

## NOTICE OF FILING

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DIVERSA TRUSTEES LIMITED (ACN 006 421 638)  
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*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.



# Amended Statement of Claim

No. VID1614 of 2025

Federal Court of Australia

District Registry: Victoria

Division: General

## AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

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

Defendant

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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		
Tel	+61 3 8611 1336	Fax	+61 3 8611 1300
Email	tom.jarvis@jws.com.au		
<b>Address for service</b> (include state and postcode)	Level 34, 55 Collins Street MELBOURNE. VIC. 3000		

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## A. PARTIES

1. The plaintiff (**ASIC**):
  - (a) is a body corporate established by s 7 of the *Australian Securities Commission Act 1989* (Cth) and continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - (b) is able to sue in its corporate name by operation of s 8(1)(d) of the ASIC Act.
2. The defendant (**Diversa**):
  - (a) is a body corporate incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - (b) is, and has been since 23 December 2005, the holder of a Registrable Superannuation Entity (**RSE**) licence (licence no. L0000635);
  - (c) is, and has been since 1 March 2004, the holder of an Australian Financial Services Licence (**AFSL**) (licence no. 235153), which authorises it to carry on a financial services business for retail and wholesale clients to, among other things:
    - (i) provide general financial product advice for certain classes of financial products, including superannuation;
    - (ii) deal in a financial product, being superannuation; and
    - (iii) (since 1 January 2021) by reason of the matters alleged in subparagraphs (b) and (c)(ii) above and by operation of section 1676A of the Corporations Act, provide a superannuation trustee service;
  - (d) between July 2020 and July 2024 (**Relevant Period**) operated a business in which it acted as trustee of superannuation funds with total assets of at least \$10 billion;
  - (e) is or was the trustee of the following funds (**Diversa Funds**) (among others), each of which was in the Relevant Period a regulated superannuation fund (and by reason thereof a registrable superannuation entity and a superannuation entity), within the meaning of each such term in the *Superannuation Industry (Supervision) Act 1993* (**SIS Act**):
    - (i) from on or around 9 August 2010 until 30 June 2022, the Powerwrap Master Plan (ABN 82 890 650 204) (**Powerwrap Fund**);
    - (ii) from on or around 30 November 2014, the Praemium SMA Superannuation Fund (ABN 75 703 857 864) (**Praemium Fund**);

- (iii) from on or around 10 May 2017 the MAP Master Superannuation Plan (ABN 71 603 157 863) (**MAP Fund**) and its sub-plans, including (until 30 November 2020) YourChoice Super (**YourChoice**) and Australian Practical Superannuation (**AusPrac**); and
- (iv) from on or around 18 May 2015, OneSuper (ABN 43 905 581 638) (**OneSuper Fund**) and its sub-plans, including (from 1 December 2020) YourChoice and AusPrac; and
- (f) in respect of each of the Diversa Funds:
  - (i) made investments available to members of each Fund for their selection (each such selectable investment, an **Investment Option**); [and](#)
  - (ii) maintained a list of Investment Options approved by it in respect of each Fund and from which members could select investments and give investment directions to Diversa (**Investment Menu**).

## **B. DIVERSA FUNDS**

### **B1. Powerwrap Fund**

3. The Powerwrap Fund was a superannuation fund:

- (a) established by trust deed (**Powerwrap Trust Deed**) on or around 9 August 2010;

#### **Particulars**

Powerwrap Fund Trust Deed dated 9 August 2010.  
Deed of Variation dated 15 June 2015.  
Deed of Amendment dated 22 April 2021.

- (b) which as at 30 June 2020, held total assets of \$139,850,000 and had approximately 891 member accounts;
  - (c) which was on 31 March 2021, transferred by successor fund transfer to the Praemium Fund; and
  - (d) which was wound up on 30 June 2022.
4. Prior to 31 March 2021, Diversa issued a Product Disclosure Statement (**PDS**) and Account Reference Guide from time to time which provided that:
- (a) in consultation with their financial advisor, members could invest their superannuation through a flexible investment structure that offered a wide range of [Investment Options](#);

- (b) members portfolios may include managed funds registered by ASIC and a range of other investments, as approved by Diversa in consultation with the Investment Administrator and published in the Powerwrap Superannuation and Pension Approved Products List;
- (c) generally, investment in illiquid assets (that is, assets which could not be redeemed within 30 days at all or with little or no loss of capital) was not permitted, however:
  - (i) if a previously liquid investment were to become illiquid, Diversa may take such action as may be required from time to time to enable the Powerwrap Fund to discharge its liabilities and meet its cash flow requirements having regard to the best interests of members as a whole; and
  - (ii) it may be possible for a member to invest in an illiquid asset if they provided prior acknowledgment to Diversa that they were aware of the illiquid nature of the investment;
- (d) there were limits on how much members could invest in certain underlying investments; and
- (e) Diversa reserved the right to refuse or delay the investment of further monies or a switching request for whatever reason, including the occurrence of a materially adverse change or materially adverse significant event affecting the information in a PDS for a product or investment available from the Powerwrap Fund.

#### **Particulars**

PDS at 1 July 2020.

Reference Guide at 1 July 2020.

