FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Netwealth Investments Limited [2026] FCA 1186

File number(s):	VID 1658 of 2025
Judgment of:	**MCEVOY J**
Date of judgment:	20 August 2026
Catchwords:	**CORPORATIONS** – duty under s 912A(1)(a) of the *Corporations Act 2001* (Cth) to do all things necessary to ensure that the financial services covered by a financial services licence were provided efficiently, honestly and fairly – where plaintiff alleges that the defendants contravened ss 912A(1)(a) and 912A(5A) of the Act in operating the Netwealth Superannuation Master Fund – where contraventions admitted by defendants – where proposed declarations and costs orders are agreed – where no application for pecuniary penalty – whether proposed declaratory relief and penalty are appropriate – relief granted in the form proposed
Legislation:	*Australian Securities and Investments Commission Act 2001* (Cth) s 93AA *Corporations Act 2001* (Cth) ss 912A(1)(a), 912A(5A), 1317E, 1317E(1), 1317E(2), 1317G *Evidence Act 1995* (Cth) ss 191, 191(2) *Federal Court of Australia Act 1976* (Cth) s 21 *Superannuation Industry (Supervision) Act 1993* (Cth) ss 10(1), 19(1)
Cases cited:	*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 *Australian Competition and Consumer Commission v MSY Technology Pty Ltd* [2012] FCAFC 56; 201 FCR 378 *Australian Securities and Investments Commission v Monarch FX Group Pty Ltd, in the matter of Monarch FX Group Pty Ltd* [2014] FCA 1387; 103 ACSR 453 *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; 275 FCR 57 *Australian Securities and Investments Commission v Avestra Asset Management Ltd (in liq)* [2017] FCA 497;

	348 ALR 525
	Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq) [2012] FCA 414; 88 ACSR 206
	Australian Securities and Investments Commission v Cassimatis (No 8) [2016] FCA 1023; 336 ALR 209
	Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790
	Australian Securities and Investments Commission v Commonwealth Bank of Australia [2022] FCA 1422
	Australian Securities and Investments Commission v Lanterne Fund Services Pty Limited [2024] FCA 353
	Australian Securities and Investments Commission v Macquarie Investment Management Limited [2026] FCA 303
	Australian Securities and Investments Commission v RAMS Financial Group Pty Ltd (Penalty) [2025] FCA 1304
	Australian Securities and Investments Commission v RI Advice Group Pty Ltd [2022] FCA 496; 160 ACSR 204
	Australian Securities and Investments Commission v United Super Pty Ltd [2025] FCA 1453
	Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate [2015] HCA 46; 258 CLR 482
	Forster v Jododex Australia Pty Ltd [1972] HCA 61; 127 CLR 421
	Minister for the Environment, Heritage and the Arts v PGP Developments Pty Limited [2010] FCA 58; 183 FCR 10
Division:	General Division
Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	55
Date of hearing:	7 August 2026
Counsel for the Plaintiff:	Mr C M Archibald KC and Mr L Hogan
Solicitor for the Plaintiff:	Lander & Rogers
Counsel for the Defendants:	Mr D F C Thomas SC and Ms E Bathurst

Solicitor for the Defendants:	Herbert Smith Freehills Kramer

ORDERS

VID 1658 of 2025

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**NETWEALTH INVESTMENTS LIMITED (ACN 090 569 109)** First Defendant **NETWEALTH SUPERANNUATION SERVICES PTY LTD (ACN 636 951 310)** Second Defendant

ORDER MADE BY:	**MCEVOY J**
DATE OF ORDER:	**20 AUGUST 2026**

THE COURT DECLARES THAT:

1. Netwealth Investments Limited (ACN 090 569 109) (**NIL**), in operating the Netwealth Superannuation Master Fund (**NSMF**) (between around 26 March 2021 and 30 June 2021), failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and 912A(5A) of the *Corporations Act 2001* (Cth) (the **Act**) where:

   (a) having regard to the apparent nature and characteristics of the First Guardian Master Fund (**FGMF**), NIL did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the First Guardian Diversified Strategies Class (**Diversified Class**) or the First Guardian Growth Strategies Class (**Growth Class**) investment options prior to or while offering those investment options to members with an interest in the NSMF's Super Accelerator Plus product;

   (b) in the circumstances described in paragraph (a) above, NIL:

      (i) approved the Diversified Class and Growth Class as investment options made available to members for selection;

(ii) while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain); and

(iii) while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the investment platform maintained and operated by NIL through which members holding an interest in the NSMF and financial advisers authorised to act on behalf of those members could:

A. access and operate their cash account in the NSMF;

B. select, and give direction to the NSMF trustee to acquire or divest an investment in a range of investment options made available by the NSMF trustee; and/or

C. access information about their investments;

(**Netwealth Platform**)

(c) while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members.

2. Netwealth Superannuation Services Pty Ltd (ACN 636 951 310) (**NSS**), in operating the NSMF (from 1 July 2021 to around 27 May 2024), failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and 912A(5A) of the Act, where:

(a) having regard to the apparent nature and characteristics of the FGMF, NSS did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the Diversified Class or the Growth Class investment options while offering those investment options to members with an interest in the NSMF's Super Accelerator Plus product;

(b) in the circumstances described in paragraph (a) above, NSS:

(i) while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of

100% of the member's account (less any minimum cash holding which the affected member was required to maintain);

(ii) while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the Netwealth Platform;

(c) while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members, prior to 6 December 2022; and

(d) on or after removing the Diversified Class and Growth Class from the investment "menu" administered by NIL on or around 22 December 2022, NSS did not inform NSMF members whose accounts recorded an investment in those classes of concerns held about the FGMF relevant to a member's future investment directions about their investment.

THE COURT ORDERS THAT:

1. The defendants are to pay the plaintiff's costs of the proceeding as agreed, or in the absence of agreement, to be taxed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MCEVOY J:

1 By an originating process dated 17 December 2025, the plaintiff, the Australian Securities and Investments Commission (**ASIC**), alleges that the defendants, Netwealth Investments Limited (**NIL**) and Netwealth Superannuation Services Pty Ltd (**NSS**), engaged in conduct that contravened ss 912A(1)(a) and 912A(5A) of the *Corporations Act 2001* (Cth) (the **Act**). The relevant conduct involved the provision of financial services covered by the defendants' respective Australian financial services licences; that is to say, dealing in superannuation products and provision of a superannuation trustee service.

2 At all material times the defendants were part of the Netwealth group of companies. They both are, and were at all relevant times, bodies corporate incorporated under the Act and holders of an Australian financial services licence. These licences authorised them to carry on a financial services business to, among other things, provide general financial product advice for certain classes of financial products including superannuation, deal in a certain class (or classes) of financial products including superannuation, and provide a superannuation trustee service to retail clients and, in respect of NIL, wholesale clients.

3 In the period from 27 February 2002 until 30 June 2021 NIL was trustee of the Netwealth Superannuation Master Fund (**NSMF**) and held the beneficial interests acquired by members in the NSMF in its capacity as custodian of the fund. Until 30 June 2021 NIL was the holder of a Registrable Superannuation Entity (**RSE**) licence. The second defendant, NSS, took over the position of trustee of the NSMF on 1 July 2021 and is, and has been, the holder of an RSE licence from that date.

4 ASIC contends that in operating the NSMF, NIL (between around 26 March 2021 and 30 June 2021) and NSS (from 1 July 2021 to around 27 May 2024) failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly in contravention of s 912A(1)(a) and s 912A(5A) of the Act.

5 The defendants have admitted the contraventions alleged by ASIC. The parties have jointly prepared and filed a statement of agreed facts and admissions (**SAFA**) as well as a supplementary statement of agreed facts and admissions (**Supplementary SAFA**) for the purposes of s 191 of the *Evidence Act 1995* (Cth). While the court is not required to accept the SAFA and Supplementary SAFA uncritically, in this case I accept them as credible and cogent,

and proof of the facts they contain. The effect of the SAFA and Supplementary SAFA is that evidence to prove the facts that they contain is not necessary, and the court has before it a sufficient factual foundation to support the exercise of its power to make declarations and impose a penalty: Evidence Act s 191(2); *Minister for the Environment, Heritage and the Arts v PGP Developments Pty Limited* [2010] FCA 58; 183 FCR 10 at [35] (Stone J); *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790 at [12] (Beach J).

6 In addition to the SAFA and Supplementary SAFA, the parties filed joint submissions on liability and relief on 24 April 2026. They have also provided a proposed minute of orders including declarations of contravention which ASIC, NIL and NSS jointly submit should be made in relation to the admitted contraventions of ss 912A(1)(a) and 912A(5A) of the Act.

7 As part of the resolution of the proceeding, NIL and NSS have also given a court enforceable undertaking pursuant to s 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth), by which they have implemented and executed a compensation scheme for all "affected investors" (**Undertaking)**. I will describe the Undertaking and its terms in further detail later in these reasons.

8 The relief proposed by the parties, consistently with the terms of the originating process, comprises:

(a) declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that NIL and NSS have contravened s 912A(1)(a) of the Act;

(b) declarations pursuant to s 1317E of the Act that NIL and NSS have contravened s 912A(5A) of the Act; and

(c) an order that the defendants pay ASIC's costs of the proceeding as agreed, or in the absence of agreement, to be taxed.

