IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION **No: NSD1847/2010**

NOTICE OF FILING

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DETAILS OF FILING

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District Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

Dated: 7/11/2011 **Registrar**

Warwick Soden

Note

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DEFENCE

No. NSD 1847 of 2010

Federal Court of Australia
District Registry: Victoria
Division: General Division

GABY HADCHITI and others named in the schedule
Applicants

and

NUFARM LIMITED (ACN 091 323 312)
Respondent

In response to the Applicants' Amended Consolidated Statement of Claim dated 12 August 2011 ("**ASOC**"), the Respondent ("**Nufarm**") says:

NB: Unless the otherwise stated:

A. terms defined in the ASOC have the same meanings when used in this Defence;

B. headings and definitions are adopted from the ASOC for ease of reference and are not treated as part of the pleadings; and

C. for avoidance of doubt, the Respondent does not plead to the headings or definitions employed by the Applicants and in particular does not plead to (and does not admit) headings or definitions which incorporate characterisations of conduct (eg. the "1 September 2010 Net Debt Corrective Disclosure*").*

PARTIES

1. It does not plead to paragraph 1.

2. As to paragraph 2, it:

   2.1 admits paragraph 2.1;

   2.2 does not know and cannot admit paragraph 2.2.

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3. Save that it admits the Applicants acquired shares in Nufarm during the Relevant Period, it does not admit paragraph 3.

4. It admits paragraph 4.

CONTINUOUS DISCLOSURE OBLIGATIONS

5. It admits paragraph 5.

6. It admits paragraph 6, subject to reference to the ASX Listing Rules in full.

7. It admits paragraph 7, subject to reference to the ASX Listing Rules in full.

8. It admits that at all material times section 674(2) of the Corporations Act applied to it, within the meaning of section 674(2)(a), and otherwise does not admit paragraph 8.

NUFARM'S BUSINESS

9. As to paragraph 9, it:
   9.1 admits that Nufarm by itself and by subsidiaries of Nufarm (Nufarm and the said subsidiaries together comprising the "**Nufarm Group**" or "the **Group**") carried on a business of, inter alia, manufacturing and distributing crop protection products, including herbicides, insecticides, fungicides and seed treatment ("the **Group Business**");

   Particulars

   Nufarm was the parent company of the Nufarm Group, which conducted the Group Business as a global business through 43 operating units around the world. The companies comprising the Nufarm Group during FY10 are identified at, inter alia, pages 98 to 101 of the FY10 Annual Report. The non-glyphosate components of the Group Business are described in Nufarm's ASX release dated 22 June 2010 (titled "*A Day at the Farm*") at p.8.

   9.2 admits that at all material times the Nufarm Group was a major supplier of glyphosate in regions in which Nufarm traded ("**regions**"), and otherwise does not admit paragraph 9.2;
   9.3 admits that at all material times the Nufarm Group supplied glyphosate branded RoundUp, under licence from Monsanto, in Australia and New

Zealand, and from FY09 in Indonesia, but says further that it also supplied glyphosate as aforesaid:

(a) branded under Nufarm's own brand; and

(b) branded under the brands of other customers; and

9.4 admits that at all material times the Nufarm Group supplied glyphosate branded under its own brand in other regions in Asia, Europe, North America and South America, but says further that it also supplied glyphosate as aforesaid under the brands of other customers;

and otherwise does not admit paragraph 9.

10. As to paragraph 10, it says that:

10.1 in FY08, the sale of glyphosate represented approximately 38% of Nufarm's total net sales revenue, and it otherwise does not admit paragraph 10.1;

10.2 in FY09, the sale of glyphosate represented approximately 34% of Nufarm's total net sales revenue, and it otherwise does not admit paragraph 10.2;

10.3 in FY10, the sale of glyphosate represented approximately 27% of Nufarm's total net sales revenue , and it otherwise does not admit paragraph 10.3;

10.4 it says further that at all material times:

(a) the Nufarm Group's sales revenue, including its glyphosate-related sales revenue:

(i) depended on various factors, including agronomic, climatic and economic conditions in the regions;

(ii) was typically generated, as to the majority part, in the second half (and within that half, mostly in the last quarter) of each financial year;

(b) the Nufarm Group's cashflow was highly seasonal and influenced by climatic conditions and operating conditions (including trading terms), which were highly variable between regions;

(c) there was no exchange for trading in glyphosate or glyphosate "technical", or for hedging exposures to movements in prices of glyphosate or technical;

(d) the price at which the Nufarm group acquired glyphosate technical from suppliers generally depended on observable industry spot prices;

(e) Nufarm Group customers (including glyphosate customers) did not enter long-term supply contracts but instead bought products as and when they needed them, and accordingly it was necessary for Nufarm to maintain stock inventories which anticipated customer demand;

(f) in the regions where RoundUp glyphosate product was sold the RoundUp brand price operated as an "umbrella price" in the region such that competitor glyphosate products were priced below the umbrella price;

and otherwise does not admit paragraph 10.

GLOBAL GLYPHOSATE CONDITIONS & NUFARM FINANCIAL PERFORMANCE

(a) FY08 year

11. It admits that glyphosate prices increased during 2H08 but otherwise does not admit paragraph 11.

12. As to paragraph 12, it:

    12.1 admits paragraph 12.1;

    12.2 admits paragraph 12.2;

    12.3 admits paragraph 12.3;

    and will refer to the full terms of the presentation and briefing at the trial.

(b) FY09 year

13. Save that it will rely upon the full terms of its announcement on 18 July 2008 at the trial, it admits paragraph 13.

14. As to paragraph 14 save that it admits that:

    14.1 after a period of strong demand and pricing in FY08, substantial additional capacity of glyphosate technical was brought into production in China in or about 1H09

    14.2 a surplus of glyphosate product and low seasonable demand caused price declines in FY09 with severe price discounting in June and July 2009, particularly in the US;

    it does not admit paragraph 14.

15. As to paragraph 15:

    15.1 it admits paragraph 15.1;

15.2 save that it admits it stated that "[a]ssuming average seasonal/climatic conditions, [it] remains on track to generate an operating NPAT of approximately $220m at 31 July, which is within the range of previous guidance", and it will rely upon the full terms of the FY09 Preliminary Half Year Report at the trial, it does not admit paragraph 15.2.

16. Save that it denies paragraph 16.2 and will refer to the terms of the 16 June 2009 guidance at the trial, it admits paragraph 16 but says further that the 16 June 2009 guidance stated, among other things:

16.1 'glyphosate sales in May and through the first half of June are tracking significantly below previous forecasts and it is now apparent that the full year contribution from Nufarm's glyphosate business will not meet earnings targets';

16.2 'it is not yet possible to accurately estimate the impact on Nufarm's year end net operating profit, but – on current projections - the company expects to miss the previous guidance of approximately $220 million by about 15%';

16.3 'a combination of later than normal buying decisions; seasonal impacts; lower application rates and distribution customers not able or willing to hold normal inventory levels have combined to dramatically impact the glyphosate business in recent weeks';

16.4 'the most dramatic impact is being felt in the US glyphosate market, with growers in many areas planting crops very late in the season and requiring fewer applications of glyphosate'.

17. As to paragraph 17 it:

17.1 admits that on 24 July 2009 it sent a letter to the ASX ("the **July query response**"), and says further that the letter was sent in response to a price query sent to Nufarm by ASX;

17.2 will rely upon the full terms of the July query response at the trial;

17.3 says that the July query response stated, inter alia, to the effect that:

(a) due to the importance of the final six weeks of the financial year, Nufarm would not be in a position to assess the final impact on Group earnings of the decline in demand for glyphosate and increased price competition in key glyphosate markets until the full year results were available; and

(b) there was a risk that Nufarm's year end net operating profit may be below the revised guidance issued on 16 June 2009; and

(c) it was possible that Nufarm's net operating profit may be more than 10–15% below the previous guidance, but Nufarm was not yet in a position to determine whether that would be the case;

and it otherwise denies paragraph 17.

