GPTV Exceeds A\$1.1bn in August 2019
28/08/2019 9:37 AM	Y	Half Yearly Report and Accounts
08/08/2019 9:43 AM	Y	Visa Inc Australian Principal Membership
30/07/2019 8:36 AM	Y	Appendix 4C H1 Q2 2019
05/07/2019 1:59 PM	N	Australian License Update
17/06/2019 11:09 AM	Y	Paydentity KYC continues to drive applications
14/05/2019 10:09 AM	Y	Break Even Run Rate Achieved
30/04/2019 8:13 AM	Y	Appendix 4C Q1 2019
10/04/2019 11:17 AM	Y	ISXPay Australian Card Processing Update
03/04/2019 10:04 AM	Y	ISXPay EEA Card Processing Update
29/03/2019 2:29 PM	N	Full Year Statutory Accounts
06/03/2019 8:22 AM	N	Ibanera - Baltic Banking & Probanx integrate CorePlus & Cor
28/02/2019 4:27 PM	Y	Appendix 4E - Preliminary Report
26/02/2019 8:23 AM	N	BREXIT - Transitional FCA License Approved
25/02/2019 8:19 AM	Y	Windsor Brokers now live on ISXPay
21/02/2019 8:45 AM	Y	European Operations Update
15/02/2019 8:23 AM	Y	Acquires 100% of Baltic Banking Service
14/02/2019 9:17 AM	Y	Australian Merchant Onboarding Update
07/02/2019 8:22 AM	Y	Probanx Coreplus core banking & APRA CPS234

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06/02/2019 8:17 AM	Y	ISXPay - Australian Card Processing Facilities
31/01/2019 1:10 PM	Y	Appendix 4C and Quarterly Update
13/12/2018 8:25 AM	Y	First EU merchant live on unified neobanking & payments plat
05/12/2018 8:20 AM	Y	First Bank to Bank transfers via BIC ISEMCY22XXX
27/11/2018 8:24 AM	Y	EU Visa & Mastercard Tier 1 Live
14/11/2018 8:25 AM	Y	Diners Club International & ISXPay Acquiring License
31/10/2018 8:44 AM	Y	ISXPay deposit taking via own BIC ISEMCY22XXX
30/10/2018 1:28 PM	Y	Appendix 4C - quarterly
18/10/2018 8:42 AM	Y	JCB Tier 1, Visa & Mastercard Tier 2 - EU/EEA Operations
17/10/2018 8:59 AM	Y	Wanfuteng Bank now live with Probanx CorePlus
12/10/2018 12:22 PM	Y	Supply Chain Update
02/10/2018 10:28 AM	Y	UnionPay International licensing for ISXPay
26/09/2018 8:55 AM	Y	Market Update regarding Supply Chain Issues
25/09/2018 8:30 AM	Y	Investor Briefing September 2018
24/09/2018 2:46 PM	N	Annual Report to shareholders
20/09/2018 8:36 AM	Y	Prasos now processing via Paydentity
19/09/2018 9:08 AM	Y	Probanx.com Acquisition - Core Banking Platform Business
05/09/2018 12:31 PM	Y	Acquisition of Business - Core Banking Platform Provider
03/09/2018 12:08 PM	Y	GPTV Update

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30/08/2018 11:47 AM	N	Bank Institution Codes (BIC) & Scheme Summary
30/08/2018 10:28 AM	Y	SEPA Direct and Instant Capability linked to IBANs
29/08/2018 9:40 AM	Y	Appendix 4E and Annual Accounts
23/08/2018 8:48 AM	Y	JCB now live with ISXPAY in the EEA
03/08/2018 12:51 PM	Y	Analyst Brief - August 2018
31/07/2018 10:29 AM	Y	Appendix 4C - quarterly
18/07/2018 9:30 AM	Y	Mastercard relationship extended to Australia
13/07/2018 8:35 AM	Y	Response to ASX Price Query
21/06/2018 9:39 AM	Y	Central Banking Facilities & SWIFT Membership
05/06/2018 9:16 AM	Y	Gobbill inks deal with iSignthis for card processing and KYC
04/06/2018 12:57 PM	Y	EMA Launch and First Contracts
04/06/2018 9:30 AM	Y	Interim Update
28/03/2018 1:59 PM	Y	AMEX and ISXPAY execute aggregator agreement
20/03/2018 8:42 AM	N	XM Chinese eKYC via Paydentity
07/03/2018 9:00 AM	N	First European Based Merchant Transacting
28/02/2018 9:05 AM	Y	Half Yearly Report and Accounts
26/02/2018 8:46 AM	Y	Four Major EEA/EU based merchants Contracted
05/02/2018 10:58 AM	Y	Aust payment processing & funds settlement update ISXPAY
22/01/2018 9:54 AM	Y	Appendix 4C - quarterly