9 For the reasons that follow I am satisfied that liability has been established and that it is appropriate for the court to make the proposed declarations and to make the order as to costs which has been agreed. There will therefore be declarations and orders substantially in the terms proposed by the parties.

RELEVANT BACKGROUND

10 Given the agreement of the parties as to the relevant facts, the application of the law to those facts, and the appropriate relief, in these reasons I have drawn from the SAFA and Supplementary SAFA, and extensively from the parties' joint written submissions. The SAFA and Supplementary SAFA are annexed to these reasons, and I will not describe the underlying facts in any more detail than is necessary to explain why I am satisfied that the proposed declarations should be made.

Overview of the NSMF and the Netwealth Platform

11 The NSMF is a regulated superannuation fund within the meaning of s 19(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth), and therefore a "registrable superannuation entity" and a "superannuation entity" within the meaning of s 10(1) of that Act.

12 The NSMF was established by trust deed on 27 February 2002. It is, and was at all relevant times, a "choice" superannuation fund in which the NSMF trustee – relevantly NIL until 30 June 2021 and NSS from 1 July 2021 – selected investment options to be added to an investment menu available to members holding a superannuation product through the NSMF.

13 The investment menu was made available to members of the NSMF through an online platform maintained and operated by NIL at all material times (**Netwealth Platform**). The Netwealth Platform allowed members and financial advisers authorised to act on behalf of those members to:

(a) select from a range of investment options made available by the NSMF trustee;

(b) direct the NSMF trustee to invest the member's funds in any of those investment options; and

(c) access information about their investments.

14 When a member or a member's financial adviser directed the NSMF trustee to invest their funds in any of the investment options offered on the Netwealth Platform, the member acquired a beneficial interest in the NSMF. Those interests were held by NIL in its capacity as NSMF trustee prior to 1 July 2021, and thereafter as custodian on trust for NSS in its capacity as NSMF trustee. A member's interest is in the assets of the NSMF as a whole, but the value of the specific investments selected is notionally allocated to the member's account in the NSMF.

15 The investment options available on the investment menu through the Netwealth Platform were selected and approved according to criteria contained in the NSMF Investment Strategy, which was approved and adopted by NIL from 28 August 2020 and by NSS (as incoming trustee of the NSMF) on 12 February 2021. This process for selection and approval of investment options was delegated by NIL to its Asset Administration team or Investment Management and Research team based on those criteria. The operation of the NSMF Investment Strategy and other policies and procedures which provided the framework for selecting, managing and monitoring investment options available on the Netwealth Platform and the investment menu are set out in the SAFA.

16 As at 30 June 2025, the NSMF had 111,891 member accounts and approximately $37.51 billion in member benefits under management. The total assets, total liability for members' benefits and number of member accounts of the NSMF between 30 June 2020 and 30 June 2024 (encompassing the relevant period of November 2020 to May 2024) is set out at paragraph [14] of the SAFA.

The First Guardian Master Fund

17 The First Guardian Master Fund (**FGMF**) is a registered managed investment scheme. At all relevant times, the responsible entity of the FGMF was Falcon Capital Limited (**Falcon**) and the investment manager was First Guardian Capital Pty Ltd (**First Guardian Capital**).

18 Relevantly, the FGMF offered to investors units in three investment classes:

(a) the First Guardian Defensive Strategies Class (until 27 May 2024) (**Defensive Class**);

(b) the First Guardian Diversified Strategies Class (until 15 January 2024) (**Diversified Class**); and

(c) the First Guardian Growth Strategies Class (until 27 May 2024) (**Growth Clas**s).

19 Each of the above listed classes was expressed to invest in a number of underlying funds which were named in the product disclosure statement issued by Falcon in respect of that class.

20 Since around 27 May 2024, new applications to and redemptions from the FGMF have been suspended.

21 On 9 April 2025, by order of this Court, Falcon was placed into liquidation and the liquidators of FGMF were directed to wind up the FGMF and its sub-funds.

THE CONTRAVENING CONDUCT

Approval of the FGMF Classes as investment options

22 The admitted contraventions firstly relate to the process undertaken by NIL of reviewing and approving the Diversified Class and Growth Class as investment options available to members for selection from the investment menu on the Netwealth Platform. This process took place between 27 November 2020 and 26 March 2021.

23 ASIC alleges, and NIL admits, that as a result of this review process and prior to approving the Diversified Class and Growth Class as investment options NIL was aware that the FGMF:

(a) had limited performance history (having been established in 2019);

(b) had, as at the end of January 2021, funds under management of approximately $14 million in the Defensive Class, $51 million in the Diversified Class and $39 million in the Growth Class;

(c) had an investment structure (which was potentially conflicted) by which the FGMF was invested, or would be invested, in unlisted units in a combination of underlying sub-funds:

   (i) that were determined by First Guardian Capital as the investment manager;

   (ii) of which Falcon was the trustee;

   (iii) which may have been illiquid and have lock in periods;

   (iv) whose particular investments and assets were unidentified and may have been located overseas; and

(d) had, in respect of the Diversified Class, a significant proportion of investments in direct/unlisted assets that were less liquid or illiquid.

24 The parties agree that these characteristics gave rise to investment risk to members who invested in FGMF, including the potential for overstatement of asset value and misstatement of investment category and risk/return profile, underperformance, delays in repayment and loss of income and principal invested.

25 ASIC alleges, and NIL admits, that in these circumstances and prior to approving the Diversified Class and Growth Class as investment options NIL did not:

(a) obtain, and therefore did not assess, copies of any FGMF compliance plan required by Pt 5C.4 of the Act, the FGMF managed investment scheme constitution, product disclosure statements for any of the sub-funds of the FGMF, or internal Falcon and First Guardian Capital policies about related party conflicts, investment due diligence, investment execution or investment valuation;

(b) verify the implementation of any of Falcon or First Guardian Capital's policies about related party conflicts, investment due diligence, investment execution or investment valuation, or the FGMF compliance plan, including through reviewing external audits of them;

(c) identify all or any sample of the assets held by FGMF or any of the sub-funds in which the FGMF was invested for ownership or conformity with the description of the assets in which that sub-fund would invest;

(d) review the valuation or liquidity of any of the assets held by the sub-funds in which FGMF was invested; or

(e) undertake any stress testing of those classes.

26 On about 26 March 2021, NIL approved the inclusion of the Diversified Class and Growth Class on the investment menu on the Netwealth Platform. Both investment options were available to NSMF members holding the "Super Accelerator Plus" product. The parties jointly submit, and I accept, that at the time of approval neither investment option was identified on the Netwealth Platform as being illiquid, despite NIL staff (including the decision-maker responsible for approving each of the Diversified Class and Growth Class for inclusion on the investment menu) considering that both classes were illiquid. Despite this, NIL determined the investment limit for the FGMF to be 100%. As a result, members of the NSMF holding the Super Accelerator Plus product could direct the NSMF trustee to invest up to the entirety of their superannuation within the NSMF into either of the Diversified Class and/or the Growth Class (subject to maintaining a minimum cash holding in their cash account).

Offering and monitoring the FGMF Classes as investment options

27 The admitted contraventions continued to occur during the entire period that the Diversified Class and Growth Class were available as investment options on the Netwealth Platform; that is to say between 26 March 2021 and 28 December 2022. During that period 1,303 NSMF members invested a total of $128,508,067.51 in either or both of the Diversified Class or the Growth Class of the FGMF.

28 NIL admits that during the period 26 March 2021 until at least 27 May 2024 it did not undertake any of the steps referred to above at paragraph [25]. NSS further admits that, while NSMF trustee, it did not require NIL to take any of those steps nor did it take any of those steps itself. The parties jointly submit, and I accept, that as a result of these failures, neither NIL or NSS obtained, and therefore did not assess, sufficient information about the FGMF to understand or evaluate investment risk in the Diversified Class or Growth Class while offering those classes as investment options on the Netwealth Platform.

29 From about 6 December 2022, NIL identified each of the Diversified Class and Growth Class as "illiquid" on the investment menu on the Netwealth Platform available to NSMF members holding the Super Accelerator Plus product. NSMF members who had an existing recorded investment in the FGMF classes were not, however, otherwise informed that it had done so. ASIC alleges, and both NIL and NSS admit, that they did not, before around 6 December 2022, inform members of the NSMF of the fact that the Diversified Class and Growth Class were potentially illiquid, despite the fact that NIL had held concerns about the liquidity of the FGMF in March 2021, and had engaged in regular correspondence with Falcon since November 2021 about delays in the processing of withdrawal or redemption requests from those classes.

Removal of the FGMF Classes as investment options

30 Finally, ASIC alleges and NSS admits that its contravention of ss 912A(1)(a) and 912(5A) of the Act continued after the closure of the Diversified Class and Growth Class to further investment through the NSMF and their removal as investment options from the Netwealth Platform on around 28 December 2022. The parties agree that by that date the FGMF no longer held a sufficient rating with an approved research house to remain on the Netwealth Platform, and NIL had developed concerns about the governance and liquidity of the FGMF and its sub-funds and the adequacy of disclosure in the relevant product disclosure statements.

31 NSS admits that it did not inform members with existing investments in the Diversified Class and the Growth Class through the NSMF of the concerns NIL held about the governance of the FGMF or about Falcon's delays in processing redemption requests.

