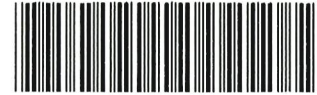




ASIC
Australian Securities &
Investments Commission



S02553193

INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 11 November 2022

Unique identification code: S02553193

TO: Diversa Trustees Limited
ACN 006 421 638
Level 9, 2 Southbank Boulevard
Southbank VIC 3006

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Diversa Trustees Limited (**Diversa**) has contravened an infringement notice provision of the ASIC Act as follows:
 - (a) From on or about 1 September 2020 to the date of this infringement notice (**Relevant Period**), Diversa contravened section 12DB(1)(a) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations that services are of a particular standard, quality, value or grade.
 - (b) A superannuation product, Cruelty Free Super (**CFS**) was issued by Diversa as trustee for the Cruelty Free Superannuation Fund during the Relevant Period. As trustee and issuer of the product, Diversa is responsible for any statements made on the website www.crueltyfreesuper.com.au and is noted as trustee of [CFS on the website](http://www.crueltyfreesuper.com.au).
 - (c) Diversa made the following representations on the webpage www.crueltyfreesuper.com.au/ethical-screens/ during the Relevant Period:

Excluded investments

Our negative screening process excludes companies engaged in the following activities:

...

Polluting

Polluting and carbon intensive activities

...

Harmful financing

Financing or support of activities which cause environmental or social harm

Poor corporate governance

- (d) The representation "*Our negative screening process excludes companies engaged in...polluting and carbon intensive activities*" makes a representation about services being of a particular quality that is false or misleading in contravention of section 12DB(1)(a) of the ASIC Act because:
- i. the representation conveys that the screening process excludes companies engaged in "*polluting*" and "*carbon intensive activities*";
 - ii. the screens applied exclude companies engaged in "*Animals in food and products*", "*Chemicals of concern*", "*Fossil fuels*", and "*Environmental destruction*" or "*Environmental damage*". In particular, the "*Environmental damage*" screen excludes "*companies whose activities have a direct negative impact on valuable environments such as old growth forest logging or destruction of recognised world heritage areas*"; and
 - iii. the screens applied do not assess or seek to exclude companies engaged in "*carbon intensive activities*" or "*polluting*", outside of the context of the destruction of "*valuable environments*".
- (e) The representation "*Our negative screen process excludes companies engaged in... financing or support of activities which cause environmental or social harm*" makes a representation about services being of a particular quality that is false or misleading in contravention of section 12DB(1)(a) because:
- i. the representation conveys that the screening process excludes companies engaged in "*Financing or support of activities which cause environmental or social harm*";
 - ii. the screen applied excludes companies engaged in "*predatory lending*", being "*companies that offer predatory lending products and services*"; and
 - iii. the screen applied does not assess or seek to exclude companies engaged in "*Financing or support of activities which cause environmental or social harm*", other than "*predatory lending*" conduct.
- (f) The representation "*Our negative screen process excludes companies engaged in... poor corporate governance*" makes a representation about services being of a particular quality that is false or misleading in contravention of section 12DB(1)(a) because:
- i. the representation conveys that the screening process excludes companies engaged in "*poor corporate governance*";
 - ii. the screens applied exclude companies engaged in "*Controversy; Fossil fuels; Tobacco; Gambling; Predatory lending; and Weapons*". In particular, the "*Controversy*" screen excludes companies "*subject to significant controversy contrary to the expectations of investors. Particular consideration is given to controversies involving the welfare of animals*"; and

- iii. the screens applied do not assess or seek to exclude companies based on a substantive review of corporate governance issues, beyond those identified as having been subject to "controversy".

Amount payable under this notice

3. The amount payable under this notice in relation to the alleged contravention is **\$13,320**. This amount can be paid using the method detailed in the covering letter accompanying this notice.
4. The payment period for the notice will be 28 days, beginning on the day after the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.

Consequences of complying with this notice

5. If Diversa pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is subsequently withdrawn and any amount paid refunded) Diversa is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Diversa for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. Diversa may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of failing to comply with this notice

8. Diversa may choose not to pay the amount payable under the notice. If Diversa does not pay the amount specified in this notice within the time for payment mentioned above, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Diversa for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
9. The maximum pecuniary penalty that a court may order Diversa to pay for the alleged contravention is the greatest of:
 - (a) \$11,100,000; and
 - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention — that amount multiplied by 3; and
 - (c) either:
 - i. 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - ii. If the amount worked out under subparagraph (i) is greater than an amount equal to \$555,000,000 — \$555,000,000.

Applying for more time to pay the amount under this notice

10. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
11. If Diversa wishes to apply for an extension of time to pay the amount specified in this notice, it should do so in writing within 28 days after the day the notice is given to Diversa (see paragraph 18).

Applying to have this notice withdrawn

12. Within 28 days after the day on which this notice is given, Diversa may apply to ASIC in writing to have this notice withdrawn.
13. Evidence or information that Diversa or Diversa's representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against Diversa or Diversa's representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

14. ASIC may, by written notice given to Diversa, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not Diversa has applied to have this notice withdrawn.
15. A withdrawal notice must be given to Diversa within the time for payment of this infringement notice to be effective.
16. If the withdrawal notice is given after Diversa has paid the amount specified in this infringement notice, ASIC will refund to Diversa the amount paid under the infringement notice.
17. If the infringement notice is withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Diversa for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

Requirements for applications

18. An application to have this notice withdrawn, or for more time to pay the amount specified under this notice:
 - (a) must be in writing;
 - (b) must include the unique identification code set out at the top of this notice;
 - (c) must include Diversa's reasons for making the application; and
 - (d) may be made by forwarding Diversa's application to ASIC at the address in paragraph 19.
19. Diversa may contact ASIC in relation to this notice by contacting:

Marita Hogan
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000
or by email: ACLInfringementNotices@asic.gov.au (please copy to
nicki.gunn@asic.gov.au)



Marita Hogan
as a delegate of the Australian Securities and Investments Commission