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19/01/2018 8:34 AM	Y	Worldline & iSignthis launch Payidentity Services in Europe
03/01/2018 8:27 AM	Y	OTCapital transacting via ISXPay Australia

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The Board of Directors  
iSignthis Ltd  
456 Victoria Parade  
East Melbourne VIC 3002

4 September 2020

## ISX: Independent Expert Review of Continuous Disclosure Policy and Processes - Supplementary Report

### Background

We refer to our Independent Expert Report dated 16 July 2020, which set out the results of our independent expert review of the disclosure policy and processes of iSignthis Ltd (ACN 075 419 715) (ISX) in accordance with the ASX Directions and the Agreed Scope (**Report**).

Since the date of our Report, we have been provided with additional correspondence relating to the suspension and termination of the arrangements between ISX and Visa referred to in Attachment 1 to this Supplementary Report (**Additional Correspondence**). ISX has requested that we review the Additional Correspondence and update our report as necessary. Accordingly, this supplementary report (**Supplementary Report**) sets out the results of our independent expert review of the Additional Correspondence.

This Supplementary Report is to be read together with our Report. The assumptions and qualifications specified in our Report apply equally to this Supplementary Report and capitalised terms in this Supplementary Report have the meaning given to them in the Report.

### Executive Summary

#### 1. Summary of scope of review

##### 1.1 We have reviewed:

- (a) the Additional Correspondence; and
- (b) ISX's response to our queries arising from our review of the Additional Correspondence referred to in Attachment 1 to this Supplementary Report,

(together, the **Additional Materials**).

#### 2. Summary of findings

2.1 Based on our review of the Additional Materials, we understand that ISX was relying on ASX Listing Rule 3.1A in withholding information about the purported termination by Visa of its contractual arrangements with ISX from disclosure to the market from 17 April 2020 until 21 May 2020.

2.2 Relevantly, we understand that ISX is required pursuant to the EU Payments Services Directive and the terms of ISEM's Electronic Money Authorisation (**European Regulatory Requirements**) to notify the regulator (being Central Bank of Cyprus (**CBC**)) immediately

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- upon any change in circumstances as to payment scheme arrangements (noting that as Australian lawyers, we are unable to comment on foreign laws and regulations).
- 2.3 We understand, based on our review of the Additional Materials, that there were two separate limbs of ASX Listing Rule 3.1A on which ISX relied during different periods in withholding the information from disclosure to the market, as follows:
- (a) from 17 April 2020 to 12 May 2020 - on the basis that the purported termination was invalid and constituted an incomplete negotiation; and
  - (b) from 12 May 2020 to 21 May 2020 - on the basis that it would have been a breach of law (being the European Regulatory Requirements) to disclose that information unless and until the notification process with the CBC had been concluded,
- in each case, in addition to the information being confidential and that a reasonable person would not have expected the information to be disclosed at that time.
- 2.4 Based on the information available to us and subject to the limited scope of our review, nothing has come to our attention that would cause us to believe that ISX's reliance on ASX Listing Rule 3.1A during each of the relevant periods was not appropriate.
- 2.5 On that basis, the obligation of ISX to disclose the termination of the arrangements between ISX and Visa in accordance with ASX Listing Rule 3.1 first arose on 21 May 2020. This date was the day on which ISX received a formal response from the European regulator to ISX's notification of the termination and after which ISX no longer had appropriate grounds to continue to withhold the information from disclosure pursuant to ASX Listing Rule 3.1A.
- 2.6 As such, based on our review of the Additional Materials, we have identified a delay of 1 to 2 business days between ISX receiving a formal response from the European regulator to ISX's notification of the termination of the Visa arrangements (on Thursday, 21 May 2020 (Melbourne time)) and ISX seeking to formally announce the termination to the market (via the letter to shareholders dated Sunday, 24 May 2020, which was released by ASX to the market on 25 May 2020).
- 2.7 We therefore consider that there was a technical breach of ASX Listing Rule 3.1 arising from this delay. In particular, once ISX had formed the view that termination was going to occur and had made its initial notification to the European regulator, it would have been appropriate for ISX to have prepared a draft announcement. This would have ensured that ISX was in a position to be able to immediately announce the termination of the Visa arrangements to the market immediately upon receiving the response from the European regulator.
- 2.8 However, we also observe that given trading in ISX's shares was suspended during this period, ISX did not have the ability to use a trading halt to assist it to manage its continuous disclosure obligations, which it may have otherwise done in the circumstances and which would have been sufficient to cover the period of the delay.
- 2.9 Given the nature and circumstances of our findings upon review of the Additional Materials, we do not have any additional recommendations to those already included in our Report.