32 Ultimately, after the FGMF Classes were removed as investment options from the Netwealth Platform, applications to and withdrawals from the FGMF as a whole were frozen on 27 May 2024. The parties agree that as at that date, approximately $100,627,603.48 remained invested by NSMF members in the Diversified Class and the Growth Class.

RELEVANT STATUTORY PROVISIONS AND PRINCIPLES

33 Section 912A(1)(a) of the Act provides that a financial services licensee must do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly.

34 A contravention of s 912A(1)(a) will be a contravention of s 912A(5A) of the Act, which is a civil penalty provision.

35 Under s 1317E of the Act, if the court is satisfied that NIL and/or NSS have contravened s 912A(1)(a) and therefore s 912A(5A), the court must make a declaration of contravention.

36 It is uncontroversial that both NIL and NSS are and were financial services licensees at relevant times during the periods of contravening conduct. Both have admitted that their Australian financial services licence covered dealing in superannuation products and provision of a superannuation trustee service, which are the financial services relevant to the admitted contraventions of s 912A(1)(a).

37 The parties agree as to the relevant principles concerning the interpretation of the standard of "efficiently, honestly and fairly" under s 912A(1)(a) of the Act summarised by Foster J in *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq)* [2012] FCA 414; 88 ACSR 206 at [69]–[70] as follows (with citations omitted):

(a) the words "efficiently, honestly and fairly" must be read as a compendious expression, meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty;

(b) the words "efficiently, honestly and fairly" connote a requirement of competence in providing advice and in complying with relevant statutory obligations, as well as an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgment in matters relevant to a client's affairs;

(c) the word "efficient" refers to a person who performs their duties efficiently, meaning the person is adequate in performance, produces the desired effect and is capable, competent and adequate, and inefficiency may be established by demonstrating that the performance of a licensee's functions falls short of the reasonable standard of performance by a dealer that the public is entitled to expect;

(d) it is not necessary to establish dishonesty in the criminal sense: the word "honestly" may comprehend prevention of conduct which is not criminal but which is morally wrong in the commercial sense; and

(e) the word "honestly" when used in conjunction with the word "fairly" tends to give the flavour of a person who not only is not dishonest, but also a person who is ethically sound.

38 These principles have been endorsed and applied in numerous other cases: see, for example, *Australian Securities and Investments Commission v Cassimatis (No 8)* [2016] FCA 1023; 336 ALR 209 at [674] (Edelman J) (***ASIC v Cassimatis***); *Australian Securities and Investments Commission v Avestra Asset Management Ltd (in liq)* [2017] FCA 497; 348 ALR 525 at [191] (Beach J); *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; 275 FCR 57 at [505]–[512] (Beach J) (***ASIC v AGM Markets***); *Australian Securities and Investments Commission v RI Advice Group Pty Ltd* [2022] FCA 496; 160 ACSR 204 at [30] (Rofe J); *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2022] FCA 1422 at [147]–[150] (Downes J); *Australian Securities and Investments Commission v Lanterne Fund Services Pty Limited* [2024] FCA 353 at [86] (McEvoy J); *Australian Securities and Investments Commission v RAMS Financial Group Pty Ltd (Penalty)* [2025] FCA 1304 at [102] (Shariff J); *Australian Securities and Investments Commission v United Super Pty Ltd* [2025] FCA 1453 at [28] (O'Callaghan J) (***ASIC v United Super***).

39 As Beach J observed in *ASIC v AGM Markets* (at [512]), a contravention of the "efficiently, honestly and fairly" standard as set out in s 912A(1)(a) of the Act does not depend upon a contravention of a "separately existing legal duty or obligation, whether statutory, fiduciary, common law or otherwise"; rather "[t]he statutory standard itself is the source of the obligation.". The parties submit, and I accept, that what therefore must be assessed is whether the financial services licensee met "reasonable expectations of performance and reasonable standards of performance": *ASIC v Cassimatis* at [674].

40 Where any of the elements of financial services provided by a licensee are outsourced, the obligations under s 912A(1)(a) of the Act are not delegable and ultimate responsibility rests with the licensee: *ASIC v United Super* at [30].

REMEDIATION BY THE DEFENDANTS

41 On 17 December 2025, NIL and NSS offered to ASIC, and ASIC accepted, the Undertaking in the form annexed to the SAFA which is annexed to these reasons.

42 As has been mentioned, pursuant to the Undertaking NIL and NSS have implemented and executed a compensation scheme for all "affected investors", defined in the Undertaking as being each person who invested in the FGMF through the NSMF and, as at the date of the Undertaking, continued to have funds invested in the FGMF through the NSMF. This compensation scheme required NSS to pay each affected investor an amount equal to their "net capital amount", which refers to the total amount deducted from the cash account of the affected investor in order to give effect to an investment direction to acquire FGMF units, less the total amount credited to the affected investor's cash account following a direction to redeem FGMF units, provided that the net capital amount may not be less than zero. The parties jointly submit that although the Undertaking only required such compensation to be paid to affected investors, the same compensation scheme was implemented and executed by NSS for persons who had held an interest in the FGMF but had sold their holdings prior to the date of the Undertaking.

43 I accept that, as described in the Supplementary SAFA, pursuant to the Undertaking 1,080 affected investors have received an aggregate of $100,726,298.10. This, the parties submit, represents an amount equal to 100% of the net capital amount paid by those members to acquire units in the FGMF through the NSMF.

DECLARATIONS OF CONTRAVENTION

44 As has been mentioned, ASIC seeks declarations pursuant to s 1317E(1) of the Act and s 21 of the FCA Act. The defendants have agreed to the form of the declarations.

45 The parties submit and I accept that the court is bound by s 1317E(1) of the Act to make declarations of contravention if declarations have been sought and it is satisfied that a contravention of a civil penalty provision (here, s 912A(5A)) has occurred. The court must be so satisfied on sufficiently cogent evidence, which may include agreed facts and admissions: *Australian Securities and Investments Commission v Monarch FX Group Pty Ltd, in the matter of Monarch FX Group Pty Ltd* [2014] FCA 1387; 103 ACSR 453 at [64] (Gordon J) (***ASIC v Monarch FX***); *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 at [91] (Dowsett, Greenwood and Wigney JJ) (***ABCC v CFMEU***).

46 Of course the court is not bound by the parties' agreement as to the terms or scope of any declarations. It must satisfy itself that the making of the declarations of contravention is appropriate: *ABCC v CFMEU* at [90]. However, where an agreed position on relief is put forward jointly by the parties — including declaratory relief — it is "highly desirable in practice for the court to accept the parties' proposal": *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 at [58] (French CJ, Kiefel, Bell, Nettle and Gordon JJ).

47 In circumstances where the defendants admit the contravening conduct, having regard to the agreed facts and the admissions which the defendants have made the parties jointly submit that the court should be satisfied on the evidence that:

(a) NIL and NSS have contravened s 912A(1)(a) of the Act and that the declarations of contravention of s 912A(1)(a) should be made in the terms sought; and

(b) NIL and NSS have thereby contravened s 912A(5A) of the Act, and a declaration must be made pursuant to s 1317E(1) of the Act.

48 As I have said, I am satisfied that the agreed facts and admissions in the SAFA provide a factual basis for the declarations of contravention of s 912A(1)(a) and therefore s 912A(5A) of the Act.

49 The parties jointly submit that the declarations are appropriately and precisely framed to reflect the essence of NIL and NSS's contraventions. I accept that this is so.

50 The court has a wide discretionary power to make declarations pursuant to s 21 of the FCA Act. In *Forster v Jododex Australia Pty Ltd* [1972] HCA 61; 127 CLR 421 (***Forster***), Gibbs J set out (at 437–438) the requirements that should be satisfied before the discretion is exercised in favour of making a declaration:

(a) the question must be a real and not a hypothetical or theoretical one;

(b) the applicant must have a real interest in raising it; and

(c) there must be a proper contradictor.

51 In relation to the making of declarations of contravention of s 912A(1)(a) under s 21 of the FCA Act, the parties jointly submit that:

(a) the present proceeding raises a real question about the past conduct of NIL in approving, and NIL and NSS in offering, the FGMF classes as investment options available for selection by NSMF members and ASIC has a real interest in raising that question through these proceedings: *Forster* at 437–438;

(b) NIL and NSS are proper contradictors, who have a genuine interest in opposing the relief sought (notwithstanding their consent to the proposed relief): *Forster* at 437–438; *Australian Competition and Consumer Commission v MSY Technology Pty Ltd* [2012] FCAFC 56; 201 FCR 378 at [30] (Greenwood, Logan and Yates JJ);

(c) the making of the declarations has utility and is of public interest, serving multiple functions and identifying failures in NIL and NSS's processes and systems for due diligence, investment risk and monitoring of investment options; and

(d) the declarations express the court's disapproval of NIL and NSS's conduct, support ASIC's regulatory interests, and serve a broader purpose of general deterrence by informing other Australian financial services licence holders of the standard of acceptable conduct in providing financial services, including superannuation trustees and trustees of "choice" investment platforms: see *ASIC Monarch FX* at [63]; *ABCC v CFMEU* at [93].

52 On the basis of the material before the court, I am satisfied that the requirements set out in *Forster* are met in this matter and that in all the circumstances the declaratory relief jointly sought by the parties is in the public interest and appropriately serves the promotion of compliance with the regulatory regime.