- 5. It was a term of the Powerwrap Trust Deed that the Powerwrap Fund was to be governed by rules. Those rules provided that:
  - (a) Diversa was required to:
    - (i) comply with the investment choice or instruction from a member if it adhered to guidelines formulated by Diversa from time to time (clause 4.1(b));
    - (ii) cause assets that are invested wholly or partly in illiquid investments for a member to be redeemed and payment made to the member in a manner and time which, in Diversa's opinion, was fair and reasonable having regard to the interests of all members [\(clause 10.3\(a\)\)](#); and

- (iii) adhere to the duties taken by the SIS Act to be contained in the rules (clause 20.12); and
- (b) Diversa had the power to:
- (i) give members a choice of two or more underlying investments, assets or financial products to implement their chosen investment strategies (clause 4.1(a)(iii));
  - (ii) if a member's investment choice or instruction ceased to adhere to guidelines formulated by Diversa from time to time, take whatever steps it considered necessary, including (without limitation) redeeming assets or investments in respect of the member (clause 4.1(d));
  - (iii) apply such conditions as it thought appropriate to the exercise of investment choice by a member (clause 4.1(e));
  - (iv) do whatever it considered appropriate to manage and invest the Powerwrap Fund (clause 4.2(a));
  - (v) formulate criteria which define the portfolios, investments, assets or financial products that may be made available to members to implement an investment strategy (clause 4.2(e));
  - (vi) determine such other criteria as it considered necessary or appropriate in relation to the choice of an investment strategy, portfolio or underlying investments, assets or financial products by a member (clause 4.2(f)); and
  - (vii) make or adopt policies in relation to any matters that Diversa considered appropriate for the convenient administration of the Powerwrap Fund (clause 20.5).

## **B2. Praemium Fund**

6. The Praemium Fund is a superannuation fund:

- (a) established by trust deed (**Praemium Trust Deed**) on around 15 September 2011; and

### **Particulars**

Trust Deed of the OneStep Superannuation Fund dated 15 September 2011.

First Supplemental Deed dated 13 February 2014 (amending the name of the OneStep Superannuation Fund to the Praemium Fund).

QROPS Amending Deed dated 28 June 2018.

Amending Deed dated 26 March 2021 (unsigned).

- (b) which, as at 30 June in each year from 2020 to 2024, had the following approximate total assets and number of member accounts:

Year ended	Total assets	No. of member accounts
30 June 2020	\$1,529,294,000	7,793
30 June 2021	\$2,528,453,000	10,593
30 June 2022	\$3,044,940,000	12,802
30 June 2023	\$3,861,389,000	13,704
30 June 2024	\$4,616,767,000	14,915

7. During the Relevant Period, Diversa issued a PDS, Investment Guide and Additional Information Guide from time to time which provided that:
- (a) the Praemium Fund offered members a wide range of asset classes from which to choose;
  - (b) Diversa reserved the right to refuse or delay the investment of further monies or a switching request for whatever reason, including the occurrence of a materially adverse change or materially adverse significant event affecting the information in the PDS for the Praemium Fund; [and](#)
  - (c) Diversa had set limits on how much a member could invest in each individual managed fund.

#### Particulars

PDS at 1 June 2020.  
 Additional Information Guide at 1 June 2020.  
 Investment Guide at 1 July 2020.

8. Under the Praemium Trust Deed:
- (a) Diversa had the power to:
    - (i) establish rules prescribing the terms and conditions upon which it may invite or require a member to give directions to it regarding the application of assets representing the member's account (clauses 14.3); and
    - (ii) postpone the application of any amount to an Investment Portfolio (as defined therein) or the repayment of any amount from an Investment Portfolio for any reason Diversa considered appropriate (clause 14.4); and
  - (b) Diversa was required to comply with any requirement of the "Superannuation Law" (including the SIS Act and Corporations Act), and had the power to comply with any other provision of Superannuation Law (clause 25.1).

### **B3. MAP Fund and OneSuper Fund – YourChoice and AusPrac**

9. The MAP Fund was a superannuation fund:

- (a) established by trust deed (**MAP Trust Deed**) on around 7 February 1992;

#### **Particulars**

Consolidated Trust Deed [dated](#) 2015.  
Deed of Novation dated 4 May 2017 (replacing MAP Funds Management Limited as trustee with Diversa).  
Deed of Retirement and Appointment dated 10 May 2017 (replacing MAP Funds Management Limited as trustee with Diversa).  
Deed of Variation dated 28 June 2018.  
Amending Deed dated 28 May 2019.  
Deed of Amendment dated 26 November 2020.

- (b) which, during the Relevant Period until 30 November 2020, included the YourChoice and AusPrac sub-plans;
- (c) which, as at 30 June 2020, held total assets of approximately \$791,818,000 and had approximately 23,524 member accounts;
- (d) which was, on 1 December 2020, transferred by successor fund transfer to the OneSuper Fund; and
- (e) which was wound up on 30 June 2022.
10. In the Relevant Period, Diversa issued a PDS and Additional Information Guide in respect of each of the YourChoice and AusPrac sub-plans from time to time which provided that:
- (a) YourChoice and AusPrac offered a wide range of investments;
- (b) members could choose one Investment Option or a combination of different Investment Options;
- (c) even though Diversa selected the investments available in the Investment Menu, Diversa was not making any endorsement of, or recommendation to invest in, any particular investment;
- (d) the majority of investments were readily convertible to cash within a week at most, and Diversa did not consider that liquidity risk was a major problem in the normal course of events, however, under extreme market conditions there was still a risk that certain investments may not readily be converted into cash; and

- (e) Diversa may place a holding limit on certain investments, and if a member reached or exceeded the holding limit, they would not be able to make further investments in that investment.

