

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v DIVERSA TRUSTEES LIMITED (ACN 006 421 638)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Registrar

### Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



**Form 2**  
(Rule 2.2)

## ORIGINATING PROCESS

No.        of 2025

Federal Court of Australia  
District Registry:  
Division: General

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**DIVERSA TRUSTEES LIMITED (ACN 006 421 638)**

Defendant

#### A.        DETAILS OF APPLICATION

This application is made under ss 52(2)(b), 52(2)(c), 52(6)(a), 52(6)(b), 52(12), 54B(1), 196 and 215(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) and ss 912A(1)(a), 912A(5A), 1101B, 1317E and 1317G(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

In this Originating Process, terms which are defined in the Concise Statement dated 8 December 2025 have the same meaning in this document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks the following:

#### Declarations

##### *Onboarding*

- 1        A declaration that, by approving each of the FGMF Classes for inclusion as investment options offered to members of:
  - (a)        the Powerwrap Fund, on around 6 August 2020;
  - (b)        the MAP Fund, including the YourChoice and AusPrac sub-plans, on around 16 November 2020; and
  - (c)        the Praemium Fund, on around 12 March 2021,and so offering them, Diversa contravened:
  - (d)        covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of the relevant Diversa Fund, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and
  - (e)        s 912A(1)(a), and thereby s912A(5A), of the Corporations Act,

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Tom Jarvis
Law firm (if applicable)	Johnson Winter Slattery
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in circumstances where Diversa did not have or assess information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise the power to approve and offer the FGMF Classes with due diligence.

- 2 In the alternative to the declaration in paragraph 1, a declaration that by approving each of the FGMF Classes for inclusion as investment options offered to members of each of the Diversa Funds without determining to inform members of their potential illiquidity, and so offering them, Diversa contravened:

- (a) covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and
- (b) s 912A(1)(a), and thereby s912A(5A), of the Corporations Act,

in circumstances where it did not have or assess information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise the power to approve and offer the FGMF Classes with due diligence.

#### *Monitoring and investment*

- 3 A declaration that Diversa contravened, between around 6 August 2020 and July 2024:

- (a) covenants to the effect of each of ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and s 54B(1) of the SIS Act in respect of each such contravention; and
- (b) s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act,

in circumstances where:

- (c) as trustee of the Diversa Funds, it had not held or assessed information, having regard to the apparent nature and characteristics of the FGMF and serious risks of investment in the FGMF Classes, so as to exercise due diligence in the approval of the FGMF Classes as investment options to members of each of the Diversa Funds;
- (d) it did not obtain or assess such information, at any time during which the FGMF Classes were offered as investment options to members of each of the Diversa Funds;
- (e) its performance, liquidity and stress testing monitoring of the FGMF used information from Falcon or First Guardian that Diversa did not independently enquire into or verify, and Diversa did not require service providers to report periodically to it as to whether investment options experienced delays in meeting redemption requests or striking unit prices; and
- (f) each of the FGMF Classes:
  - (i) remained offered and were not removed as investment options for members of the Diversa Funds; and
  - (ii) further and in the alternative to (i), remained offered as investment options for members of the Diversa Funds without Diversa having determined to notify members of their potential illiquidity.



- 4 A declaration that Diversa, from around 6 August 2020 to July 2024, contravened:
  - (a) a covenant to the effect of s 52(6)(a) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act; and
  - (b) s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act, by not formulating, giving effect to or reviewing an investment strategy for each of the FGMF Classes, or the FGMF, offered to members of the Diversa Funds.
- 5 A declaration that, having approved the FGMF Classes in the circumstances set out in paragraph 1 above, and continuing to make them available to investors, on each occasion that Diversa, as trustee of each of the Diversa Funds, invested in each of the FGMF Classes, Diversa:
  - (a) failed to exercise the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments, and so contravened a covenant to the effect of s 52(2)(b) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention;
  - (b) exercised a power of investment other than in the best interests or best financial interests of the members of the Diversa Funds, and so contravened a covenant to the effect of s 52(2)(c) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention; and
  - (c) failed to promote the financial interests of Diversa Fund members, and so contravened a covenant to the effect of s 52(12) of the SIS Act contained or taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention;
  - (d) failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) and thereby s 912A(5A).
- 6 A declaration that Diversa contravened covenants to the effect of each of s 52(2)(b) and 52(2)(c) of the SIS Act taken to be contained in the governing rules of each of the Diversa Funds, and thereby s 54B(1) of the SIS Act in respect of each such contravention, while each of the FGMF Classes was offered as an investment option to members holding interests in YourChoice and AusPrac, by failing to:
  - (a) enforce the holding limit of 50% determined by it to be applicable to each FGMF Class for members' accounts, by making investments which exceeded that limit;
  - (b) have systems in place which ensured compliance with the holding limit and detected any infringements of it; and
  - (c) notify members or their advisers that such a holding limit had been imposed.
- 7 A declaration that Diversa contravened s 912A(1)(a), and thereby s 912A(5A), of the Corporations Act while each of the FGMF Classes was offered as an investment option to members holding interests in YourChoice and AusPrac, by failing to do each of the following things:

- (a) have adequate systems and processes in place to ensure that it and its service providers were able to apply and enforce holding limits to each FGMF Class for member accounts;
- (b) have adequate systems and processes to ensure there was not widespread or systemic non-compliance with the holding limit of 50% determined by it to be applicable to each FGMF Class for members' accounts;
- (c) have adequate systems and processes in place to identify failures to apply the 50% holding limit determined by it to be applicable to each FGMF Class for members' accounts; and
- (d) notify members or their advisers that such a holding limit had been imposed.

#### **Pecuniary penalties**

- 8 An order pursuant to s 196(3) of the SIS Act that Diversa pay to the Commonwealth a monetary penalty in an amount to be fixed by the Court in respect of each of the declared contraventions of s 54B(1) of the SIS Act.
- 9 An order pursuant to section 1317G(1) of the Corporations Act that Diversa pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 912A(5A) of the Corporations Act.

#### **Compensation orders or remediation program orders**

- 10 An order pursuant to s 215(1) of the SIS Act that Diversa pay compensation to each of the Diversa Funds, in an amount to be fixed by the Court, for loss or damage each of the Diversa Funds suffered on behalf of all past and present members who:
  - (a) instructed Diversa as trustee of the relevant Diversa Fund to invest in any class of the FGMF on the members' behalf; and
  - (b) in respect of whom the amount directed to be invested in each class of the FGMF has not been redeemed by the responsible entity of the FGMF, in full,(those current or former members of the Diversa Funds, **Affected Diversa Members**).
- 11 Further or alternatively to paragraph 10 above, an order pursuant to s 1101B of the Corporations Act that, by a date to be fixed by the Court, Diversa:
  - (a) establish and implement a review and remediation program (**Remediation Program**) to:
    - (i) identify all Affected Diversa Members;
    - (ii) determine the loss suffered by:
      - (A) each of the Diversa Funds (on behalf of all Affected Diversa Members); and
      - (B) each Affected Diversa Member,as a result of Diversa's contraventions of s 912A(5A) of the Corporations Act or s 54B(1) of the SIS Act referred to above;
  - (iii) inform each Affected Diversa Member of any loss suffered by that Affected Diversa Member;





- (iv) pay, or cause to be paid, to each Affected Diversa Member, their entitlement in respect of their loss;
- (b) appoint (at Diversa's cost) a suitably qualified independent expert, to be agreed upon by the parties or, in the absence of agreement, to be determined by the Court, to prepare and provide to ASIC and the Court:
  - (i) on a date to be fixed by the Court, an interim report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program;
  - (ii) within 2 months of the completion of the Remediation Program, a final report on the Remediation Program, including as to whether the expert perceives any deficiencies in the design, implementation and effectiveness of the Remediation Program.

#### Other Orders

- 12 An order that the Defendant pay the Plaintiff's costs.
- 13 Such further or other orders as the Court considers appropriate.

Date: 8 December 2025

*John Winter Skelley.*

*Signature of Plaintiff's legal practitioner*

This application will be heard by ..... at Owen Dixon  
Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at .....\*am/\*pm on  
.....



**B. NOTICE TO DEFENDANT**

**TO: DIVERSA TRUSTEES LIMITED (ACN 006 421 638)**  
Level 17, 60 City Road  
SOUTHBANK VIC 3006

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

Date of filing: 8 December 2025

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*Registrar*

This Originating Process is filed by Johnson Winter Slattery, solicitors for the Plaintiff.

**D. SERVICE**

The Plaintiff's address for service is:

Johnson Winter Slattery  
Level 34, 55 Collins Street  
MELBOURNE VIC 3000

It is intended to serve a copy of this Originating Process on the defendant