NO PECUNIARY PENALTY

53 In the particular circumstances of this proceeding, ASIC makes no application for a pecuniary penalty order against either NSS or NIL under s 1317G of the Act. ASIC has had regard to:

(a) the Undertaking provided and promptly effected by NIL and NSS to pay compensation to affected members;

(b) the strong public interest in prioritising the prompt return of capital invested by members of APRA regulated superannuation funds;

(c) NIL and NSS's early and productive cooperation avoiding contested litigation and demonstrating contrition; and

(d) the declarations of contravention proposed jointly by the parties.

54 In *Australian Securities and Investments Commission v Macquarie Investment Management Limited* [2026] FCA 303 at [28], Wheelahan J stated that "[b]ecause no pecuniary penalty is

sought by ASIC in what is an adversarial proceeding, no occasion arises for the Court to consider whether a penalty should be imposed, and if so, an appropriate amount." I respectfully agree with and endorse his Honour's observations in this regard.

COSTS

55 Pursuant to the Undertaking, the parties have agreed that NIL and NSS should pay ASIC's costs of the proceeding as agreed or, in the absence of agreement, as taxed. I am satisfied that this is appropriate in all the circumstances and there will be an order in these terms.

I certify that the preceding fifty-five (55) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice McEvoy.

Associate:

Dated: 20 August 2026

ANNEXURES

Annexure A – Statement of Agreed Facts and Admissions

STATEMENT OF AGREED FACTS AND ADMISSIONS

Federal Court of Australia
District Registry: Victoria
Division: General — No. VID of 2025

IN THE MATTER OF NETWEALTH INVESTMENTS LIMITED (ACN 090 569 109) AND NETWEALTH SUPERANNUATION SERVICES PTY LTD (ACN 636 951 310)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

and

NETWEALTH INVESTMENTS LIMITED (ACN 090 569 109)

and

NETWEALTH SUPERANNUATION SERVICES PTY LTD (ACN 636 951 310)
Defendants

Contents

A. INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SAFA**) is made for the purposes of s 191 of the *Evidence Act 1995* (Cth) jointly by the plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the defendants, Netwealth Investments Limited (**NIL**) and Netwealth Superannuation Services Pty Ltd (**NSS**).

2. The SAFA relates to a proceeding to be commenced by ASIC against the defendants (**Proceeding**). This SAFA is made jointly by ASIC and the defendants in support of consent orders setting out the relief and other orders they agree to, which, if made, will resolve this Proceeding (**Consent Orders**).

3. This document contains facts relevant to contraventions alleged by ASIC and admitted to by the defendants for the purpose of the Proceeding as set out in the Consent Orders. The facts agreed to, and the admissions made, are agreed to and made solely for the purposes of the Proceeding and do not constitute any admission outside of the Proceeding.

B. THE PARTIES

4. At all material times, ASIC is and was a body corporate established under s 7 of the *Australian Securities Commission Act 1989* (Cth), continued by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and able to sue in its corporate name by reason of s 8 of the ASIC Act.

5. ASIC is the statutory authority with responsibility for the general administration of the *Corporations Act 2001* (Cth) (**Corporations Act**).

6. The first defendant, NIL:

   a. is and was at all relevant times a body corporate incorporated under the Corporations Act;

   b. was, between 27 February 2002 and 30 June 2021, trustee of the Netwealth Superannuation Master Fund (ABN 94 573 747 704) (**NSMF**) and held the beneficial interests acquired by members (see [10] – [14] below) in the NSMF in its capacity as custodian of the NSMF;

   c. was, until 30 June 2021, the holder of a Registrable Superannuation Entity (**RSE**) licence (licence no. L0000192);

   d. is, and has been since 13 August 2003, the holder of an Australian Financial Services Licence (**AFSL**) (licence no. 230975), which authorises it to carry on a financial services business to, among other things:

      i. provide general financial product advice for certain classes of financial products, including superannuation;

      ii. deal in certain classes of financial products, including superannuation;

      iii. operate a managed investment scheme;

      iv. provide custodial or depository services including for investor directed portfolio services; and

      v. (from 1 January 2021 until 30 June 2021) provide a superannuation trustee service,

   to retail and wholesale clients.

7. The second defendant, NSS:

   a. is and was at all relevant times a body corporate incorporated under the Corporations Act;

   b. is, and has been since 1 July 2021, trustee of the NSMF;

   c. is, and has been since 1 July 2021, the holder of an RSE licence (licence no. L0003483);

   d. is, and has been since 27 May 2021, the holder of an AFSL (licence no. 528032), which authorises it to carry on a financial services business to, among other things:

      i. provide general financial product advice for certain classes of financial products, including interests in managed investment schemes and superannuation;

      ii. deal in a class of financial products, being superannuation; and

      iii. provide a superannuation trustee service,

   to retail clients.

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8. The conduct of the defendants the subject of this SAFA involved the provision of financial services covered by their respective AFSLs.

9. At all material times, the defendants were part of the Netwealth group of companies and their ultimate holding company is Netwealth Group Limited, an ASX listed company with a market capitalisation of approximately $6.66B.

C. The NSMF

C1. NSMF Structure and governance

10. The NSMF was between November 2020 and May 2024 (**Relevant Period**), and remains:

   a. a registrable superannuation entity within the meaning of s 10(1) of the SIS Act;

   b. a regulated superannuation fund within the meaning of s 19(1) of the SIS Act; and

   c. a superannuation entity within the meaning of s 10(1) of the SIS Act.

11. The NSMF was established by Trust Deed on 27 February 2002 (as amended from time to time) (**Trust Deed**).

12. The NSMF is, and was at all relevant times, a 'choice' superannuation fund, in which the NSMF trustee selected investment options to be added to a menu for the superannuation product held by the members. The interests acquired on the instructions of NSMF members were, during the period where NIL was the NSMF trustee, held by NIL in that capacity and, since NSS became the NSMF trustee, have been held by NIL as custodian on trust for NSS in its capacity as trustee of the NSMF.

13. During the Relevant Period, under the NSMF's governing rules, members did not have any interest in any particular asset but only an interest in the assets of the NSMF as a whole. However, the specific investments and assets that the member or their financial adviser has selected, and that the NSMF trustee invested in as a result, are notionally allocated to the client's account in the NSMF. A NSMF member or their financial adviser could not select or direct the trustee to make an investment that was not on the investment menu for the superannuation product they held.

14. During the Relevant Period, the NSMF had the following total assets, total liability for members' and number of members:

Year ended	Total assets	Total liability for members' benefits	No. of member accounts
30 June 2024	$30,250,271,000	$29,939,816,000	100,142
30 June 2023	$23,967,998,000	$23,818,146,000	88,550
30 June 2022	$19,152,635,000	$19,032,905,000	80,620
30 June 2021	$17,018,668,000	$16,819,295,000	69,480
30 June 2020	$11,723,604,000	$11,654,854,000	59,447

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15. As at 30 June 2025, the NSMF had 111,891 member accounts, and approximately $37.51 billion in member benefits under management.

C2. Netwealth Platform and Products

16. At all times since 1 July 2021 (the date on which NSS became the trustee of the NSMF), NSS and NIL have been parties to a Platform Provider, Custody and Administration Services Agreement (**PPCA Agreement**).

17. Under the PPCA Agreement NIL was appointed by NSS to provide certain services to NSS as NSMF Trustee including:

    a. Administration Services, which includes investment operations, investor services, website maintenance, Board and committee reporting, and advisor oversight;

    b. Custody Services, which includes requiring NIL to hold the assets of the NSMF on trust for NSS as trustee of the NSMF;

    c. Risk and Compliance Services, which includes risk and compliance management, policy development, breach and incident reporting;

    d. Product Services, which includes obligations in respect of disclosure documents, member communications, investment management strategy (including giving effect to the NSMF Investment Strategy), and reporting;

    e. Various financial and distribution services; and

    f. the provision and maintenance of a platform for members to access information about their account.

18. Throughout the Relevant Period, NIL was, and remains, required to do all things necessary to ensure that the financial services covered by its AFSL are provided efficiently, honestly and fairly, to comply with all applicable laws and its AFSL and maintain documented internal control structures and compliance systems to ensure compliance with its AFSL and applicable laws.

19. Throughout the Relevant Period, NIL maintained and operated a platform through which members holding an interest in the NSMF and financial advisers authorised to act on behalf of those members could:

    a. access and operate their cash account in the NSMF;

    b. select, and give direction to the NSMF trustee to acquire or divest, an investment in a range of investment options made available by the NSMF trustee; and/or

    c. access information about their investments,

    (**Netwealth Platform**).

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20. Throughout the Relevant Period, NSMF members and their advisers registered to use the Netwealth Platform were able to:

a. invest funds in certain superannuation or investments products offered by the trustee of the NSMF; and

b. select and give direction to the NSMF trustee to acquire or divest an investment in investment options on a "menu" maintained by the trustee of the NSMF on the Netwealth Platform (**Investment Menu**). The trustee of the NSMF maintained a public Investment Menu and various other investment menus applicable in respect of certain classes of members. Since 1 July 2021, the Investment Menu has been administered by NIL in accordance with NSS's instructions.