**Particulars**

YourChoice PDS at 1 October 2020.  
 YourChoice Additional Information Guide at 1 October 2020.  
 AusPrac PDS at 1 October 2020.  
 AusPrac Additional Information Guide at 1 October 2020.

11. Under the MAP Trust Deed Diversa was required to:
- (a) settle the intended asset allocation of each investment strategy having regard to its particular risk and return profile (clause 6.4);
  - (b) settle the authorised investments to be made in respect of each **i**nvestment **e**Option (clause 6.5);
  - (c) record sufficient particulars in respect of each investment strategy so that a person reading the information would have all the information the person would reasonably need, including for the purpose of making an informed judgement about the effect of and any risk involved in each of the **i**nvestment **e**Options (clause 6.7); and
  - (d) comply with all of the covenants that are taken to be included in the MAP Trust Deed under the SIS Act (clause 9.3.13).
12. The OneSuper Fund is a superannuation fund:
- (a) established by trust deed (**OneSuper Trust Deed**) on around 18 March 1991;

**Particulars**

Deed of Retirement and Appointment dated May 2015.  
 Consolidated Trust Deed dated 1 December 2023.

- (b) which, as at 30 June in each year from 2020 to 2024, had the following approximate total assets and member accounts:

Year ended	Total assets	No. of member accounts
30 June 2020	\$169,105,000	5,588
30 June 2021	\$1,297,501,000	56,297
30 June 2022	\$1,225,995,000	59,814
30 June 2023	\$1,325,777,000	59,302
30 June 2024	\$6,289,076,000	191,713

- (c) which, from between 1 December 2020 and 30 June 2022, included the YourChoice and AusPrac sub-plans; and
  - (d) which, from 1 July 2022, included the YourChoice sub-plan, and the AusPrac 'white label' product as part of that sub-plan.
13. During the Relevant Period, Diversa issued a PDS and Additional Information Guide in respect of each of the YourChoice and AusPrac sub-plans from time to time which provided for the matters alleged in paragraph 10 above.

#### **Particulars**

YourChoice PDS at 1 December 2020.  
YourChoice Additional Information Guide at 1 December 2020.  
AusPrac PDS at 1 December 2020.  
AusPrac Additional Information Guide at 1 December 2020.

14. Under the OneSuper Trust Deed:
- (a) Diversa had the power to:
    - (i) offer members a choice of Investment Options (clause 10.1(a)); and
    - (ii) permit a member to direct Diversa to invest all or part of a member's account in one or more investments on such terms and conditions as Diversa considered appropriate, including the percentage which a member may invest in any one or more investments, subject to lawful requirements (including the SIS Act and Corporations Act) (clause 10.2(a)); and
  - (b) Diversa was required to exercise all of the powers and discretions given to it under the OneSuper Trust Deed subject to relevant provisions, restrictions, limitations and requirements contained in the SIS Act (clause 3.1).

#### **B4. Diversa Funds and s 52 SIS Act covenants**

15. By operation of s 52(1) of the SIS Act, during the Relevant Period, the 'governing rules' of each of the Diversa Funds included covenants to the effect that Diversa, as trustee:
- (a) exercise, in relation to all matters affecting each of the Diversa Funds, 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 (s 52(2)(b) of the SIS Act);
  - (b) (until 30 June 2021) perform the trustee's duties and exercise the trustee's powers in the best interests of the beneficiaries of each of the Diversa Funds and (after 30 June 2021) to perform the trustee's duties and exercise the trustee's powers in

the best financial interests of the beneficiaries of each of the Diversa Funds (s 52(2)(c) of the SIS Act);

- (c) formulate, review regularly and give effect to an investment strategy for:
  - (i) the whole of each of the Diversa Funds; and
  - (ii) each ~~i~~Investment ~~e~~Option offered by it in each of the Diversa Funds, having regard to matters listed in s 52(6)(a)(i) to (viii) of the SIS Act (s 52(6)(a) of the SIS Act);
- (d) exercise due diligence in developing, offering and reviewing regularly each ~~i~~Investment ~~e~~Option offered by it in each of the Diversa Funds (s 52(6)(b) of the SIS Act); and
- (e) promote the financial interests of the beneficiaries of each of the Diversa Funds who hold a choice product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes) (s 52(12) of the SIS Act).

#### Particulars

The covenants are taken to be so included by operation of s 52(1) of the SIS Act. 'Governing rules' has the meaning given to that term at s 10 of the SIS Act.

- 16. During the Relevant Period, by operation of s 29E(1)(a) of the SIS Act, it was a condition of Diversa's RSE licence that it must comply with the RSE Licence Law as defined in s10 of the SIS Act which includes prudential standards made by the Australian Prudential Regulation Authority (**APRA**) under s 34C of the SIS Act, including relevantly:
  - (a) as to investment governance: until 31 December 2022, *Superannuation (Prudential Standard) Determination No. 8 of 2012 - Prudential Standard SPS 530 - Investment Governance (SPS 530 (July 2013))* and, thereafter, *Superannuation (Prudential Standard) Determination No. 2 of 2022 - Prudential Standard SPS 530 - Investment Governance*; and
  - (b) as to risk management: *Superannuation (Prudential Standard) Determination No. 3 of 2019 Prudential Standard SPS 220 – Risk Management (SPS 220)*.