18. As to paragraph 18, it:

18.1 admits that Nufarm's glyphosate inventory levels (expressed in volume) were higher than usual at financial year-end, but otherwise does not admit paragraph 18.1;

18.2 admits sub-paragraph 18.2;

18.3 as to paragraph 18.3, it says that:

(a) it classified losses of $22.7 million after tax on glyphosate sold in FY09 as an inventory adjustment material item, to take account of the dramatic fall in glyphosate prices in the final six weeks of FY09 which had meant that the book value of that inventory could not be recovered through sales made in the period;

(b) it booked a $40.8 million after tax write-down on the value of glyphosate inventory on hand as at 31 July 2009, largely being inventory held in the USA;

(c) it expected the adjusted value of its inventory to be fully recouped during FY10, and that, when combined with the sale of glyphosate produced from glyphosate technical purchased in FY10, this would place it in a position to generate profits in FY10 while selling glyphosate at market competitive prices;

and otherwise it does not admit paragraph 18.3.

19. Save that it:

19.1 says that the said letter ("the **August ASX query response**") stated, among other things that:

(a) "Subject to further management review and external audit, [Nufarm] currently estimates that it will report a net operating result, excluding material items, of approximately $135 million–$145 million"; and

(b) 'The deterioration in Nufarm's operating profit is principally attributable to a substantial reduction in the selling price of glyphosate in the US market in the months of June and July, together with lower than forecast volume sales of glyphosate. Nufarm believes that all major glyphosate suppliers have been affected by these impacts'; and

19.2 will rely upon the full terms of the August ASX query response at the trial;

it admits paragraph 19.

20. Save that it will refer to the full terms of the FY09 Preliminary Final Report and the FY09 End of Year Briefing Presentation at the trial, it admits paragraph 20.

CONTRAVENTIONS[1]

(a) 28 September 2009 Representations

21. As to paragraph 21 it:

21.1 admits paragraph 21.1;

21.2 admits paragraph 21.2;

21.3 admits paragraph 21.3;

21.4 admits paragraph 21.4;

21.5 save that it admits it stated to the effect that it had written-down the value of glyphosate inventory, it denies paragraph 21.5;

21.6 admits paragraph 21.6;

21.7 save that it admits it stated that its management expected to see growth in group profitability in FY10 with an improved operating environment in Brazil, a more competitive position in glyphosate; and continued revenue and margin expansion across other product positions being the major contributors to that growth, it denies paragraph 21.7;

21.8 admits paragraph 21.8;

21.9 admits paragraph 21.9;

21.10 does not admit paragraph 21.10, but says it stated that "[w]ith an adjusted cost base and strong market access, [it] was well placed to capture an appropriate share of glyphosate sales across its regional businesses. [It] is forecasting a return to acceptable profitability in its glyphosate business in 2010.";

21.11 save that it says it stated that Nufarm had confidence that FY10 would generate much improved results, it denies paragraph 21.11;

21.12 it admits paragraph 21.12;

[1] Nufarm refers to and repeats Note C to the Notes preceding its pleading in this Defence, that headings in this Defence adopt the form of the ASOC for ease of reference only, are not treated as part of the pleading and shall not be taken to constitute admissions or other pleadings.

21.13 it says further that it stated in its FY09 Preliminary Final Report that, as was the case:

(a) total herbicide sales had been down in FY09 compared to FY08 but when glyphosate was excluded from the calculation there was an increase in other herbicide sales of almost 14%, and there had been increased sales of insecticides (up 21%) and fungicides (up 10%);

(b) Nufarm's Asian sales grew strongly in 2009;

(c) excluding its glyphosate business, Nufarm's US sales increased by more than 17% and gross margins increased by 32%;

Particulars

Page 3 in FY09 Preliminary Final Report.

(d) Nufarm recorded a 30% increase in sales in Canada during FY09;

(e) European sales in FY09 were up 15% from FY08;

(f) glyphosate volumes in Brazil and Argentina had been similar in FY09 to FY08 but revenues were down by reason of reduced margins and (in Brazil) credit-related pressures, while segments other than glyphosate had performed strongly and Chile had generated profit above budget;

Particulars

Page 4-5 in FY09 Preliminary Final Report.

(g) management expected to see growth in group profitability in FY10 mainly resulting from an improved operating environment in Brazil, a more competitive position in glyphosate, and revenue and margin expansion across other product positions.

Particulars

Page 7-8 in FY09 Preliminary Final Report.

22. As to paragraph 22, it:

22.1 it admits paragraph 22.1;

22.2 it admits paragraph 22.2;

22.3 it admits paragraph 22.3;

22.4 it admits paragraph 22.4;

22.5 it says further that it also stated in its FY09 End of Year Briefing Presentation that or to the effect that Nufarm's outlook for FY10:

(a) remained challenging by reason of glyphosate market conditions; and

(b) assumed, inter alia:

(i) average seasonal conditions;

(ii) some easing in credit market-related pressures; and

(iii) distributor and grower stocking patterns returning to normal.

23. As to paragraph 23:

23.1 it denies making the statement alleged in paragraph 23.1, and refers to and repeats paragraph 21 above and in particular paragraph 21.10 above;

23.2 it denies making the statement alleged in paragraph 23.2, and refers to and repeats paragraph 21 above and in particular paragraphs 21.7, 21.11 and 21.12 above; and

23.3 otherwise does not admit paragraph 23.

24. It refers to and repeats paragraph 23 above, and denies paragraph 24.

25. It denies making the statements alleged in paragraph 25 on 28 September 2009, or at any time prior to March 2010.

26. Save that it:

26.1 says glyphosate prices in August and September 2009;

(a) were lower than levels at the start of 1H10; and

(b) were lower than projected in all regions in which Nufarm traded, compared to the previous corresponding period being 1H09;

26.2 says further that the above months in any financial year typically had very slow sales activity for Nufarm;

26.3 says it elected to maintain market share in the US in 1H10 by selling its glyphosate inventory at the prevailing low market prices;

26.4 admits that in or about September and October 2009 it provided one-off price protection measures on product sold in FY09;

it refers to paragraph 25 above and denies paragraph 26 of the ASOC.

27. As to paragraph 27 it:

27.1 admits sub-paragraph 27.1, but says further that:

(a) Roundup branded glyphosate products sold in Australia, New Zealand and Indonesia were distributed by Nufarm under licence from Monsanto and not by Monsanto directly;

(b) Roundup branded glyphosate products referred to in (a) were manufactured by Nufarm using glyphosate technical purchased from Monsanto at market competitive prices;

(c) the Monsanto announcement did not apply to the sale of Roundup branded glyphosate products in Australia, New Zealand and Indonesia, being products distributed by Nufarm;

27.2 does not admit sub-paragraph 27.2, and says further that following the said announcement:

(a) Monsanto's prices for Roundup branded glyphosate products remained significantly higher than the prices at which Nufarm traded; and

(b) volatility in prices for glyphosate products continued in the regions in which Nufarm traded.

28. As to paragraph 28, it:

28.1 says that as at about 28 September 2009 it was aware of the matters the subject of the admissions set out in paragraphs 11 to 20 above, and in particular paragraph 10.4(a) above, and otherwise does not admit paragraph 28.1;

28.2 says that as at 28 September 2009 it:

(a) believed that neither FY08 nor FY09 was an appropriate base or reference point for projecting sustainable profit contributions from glyphosate on a forward looking basis, given the dramatic differential in pricing, increased global capacity for glyphosate manufacturing, and the margin impacts associated with raw material costs; and

(b) did not use FY08 or FY09 as the appropriate basis for projecting sustainable profit contributions from glyphosate on a forward-looking basis;

and otherwise does not admit paragraph 28.2;

28.3 says that as at 28 September 2009 it regarded the major drivers of its results in FY09 as:

(a) the dramatic reversal of supply/demand balance in global glyphosate business;

(b) credit pressures impacting purchasing behaviour at both distribution and grower level; and

(c) continued growth in both sales and margin from expanded positions in insecticides, fungicides and seed treatment;

and otherwise does not admit sub-paragraph 28.3;

Particulars

2009 Full Year Results announcement, 28 September 2009 at page 4.

28.4 denies paragraph 28.4 and refers to and repeats paragraph 26 above;

28.5 says that as at about 28 September 2009 it was aware of Monsanto's Roundup price reduction announcement, but otherwise denies paragraph 28.5 and refers to and repeats paragraph 27.2 above;

28.6 says that as at about 28 September 2009 it was aware of the matters set out in paragraphs 10 and 11 above, and otherwise does not admit sub-paragraph 28.6;

28.7 says further that as at about 28 September 2009 it was aware that:

(a) the targets in its budget for FY10 ("**FY10 budget**") were:

(i) net sales $2,745 million;

(ii) gross profit $841 million;

(iii) operating EBIT $363 million;

(iv) operating NPAT $202 million;

Particulars

The FY10 budget had been prepared following consultation with regional managers, and was discussed during the strategic review meeting on 15 and 16 July 2009 and approved by the Nufarm Board. The budget was based on a number of assumptions and judgments about variables including pricing, margins, market conditions, agronomic factors, customer demand, and currency exchange rates. A copy of the budget may be inspected by appointment at the offices of Nufarm's solicitors.