21. Each Investment Menu displayed various investment options and included details such as the current price / unit price of an investment option. Investment options available on the public Investment Menu included, amongst other things, a range of managed funds. As at February 2021, there were approximately 519 managed funds included on the public Investment Menu. As at October 2025, there were approximately 676 managed funds included on the public Investment Menu.

22. Since 14 March 2021, NIL and/or NSS were able to indicate on the Investment Menu whether certain products the trustee made available were, or may have been, illiquid.

23. Throughout the Relevant Period, the NSMF trustee offered to its members a superannuation product known as Super Accelerator, within which members of the NSMF could choose between Super Accelerator Core and Super Accelerator Plus.

24. During the Relevant Period, NIL or NSS published, and made available to NSMF members, in respect of the Super Accelerator product:

a. Product disclosure statements;

b. Information guides; and

c. From around October 2021, Target Market Determinations.

25. This material stated among other things that the NSMF trustee:

a. was responsible for the selection of the investment options made available to product holders;

b. managed investment risk by making available investments that typically had been subject to appropriate research and approval;

c. had a risk management framework in place;

d. would identify on the Investment Menu those managed funds that required more than 30 days' notice of a redemption request; and

e. may apply investment limits to particular managed funds (an investment limit limited the proportion of a member's account that was permitted to be directed into a particular investment option).

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C3. Policies

26. At the times the respective defendants were RSE Licensees, they were required to have systems, structures, policies, processes and people to address the RSE licensee's responsibilities with regard to investments within its business operations (an **investment governance framework**) that complied with the Superannuation Prudential Standard SPS 530 Investment Governance (**SPS 530**) and took account of SPS 220 – Risk Management.

27. During the Relevant Period, the NSMF Investment Governance Framework (**IGF**), the NSMF Investment Strategy and other policies and procedures provided a framework for selecting, managing and monitoring investment options available on the Netwealth Platform and Investment Menu. In this respect:

    a. The IGF was approved and adopted by NIL as trustee of the NSMF on, and applied from, 28 August 2020 and, subsequently, approved and adopted by NSS as (incoming) trustee of the NSMF on 12 February 2021.

    b. The NSMF Investment Strategy which was approved and adopted by NIL as trustee of the NSMF on, and applied from, 28 August 2020 and was approved and adopted by NSS as incoming trustee of the NSMF on 12 February 2021.

    c. The NSMF Valuation Governance Framework, approved by NSS as trustee of the NSMF on 22 December 2022, set out the process for the valuation of investments owned by the trustee of the NSMF and for the documentation of valuations.

    d. The NSS Investment Options Performance Monitoring Policy, approved by NSS as trustee of the NSMF on 22 December 2022, set out the process for NIL's Investment Management & Research Team (**IMR) team** to monitor investment options made available by NSS on a quarterly basis.

    e. NIL or NSS have had in place, since at least 30 January 2015, a "Netwealth Research Providers Process" which recorded how NIL and NSS would use external research providers.

28. Those policies contemplated that, amongst other things, the trustee:

    a. was responsible for the selection of the investment options made available to product holders;

    b. would clearly highlight which assets are illiquid in the Investment Menu "so that members are informed about which assets may meet their needs prior to reading the asset PDS"; and

    c. may apply investment limits by category and individually to investment options, and to assets considered less liquid.

29. Between November 2020 and March 2021, the process for onboarding an investment option to the NSMF Investment Menu was initiated by a request made internally or by a financial adviser to either NIL's Asset Administration (**AA**) team or its IMR team. Assessment and approval of managed funds for inclusion on an investment menu was delegated by NIL to its AA and IMR teams, based on criteria contained in the NSMF Investment Strategy. The IMR team was also delegated responsibility for communications to members about removal of investment options from a menu.

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D. FIRST GUARDIAN MASTER FUND

30. The First Guardian Master Fund (**FGMF**) is (notwithstanding it is being wound up) a registered managed investment scheme (ARSN: 635 429 113) registered on 23 August 2019.

31. At all material times during the Relevant Period:

    a. Falcon Capital Limited (**Falcon**) was the responsible entity of the FGMF and the holder of an AFSL licence (302538);

    b. First Guardian Capital Pty Ltd (**First Guardian Capital**) was the investment manager of FGMF;

    c. the directors of Falcon and First Guardian Capital included Mr David Anderson and Mr Simon Selimaj.

32. During the Relevant Period, the FGMF offered investors units in three investment classes:

    a. the First Guardian Defensive Strategies Class (until 27 May 2024) (**Defensive Class**);

    b. the First Guardian Diversified Strategies Class (until 15 January 2024) (**Diversified Class**); and

    c. the First Guardian Growth Strategies Class (until 27 May 2024) (**Growth Class**).

33. From time to time, Falcon issued Product Disclosure Statements in respect of each of the Defensive Class, Diversified Class, Growth Class and the underlying funds. Each class was expressed to invest in a number of underlying funds which were named in the product disclosure statement (**PDS**).

34. Since around 27 May 2024, new applications to and redemptions from the FGMF have been suspended.

35. On 9 April 2025, by order of the Federal Court of Australia, Falcon was placed into liquidation and the liquidators of Falcon were directed to wind up the FGMF and its sub-funds.

E. ADDING THE FIRST GUARDIAN MASTER FUND TO THE INVESTMENT MENU

E1. Assessment of the First Guardian Master Fund

36. On 15 December 2020, NIL received a request to add the Defensive Class, Diversified Class and Growth Class to its Investment Menu as investment options available to NSMF members.

37. At the time the request was received:

    a. none of the Defensive Class, Diversified Class or Growth Class had previously been listed on the Investment Menu;

    b. Falcon was not a responsible entity for any investment option on the Investment Menu;

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c. First Guardian Capital had not been the investment manager for any investment option on the Investment Menu; and

d. Messrs Anderson and Selimaj had not been directors of any other investment option on the Investment Menu.

38. Between around 27 November 2020 and 26 March 2021, NIL undertook review and assessment of the FGMF and Falcon for the purposes of deciding whether to add the Defensive Class, Diversified Class and Growth Class to the Investment Menu.

39. The review and assessment of the Defensive Class, Diversified Class and Growth Class was undertaken by members of NIL's AA and IMR teams. The NIL AA team considered whether NIL was able to facilitate the administration of the FGMF and the operational aspects of the product within NIL's system. The IMR team undertook review into Falcon as the RE, then the FGMF as a product. The reviews by the NIL AA team and the IMR team occurred concurrently.

40. In the course of the review the NIL IMR team considered the following material in respect of the FGMF and Falcon:

a. copies of PDSs for each of the Defensive Class, Diversified Class and Growth Class;

b. a report published by SQM Research dated 30 June 2020 on the FGMF (comprising each of the Defensive Class, Diversified Class and Growth Class) (**SQM Report**):

i. in which the three classes were shown to have a star rating of 3.5;

ii. which expressed various views held by SQM Research in relation to the FGMF which included, relevantly, that:

1. the FGMF was overexposed to certain sectors; and the First Guardian Capital investment team had "relatively limited experience in managing multi-asset diversified funds";

2. the FGMF's liquidity profile was "quite different to a typical Balanced Fund", a "significant proportion of the [Fund] is invested in direct/unlisted assets which are less liquid or illiquid", and that underlying funds may have lock-in periods; and

3. that the FGMF had limited performance history and was invested in unit trusts of which the responsible entity itself was trustee,

albeit while also noting that First Guardian Capital's leadership team was highly experienced, that on a relative basis, the Fund had performed well since its launch in September 2019 and that the FGMF was well diversified across various asset classes and risk-return profiles of the 9 sub-funds.

c. a series of emails exchanged between the IMR team and David Anderson requesting responses to questions about Falcon as the Responsible Entity of the FGMF and information about Falcon's complaints handling process.

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41. As a result of the review and consideration referred to in paragraphs 39 and 40 above, NIL was aware that the FGMF had the following characteristics:

a. it was established in 2019 and had limited performance history;

b. it had funds under management, "as at end January" 2021 of approximately:

i. Defensive Class - $14m;

ii. Diversified Class - $51m; and

iii. Growth Class - $39m.

c. it was invested, and would be invested, in unlisted units in a combination of underlying sub-funds:

i. that were determined by First Guardian Capital as the investment manager;

ii. of which Falcon was the trustee;

iii. which may be illiquid and have lock-in periods;

iv. whose particular investments and assets were not identified and may be located overseas; and

d. A significant proportion of the diversified class of the FGMF was invested in direct/unlisted assets that were less liquid or illiquid.

42. These characteristics, in particular a fund with an investment team with limited experience in managing multi-asset diversified funds, little performance history, a potentially conflicted investment structure and unlisted investments that were not identified and may have been located overseas, gave rise to investment risk to members who invested in FGMF, including the potential for overstatement of asset value and misstatement of investment category and risk/return profile, underperformance, delays in repayment and loss of income and principal invested.