#### B5. Policies of Diversa as trustee of the Diversa Funds

- 17. Throughout the Relevant Period, Diversa adopted and maintained an Investment Policy ~~Statement~~ that applied to each of the Diversa Funds which provided that:
  - (a) each fund under Diversa trusteeship would have its own specific and tailored ~~i~~Investment ~~P~~olicy ~~S~~statement (section 1);

- (b) Diversa's approval of managed funds for investment would typically be subject to holding limits for members (section 3);
- (c) approval of managed funds for inclusion as an investment option on an investment menu was delegated by Diversa to its Investment Committee, or to management if the investment option had been previously approved for a fund of which Diversa was trustee (section 3);
- (d) a decision to select, retain, remove or restrict an investment on each fund approved product list would be made by Diversa in accordance with the investment policy statement for each of the Diversa Funds using selection criteria to manage investment risk (section 3);
- (e) the general investment objective for funds under Diversa's trusteeship was to offer members a range of different Investment Options that had been subject to an initial due diligence and were recommended on the basis of that due diligence (section 5);
- (f) the aim of the investment selection process was for Diversa to ensure that effective due diligence was completed that was commensurate with the nature and characteristics of the investment and, in doing so, the goal of the process was to result in Diversa being satisfied that (section 6.3):
  - (i) it had sufficient understanding and knowledge of the investment offered;
  - (ii) the investment was appropriate for investment by members; and
  - (iii) the investment was consistent with the investment objectives and strategies allowed under the fund investment strategy; and
- (g) Diversa would conduct investment monitoring (section 7):
  - (i) with the principal goals of:
    - (A) monitoring returns in order to highlight funds and portfolios which may not meet their stated investment objectives;
    - (B) ascertaining the existence of any particular weakness or significant changes in investments offered to members so as to allow Diversa to continually assess the ability of the proposed investments to successfully meet fund objectives; and
    - (C) monitor the liquidity of the Investment Options in order to determine whether action was required if a liquidity event had occurred;

- (ii) by reviewing all investments on a quarterly basis;
- (iii) by monitoring the extent to which the goals were being achieved through quarterly and annual reporting; and
- (iv) such that any investment option that no longer met the stated investment criteria should no longer be offered to members unless Diversa had specific reasons to deem otherwise.

**Particulars**

Diversa Investment Policy ~~Statements~~:

- (A) [From](#) 13/03/2019 – 7/10/2021.
- (B) [From](#) 8/10/2021 – 25/10/2022.
- (C) [From](#) 26/10/2022 – 13/12/2022.
- (D) [From](#) 14/12/2022 – 27/06/2023.
- (E) [From](#) 28/06/2023 – 12/12/2023.
- (F) [From](#) 13/12/2023 – 10/12/2024.

18. Throughout the Relevant Period, Diversa adopted and maintained a Valuation Policy which provided that:

- (a) reliable and timely valuation information be made available so that members could be allocated an appropriate and equitable share of the fund's return on investments and to ensure new, continuing and exiting members were treated fairly;
- (b) Diversa was responsible for understanding the basis of the valuation of all assets held by the funds of which it was trustee (section 1.1) and, where the asset was a pooled investment vehicle that invested in other sub-vehicles or funds, Diversa would (section 2.3.7 or 3.3.7):
  - (i) review the inherent valuation risks associated with investments that have multiple management layers, complex investment structures and/or underlying assets that are opaque in nature;
  - (ii) have a sufficient understanding of the nature of assets underlying the investment; and
  - (iii) have assessed the investment manager's valuation and risk management policies and processes.

**Particulars**

Valuation Policy in force from May 2017.

Further versions of Diversa's Valuation Policy were issued in:

- (A) August 2022.
- (B) April 2023.
- (C) ~~From~~ April 2024.

19. In the Relevant Period from December 2022, Diversa adopted and maintained a Liquidity Policy which provided that:
- (a) Diversa aimed to safeguard members' benefits through risk and liquidity management (section 1);
  - (b) a liquidity management plan be adopted to ensure that the superannuation funds under trusteeship and each **i**Investment **e**Option within those funds were able to meet payment, transfer and withdrawal requirements as and when they were due (section 7);
  - (c) consideration be given by Diversa to the liquidity profile of a fund before it was approved for use on the approved product list and on-going monitoring was undertaken (section 5.2); and
  - (d) Investment Options on an approved product list considered to have a sub-optimal level of liquidity may be approved subject to completion of an illiquidity acknowledgment by a member prior to investment, and may be subject to maximum investment limits to mitigate liquidity risk (sections 5.2 and 5.3).

#### Particulars

Diversa's Liquidity Policy in force from December 2022.

Further versions of Diversa's Liquidity Policy were issued in:

- (A) April 2023.
- (B) May 2024.