(b) Nufarm's FY10 NPAT forecast was in line with current market consensus as at late September 2009, being a forecast NPAT in the range of $158-204 million;

(c) it expected that Monsanto would hold its selling price until the end of Monsanto's financial year, being 31 August 2010; and

(d) in the North America region, the glyphosate market had showed signs of renewed life in August 2009 with distribution- and grower-demand reappearing as prices dipped to pre-1997 levels.

29. It denies paragraph 29, and says further that if (which is denied) it made the 28 September 2009 Representations as alleged, then by reason of the matters set out in paragraphs 10, 27 and 28 above it had reasonable grounds for making the said representations at the time they were made.

30. It denies paragraph 30.

(b) 26 October 2009 Representations

31. Save that it admits that:
    - 31.1 on 26 October 2009 it published the FY09 Annual Report; and
    - 31.2 the FY09 Annual Report inter alia repeated the substance of the statements pleaded in paragraph 21 above;

    it does not admit paragraph 31.

32. It denies paragraph 32 and refers to and repeats paragraph 23 above.

33. It denies paragraph 33.

34. As to paragraph 34, it:
    - 34.1 refers to and repeats paragraphs 27 and 28 above, and otherwise does not admit paragraph 34.1;
    - 34.2 denies paragraph 34.2 and refers to paragraph 75.6 below;
    - 34.3 says further that in about October 2009 its overall net selling price (in Australian dollars) started to increase;
    - 34.4 says further that as at 26 October 2009 it had the same expectation as set out in paragraph 28.7(c) above (regarding Monsanto's price hold).

35. As to paragraph 35 it:
    - 35.1 denies the allegations therein; and
    - 35.2 says further that if it made the Inventory Representation or the Improved Profit Representation (which is denied), it had reasonable grounds for making them, and refers to and repeats paragraphs 10, 27 to 28 and 34 above.

36. It denies paragraph 36.

(c) 3 December 2009 Representations

37. As to paragraph 37:

37.1 save that it will refer to the full terms of the Chairman's Address to the 2009 AGM, it admits paragraphs 37.1 to 37.6;

37.2 it says further that the said Address further contained statements that or to the effect that:

(a) Nufarm's profitability was difficult to forecast because, in addition to the normal business risks and exchange movements, the company was exposed to extreme seasonal and climatic factors which could influence performance;

(b) Nufarm was subject to a "credit watch" issued by Standard & Poors, pending the outcome of negotiations relating to a proposed acquisition of Nufarm by Sinochem, a China-based State-owned enterprise.

Particulars

Chairman's Address to 2009 AGM at pp.1-2.

38. As to paragraph 38:

38.1 save that it will refer to the full terms of the Managing Director's Address to the 2009 AGM, it admits paragraphs 38.1 to 38.4 inclusive;

38.2 it says further that the said Address further stated that or to the effect that:

(a) a deterioration in business conditions in Brazil over FY09 had resulted in fewer sales being made and margins being squeezed, and the South American segment had recorded a loss of $41m as a segment operating result;

(b) Nufarm's US business had delivered a 23% increase in sales in FY09 but gross profit from glyphosate sales had dropped $77 million from FY08;

(c) Europe (including Eastern Europe) was a smaller glyphosate market, but should provide a largely stable cost base;

(d) there was increased availability of credit in Brazil for the FY10 season, but pricing competition in Brazil remained very aggressive and margins being achieved in Brazil remained below budget in FY10, although better than FY09;

(e) the first quarter of a financial year is a relatively quiet period due to the timing of seasons in major regions around the world, and is seldom reflective of how the Nufarm business would perform over the course of a financial year;

(f) Nufarm was not providing specific guidance on an expected operating profit outcome for FY10, by reason of uncertainties relating both to the extent and the timing of anticipated improvements in a number of important areas;

(g) Nufarm was seeing evidence of improvement in the global credit environment, but it remained to be seen how quickly the improvement led to improved trading conditions and more normal stocking and purchasing behaviour;

(h) measures taken in the US had put Nufarm on a footing to generate more acceptable margins on glyphosate sales for the balance of the year;

(i) recent late-season rainfalls in Australia were not ideally-timed for growers wanting to harvest crops, but did point to reasonable summer cropping conditions and 2H10 business regeneration;

(j) the forecast group result for 1H10 was below the result for 1H09, which had benefited from an unusual sales mix of higher margin products in an environment that was quite different from 1H10 conditions;

(k) while Nufarm was confident that FY10 NPAT would show a considerable improvement on FY09, the extent of the improvement would depend on the usual factors impacting the key selling period in 2H10, including climatic conditions and the competitive environment.

Particulars

Managing Director's Address to 2009 AGM.

39. As to paragraph 39 it:

39.1 does not admit the allegations therein;

39.2 refers to and repeats paragraph 23.2 above; and

39.3 says further that the statements it made on 3 December 2009 were the statements admitted or pleaded in paragraphs 37 and 38 above.

40. It does not admit paragraph 40.

41. As to paragraph 41, it:

41.1 denies paragraph 41.1 and says that in about October 2009 Nufarm's overall net selling price (in Australian dollars) started to increase;

41.2 says that during October and November 2009 it continued to sell its glyphosate inventory in the USA at a loss (based on the written-down value of that inventory), and otherwise denies all the allegations in sub-paragraph 41.2;

41.3 admits that in or about September and October 2009 it provided one-off price protection measures on product sold in FY09, and otherwise denies all the allegations in sub-paragraph 41.3.

42. As to paragraph 42, it:

42.1 says that as at about 3 December 2009 it was aware of the matters admitted or pleaded in paragraph 28, and was further aware of the matters pleaded in paragraphs 27, 34, 37 and 38 above, and otherwise does not admit paragraph 42.1;

42.2 admits that as at about 3 December 2009 it was aware of its financial results for 1Q10;

42.3 admits that as at about 3 December 2009 it was aware of the matters admitted or pleaded in paragraph 41 above, and otherwise denies paragraph 42.3;

42.4 admits that as at 3 December 2009 it believed the remainder of FY10 was likely to see a continuation of lower and more competitive pricing and supply;

42.5 says further that as at 3 December 2009:

(a) it also believed that over the remainder of FY10 Nufarm would begin to see recovery in the profitability of its glyphosate business;

Particulars

Managing Director's Address to 2009 AGM at p.2.

(b) it was aware that:

(i) the result for the period ending 30 September 2009 (being the first two months of FY10) was largely attributable to losses from sales of US glyphosate inventory at prices below their post-31 July 2009 written-down values;

(ii) its management forecasts for FY10 as at the 3 December 2009 board meeting (based on budgeted exchange rates) were:

(A) net sales $2,955 million;

(B) gross profit $811 million;

(C) operating EBIT $331 million;

(D) operating NPAT $190 million;

(iii) in the period ending 31 October 2009:

(A) the US business had enjoyed strong demand which had cleared inventory from the previous period, albeit at low margins, as US growers had restocked in the belief that the price had bottomed;

(B) in Australia and New Zealand, higher priced glyphosate had been sold from the Nufarm system and orders for new inventory had been placed;

(iv) in the period October to end November 2009:

(A) US distribution had restocked glyphosate aggressively in the last 8 weeks, and Nufarm was finalising delivery of approximately 7 million gallons sold during this time;

(B) in North East Europe the autumn season had been below budget, but the dry autumn and missed treatments were expected to result in more opportunities in the European spring (being March to May 2010);

(C) there had been strong rainfalls in many cropping areas in Australia, pointing to reasonable summer conditions generating business in 2H10;

Particulars

Managing Director's Address to 2009 AGM at p.5.