43. During the review and assessment of the Defensive Class, Diversified Class and Growth Class of the FGMF, NIL did not:

a. obtain, and therefore did not assess, copies of:

i. any FGMF compliance plan required by Part 5C.4 of the Corporations Act;

ii. the FGMF managed investment scheme constitution;

iii. product disclosure statements or constitutions for any of the sub-funds of the FGMF;

iv. Falcon or First Guardian Capital's policies or practices about related party conflicts, investment due diligence, investment execution or investment valuation;

b. verify implementation of any of the policies referred to in paragraph 43.a.iv, or the FGMF compliance plan, including through reviewing external audits of them;

c. identify all or any sample of the assets held by FGMF or any of the sub-funds in which the FGMF was invested for ownership or conformity with the description of the assets in which that sub–fund would invest;

d. review the valuation or liquidity of all or any sample of the assets held by the sub-funds in which the FGMF was invested;

e. undertake any stress testing of the FGMF classes prior to including them as investment options offered to NSMF members.

44. Despite the limited information and the risks described in paragraph 42 above, on around 26 March 2021, NIL as NSMF trustee approved each of the Diversified Class and Growth Class as investment options available to Super Accelerator Plus members, and they became available for selection. NIL determined the investment limit for the FGMF to be 100%, and did not display any information on the investment menu as to the potential illiquidity of each investment option.

E2. Approval of the addition of the Defensive Class, Diversified Class and Growth Class of the FGMF to the Investment Menu

45. On 26 March 2021, an Investment Analyst in NIL's IMR Team (the **decision maker**) approved, within authority delegated under Netwealth's investment governance framework, each of the Diversified Class and Growth Class of the FGMF for inclusion on the Investment Menu available to NSMF members holding the "Super Accelerator Plus" product. The decision to onboard the FGMF was not reviewed by the Head of the IMR Team, or considered by either the NIL Investment Committee or the NIL Board of Directors.

46. NIL did not approve the Defensive Class for inclusion on the Investment Menu because the FUM for that Class was under $25 million dollars.

47. At the time the Diversified Class and Growth Class of the FGMF were added to the Investment Menu:

a. NIL did not identify either the Diversified Class or the Growth Class as being illiquid on the Investment Menu, despite NIL staff (including the decision maker) considering that the Diversified Class and the Growth Class were illiquid; and

b. NIL set the investment limit in respect of each of the Diversified Class or the Growth Class at 100%. As a result, NSMF members holding the "Super Accelerator Plus" product were able to invest the entirety of their superannuation within the NSMF in either the Diversified Class and/or the Growth Class (subject to maintaining a minimum cash holding in their cash account).

48. In the period between 26 March 2021 and 28 December 2022, 1,303 NSMF members invested a total of $128,508,067.51 in either the Diversified Class or the Growth Class of the FGMF.

49. As at the date of this SAFA, 1,084 NSMF members are invested in either the Diversified Class or the Growth Class of the FGMF. The amount invested in FGMF on behalf of members of the Fund, excluding any amounts subsequently redeemed by members prior to redemptions in FGMF being frozen on 27 May 2024, was $100,627,603.48. Many such members invested a high proportion of their interest in the NSMF in those Classes.

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F. MONITORING OF FGMF CLASSES AS INVESTMENT OPTIONS

50. From 26 March 2021 until around December 2023, NIL (as either NSMF trustee or, from 1 July 2021, in accordance with the PPCA Agreement) received and acted upon directions to invest in the Diversified Class and Growth Class investment options as follows:

Total investment by class

First Guardian class	No. of members[1]	Total amount invested
Diversified	59	$8,658,089.57
Growth	1,255	$119,849,977.94
Total	**1,303**	**$128,508,067.51**

Total investment when redemptions in the FGMF were frozen

First Guardian class	No. of members[2]	Total amount invested	Total sale proceeds received	Net amount invested
Diversified	48	$7,189,477.81	$891,424.30	$6,298,053.51
Growth	1,036	$98,300,965.60	$3,971,415.63	$94,329,549.97
Total	**1,084**	**$105,490,443.41**	**$4,862,839.93**	**$100,627,603.48**

51. In the period from 26 March 2021 until at least 27 May 2024 NIL did not:

a. obtain and therefore did not assess copies of:

i. any FGMF compliance plan required by Part 5C.4 of the Corporations Act;

ii. the FGMF managed investment scheme constitution;

iii. PDSs or constitutions for any of the sub-funds of the FGMF;

iv. Falcon or First Guardian Capital's policies or practices about related party conflicts, investment due diligence, investment execution or investment valuation;

b. verify implementation of any of the policies referred to in paragraph 51.a.iv or the FGMF compliance plan, including through reviewing compliance external audits of them;

c. identify all or any sample of the assets held by FGMF or any of the sub-funds in which the FGMF was invested for ownership or conformity with the description of the assets in which that sub–fund would invest;

d. review the valuation or liquidity of all or any sample of the assets held by the sub-funds in which the FGMF was invested.

[1] 11 members had investments in both the Diversified and Growth classes.
[2] 8 members had investments in both the Diversified and Growth classes.

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52. NSS, while NSMF trustee, did not require NIL to do any of the things in paragraph 51 in the Relevant Period, nor did it do any of those things itself.

53. At various times between November 2021 and 27 May 2024, NIL corresponded regularly with Falcon about the processing of withdrawal or redemption requests from the Diversified Class and Growth Class taking longer than stated in the FGMF disclosure materials.

54. On 28 February 2022, NSS determined that approvals of products for addition to the Investment Menu which relied on rating reports by SQM, should be restricted to products which have a minimum 4-star rating. Around the same time, NIL identified that the Diversified Class and Growth Class were the only investment options on the Investment Menu that had a research house rating below NSS's minimum required ratings.

55. In May 2022, NIL informed Falcon that FGMF did not hold a minimum research house rating requirement to remain on the Investment Menu and that FGMF would be given until the end of 2022 to obtain a minimum research house rating.

56. In November 2022, delays in processing redemptions by the FGMF triggered an enquiry into the Diversified Class and Growth Class. As a result, NIL, in its capacity as NSS's delegate under the PPCA, determined that the '*First Guardian assets should be flagged as illiquid as there was a real risk that the 30-day redemption timeframe could not be met*'.

57. In late November 2022, a compliance incident was raised by NIL/NSS concerning redemption requests exceeding 30 days. Around the same time, concerns were raised internally by the NIL IMR team that the FGMF's '*RE governance is poor*'.

58. In December 2022, the NIL IMR team reviewed the most recent research report from SQM Research Pty Ltd, then-current First Guardian PDS, the latest quarterly update from Falcon regarding the FGMF, and FGMF's investment returns. As a result, NIL had concerns about:

   a. the liquidity of the FGMF; and

   b. the adequacy of disclosure in the PDSs for the Diversified Class and Growth Class given that they were not disclosed to be illiquid in those PDSs.

59. From around 6 December 2022, NIL identified each of the Diversified Class and Growth Class as "illiquid" on the Investment Menu on the Netwealth Platform available to NSMF members holding the "Super Accelerator Plus" product. Neither NSS nor NIL otherwise informed NSMF members who had an existing recorded investment in the FGMF classes that it had done so.

60. On or about 20 December 2022, the NIL IMR team, recommended that no further investment was permitted to be made by any member of the NSMF into the Diversified Class and Growth Class.

G. REMOVAL OF FGMF CLASSES AS INVESTMENT OPTIONS

61. On 23 December 2022, NIL directed that the Diversified Class and Growth Class be closed to further investment for NSMF members.

62. On around 28 December 2022, NIL closed the Diversified Class and Growth Class from further investment through the NSMF. From this date, directions to acquire could not be made by or for

NSMF members, but the NSMF remained invested in each such class, and relevant NSMF members continued to have investment in the Diversified Class and/or Growth Class recorded in their member account.

63. In January 2023, NIL's IMR team informed the relevant business development managers, a point of contact for financial adviser representatives of NSMF members, that the Diversified Class and Growth Class were "closed off" because each did not hold a sufficient rating from an approved research house, and that financial advisers should inform members of the same where appropriate.

64. Despite that being the message provided, members of the NIL IMR team also held concerns that FGMF was *'poorly governed'* and they held concerns about the timeframe for processing redemptions.

65. Between around 13 January 2023 and 27 May 2024, NIL continued to correspond regularly with Falcon about delays in the processing of redemption requests.

66. On 27 May 2024, Falcon informed NIL that it was suspending the processing of all new applications and redemptions for the FGMF.

67. Neither NIL nor NSS informed NSMF members (or their financial advisers) whose accounts recorded an investment in either the Diversified Class or Growth Class, on or before 27 May 2024 of governance concerns about the FGMF, or concerns in relation to redemption delays (see paragraphs 64 and 65 above) .

68. The FGMF was frozen for redemptions and withdrawals after 27 May 2024. Falcon was placed into liquidation on 9 April 2025 with a direction that the liquidators wind up the FGMF and its underlying funds.

69. Between 20 December 2024 and 21 January 2025, NIL exchanged a series of emails in which NIL sought information to verify the nature and value of underlying assets of the FGMF and asked about the liquidity of those underlying assets. First Guardian responded that they did not "*hold concerns with other assets in the Funds.*"

70. As at 27 May 2024, a net amount of approximately $100,627,603.48 of NSMF funds remained invested in the FGMF: $6,298,053.51 on behalf of 48 members in the Diversified Class, and $94,329,549.97 on behalf of 1,036 members, in the Growth Class.