20. From June 2023 until at least July 2024, Diversa adopted and maintained a Stress Testing Programme which provided that:
- (a) Diversa was required to undertake stress testing to ensure its **i**Investment **e**Options could meet their objectives across a number of different and extreme market conditions (section 3.1);
  - (b) stress testing was to take into account changes in market conditions, the investment strategy, the liability profile of **i**Investment **e**Options, and circumstances that may affect the liquidity of specific **i**Investment **e**Options and each fund/sub-fund as a whole (section 3.1);
  - (c) Diversa was responsible for understanding and approving the basis of the stress testing undertaken for all the funds and **i**Investment **e**Options (section 3.2);
  - (d) stress testing was to be conducted at least annually (section 4.1);

- (e) the stress testing program for those funds/sub-funds offering a platform service involved a review of each of the investment offerings approved on Diversa's approved product list (section 4.1); and
- (f) if the results of stress testing were of concern, then an escalation of response may be necessary, and escalation to the Board may be considered by the Investment Committee where the results of the stress testing programme result in significant changes to the investment objectives, asset allocation or underlying investments of the funds (section 4.3).

### Particulars

Diversa's Stress Testing Programme in force from June 2023.  
[A further version of Diversa's Stress Testing Programme was issued in June 2024.](#)

**B6. ~~A further version of Diversa's Stress Testing Programme was issued in June 2024.~~ Investment policies of the Diversa Funds**

- 21. Throughout the Relevant Period, as trustee of the Powerwrap Fund, Diversa adopted and maintained an investment policy statement which provided:
  - (a) to the effect alleged in paragraphs 17(f) and (g) above;
  - (b) a managed fund should meet certain criteria before it could be approved for the Powerwrap Fund (subject to certain exceptions), including:
    - (i) for Diversa to assess the size of the managed fund and demand by members and financial advisers for investment;
    - (ii) a research house or ratings agency approved by Diversa must rate the managed fund or the fund manager's overall investment capability as "Investment Grade" (or equivalent) having conducted a review of certain key factors, and which includes a rating by SQM Research of 3.5 stars;
    - (iii) the managed fund must be liquid as defined in the Corporations Act, and which requirement would generally be satisfied if the fund were able to realise at least 80% of its assets within the time specified in the fund's constitution for satisfying redemption requests; and
    - (iv) the managed fund must value units on a fair and reasonable basis and in a timely manner;
  - (c) Diversa may place a holding restriction on any managed fund, for example where it considered that there was additional risk (including due to size or concentration risk), poor liquidity or a lack of diversification; and

- (d) when Diversa detected that an Investment Option did not meet all the necessary investment criteria, but took the view that the Investment Option should not automatically be removed from the Investment Menu, the Investment Option would be placed on a watch list, and subjected to additional scrutiny.

#### Particulars

Powerwrap Fund Investment Policy Statement as at May 2020.

22. Throughout the Relevant Period, as trustee of the Praemium Fund, Diversa adopted and maintained an investment policy statement for the Praemium Fund which provided to the effect alleged in paragraph 21(a) to (d) above.

#### Particulars

Praemium Fund Investment Policy Statement:

- (A) From May 2020.
  - (B) From February 2021.
  - (C) From April 2022.
  - (D) From July 2023.
23. As trustee of the MAP Fund and the OneSuper Fund, Diversa adopted and maintained an investment policy statement for the MAP Fund and OneSuper Fund, as well as each of YourChoice and AusPrac, which provided, in respect of each of:
- (a) the MAP Fund, to the effect alleged in paragraph 21(a) to (c) above;
  - (b) the OneSuper Fund, to the effect alleged in paragraph 21(a) to (c) above;
  - (c) YourChoice:
    - (i) to the effect alleged in paragraphs 17(f) and 21(b)-(c) above; and
    - (ii) further, that Diversa would conduct investment monitoring:
      - (A) with the principal goals to (section 4):
        - (I) assess the extent to which the Fund's investment strategy, including asset allocation, was being followed;
        - (II) assess the extent to which the Fund's investment objectives were being achieved;
        - (III) compare the performance of the Fund's appointed managers/investments against the performance of other relevant professional managers and market indices;

- (IV) ascertain the existence of any particular weakness in the managers so as to allow Diversa to continually assess the ability of the managers to successfully meet the Fund's objectives; and
  - (V) monitor the liquidity of the Fund's investment options in order to determine whether action was required if a liquidity event had occurred;
  - (B) using regular reporting to occur on an exception basis, where outliers were highlighted and to enable a more in depth investigation; and
  - (C) by receiving a quarterly investment report which identified those managed portfolios and managed funds that were currently on watch and/or had performed poorly over the quarter and those that had performed poorly over the longer term;
- (d) AusPrac:
- (i) to the effect alleged in paragraphs 17(f) and 21(b)-(c) above;
  - (ii) further, that the trustee would conduct investment monitoring (section 4):
    - (A) with the principal goals to the effect alleged in paragraph 23(c)(ii)(A) above;
    - (B) before July 2021:
      - (I) using a specialist commercial software that allowed regular reporting to occur on an exception basis, where outliers are highlighted and enable a more in-depth investigation if warranted; and
      - (II) with regard to performance and stress and liquidity testing; and
    - (C) after July 2021: to the effect alleged in paragraphs 23(c)(ii)(B) and 23(c)(ii)(C) above.

#### **Particulars**

As to the MAP Fund Investment Policy Statement from June 2020.

As to the OneSuper Fund Investment Policy Statement from December 2020.

As to the YourChoice Investment Policy Statement:

(A) from July 2021.

- (B) from September 2022.
  - (C) from July 2023.
- As to the AusPrac Investment Policy Statement
- (A) from December 2020.
  - (B) from July 2021.
  - (C) from July 2023.