(c) management expected that margins for glyphosate would improve dramatically over the next 10 months in the USA compared with FY10 budget, as the cost would be based on the newer replacement cost not the blended cost on which the FY10 budget was based;

(d) management were still of the opinion that:

(i) Nufarm was finally seeing the end of the high value damaging inventory and was able to introduce new low cost raw material;

(ii) Nufarm had maintained an aggressive approach to glyphosate market issues in order to achieve the full year on a profitable position; and

(iii) the full year budget for FY10 could be achieved;

(e) current market consensus for forecast FY10 operating NPAT was approximately $172 million.

Particulars

For the avoidance of doubt the admissions made in paragraph 42 are not admissions of any matter asserted in the particulars to paragraph 42 of the ASOC, to which Nufarm is not required to plead and does not plead.

43. As to paragraph 43 it:

43.1 refers to and repeats paragraph 39 above, and denies paragraph 43; and

43.2 says further that if it made the Improved Profit Representation (which is not admitted), then by reason of the matters set out in paragraphs 10 and 42 above it had reasonable grounds for making the representation at 3 December 2009.

44. It denies paragraph 44.

(d) Financial Performance in 1H10

45. As to paragraph 45, it:

45.1 admits that average selling prices for glyphosate in most regions in which Nufarm traded in 1H10 were less than half the prices achieved in 1H09, but otherwise denies paragraph 45.1;

45.2 admits that 1H10 glyphosate prices and margins in all regions in which Nufarm traded were lower than projected compared to 1H09, but otherwise does not admit paragraph 45.2;

45.3 admits that average sales prices for glyphosate in the US in 1H10 were below the adjusted book value of US inventory after the post-31 July 2009 write down, but otherwise does not admit paragraph 45.3;

45.4 it admits paragraph 45.4.

46. It admits that on or about 11 February 2010 it was aware that its financial result for 1H10 was likely to be a small operating loss, a breakeven result or a small operating profit in the order of $5-7 million, but otherwise denies paragraph 46.

47. It admits paragraph 47.

48. It denies paragraph 48, and says further that:

48.1 by not later than 3 December 2009 Nufarm had reported to the market that or to the effect that:

(a) the first quarter of Nufarm's financial year is a relatively quiet period;

(b) uncertainties relating both to the extent and the timing of anticipated improvements in a number of important areas had caused Nufarm to refrain from providing guidance as to its 2010 full-year result;

(c) although Nufarm was seeing evidence of improvement in the global credit environment, it remained to be seen how quickly the improvement led to improved trading conditions;

(d) Nufarm had taken measures in the US to put itself on a footing to generate more acceptable margins on glyphosate sales over the period December 2009 to July 2010;

(e) 1H10 rainfalls in Australia had adversely impacted growers wanting to harvest crops;

(f) 1H09 NPAT results had benefited from an unusual sales mix of higher margin products, in an environment that was quite different from 1H10 conditions; and

(g) the forecast group result for 1H10 was below the result for 1H09;

Particulars

Managing Director's Address to 2009 AGM.

48.2 by reason of the matters in paragraph 39.1 above, after 3 December 2009 a reasonable person:

(a) would have expected Nufarm to achieve at most a very modest operating profit in 1H10, at a level well below the NPAT achieved in 1H09;

(b) would have expected that information to the effect that Nufarm expected its financial result for 1H10 to be a small operating loss, a breakeven result or a small operating profit in the order of $5-7 million would be regarded by reasonable persons as consistent with the description of difficult market conditions continuing through 1H10, contained in the Managing Director's address to 2009 AGM and referred to in paragraph 48.1 above; and

(c) in circumstances where the information in paragraph 48.1 had been reported to the market, would not have expected a subsequent release of Nufarm's Likely 1H10 Financial Result (as defined) to have a material effect on the price or value of the shares in Nufarm.

49. As to paragraph 49, it:

49.1 refers to and repeats paragraph 48 above, and denies paragraph 49;

49.2 says further and in the alternative that, even if Nufarm's Likely 1H10 Financial Result was, as at 11 February 2010, information that a reasonable person would expect to have a material effect on the price or value of shares in Nufarm (which is denied), the information as between 11 February and 2 March 2010:

(a) was information that:

  (i) a reasonable person would not expect to be disclosed, for the reasons set out in "iii" below;

  (ii) was confidential, and ASX had not formed the view that the information had ceased to be confidential; and

  (iii) comprised matters of supposition, further or alternatively was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rule 3.1A.1 to 3.1A.3; and

(b) by reason of the matters in "a":

  (i) was not information to which ASX Listing Rule 3.1 applied; and

  (ii) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 2 March 2010.

Particulars

The information comprising Nufarm's Likely 1H10 Financial Result (as defined in the ASOC) was considered by the Nufarm Board at its meeting on 11 February 2010. Following the Board meeting senior management took further steps to verify and supplement the available information including by convening a meeting of Regional Managers in Melbourne, Australia, on 24 and 25 February 2010 ("**February 2010 Regional Review Meeting**") to receive and analyse regional raw data. Senior Management completed their review of the data between 26 and 28 February 2010, following which Nufarm brought forward the announcement of its 1H10 results from the scheduled date of 30 March 2010, by calling the Extraordinary General Meeting on 2 March 2010.

50. Save that it refers to and repeats paragraphs 48 and 49 above and says it was not required to notify ASX of Nufarm's Likely 1H10 Financial Result until 2 March 2010, it admits paragraph 50.

51. As to paragraph 51 it:

51.1 denies each and every allegation therein; and

51.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

  (a) Nufarm acted honestly; and

  (b) having regard to all the circumstances of the case, and in particular the circumstances set out in paragraphs 42, 48 and 49 above, Nufarm ought fairly to be excused for the contravention;

and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

(f) 2 March 2010 Representations

52. As to paragraph 52 it:

52.1 admits paragraph 52.1;

52.2 save that it says the Managing Director's Address to the 2010 EGM stated that "[t]he major contributing factors to [the 1H10 net loss] result are lower than projected glyphosate pricing and margins in all global markets compared to the previous corresponding period, and relatively low demand for crop protection products and some production interruptions due to climatic conditions in Europe and North America", it does not admit paragraph 52.2;

52.3 it does not admit paragraph 52.3 but says that the said Address stated to the effect that Nufarm had opted to suffer a further short-term loss by electing to maintain its US market positions by selling its US inventories at the lower market prices prevailing in 1H10;

52.4 it does not admit paragraph 52.4 but says that the said Address stated to the effect that the Managing Director was confident that Nufarm was seeing clear signs of profit recovery in Nufarm's glyphosate business;

52.5 it does not admit paragraph 52.5 but says that the said Address stated to the effect that for glyphosate products Nufarm viewed gross margins in the order of 25% as achievable, on sales that were likely to settle somewhere above the low prices of FY09;

52.6 it admits paragraph 52.6;

52.7 it does not admit paragraph 52.7 but says that the said Address stated that Nufarm's projected 2H10 recovery was consistent with what it had been able to achieve in previous years and was based on realistic assumptions;

52.8 it says further that the said Address also stated that or to the effect that:

(a) in Australia:

(i) Nufarm expected to capitalise on additional demand for crop protection products resulting from very good recent rainfalls in important cropping regions;

(ii) climatic conditions in Northern Australia indicated a potential additional cycle of Roundup applications;

(iii) heading into Nufarm's major selling season in Australia, there were some encouraging signs of price recovery in product lines including glyphosate, over FY09 price levels;

(iv) depending on the drought-breaking rains, indications were for a full "winter plant" with the possibility of above-average planting activity;

(b) in the US:

(i) in relation to glyphosate, Nufarm:

(A) was purchasing glyphosate intermediate at market competitive prices and would generate more acceptable margins on the sales taking place over 2H10; and

(B) would get a clearer picture of pricing trends and volume demand as Nufarm's northern spring selling season unfolded;

(ii) Nufarm expected sales of non-glyphosate crop-protection products to be relatively strong and its business was well placed to achieve revenue and profit growth over the balance of 2H10;

(c) as to Europe:

(i) Europe had experienced a dry autumn in 2009 and then its coldest winter in many years, but if there was a timely spring (in March to May 2010) demand was likely to be strong for herbicides and other Nufarm product lines; and

(ii) other higher-margin products had been launched in 1H09 but 2010 sales would wait until the European spring and summer;

(d) in overall terms, Nufarm:

(i) remained cautious about the various factors that would determine the profit outcome at year end; and

(ii) had the view that it was through the worst of the pressures that led to the FY09 setbacks and the 1H10 result.