### End of Executive Summary

Clayton Utz  
4 September 2020

## Detailed Report

### Additional Materials

#### 1. Background and scope of review

1.1 As requested by ISX, we have reviewed:

- (a) the additional correspondence between Visa and ISX and ISX's wholly-owned subsidiary, iSignthis eMoney Ltd (**ISEM**) in respect of the suspension and termination of the contractual arrangements between Visa and ISX as referred to in Attachment 1 to this Supplementary Report (**Additional Correspondence**); and
- (b) ISX's responses to our queries following our review of the Additional Correspondence as referred to in Attachment 1 to this Supplementary Report, as set out in Attachment 1 (**Additional Materials**).

1.2 Set out below in section 2 are our findings in respect of our review of the Additional Materials.

#### 2. Review of Additional Materials - findings and recommendations

2.1 Based on our review of the Additional Materials, in addition to those matters relevant to the Visa relationship as set out in section 9.2(a) of our Report, we set out below our understanding of the relevant facts.

- (a) Upon receipt of the letter from Visa on Friday 17 April 2020 pursuant to which Visa purported to terminate the arrangements with ISX, ISX was of the view that the termination was invalid and constituted wrongful termination. ISX continued to hold this view until Tuesday 12 May 2020 (**Initial Period**).
- (b) Throughout the Initial Period, ISX continued to liaise with Visa in relation the termination, providing additional information to support ISX's contention that the termination was invalid.
- (c) Throughout the Initial Period, ISX was withholding disclosure of the purported termination in reliance on ASX Listing Rule 3.1A on the basis that the purported termination was invalid and constituted an incomplete negotiation (in addition to the information being confidential and that a reasonable person would not have expected the information to be disclosed at that point).
- (d) On Tuesday 12 May 2020, ISX accepted that the Visa arrangements in both Europe and Australia were likely to be terminated (even if it did not consider the termination to be valid).
- (e) Although we are unable to comment on foreign laws and regulations, we understand from ISX that ISX is required pursuant to the EU Payments Services Directive and the terms of ISEM's Electronic Money Authorisation (**European Regulatory Requirements**) to notify the regulator (being Central Bank of Cyprus (**CBC**)) immediately upon any change in circumstances as to payment scheme arrangements.

- (f) Between Tuesday 12 May 2020 and Thursday 21 May 2020 (Melbourne time), ISX and ISEM were liaising with the CBC in relation to the termination of the Visa arrangement (**Second Period**). In particular:
- (i) on Tuesday 12 May 2020, ISX had a discussion with the CBC to notify the CBC of the Visa termination;
  - (ii) this discussion was followed by a series of written communications and further discussions between ISX and CBC in relation to the Visa termination; and
  - (iii) on Thursday 21 May 2020 (Melbourne time), ISX received written acknowledgement from the CBC of the notification provided by ISX and ISEM of the termination of the Visa arrangements.
- (g) Throughout the Second Period, ISX was withholding disclosure of the termination in reliance on ASX Listing Rule 3.1A on the basis that it would have been a breach of law (being the European Regulatory Requirements) to disclose that information unless and until the notification process with the CBC had been concluded (in addition to the information being confidential and that a reasonable person would not have expected the information to be disclosed at that point).
- (h) On Sunday 24 May 2020, ISX sent a letter to its shareholders providing a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final, which was released to the market on Monday 25 May 2020.

2.2 Based on our review of the Additional Materials and subject to the Agreed Scope, we have considered the appropriateness of ISX's reliance on ASX Listing Rule 3.1A to withhold disclosure of the purported termination by Visa throughout the First Period and Second Period, and we note as follows:

- (a) ISX have informed us that they considered that the termination was invalid on the basis that the purported termination by Visa was based on factual errors. This is consistent with the Additional Correspondence, in which ISX set out in some detail its responses to what it considered to be factual errors in the basis on which Visa had purported to terminate its contractual arrangements with ISX;
- (b) it is beyond the Agreed Scope for us to assess from a contractual perspective whether the position taken by ISX in relation to the validity or otherwise of the purported termination by Visa was justified or reasonable. We understand that ISX sought and obtained independent legal advice in that regard;
- (c) on the assumption that ISX's view regarding the invalidity of the purported termination by Visa was reasonable, we agree with the view taken by ISX that it would have been inappropriate to disclose the purported termination at that time, including:
  - (i) that it would have arguably been misleading to disclose the purported termination if it was in fact invalid; and
  - (ii) the ongoing discussions between ISX and Visa on those matters constituted an incomplete negotiation and was insufficiently definite to warrant disclosure; and

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- (d) on the assumption that it would have constituted a breach of law or regulation for ISX to disclose the termination to the market before complying with its notification obligations under the European Regulatory Requirements, we agree with the view taken by ISX that it was appropriate to withhold disclosure of the purported termination until those obligations were met.
- 2.3 Accordingly, based on the information available to us and subject to the limited scope of our review, nothing has come to our attention that would cause us to believe that ISX's reliance on ASX Listing Rule 3.1A during each of the relevant periods was not appropriate.
- 2.4 On that basis, the obligation of ISX to disclose the termination of the arrangements between ISX and Visa in accordance with ASX Listing Rule 3.1 first arose on Thursday 21 May 2020. This date was the day on which ISX received a formal response from the European regulator to ISX's notification of the termination and after which ISX no longer had appropriate grounds to continue to withhold the information from disclosure pursuant to ASX Listing Rule 3.1A.
- 2.5 There was therefore a delay of 1 to 2 business day between ISX receiving a formal response from the European regulator to ISX's notification of the termination of the Visa arrangements (on Thursday 21 May 2020 (Melbourne time)) and ISX seeking to formally announce the termination to the market (via the letter to shareholders dated Sunday 24 May 2020, which was released by ASX to the market on Monday 25 May 2020).
- 2.6 We therefore consider that there was a technical breach of ASX Listing Rule 3.1 arising from this delay. In particular, once ISX had formed the view that termination was going to occur and had made its initial notification to the European regulator, it would have been appropriate for ISX to have prepared a draft announcement. This would have ensured that ISX was in a position to be able to immediately announce the termination of the Visa arrangements to the market immediately upon receiving the response from the European regulator.
- 2.7 However, we also observe that given trading in ISX's shares was suspended during this period, ISX did not have the ability to use a trading halt to assist it to manage its continuous disclosure obligations, which it may have otherwise done in the circumstances and which would have been sufficient to cover the period of the delay.
- 2.8 Given the nature and circumstances of our findings upon review of the Additional Materials, we do not have any additional recommendations to those already included in our Report.

### Assumptions and Qualifications

#### 3. Assumptions and Qualifications

- 3.1 The assumptions and qualifications set out in our Report apply equally to this Supplementary Report. In particular:
- (a) This letter is strictly limited to the matters stated in it and does not apply by implication to other matters.
- (b) This letter sets out the issues identified from our review of the information referred to in Attachment 1 to this Supplementary Report. We have not reviewed any other documents in the preparation of this letter, including the Key Contracts.
- (c) This letter is given on the basis of the laws and regulations in the Commonwealth, States and Territories of Australia which are in force as at 9.00am (Melbourne time)

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on the date of this letter, and is given on the basis that it will be construed in accordance with those laws.

- (d) The opinions and analysis contained in this letter are provided on the basis of the Additional Materials referred to in Attachment 1 to this Supplementary Report.
- (e) We are Australian lawyers with expertise in Australian law only, and express no opinion on any other matter in relation to any business, operational, commercial, market or industry related, financial, accounting, statistical, taxation or stamp duty matters.
- (f) We have reviewed the Additional Materials referred to in Attachment 1 to this Supplementary Report solely for the purposes of assessing ISX's compliance or otherwise with its continuous disclosure obligations in respect of announcement of material contracts (other than the Key Contracts). We have not reviewed those documents referred to in the Additional Materials referred to in Attachment 1 to this Supplementary Report, and do not otherwise comment on, the terms of those documents referred to in the Additional Materials referred to in Attachment 1 to this Supplementary Report (including in relation to their enforceability or compliance with applicable laws).
- (g) In providing the advice expressed in this letter we have made the following assumptions:
  - (i) that there are no material documents or other material information other than those which were disclosed to us, which are relevant to the matters dealt with in this letter;
  - (ii) that all information (in whatever form) and responses (to questions) provided to or by ISX and its directors, officers, employees, advisers and agents, is true, complete and accurate; and
  - (iii) no material changes have been made to the contracts provided to us for review.