**C. INVESTMENT OPTIONS: FIRST GUARDIAN MASTER FUND CLASSES**

24. The First Guardian Master Fund (**FGMF**) was a registered managed investment scheme (ARSN: 635 429 113) registered on 23 August 2019.
25. At all material times:
- (a) Falcon Capital Limited (**Falcon**) was the responsible entity of the FGMF and the holder of an AFSL licence (302538); and
  - (b) First Guardian Capital Pty Ltd (**First Guardian**) was the investment manager of the FGMF.
26. During the Relevant Period, Falcon:
- (a) offered to investors units in three investment classes of the FGMF (collectively, the **FGMF Classes**):
    - (i) the First Guardian Defensive Strategies Class (until 27 May 2024) (**Defensive Class**);
    - (ii) the First Guardian Diversified Strategies Class (until 15 January 2024) (**Diversified Class**); and
    - (iii) the First Guardian Growth Strategies Class (until 27 May 2024) (**Growth Class**);
  - (b) issued PDS in respect of each of the FGMF Classes which stated:
    - (i) that funds were invested by the FGMF in certain underlying funds (**FGMF underlying funds**):
      - (A) constituted as unregistered managed investment schemes of which Falcon was also the trustee; and
      - (B) that variously invested in asset categories including debt finance, international shares and real property, and private equity;

- (ii) the investment return objective of each FGMF Class was a certain percentage of funds invested;
- (iii) there were certain percentage average weights and ranges of allowable allocations in each FGMF underlying fund;
- (iv) there were certain fees for each FGMF Class, which were charged and collected at the level of the FGMF underlying funds, including:
  - (A) asset acquisition and establishment fees;
  - (B) management fees; and
  - (C) performance fees.
- (v) that a diversified investment was an investment product that consisted of multiple specialised funds from various investment managers; and
- (vi) that changes may be made to the investment objectives and strategy of the FGMF underlying funds; and

**Particulars**

Defensive Class PDS:

- (A) 30 April 2020.
- (B) 15 November 2022.

Diversified Class PDS:

- (A) 25 May 2020.
- (B) 1 May 2021).
- (C) 1 July 2022).
- (D) 15 November 2022).

Growth Class PDS:

- (A) 30 April 2020.
- (B) 1 May 2021.
- (C) 1 July 2022.
- (D) 15 November 2022.

- (c) issued Information Memoranda for various FGMF underlying funds.

**Particulars**

The FGMF underlying funds varied during the Relevant Period, and there was one or more Information Memoranda for various FGMF underlying funds.

## D. ONBOARDING: APPROVAL OF FGMF CLASSES AS INVESTMENT OPTIONS

### D1. Powerwrap Fund

27. On 20 July 2020, Diversa received a request for approval of the addition of each of the FGMF Classes to the Powerwrap Fund Investment Menu, which also included the following:

- (a) copies of the PDSs for each of the FGMF Classes, which stated that:
  - (i) all withdrawal requests were processed by First Guardian within 30 days;  
[and](#)
  - (ii) withdrawals may be suspended in certain circumstances or generally if Falcon believed it to be in the best interests of investors to do so;
- (b) investment overview reports prepared by First Guardian for each of the FGMF Classes;
- (c) investment performance reports prepared by First Guardian dated June 2020 for the Growth and Defensive Classes;
- (d) a table of the investment performance of the Growth and Defensive Classes;
- (e) a table of the investment performance of each of the FGMF Classes;
- (f) tables of the net asset value and asset allocation for each of the FGMF Classes, which stated among other things that the net asset value for each of the FGMF Classes was:
  - (i) Defensive Class - \$1.69m;
  - (ii) Diversified Class - \$11.63m; and
  - (iii) Growth Class - \$9.63m; [and](#)
- (g) a report on the FGMF (comprising each of the FGMF Classes) prepared by SQM Research dated June 2020 (**SQM Report**) that:
  - (i) rated the FGMF as 3.5 stars or “Acceptable”, and described that as “low investment grade”;
  - (ii) stated for each FGMF Class the investment return objectives, average weight and allowable ranges of allocations to FGMF underlying funds, and fees; and
  - (iii) stated that:

- (A) the First Guardian investment team had relatively limited experience in managing multi-asset diversified funds;
- (B) the FGMF's liquidity profile was quite different from a typical balanced fund, a significant proportion of the FGMF was invested in direct or unlisted assets which are less liquid or illiquid, and some of the underlying sub-funds were less liquid or illiquid and had lock-in periods;
- (C) the FGMF was overexposed to the residential property development and mortgage lending sector and did not have any exposure to the largest equity markets, which reduced its diversification and increased its concentration risk on a relative basis;
- (D) the three FGMF Classes were launched recently in September 2019 and therefore had a very short track record;
- (E) in addition to the PDS of each of the three FGMF Classes, advisers and investors should refer to the individual PDS of the nine underlying sub-funds for further details; and
- (F) the Board of Falcon was not constituted by a majority of independent directors.

#### **Particulars**

The request and information were received by email from Ms O'Farrell of Powerwrap Limited to Mr Haymes, Senior Account Executive, of Diversa dated 20 July 2020. That email attached the PDSs for each of the FGMF Classes, the investment overview report, performance reports (as well as a third performance report for the 'Balanced' model), a table of investment performance for each of the FGMF, a table of investment performance for the Growth and Defensive Classes (as well as a third performance report for the 'Balanced' model), tables of net asset values and asset allocation data, the SQM Report and Powerwrap's request for approval letter.