53. It denies the allegations in paragraph 53.

54. It does not admit paragraph 54.

55. It does not admit paragraph 55.

56. As to paragraph 56:

56.1 save that it refers to and repeats paragraphs 26 and 27 above and says that at 2 March 2010 it was aware of the matters pleaded therein, it does not admit paragraph 56.1;

56.2 save that it refers to and repeats paragraphs 41 and 42 above and says that at 2 March 2010 it was aware of the matters pleaded therein, it does not admit paragraph 56.2;

56.3 save that it refers to and repeats paragraph 45 above and says that at 2 March 2010 it was aware of the matters pleaded therein, it does not admit paragraph 56.3;

56.4 save that it:

(a) refers to and repeats paragraph 52.1 to 52.7 above; and

(b) refers to and repeats as statements of fact the matters set out in paragraph 52.8(a) to (c) above;

and says that at 2 March 2010 it was aware of the matters pleaded therein, it does not admit paragraph 56.4;

56.5 it admits paragraph 56.5, but further refers to and repeats paragraphs 52.8(b) and (c) above;

56.6 it admits paragraph 56.5;

56.7 as to paragraph 56.7 it:

(a) admits its FY10 Profit Forecast was based on an assumption of at least average climatic conditions in the regions in which Nufarm Group traded;

(b) admits its FY10 Profit Forecast was based on an expectation that global demand, and prices and margins for glyphosate in the regions in which Nufarm Group traded, would increase in 2H10;

(c) admits its FY10 Profit Forecast was based on an expectation that it would make "catch-up" sales of glyphosate in Europe and North America in 2H10, particularly in the key selling season being the northern spring, but denies Monsanto's Roundup price reduction was likely to increase competition or place further pressure on prices in the US and refers to and repeats paragraph 27 above;

(d) admits paragraph (d);

and otherwise does not admit paragraph 56.7;

56.8 it admits that a 2H10 operating profit of approximately A$120–A$140 million would have exceeded its operating profits in each of 2H08 and 2H09, but otherwise does not admit sub-paragraph 56.8;

56.9 it admits sub-paragraph 56.9, but says further that the FY10 Profit Forecast was not based on an assumption of:

(a) a resumption of 2H08 market conditions; or

(b) a glyphosate price bubble in FY10;

56.10 it says further that as at about 2 March 2010 it was aware:

(a) of the matters set out in paragraph 42 above;

(b) that the February 2010 Regional Review Meeting had:

(i) reviewed each region's preliminary results for 1H10 and the forecast for FY10;

(ii) resulted in a revision of the gross margin forecasts for glyphosate sales in the North American region, from 20% as assumed in the forecasts tabled at the 11 February 2010 Board meeting down to 12%;

(iii) confirmed a forecast FY10 operating NPAT of $112.3 million;

(c) that in the three months prior to 2 March 2010 Nufarm had achieved good glyphosate sales in Australia, and solid orders for the following three months;

(d) that the North American region had reported improvement in gross margin, and there were indications of potential unbudgeted sales to a major new US customer;

(e) that Nufarm continued to hold the expectation regarding Monsanto's selling price for Roundup referred to in paragraph 28.7(c) above;

(f) Nufarm's historical performance, other than for the "transition" year of FY09, showed that the full year operating NPAT forecasts derived using the procedures and data series used in February 2010 to set its FY10 forecast were strongly predictive and were invariably achieved by year-end; and

(g) that in the lead-up to 2 March 2010 the market consensus for Nufarm's operating NPAT for FY10 was $165 million, with a range of $101 to $180 million.

57. It denies paragraph 57 and says further that by reason of the matters set out in paragraphs 10 and 56, as at 2 March 2010 it had reasonable grounds for making the FY10 Profit Forecast.

58. It denies paragraph 58.

(g) 2 March 2010 Continuous Disclosure Contraventions

i. Profit Forecast Disclosure Contravention

59. It refers to paragraph 56 above, and denies paragraph 59.

60. It refers to paragraph 59 above, and denies paragraph 60.

61. It refers to and repeats paragraphs 59 and 60, and denies paragraph 61.

62. Save that it refers to and repeats the denials in paragraphs 59 to 61 inclusive, it admits it did not notify ASX of any material downgrade to its FY10 profit forecast prior to 14 July 2010 but otherwise does not admit paragraph 62.

63. As to paragraph 63 it:

    63.1 denies each and every allegation therein; and

    63.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

    (a) Nufarm acted honestly; and

    (b) having regard to all the circumstances of the case, and in particular the circumstances set out in paragraphs 10 and 56 above, Nufarm ought fairly to be excused for the contravention;

    and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

ii. Net Debt Forecast Disclosure Contravention

64. Save that it will refer to the full terms of the Managing Directors' address to the 2010 EGM at the trial, it admits paragraph 64.

65. As to paragraph 65 it:

    65.1 denies the allegations therein;

65.2 says further that an "accounts receivable cash collection cycle":

(a) during the Relevant Period was not a measure used by Nufarm for the reasons that its cashflow is highly seasonal, climatic conditions are highly variable between regions, and there are significant differences in operating conditions (including trading terms) between regions; and

(b) by reason of "a":

(i) was not monitored; and

(ii) was not a measure which ought reasonably to have been monitored;

by Nufarm during the Relevant Period.

66. It denies paragraph 66.

67. It denies paragraph 67, and refers to and repeats paragraphs 65.2(a) and 65.2(b)(ii) above.

68. It refers to and repeats paragraph 67, and denies paragraph 68.

69. Save that it refers to and repeats the denials in paragraphs 65 to 68 inclusive, it admits it did not notify ASX that its net debt at the end of FY10 would be approximately $500m or higher prior to 1 September 2010.

70. As to paragraph 70 it:

70.1 denies each and every allegation therein; and

70.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

(a) Nufarm acted honestly; and

(b) having regard to all the circumstances of the case, and in particular the circumstances set out in paragraph 65 above, Nufarm ought fairly to be excused for the contravention;

and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

(h) 30 March 2010 Representations

71. It admits paragraph 71 but says further that at the time of releasing its 1H10 interim results it further stated to the market that or to the effect that:

71.1 group sales were $890 million in the period compared with $1.24 billion in 1H09, reflecting price reductions in glyphosate globally and adverse climatic conditions in the Northern Hemisphere;

71.2 the 1H09 result had been characterised by an excellent summer cropping season in Australia, early season sales in both North America and Europe and a much stronger pricing environment but the 1H10 result reflected adverse climatic conditions and pricing pressure;

71.3 for Australia:

(a) 1H10 summer cropping conditions in Australia were adversely affected by late summer rains in northern regions, but the rainfall would prove beneficial for plantings in 2H10;

(b) for 2H10 product demand was already strong in Eastern States and the outlook for crop plantings was extremely positive;

71.4 for North America:

(a) 1H10 sales in North America were adversely affected by climatic conditions and reduced glyphosate prices, and segment operating profit was $3m compared to $53m for 1H09, but Nufarm had cleared its glyphosate inventory and was now purchasing glyphosate acid at market competitive prices and expected to generate more acceptable margins on sales occurring in 2H10;

(b) the US glyphosate segment was still transitioning to a more normal level of productivity;

71.5 1H10 had seen a slight easing of credit related pressures in Brazil but competition remained intense and margins had been dramatically impacted;

71.6 in 2H10:

(a) climatic factors would largely determine demand for glyphosate and most other crop protection products, with pricing likely to strengthen as the key selling seasons got under way in Australia, North America and Europe;

(b) Nufarm's FY10 Profit Forecast assumed at least average climatic conditions and subsequent demand in its key selling regions, and a gradual improvement in glyphosate margins through the balance of FY10;

("the **FY10 interim result statements**").

Particulars

The FY10 interim results statements were contained in the FY10 Interim Results Presentation.