3.2 The information contained in this letter reflects the results of our independent expert review as at 5.00pm on the date of this letter.

Yours sincerely



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**Attachment 1 Sources of information**

1. In preparing this letter we have reviewed the materials disclosed to us in the following:
- (a) email from Janine Ryan of ASX to Michael Linehan at 7.02pm on 23 July 2020, titled "Independent Expert's Report", to which the following documents were attached:
    - (i) letter from Visa Europe Limited to ISX and iSignthis eMoney Ltd (**ISEM**) dated 6 March 2020;
    - (ii) letter from Visa Europe Limited to ISX and ISEM dated 17 April 2020;
    - (iii) email chain containing emails between Visa and ISX between 19 March 2020 and 27 April 2020;
    - (iv) letter from Visa Europe Limited to ISX and ISEM dated 1 May 2020;
    - (v) letter from ISX and ISEM to Visa dated 5 May 2020;
    - (vi) letter from Visa to ISX and ISEM dated 12 May 2020; and
    - (vii) email chain containing emails between Visa and ISX on 12 May 2020; and
  - (b) email from John Karantzis to Michael Linehan and Brendan Groves at 1.59pm on 19 August 2020, to which a document containing ISX responses to questions we had raised with ISX was attached.

**Attachment 4 Sources of information**

1. In preparing this letter we have reviewed the materials disclosed to us in the following:
- (a) email from John Karantzis to Michael Linehan at 12.01pm on 1 June 2020, titled "Revenue and MAF Data";
  - (b) email from John Karantzis to Michael Linehan at 12.08pm on 1 June 2020, titled "FW: Continuous disclosure policy review";
  - (c) second email from John Karantzis to Michael Linehan at 12.08pm on 1 June 2020, titled "FW: Continuous disclosure policy review";
  - (d) email from John Karantzis to Michael Linehan at 10.40am on 2 June 2020, titled "Sample set of 10 "Processing" contracts entered into since 1 January 2018.";
  - (e) email from John Karantzis to Michael Linehan at 11.33am on 3 June 2020, titled "EMI Agreements";
  - (f) DropBox folder as at 11.00am on 4 June 2020 ([https://www.dropbox.com/sh/36m08769vxth9lu/AACJNBb14mF3JCgx9N8r\\_RSwa?dl=0](https://www.dropbox.com/sh/36m08769vxth9lu/AACJNBb14mF3JCgx9N8r_RSwa?dl=0));
  - (g) email from John Karantzis to Michael Linehan, Brendan Groves and Elizabeth Warrell at 2.55pm on 5 June 2020, titled "Re: EMI Agreements"
  - (h) DropBox folder as at 3.21pm on 5 June 2020;
  - (i) email from John Karantzis to Michael Linehan, Brendan Groves and Elizabeth Warrell at 3.38pm on 5 June 2020, titled "Re: EMI Agreements"
  - (j) email from John Karantzis to Michael Linehan, Brendan Groves, Elizabeth Warrell and Patricia Hill at 1.15pm on 9 June 2020;
  - (k) email from John Karantzis to Michael Linehan, Brendan Groves, Elizabeth Warrell and Patricia Hill at 1.51pm on 9 June 2020, titled "RE: EMI Agreements";
  - (l) email from John Karantzis to Michael Linehan at 3.20pm on 12 June 2020, titled "RE: EMI Agreements";
  - (m) teleconference between Tim Hart, John Karantzis, Michael Linehan, Brendan Groves, Kate Allison and Patricia Hill from 1.30pm to 2.30pm on 17 June 2020;
  - (n) teleconference between Elizabeth Warrell, Todd Richards, Michael Linehan, Brendan Groves, Kate Allison and Patricia Hill from 3.00pm to 3.40pm on 17 June 2020;
  - (o) email from John Karantzis to Michael Linehan, Brendan Groves, Kate Allison and Tim Hart at 5.56pm on 30 June 2020, titled " Re: Further queries arising from review";

- (p) email from John Karantzis to Michael Linehan, Brendan Groves, Kate Allison and Tim Hart at 8.31pm on 2 July 2020, titled "Re: Further queries arising from review"; and
- (q) email from John Karantzis to Michael Linehan, Brendan Groves, Kate Allison and Tim Hart at 12.39pm on 3 July 2020, titled "Re: Further queries arising from review".
2. We have also reviewed and relied upon the searches of public records of the ISX announcements available on the ASX Market Announcements Platform as at 23 June 2020.

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