28. On 27 July 2020, Diversa received further information in relation to each of the FGMF Classes, in which First Guardian stated that:
- (a) the level of funds under management for each of the FGMF Classes would increase through rollovers on 1 September 2020 to:
    - (i) Defensive Class - \$12.46m;
    - (ii) Diversified Class - \$72.68m; and

(iii) Growth Class - \$57.52m; and

(b) funds from new investors of \$25.8m would be received over the next 90 days.

**Particulars**

Email from Libby O'Farrell (Powerwrap Limited, General Manager Product & Client Experience) to Josh Haymes (Diversa, Senior Account Executive) dated 27 July 2020.  
Attachments to Libby O'Farrell's email.

29. On around 6 August 2020, Diversa considered the request for approval of the addition of the FGMF Classes to the Investment Menu of the Powerwrap Fund, with:

(a) a recommendation paper prepared by Diversa personnel which:

(i) stated that Diversa's investment consultant had reviewed the FGMF Classes and confirmed that they met the criteria in the Powerwrap [Fund](#) Investment Policy Statement;

(ii) referred to the "very low" level of funds under management in the FGMF Classes and conveyed statements made by First Guardian to the investment consultant as to increasing the level of funds under management by rollovers and further investments of approximately \$145m within 90 days; and

(iii) recommended that each of the FGMF Classes be approved for the Powerwrap Fund Investment Menu with a holding limit of 50%;

(b) a copy of the SQM Report referred to in paragraph 27(g) above;

(c) copies of the investment overview reports alleged in paragraph 27(b) above; and

(d) a copy of the table of investment performance of the Growth and Defensive Classes as alleged in paragraph 27(d) above.

**Particulars**

Diversa's Investment Committee considered the request for approval and received the documents in (a)-(d).

The internal Diversa recommendation paper was sent by email dated 27 July 2020 from Josh Haymes, [\(Senior Account Executive\)](#), to Rachel Griffith, [\(Head of Investment Governance, Diversa\)](#). An updated version of the recommendation paper, signed by Rachel Griffith, was sent to the Investment Committee on 28 July 2020.

30. As at 6 August 2020, Diversa was aware that the FGMF had the following characteristics:

- (a) it was established in 2019 and had performance history of less than 2 years;
- (b) it had received a low investment grade rating from SQM Research;
- (c) funds under management were stated by First Guardian to be:
  - (i) as at around July 2020, approximately \$23m; and
  - (ii) as at around October 2020, approximately \$168m;
- (d) it was invested, and Falcon or First Guardian proposed that additional funds would be invested, in unlisted units in a combination of the FGMF underlying funds:
  - (i) chosen by First Guardian as the investment manager; and
  - (ii) of which Falcon was the trustee;
  - (iii) which were unregistered, and the financial accounts of which were thereby not required by law to be audited;
  - (iv) which may be illiquid and have lock-in periods; and
  - (v) in which particular investments and assets:
    - (A) were not identified; and
    - (B) may be located overseas;
- (e) the FGMF (and each of its classes) may be illiquid; and
- (f) it provided for redemptions or withdrawals within about 30 days of a request.

### Particulars

Diversa's awareness of these matters is to be inferred from:

- (A) ~~(i)~~ material, referred to in paragraphs 27–28 above, received by Diversa personnel with roles or authority to review, consider or approve investments; and
- (B) ~~(ii)~~ the information contained in the papers prepared by Diversa personnel or received by the Investment Committee as referred to in paragraph 29 above.

Further, as to (e), ASIC refers to the awareness of Mr Haymes, Senior Account Executive, Diversa, who on 22 July 2020 in correspondence with Ms O'Farrell of Powerwrap Limited, and again on 27 July 2020 in correspondence with Rachel Griffiths of Diversa, stated that the FGMF had "potential liquidity issues".

31. Further, as at around 6 August 2020, by reason of the matters alleged in paragraphs 27-29 above, Diversa was aware of a variety of different information in the PDS and investment overview reports for each of the FGMF Classes, and as described in the SQM Report, with respect to:

- (a) the investment return objective;
- (b) the underlying sub-funds;
- (c) the investment allocation to the FGMF underlying funds, including
  - (i) average weight; and
  - (ii) allowable range;
- (d) the asset acquisition and establishment fee.

#### **Particulars**

PDS for each of the FGMF Classes.

SQM Report dated June 2020. Investment overview reports.

Diversa's awareness of these matters is to be inferred from receipt of those materials by Diversa personnel with roles or authority to review, consider or approve investments as alleged in paragraphs 27-29 and their particulars.

As to (a), the percentage investment return objectives are higher for each FGMF Class in the SQM Report than in the PDS and investment overview reports.

As to (b), the PDS and investment overview reports listed 10 underlying funds, the SQM Report 9 and the "FG Global Income Fund" (PDS) is described as the "FG Global Bond Fund" in the SQM Report.

As to (c), the PDS and investment overview reports and SQM Report describe different averages and allowable ranges for investment allocation to the FGMF underlying funds.

As to (d), the fee was up to 3.0% plus GST in PDS and 3.5% plus GST in the SQM Report.