72. It denies the allegations in paragraph 72.

73. It does not admit paragraph 73.

74. As to paragraph 74 it:

74.1 denies it did not qualify the FY10 Profit Forecast, and refers to and repeats the FY10 interim results statements set out in paragraph 71 above;

74.2 admits it did not withdraw the FY10 Profit Forecast at any time prior to 14 July 2010; and

otherwise does not admit paragraph 74.

75. As to paragraph 75, it:

75.1 refers to paragraph 56 above and otherwise does not admit paragraph 75.1;

75.2 admits that the average gross margin on its glyphosate sales in 1H10 was approximately 6%, but otherwise does not admit paragraph 75.2;

75.3 admits it was aware there had been severe winter conditions in Europe and North America, but otherwise does not admit sub-paragraph 75.3;

75.4 admits sub-paragraph 75.4;

75.5 does not admit paragraph 75.5;

75.6 denies paragraph 75.6, and says further that:

(a) sales volumes and prices are less indicative of profitability than net sales adjusted for rebates, discounts and like concessions;

(b) sales volumes, sales prices and net sales for a part-month are not a reliable indicator of the full month result for the reasons that:

(i) agricultural buyers adjust buying activity quickly in response to fluctuating weather conditions;

(ii) large customers frequently attempt to continue price negotiations with Nufarm after shipment of an order, especially in volatile markets; and

(iii) allowing for data-processing time, sales made in the last few days of a calendar month are often not processed until the first days of the following month;

(c) Nufarm's net sales results were not reported other than on a full-month basis and typically were not available for 10-14 days after the close of a calendar month;

(d) Nufarm's sales monitoring systems were not, in the respects described above or otherwise, unreasonable having regard to *inter alia* the matters set out in paragraph 10.4 above;

75.7 says further that as at 30 March 2010:

(a) it was aware of the matters set out in paragraph 56 above;

(b) it was aware of the matters described in the FY10 interim results statements;

(c) held the expectations described in the FY10 interim results statements;

(d) excellent rains in the east and south indicated a good autumn and winter planting season in Australia;

(e) in the Australia and New Zealand region, the average gross margin on glyphosate sales was 25%, and Nufarm's inventory levels were back to normal;

(f) management reported confidence that the FY10 Profit Forecast would be achieved;

(g) current market consensus for forecast FY10 operating NPAT was approximately $106 million, with a range of $92–$125 million;

(h) its internal FY10 operating NPAT forecast based on actual January numbers and forecasts derived from February 2010 Regional Review Meetings, was a FY10 operating NPAT of $114 million assuming normal climatic conditions, which was within the forecast range previously announced.

76. It denies paragraph 76 and says that by reason of the matters referred to in paragraphs 10 and 75 above it had reasonable grounds for making the FY10 Profit Forecast at 30 March 2010.

77. It denies paragraph 77 and refers to and repeats paragraph 76 above.

(i) 20 April 2010 Representations

78. As to paragraph 78:

78.1 it admits paragraph 78.1 but says further that the announcement also stated that the FY10 Profit Forecast assumed at least average climatic conditions and subsequent demand in Nufarm's key selling regions, and a gradual improvement in glyphosate margins over the remainder of 2H10;

78.2 save that it refers to and repeats paragraphs 52.8, 71 and 78.1 and says further that its forecast was qualified by the matters set out in those paragraphs, it admits paragraph 78.2.

79. It does not admit paragraph 79.

80. As to paragraph 80 it:

80.1 denies it did not qualify the FY10 Profit Forecast, and refers to and repeats the FY10 interim results statements set out in paragraph 71 above and the further matters set out in paragraph 78 above;

80.2 admits it did not withdraw the FY10 Profit Forecast at any time prior to 14 July 2010; and

otherwise does not admit paragraph 80.

81. As to paragraph 81, it:

81.1 was aware of the matters set out in paragraph 75 above and in particular paragraph 75.7, and otherwise does not admit paragraph 81.1;

81.2 as to paragraph 81.2 it says it was aware at 20 April 2010 of sales volumes, sales prices and net sales to March month-end, but otherwise it refers to and repeats paragraph 75.6 above and denies paragraph 81.2.

81.3 says further that as at 20 April 2010 it:

(a) continued to hold the expectations described in the FY10 interim results statements;

(b) was further aware that:

(i) the January 2010 YTD and February YTD results had each reported net losses; but

(ii) over Easter 2010 (being early April 2010) senior management had discussed the February YTD result with the regional managers in Europe, Australia and South America, to determine whether regional management's full-year expectations aligned with the FY10 Profit Forecast:

(A) European regional management had reported that the shortfall of YTD results against forecast was climate-related, but believed the season was developing in a manner that indicated a full year result in excess of the forecast presented to the Board at the March meeting;

(B) Australian regional management had reconfirmed its FY10 forecast;

(C) South American management downgraded its FY forecast by $4m, reflecting costs associated with the repayment of a financing facility;

(D) while the North American season was still to commence, US management had reported very high confidence as to the existing FY10 forecast;

(iii) Nufarm's historical performance, other than for the "transition" year of FY09, showed that the full year operating NPAT forecasts derived using the procedures and data series used for the 2010 forecasts were strongly predictive and were invariably achieved by year-end; and

(iv) the preliminary March 2010 YTD result was an operating net profit after tax of $0.853 million, reflecting March monthly operating net profit after tax of $21.6 million against a forecast of $17.9 million.

82. It denies paragraph 82 and says further that by reason of the matters set out in paragraph 81 it did have reasonable grounds for making the FY10 Profit Forecast as at 20 April 2010.

83. It denies paragraph 83 and refers to and repeats paragraphs 81 and 82 above.

(j) Monsanto's 27 May 2010 Forecast Downgrade

84. As to paragraph 84 it:

84.1 admits the announcement of the Monsanto Forecast Downgrade;

84.2 says further that:

(a) the Monsanto Forecast Downgrade reflected a "repositioning" of Monsanto's glyphosate product lines at prices closer to generics, as described in its announcement to the New York Stock Exchange (the "**Monsanto NYSE announcement**");

(b) it repeats paragraphs 10.4(f), 27.1(a) and 27.1(b) above;

(c) Monsanto's price point in the US prior to the said announcement was approximately US$20 per "Roundup Equivalent Gallon" ("**REG**"), compared to Nufarm's typical price point of around US$9-10 per REG;

(d) Monsanto prior to the said announcement had been losing market share in the US to lower-priced competitors, including generics producers;

(e) the effect of Monsanto's price-repositioning was expected by Nufarm and other market participants to set its price point at around US$12 per REG, still at a premium above Nufarm's typical price point of around US$9-10 per REG;

(f) the Monsanto NYSE announcement did not disclose any initiative for achieving the "new market positioning" to which it referred;

(g) by reason of the matters in (d) and (e), neither the Monsanto Forecast Downgrade nor the repositioning intentions described in the Monsanto NYSE announcement provided cause for Nufarm to downgrade its FY10 Profit Forecast, which already assumed a significant reduction in margins on and profits from glyphosate in the US;

84.3 and otherwise does not admit the allegations in paragraph 84 and will rely upon the full terms of the Monsanto NYSE announcement at trial.

(k) 28 May 2010 Representations

85. As to paragraph 85 it:

85.1 says that on 28 May 2010 it:

(a) held a conference call with sell-side market analysts ("**28 May conference call**") in which it stated, inter alia, to the effect that:

(i) the Monsanto Forecast Downgrade and the Monsanto NYSE announcement had limited implications for its own business and earnings outlook;

(ii) a qualification in relation to Nufarm's profit guidance was that the last quarter of the financial year was always all-important and

Nufarm would keep testing the assumptions that it made and keep talking to regional management on a regular basis; and

(b) made a company announcement to ASX in which it stated, inter alia, to the effect set out in (a)(i) above and referred readers to an audio file of the 28 May conference call available at the Nufarm website; and

85.2 otherwise does not admit paragraph 85.