H. PAYMENT PROGRAM

71. On 17 December 2025 NIL and NSS offered to ASIC, and ASIC accepted, an undertaking under s93AA of the ASIC Act.

72. A copy of the undertaking is annexed to this SAFA.

73. In summary, the undertaking requires the return to each of the affected members of NSMF of an amount equal to 100% of the net capital amount they invested in the FGMF (being the difference between the amount deducted from the cash account of the affected member in order to give effect to an investment direction to acquire FGMF units, less the amount credited to the affected member's cash account following a direction to redeem FGMF units, provided that the Net Capital Amount may not be less than zero). Those payments are being made by NSS in recognition of potential claims for compensation that may be brought against NSS by ASIC or Affected Investors, but without

admission that NSS would bear liability should such claims be brought. The payments, together with NIL and NSS making the admissions set out in this SAFA, are part of the basis for resolving ASIC's concerns in relation to NIL and NSS in respect of their conduct in respect of the FGMF.

I. ADMISSIONS OF CONTRAVENTIONS

74. NIL and NSS admit that:

   a. each time the NSMF trustee issued or varied a member's superannuation interest in the NSMF (including by acting on instructions to buy, sell or hold investments), it dealt in a financial product and provided a financial service for the purposes of Chapter 7 of the Corporations Act;

   b. the AFSL for each of NIL and NSS, at relevant times, covered dealing in superannuation products;

   c. in operating the NSMF and selecting and continuing to make available investment options for members within Super Accelerator Plus, NIL (between 1 January 2021 and 30 June 2021) and NSS (from 1 July 2021) provided a superannuation trustee service, and therefore a financial service, for the purposes of and as defined in Chapter 7 of the Corporations Act; and

   d. the AFSL for each of NIL and NSS, at relevant times, covered provision of a superannuation trustee service.

75. NIL admits that:

   a. having regard to the apparent nature and characteristics of the FGMF, it did not obtain and, therefore did not assess, sufficient information about the FGMF, or make sufficient independent enquiries, to understand or evaluate investment risk in the Diversified Class or Growth Class investment options prior to or while offering them;

   b. in the circumstances described by paragraph (a), it approved the Diversified Class and Growth Class as investment options, made investments in them at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain, and continued to offer them on the Netwealth Platform); and

   c. it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while offered to members, before around 6 December 2022.

76. NSS admits that:

   a. having regard to the apparent nature and characteristics of the FGMF, it did not obtain and therefore did not assess, sufficient information about the FGMF, or make sufficient independent enquiries, to understand or evaluate investment risk in the Diversified Class or Growth Class investment options while offering them;

   b. in the circumstances described by paragraph (a), made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the

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member's account (less any minimum cash holding which the affected member was required to maintain), and continued to offer them on the Netwealth Platform;

c. it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while offered to members, before around 6 December 2022; and

d. on or after removing the Diversified Class and Growth Class from the Investment Menu, it did not inform NSMF members whose accounts recorded an investment in those classes of concerns held about the FGMF relevant to a member's future investment directions about their investment.

77. For the avoidance of doubt, each of NSS and NIL do not admit, and ASIC does not contend, that either NSS or NIL has acted dishonestly in the criminal sense by engaging in the conduct at [74] – [76] above.

78. By reason of the matters referred to in paragraph 75.a above, NIL, as the holder of an AFSL, failed up to 30 June 2021 to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly and thereby contravened s912A(1)(a) and 912A(5A) of the Corporations Act.

79. By reason of the matters referred to in paragraph 76.a above, NSS, as the holder of an AFSL, from 1 July 2021 until around 27 May 2024, failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly and thereby contravened s912A(1)(a) and 912A(5A) of the Corporations Act.

Date: 17 December 2025

Signed by Tom Jarvis Lawyer for the Plaintiff	Signed by Andrew Eastwood Lawyer for the Defendants

Annexure 1

COURT ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (**ASIC**) by:

Netwealth Investments Limited (**NIL**)
ACN 090 569 109

and

Netwealth Superannuation Services Pty Ltd (**NSS**)
ACN 636 951 310

Level 6, 180 Flinders Street Melbourne VIC 3000

1 Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Affected Investor means a person who invested in FGMF through NSMF and, as at the date ofthis Court Enforceable Undertaking, continues to have funds invested in FGMF through NSMF.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

Corporations Act means the *Corporations Act 2001* (Cth)

FGMF means the First Guardian Master Fund.

Net Capital Amount means, in respect ofeach Affected Investor, the total amount deducted from the cash account of the Affected Investor in order to give effect to an investment direction to acquire FGMF units, less the total amount credited to the Affected Investor's cash account following a direction to redeem FGMF units, provided that the Net Capital Amount may not be less than zero.

NSMF means the Netwealth Superannuation Master Fund (ABN 94 573 747 704).

2 Background

2.1 Under s1 ofthe ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 ASIC is investigating the management and operation of the First Guardian Master Fund (ARSN 635 429 113) (**FGMF**), a registered managed investment scheme registered on 23 August 2019, which is now being wound up. Falcon Capital Limited (in liquidation) is the responsible entity of the FGMF. During the relevant period, the FGMF offered investors units in three investment classes: the First Guardian Defensive Strategies Class (**Defensive Class**); the First Guardian Diversified Strategies Class (**Diversified Class**); and the First Guardian Growth Strategies Class (**Growth Class**).

2.3 Affected Investors invested in FGMF Diversified Class and Growth Class through the NSMF. The NSMF is, and was at all relevant times, a 'choice' superannuation fund, in which the trustee of the NSMF selected invested options to be added to a menu for the superannuation product held by the members. Between 27 February 2002 and 30 June 2021, NIL was the trustee of the NSMF. Since 1 July 2021, NSS has been the trustee of the NSMF.

2.4 ASIC has conducted an investigation (**Netwealth Investigation**) into the conduct of NIL and NSS in relation to the FGMF.

2.5 The Netwealth Investigation has resulted in:

2.5.1 ASIC and NIL and NSS seeking to finalise ASIC's concerns in relation to NIL and NSS that are the subject of the Netwealth Investigation through an agreed Court outcome, involving NIL and NSS admitting to contraventions of ss 912A(l)(a) and 912A(5A) of the Corporations Act and agreeing facts in support of those contraventions in proceedings to be commenced by ASIC against NIL and NSS, with ASIC agreeing not to seek a civil penalty in respect of those contraventions; and

2.5.2 NSS pursuant to this court enforceable undertaking agreeing to make the payments pursuant to the Payment Program set out in section 3 below.

2.6 The proposed proceedings in relation to the agreed Court outcome (**Proceedings**) relate to failures by NIL and NSS to obtain, and therefore assess, sufficient information about the FGMF, or make sufficient independent inquiries, to understand or evaluate the risks of investment in offering or monitoring the Diversified Class or Growth Class as investment options to NSMF members.

2.7 NIL and NSS:

2.7.1 acknowledge and admit they contravened ss 912A(l)(a) and 912A(5A) of the Corporations Act as set out in Attachment A;

2.7.2 have agreed to make certain admissions in the Proceedings that will be commenced by ASIC to support ASIC obtaining declarations from the Court regarding the contraventions as set out in Attachment A (**the Declarations**). The admissions and facts upon which those admissions are based are recorded in a signed Statement of Agreed Facts and Admissions (**SAFA**), which will be filed in the Proceedings;

2.7.3 will join with ASIC in making submissions to the Court in support of obtaining the Declarations; and

2.7.4 has agreed to pay ASIC's costs of the Proceedings.

3 Undertakings

3.1 Under section 93AA of the ASIC Act, NIL and NSS have offered and ASIC, having regard to the Proceedings and the matters referred to at paragraphs 2.6 and 2.7, has agreed to accept as an alternative to other civil or administrative enforcement action against NIL or NSS arising from the Netwealth Investigation, undertakings from NIL and NSS that:

(Payment Program)

3.2 NSS will commence a program (**Payment Program**) in order to pay to each Affected Investor an amount equal to the Net Capital Amount. The Payment Program is comprised of the following steps:

3.2.1 by 30 January 2026, NSS agrees to sell beneficial ownership of all units in FGMF that it held for Affected Investors to Netwealth Holdings Limited in return for a cash payment that will be paid to NSS and credited to the cash accounts of Affected Investors in the NSMF on or before 30 January 2026 **(Cash for Asset Swap);** and

3.2.2 on or before 30 January 2026, NSS will make a payment to each Affected Investor that will be allocated to their cash account in the NSMF in an amount equal to their Net Capital Amount less the amount allocated to their cash account as part of the Cash for Asset Swap (**Compensation Payment**). NSS has agreed to make the Compensation Payment in order to settle ASIC's concerns and in recognition of potential claims for compensation that may be brought against NSS by ASIC or Affected Investors, but without admission that NSS would bear liability should such claims be brought;

3.2.3 on or before 13 February 2026, NSS will arrange for the preparation, by a suitably qualified third party, of a report on the Payment Program (**Payment Program Report**), which will:

i. assess whether payments made to each Affected Investor through the Payment Program are equal to the Net Capital Amount for each Affected Investor; and

ii. assess whether there are any Affected Investors who have not been paid an amount at least equal to their Net Capital Amount, and identify those Affected Investors (**Identified Affected Investors**) and the amount of their Net Capital Amount that has not been paid (**Shortfall Amount**); and

3.2.4 if there are any Identified Affected Investors, NSS will make payments to them of their respective Shortfall Amounts on or before 20 February 2026.