86. It does not admit paragraph 86 and refers to and repeats paragraph 85.

87. It denies paragraph 87 and refers to and repeats paragraph 85, and in particular paragraph 85.1(a)(ii).

88. As to paragraph 88:

88.1 it refers to paragraph 81 above, and otherwise does not admit paragraph 88.1;

88.2 it refers to and repeats paragraph 84 above, and otherwise does not admit paragraph 88.2;

88.3 as to paragraph 88.3, it:

(a) refers to and repeats paragraph 75.6 above;

(b) says that at 28 May 2010 it was aware of its sales volumes, sales prices and net sales to April 2010 month-end; and

(c) otherwise denies paragraph 88.3;

88.4 says further that as at 28 May 2010 it:

(a) was aware of the matters set out in paragraph 81 above;

(b) was further aware that:

(i) the March 2010 results showed that Australia, New Zealand and Asia were performing well against forecast at both operating NPAT and EBIT;

(ii) March YTD results showed an operating NPAT of $0.9 million, which was $16.8 million below forecast but which was driven by a slow start to the season in the USA and Europe;

(iii) the March forecast for FY10 NPAT, following analysis with the regional managers, was $112.2 million compared with the January forecast of $113.9 million;

(iv) agricultural conditions in Australia were generally excellent, product volumes supplied in April were very high, Australia's production output had virtually reached the full year budget, May so far looked to be a very good sales month and the Australian region was reporting a gross profit margin of 29.8%, up from 22.4% on a YTD basis;

(v) North American and European selling seasons had now commenced and April sales provided confidence that year end forecast targets would be achieved;

(vi) both its North American and European regions had affirmed their FY10 forecasts;

(vii) in North America in the agriculture market there was aggressive pricing and some margin pressure, but the glyphosate price was holding and crop predictions were positive;

(viii) in Europe:

(A) April sales in north-east Europe had been good and regional management reported confidence in achieving profit exceeding the January forecast; and

(B) Southern Europe was reporting a strong spring season, with good product movement in April;

(ix) current market consensus for forecast FY10 operating NPAT was approximately $106 million, but with a range of $86–$125 million.

89. It denies paragraph 89 and refers to and repeats paragraph 88 above.

90. It denies paragraph 90.

(I) 28 May 2010 Continuous Disclosure Contravention

91. It denies paragraph 91, and refers to and repeats paragraph 88 above.

92. It refers to and repeats paragraph 91, and denies paragraph 92.

93. Save that it refers to and repeats paragraphs 91 and 92 and denies any Revised Profit Forecast was required prior to 14 July 2010, it admits it did not notify ASX of a Revised Profit Forecast prior to 14 July 2010 but otherwise does not admit paragraph 93.

94. As to paragraph 94 it:

94.1 denies each and every allegation therein; and

94.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

(a) Nufarm acted honestly; and

(b) having regard to all the circumstances of the case, and in particular the circumstances set out in paragraphs 81, 84, 85 and 88 above, Nufarm ought fairly to be excused for the contravention;

and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

(m) Elders Profit Downgrade

95. As to paragraph 95, it:

95.1 admits paragraph 95;

95.2 says further that Elders in its announcement containing the Elders' Profit Downgrade ("**Elders' June announcement**") and in its "Trading and Operations Update" also released on 22 June 2010 ("**Elders' Update**") further stated that or to the effect that:

(a) the downgrade reflected lower than anticipated earnings from its Rural Services operations, which were insufficient to achieve guidance especially after its earlier forecast downgrade for its Forestry operations (Elders June announcement p.2-3; Elders' Update p.7);

(b) its Rural Services operations included real estate agency, stock agency, New Zealand operations and live export operations including to Indonesia (Elders June announcement p.2-3; Elders' Update p.7);

(c) the lower than anticipated earnings from its Rural Services operations resulted principally because of persistently low prices for key farm supply lines coupled with subdued activity in its real estate operations, in New Zealand and in live export volumes to Indonesia (Elders June announcement p.2);

(d) sales volumes and gross margins in its agricultural chemical and other farm supplies segments had each risen compared to its previous corresponding period, although prices were still low (Elders' Update pp.3, 8);

95.3 says further that market reports received by Nufarm indicated that despite the Elders June Announcement, major customers of Nufarm did not intend to reduce purchases from Nufarm.

Particulars

The reports were oral and received by inter alia:

i. Doug Rathbone from Malcolm Jackman of Elders during May and June 2010;

ii. Kevin Martin from Graeme Jacobs of Landmark during May and June 2010;

iii. Dick Barrett from US customers including Tenkoz (Nufarm's largest US glyphosate customer) during FY10;

iv. Lachlan McKinnon from Rob Hart of Landmark and Jim Lynch of Elders during May and June 2010;

the material substance of which were that the customers either indicated that they expected to make significant further purchases of product from Nufarm before the end of the financial year as they had done in previous years, or else did not indicate that they would depart from previous years' practices by failing to make such purchases.

(n) 22 June 2010 Representations

96. As to paragraph 96 it:

96.1 admits it made the presentation titled "A Day at the Farm" to the JP Morgan Annual Agriculture Corporate Access day on 22 June 2010 ("**June DATF presentation**"), which presentation was then released to ASX and published on the Nufarm website;

96.2 says it stated in the June DATF presentation that or to the effect that:

(a) Nufarm was at 22 June 2010 in the "critical 'swing' period, with June and July always key sales/profit months" (original emphasis);

(b) seasonal conditions had continued to be positive in Australia;

(c) glyphosate pricing remained very competitive in the US and had spread to Canada;

(d) there was a "subdued" pricing environment in Europe;

(e) Nufarm would continue to keep year-end under close and regular review and advise the market if it formed a different view of the final result; and

96.3 otherwise denies paragraph 96.

Particulars

June DATF presentation p.2.

97. It denies paragraph 97 and refers to and repeats paragraph 96 above.

98. Save that it refers to and repeats paragraph 96, and further refers to and repeats paragraphs 62 and 93 above, and says it was not required to notify ASX of any revision to its FY10 Profit Forecast prior to 14 July 2010, it admits it did not notify ASX of any revision to its FY10 Profit Forecast prior to 14 July 2010, and otherwise does not admit paragraph 98.

99. As to paragraph 99:

 99.1 it refers to and repeats paragraph 88 above, and otherwise denies paragraph 99.1;

 99.2 it denies all the allegations in sub-paragraph 99.2;

 99.3 save that it had received sales data from its regions for May 2010, it does not admit paragraph 99.3;

 99.4 it denies paragraph 99.4 and refers to and repeats paragraph 75.6 above;

 99.5 it says further that as at 22 June 2010 it was aware that:

  (a) although May 2010 sales volumes in Australia had slipped against expectations, seasonal conditions were still relatively positive, there was good rainfall in all regions (albeit late for the Australian Central and coastal regions), and there was strong demand creating shortages, which factors were helping to hold reasonable price points; and

  (b) between 16 and 18 June 2010 meetings of regional general managers and regional CFOs in Melbourne to discuss the results for FY10 ("the **June regional reviews**") resulted in a revised FY10 forecast of $109 million, against its FY10 Profit Forecast range of $110-130 million.

100. It denies paragraph 100 and says further that by reason of the matters set out in paragraph 99 above Nufarm retained reasonable grounds for making the FY10 Profit Forecast as at 22 June 2010.

101. It denies paragraph 101.

(o) 22 June 2010 Continuous Disclosure Contravention

102. It denies paragraph 102.

103. It denies paragraph 103 and says further that if (which is not admitted) the "Revised Profit Forecast" contemplated by the Applicants herein refers to the revised FY10 Forecast of $109 million referred to in paragraph 99.5(b) above, the difference between the revised forecast of $109 million and the FY10 Profit Forecast of $110-130 million:

103.1 was not information which, as at 22 June 2010 or at any time after 2 March 2010 a reasonable person would expect to have a material effect on the price or value of Nufarm shares;

103.2 further or alternatively:

(a) was information that:

(i) a reasonable person would not expect to be disclosed, for the reasons set out in "iii" below;

(ii) was confidential, and ASX had not formed the view that the information had ceased to be confidential; and

(iii) comprised matters of supposition, further or alternatively was insufficiently definite to warrant disclosure;

within the meaning of ASX Listing Rule 3.1A.1 to 3.1A.3; and

(b) by reason of the matters in (a):

(i) was not information to which ASX Listing Rule 3.1 applied; and

(ii) was not information which section 674(2) of the Corporations Act required be notified to ASX at any time prior to 14 July 2010.

104. Save that it refers to and repeats paragraphs 102 to 103 above and says it was not required to notify ASX of any revision to its FY10 Profit Forecast prior to 14 July 2010, it admits it did not notify ASX of any revision to its FY10 Profit Forecast prior to 14 July 2010.

105. As to paragraph 105 it:

105.1 denies each and every allegation therein; and

105.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

(a) Nufarm acted honestly; and

(b) having regard to all the circumstances of the case, and in particular the circumstances set out in paragraphs 96, and 102 to 103 inclusive above, Nufarm ought fairly to be excused for the contravention;

and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

(p) 14 July 2010 Forecast Downgrade

106. It admits paragraph 106, and says further that the announcement of the FY10 Profit Forecast Downgrade ("the **July Downgrade announcement**") further stated that or to the effect that, inter alia:

106.1 the final quarter (May-July) of Nufarm's financial year is typically the key sales and profit generating period, reflecting significant agricultural activity in regions such as Australia, North America and Europe;

106.2 in the final quarter of FY10:

(a) in North America:

(i) a faster than usual 'burn-down' period (the process of clearing vegetation on farming land ahead of sowing the new crop) meant a limited window for herbicide usage and follow-up sales in May and June on a range of products had been lower than anticipated;

(ii) unusually wet conditions through large areas of the north eastern "corn belt" in the US had also had a dampening effect on demand;

(iii) in Canada there had been a major impact on product demand due to very wet conditions in the major cereal growing regions in the west of Canada, and unprecedented rainfall in May and June had resulted in sales being down some 20% on previous forecasts;

(p.1);

(b) in Europe:

(i) climatic conditions had been cooler and drier in key regions such as France, Germany and the UK, especially during the key buying period for crop protection products;

(ii) heavy rainfall in Eastern Europe – particularly Poland and Hungary – in June had interrupted cropping activity in those areas and placed further downward pressure on product demand;

(c) in Australia:

(i) Western Australia had experienced a late start to the planting of winter crops which would push back sales of some products into the new financial year; and

(ii) Southern NSW had experienced unusually wet conditions (p.2);

(iii) Nufarm's major distribution customers' purchasing behaviour had changed in that they were now operating with very low stocking levels and as such attempting to service their customers on a 'hand to mouth' basis.

(q) 14 July 2010 Net Debt Forecast Disclosure Contravention

107. Save that it says the said announcement formed part of the July Downgrade announcement, and it refers to and repeats paragraph 106 above, it admits paragraph 107.

108. It denies paragraph 108 and refers to and repeats paragraph 65.2 above.

109. It refers to and repeats paragraphs 88.4, 99.5 and 106.2 above, and denies paragraph 109.

110. It refers to and repeats paragraph 109 and denies paragraph 110.

111. It denies paragraph 111.

112. As to paragraph 112, save that it refers to and repeats paragraph 106 to 111 above and says there was no further revised debt forecast which ought to have been notified to ASX, it admits it did not notify ASX of a further revised debt forecast prior to 1 September 2010.

113. It denies paragraph 113.

(r) FY10 Continuous Disclosure Contravention

114. As to paragraph 114, it:

114.1 denies paragraph 114.1 and says further that at all material times its FY10 Profit Forecast was based on assessments of inter alia:

(a) prevailing market prices and price trends; and

(b) prevailing and recent historical market shares and customer demand volumes;

and assumed continuation across its product range of existing price trends and customer demand volumes, average climatic conditions and repetition of historical customer buying patterns;

114.2 denies paragraph 114.2, and refers to and repeats paragraphs 56.10(f) and 81.3(b)(iii) above;

114.3 denies paragraph 114.3 and refers to and repeats paragraphs 27–28, 34–35, 42, 56.10, 81.3 and 88.4 above.

115. It denies paragraph 115 and refers to and repeats paragraph 114.1-3 above.

116. It denies paragraph 116.

117. It refers to and repeats paragraph 114 above and denies there was Material Information as defined to notify to ASX, and otherwise denies paragraph 117.

118. As to paragraph 118 it:

118.1 denies each and every allegation therein; and

118.2 says in the alternative that if the Court finds that Nufarm contravened or may have contravened section 674(2) of the Corporations Act as alleged (which is denied):

(a) Nufarm acted honestly; and

(b) having regard to all the circumstances of the case, Nufarm ought fairly to be excused for the contravention;

and the Court ought in its discretion relieve Nufarm from liability for such contravention, pursuant to section 1317S of the Corporations Act.

(s) 1 September 2010 Net Debt Corrective Disclosure

119. Save that it will refer to the full terms of the 1 September 2010 announcement at the trial, it admits the announcement referred to in paragraph 119.

LOSS AND DAMAGE

120. As to paragraph 120:

 120.1 it admits that during the Relevant Period the market for shares in Nufarm was regulated by, inter alia, the ASX Listing Rules and ss 674(2) and 1041H of the Corporations Act, and otherwise does not admit sub-paragraph 120.1;

 120.2 does not admit sub-paragraph 120.2;

 120.3 it says that paragraph 120.3 is vague and embarrassing, and otherwise denies paragraph 120.3; and

 120.4 it says that paragraph 120.4 is vague and embarrassing, and otherwise denies paragraph 120.4.

121. It admits paragraph 121.

122. It admits paragraph 122.

123. It admits paragraph 123.

124. As to paragraph 124:

 124.1 it admits that trading in its shares on the ASX resumed on 15 July 2010; and

 124.2 it admits that its share price on 15 July 2010 fell to a low of $3.68 per share and closed at $3.75 per share;

 124.3 it admits that its share price on 16 July 2010 fell to a low of $3.40 per share and closed at $3.40 per share;

 124.4 it admits that its share price on 19 July 2010 fell to a low of $3.20 per share and closed at $3.25 per share;

 and otherwise does not admit paragraph 124.

125. It admits paragraph 125.

126. It admits that on 1 September 2010 it made the announcement admitted in paragraph 119 above, being the 1 September 2010 Net Debt Corrective Disclosure as defined.

127. It admits that:

 127.1 its share price on 1 September 2010 fell to a low of $3.48 per share and closed at $3.59 per share;

127.2 its share price on 2 September 2010 fell to a low of $3.48 per share and closed at $3.50 per share;

127.3 its share price on 3 September 2010 fell to a low of $3.34 per share and closed at $3.39 per share,

and otherwise does not admit paragraph 127.

128. It denies paragraph 128.

129. As to paragraph 129 it:

129.1 admits the Applicants acquired shares in Nufarm during the Relevant Period;

129.2 does not admit the Group Members acquired shares in Nufarm during the Relevant Period;

129.3 denies the Applicants or Group Members made any assumption of the kind alleged in paragraph 129;

129.4 denies that investors comprising the market for shares in Nufarm ("the **market**") made any assumption of the kind alleged in paragraph 129;

129.5 says further that for the reasons set out in this Defence, the market had been informed of all information about which Nufarm was obligated to inform the market; and

129.6 otherwise denies the allegations in paragraph 129.

130. As to paragraph 130 it:

130.1 does not admit the allegations therein; and

130.2 says further that if (which is not admitted) the said Group Members made the said acquisitions on the assumption alleged, then for the reasons set out in this Defence, and in particular paragraph 129.5 above, the assumption was valid.

131. It denies paragraph 131.

132. It denies paragraph 132.

133. It denies paragraph 133.

134. It denies paragraph 134.

135. It denies paragraph 135.

DATE 7 November 2011

Signed by Zaven Mardirossian
ARNOLD BLOCH LEIBLER
Lawyers for the Respondent

This pleading was prepared by Lachlan Armstrong and Oren Bigos of counsel, and settled by Alan Archibald of Her Majesty's Counsel.

Certificate of lawyer

I, Zaven Mardirossian, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 7 November 2011

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Signed by Zaven Mardirossian

Lawyer for the Respondent

Schedule

No. NSD 1847 of 2010

Federal Court of Australia
District Registry: Victoria
Division: General Division

Applicants

Second Applicant:	Verbatt Pty Ltd (ACN 116 145 834) (as trustee of the Verbatt Trust)
Third and Fourth Applicants:	Graham and Susan Roney

Date: 7 November 2011