(Costs)

3.2.5 NSS will pay its costs and the costs of the suitably qualified third party in connection with the Payment Program and not seek reimbursement from or contribution towards those costs from any Affected Investor;

3.2.6 NSS and NIL will each not seek any waiver or release from any Affected Investor of any claims it may have against NIL, NSS or any other company or individual;

3.2.7 NSS and NIL will each pay their costs of their compliance with this court enforceable undertaking;

3.2.8 NSS and NIL will provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this court enforceable undertaking.

4 Acknowledgements

4.1 NIL and NSS acknowledge that ASIC:

4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;

4.1.2 may from time to time publicly refer to this undertaking;

4.1.3 will from time to time publicly report about compliance with this undertaking;

4.1.4 will make this undertaking available for public inspection;

4.1.5 may issue a media release referring to the content of the Payment Program Report;

4.1.6 may from time to time publicly refer to the content of the Payment Program Report; and

4.1.7 may make available for public inspection a summary of the content of the Payment Program Report, or a statement that refers to its content.

4.2 ASIC acknowledges that it will not refer to any information from the Payment Program Report that:

4.2.1 consists of personal information of Affected Investors;

4.2.2 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the court enforceable undertaking;

4.2.3 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of NIL, NSS or a third party otherwise than in a way that arises from the execution, implementation and reporting, of the outcomes of the enforceable undertaking;

4.2.4 ASIC is satisfied should not be released because it would be against the public interest to do so; or

4.2.5 NIL or NSS has asked not to be released if ASIC is satisfied:

i. it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of NIL or NSS otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the court enforceable undertaking; or

ii. it should not be released because it would be against the public interest to do so.

4.3 Further, NIL and NSS acknowledge that:

4.3.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of the Netwealth Investigation, or arising from future conduct; and

4.3.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

4.4 NIL and NSS acknowledge that this undertaking has no operative force until accepted by ASIC, and NIL, NSS and ASIC acknowledge that the date of the court enforceable undertaking is the date on which it is accepted by ASIC.

Executed by **NETWEALTH INVESTMENTS LIMITED ACN 090 569 109** in accordance with section 126(1) of the *Corporations Act 2001* (Cth) by its duly authorised delegates:

Matt Heine (Dec 17, 2025 17:56:34 GMT+11)	J. Henson Jodie Henson (Dec 17, 2025 17:57:01 GMT+11)
Signature of authorised delegate	Signature of authorised delegate
Matthew Heine	Jodie Henson
Name of authorised delegate	Name of authorised delegate

Executed by **NETWEALTH SUPERANNUATION SERVICES PTY LTD ACN 636 951 310** in accordance with section 126(1) of the *Corporations Act 2001* (Cth) by its duly authorised delegates:

Matt Heine (Dec 17, 2025 17:56:34 GMT+11)	J. Henson Jodie Henson (Dec 17, 2025 17:57:01 GMT+11)
Signature of authorised delegate	Signature of authorised delegate
Matthew Heine	Jodie Henson
Name of authorised delegate	Name of authorised delegate

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:

Catherine Iles

Catherine Iles

Delegate of Australian Securities and Investments Commission

17 December 2025

ATTACHMENT A: DECLARATIONS

1. A declaration that NIL (between around 26 March 2021 and 30 June 2021), in operating the Netwealth Superannuation Master Fund (**NSMF**), failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act, and s 912A(5A) of the Corporations Act, where:

    a. having regard to the apparent nature and characteristics of the First Guardian Master Fund (**FGMF**), NIL did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the First Guardian Diversified Strategies Class (**Diversified Class**) or the First Guardian Growth Strategies Class (**Growth Class**) investment options prior to or while offering them to members with an interest in the NSMF's Super Accelerator Plus product;

    b. in the circumstances described in paragraph (a) above, NIL:

        i. approved the Diversified Class and Growth Class as investment options made available to members for selection;

        ii. while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain); and

        iii. while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the investment platform maintained and operated by NIL through which members holding an interest in the NSMF and financial advisers authorised to act on behalf of those members could:

            1. access and operate their cash account in the NSMF;

            2. select, and give direction to the NSMF trustee to acquire or divest an investment in a range of investment options made available by the NSMF trustee; and/or

            3. access information about their investments;

        (**Netwealth Platform**)

    c. while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members.

2. A declaration that NSS (from 1 July 2021 to around 27 May 2024), in operating the NSMF, failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act, and s 912A(5A) of the Corporations Act, where:

   a. having regard to the apparent nature and characteristics of the FGMF, NSS did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the Diversified Class or the Growth Class investment options while offering them to members with an interest in the NSMF's Super Accelerator Plus product;

   b. in the circumstances described in paragraph (a) above, NSS:

      i. while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain);

      ii. while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the Netwealth Platform;

   c. while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members, prior to 6 December 2022; and

   d. on or after removing the Diversified Class and Growth Class from the investment "menu" administered by NIL on or around 22 December 2022, NSS did not inform NSMF members whose accounts recorded an investment in those classes of concerns held about the FGMF relevant to a member's future investment directions about their investment.

Annexure B – Supplementary Statement of Agreed Facts and Admissions

SUPPLEMENTARY STATEMENT OF AGREED FACTS AND ADMISSIONS

Federal Court of Australia
District Registry: Victoria
Division: General — No. VID 1658 of 2025

IN THE MATTER OF NETWEALTH INVESTMENTS LIMITED (ACN 090 569 109) and NETWEALTH SUPERANNUATION SERVICES PTY LTD (ACN 636 951 310)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

and

NETWEALTH INVESTMENTS LIMITED (ACN 090 569 109)

and

NETWEALTH SUPERANNUATION SERVICES PTY LTD (ACN 636 951 310)

Defendants

Contents

1. This Supplementary Statement of Agreed Facts and Admissions (**Supplementary SAFA**) is made for the purposes of s 191 of the *Evidence Act 1995* (Cth) jointly by the Plaintiff, the Australian Securities and Investments Commission (**ASIC**), and the Defendants, Netwealth Investments Limited (**NIL**) and Netwealth Superannuation Services Pty Ltd (**NSS**).

2. This Supplementary SAFA relates to a proceeding commenced by ASIC against the Defendants (**Proceeding**) and contains facts relevant to contraventions alleged by ASIC and admitted to by NIL and NSS, for the purposes of this Proceeding.

3. The definitions used in the Statement of Agreed Facts and Admissions (**SAFA**) filed in this Proceeding on 18 December 2025 are also used in this Supplementary SAFA, unless otherwise stated.

Enforceable Undertaking

4. Pursuant to the court enforceable undertaking given under s 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth) and entered into on 17 December 2025 (**Undertaking**), NSS agreed to commence a 'Payment Program', which required NSS to return to each of the Affected Investors (defined in the Undertaking as being each person who invested in the NSMF and, as at the date of the Undertaking, continued to have funds invested in FGMF through NSMF) an amount equal to their Net Capital Amount.

5. For the purposes of the Undertaking, the Net Capital Amount means, in respect of each Affected Investor, the total amount deducted from the cash account of the Affected Investor in order to give effect to an investment direction to acquire FGMF units, less the total amount credited to the Affected Investor's cash account following a direction to redeem FGMF units, provided that the Net Capital Amount may not be less than zero.

6. Whilst the Undertaking only required such compensation to be paid to Affected Investors, the same compensation scheme was implemented and executed by NSS for persons who had held an interest in the FGMF but had sold their holdings prior to the date of the Undertaking. That resulted in an additional four NSMF members being compensated. In subsequent paragraphs, the term "Affected Investor" should be read as also including those four persons, notwithstanding the narrower definition of this term used in the Undertaking.

Payment Program

7. On 28 January 2026, NSS sold beneficial ownership of all units in the FGMF held by Affected Investors to Netwealth Holdings Limited, in exchange for a cash payment which was paid to NSS.

8. On 28 January 2026, NSS made a payment to each Affected Investor, equal to their Net Capital Amount plus, or for certain Affected Investors less, an amount in respect of Capital Gains Tax in relation to the units of the FGMF sold.

9. Pursuant to the Undertaking, NSS engaged a qualified third party to prepare a report on the payments made to each Affected Investor. The report is in the form of a letter signed

by Michael Dermody, Partner at KPMG, and dated 10 February 2026 (**Payment Program Report**), which confirms:

a. the payments made to each Affected Investor through the Payment Program were equal to their Net Capital Amount plus, or for certain Affected Investors less, an amount in respect of Capital Gains Tax in relation to their remaining units in the FGMF (at p.5, Pt 4.3); and

b. no Affected Investors were not paid their full Net Capital Amount (at p.6, Pt 4.5).

10. The total Net Capital Amount paid to Affected Investors was $100,726.298.10.

11. NSS made payments to 1,080 Affected Investors (at p.3, Pt 3). The SAFA (at paragraph 50) refers to a total of 1,084 investors but it is agreed that the number of Affected Investors is 1,080.

12. The result of the Payment Program is that each Affected Investor has been paid an amount equal to the amount deducted from the Affected Investor's account to acquire units in the FGMF, less the total amount credited to the Affected Investor's cash account following a direction to redeem units in the FGMF.

Date: 24 April 2026

Signed by Tom Jarvis Lawyer for the Plaintiff	Signed by Andrew Eastwood Lawyer for the Defendant