32. Diversa did not, before it approved each of the FGMF Classes on the Powerwrap Fund Investment Menu:

- (a) obtain or review a copy of the FGMF managed investment scheme constitution;
- (b) obtain or review a copy of any constitution or PDS for any underlying fund of the FGMF;
- (c) review all or any sample of the assets held by the underlying funds, in which the FGMF was said to be invested, for:
  - (i) ownership; or
  - (ii) conformity with the description of the assets in which that sub-fund would invest;

- (d) review:
    - (i) the valuation; or
    - (ii) the liquidity,
 of all or any sample of the assets held by the unit trusts in which the FGMF was said to be invested;
  - (e) undertake stress testing of the FGMF or its underlying funds;
  - (f) obtain or review a copy of audited accounts of the FGMF or audit of its compliance plan;
  - (g) obtain a copy of or verify the implementation by Falcon or First Guardian of policies or practices about related party conflict, investment due diligence, investment execution or investment valuation; or
  - (h) verify that Diversa's investment consultant for the Powerwrap Fund had taken any of the steps in (a)-(g) above.
33. On or around 6 August 2020, in the circumstances alleged in paragraphs 29 to 32 above, Diversa:
- (a) approved each of the FGMF Classes for selection as Investment Options of the Powerwrap Fund and inclusion on the Investment Menu (on condition that Falcon and/or First Guardian agreed not to apply an establishment fee in respect of Powerwrap Fund members); and
  - (b) determined to apply an investment limit, in respect of each FGMF Class, of 50% of a Powerwrap Fund member's account (such limit, a **holding limit**).

#### **Particulars**

Minutes of the meeting of Diversa Investment Committee on 6 August 2020.

Diversa Investment Committee Decisions/Actions 6 August 2020.

- 34. Diversa's conduct as alleged in paragraphs 32 and 33 above was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as alleged in paragraphs 17(d)-(f), 18, and 21(b)(iii)-(iv).
- 35. From around 6 August 2020, Diversa offered to members each of the FGMF Classes as Investment Options on the Powerwrap Fund Investment Menu.
- 36. Diversa did not, at or from the time that it offered each of the FGMF Classes as Investment Options on the Powerwrap Fund Investment Menu:

- (a) provide or require that information be provided to Powerwrap Fund members that each ~~Investment~~ ~~Option~~ was or may be illiquid; or
- (b) formulate and give effect to an investment strategy for each FGMF Class as an Investment Option for the purposes of the covenant alleged in paragraph 15(c)(ii) above.

**D2. MAP Fund (YourChoice and AusPrac)**

37. Between 17 September 2020 and 11 November 2020, Diversa received a request for approval of the addition of each of the FGMF Classes to the MAP Fund Investment Menu, which also included the following information:
- (a) a Managed Fund Approval Checklist stating:
    - (i) that the criteria of the [MAP Fund](#) Investment Policy Statement were met; and
    - (ii) that expected demand for investment across the classes was \$200,000;
  - (b) copies of the PDSs for each of the FGMF Classes;
  - (c) a copy of the SQM Report;
  - (d) a copy of the First Guardian document dated 30 June 2020 showing a table of the investment performance of each of the [Growth and Defensive](#) ~~FGMF~~ Classes; and
  - (e) a copy of the investment performance reports for [each of the FGMF Growth and Defensive](#) Classes prepared by First Guardian and dated October 2020.

**Particulars**

Email from Caroline Borge (OneVue, Business Implementation Manager) to Daniel Strachan (Diversa, then Senior Account Executive) dated 17 September 2020 requesting the addition of the three FGMF classes to the MAP Fund (Email at Attachments including: SQM Report, PDS's and managed fund approval checklist).

Email from Caroline Borge to Daniel Strachan dated 11 November 2020 attaching the performance reports.

Email from Daniel Strachan to Caroline Borge dated 11 November 2020 attaching a table of the investment performance of the Growth and Defensive Classes dated 30 June 2020.

38. On around 16 November 2020, Diversa considered the request for addition of the FGMF Classes to the Investment Menu of the MAP Fund, with:
- (a) the material alleged in paragraphs 27-29 and 37 above;
  - (b) an email from First Guardian stating that no entry fees would apply to the FGMF Classes; and

- (c) an approval paper prepared by Diversa personnel which:
- (i) noted that the FGMF Classes had been approved by Diversa for the Powerwrap Fund with a holding limit of 50%;
  - (ii) stated that Diversa's promoter had conducted due diligence on the FGMF Classes and confirmed that they were consistent with the requirements of the MAP [Fund](#) Investment Policy Statement; and
  - (iii) recommended approval subject to a 50% holding limit for each FGMF Class.

#### **Particulars**

Consideration was given for Diversa by Rachel Griffith (Head of Investment Governance) pursuant to authority to do so under Diversa's Investment Policy ~~Statement~~ (section 3).

Emails from Daniel Strachan to Rachel Griffith (Head of Investment Governance) dated 16 November 2020, attaching the Managed Funds Approval Checklist, a copy of the SQM Report, an email from Mr Anderson to Ms Borge dated 11 November 2020, performance reports for each of the FGMF Classes and the Diversa approval paper.

39. As at 16 November 2020, Diversa was aware of the matters alleged in paragraphs 30, ~~and 37~~ [and 38](#) and that the information it held contained the differences alleged in paragraph 31 above.

#### **Particulars**

ASIC refers to and repeats the particulars to paragraphs 30 and 31 above, as well as the matters in paragraphs 37 and 38 above.

40. Diversa did not, before it approved each of the FGMF Classes on the MAP Fund Investment Menu:
- (a) take any of the steps alleged in paragraph 32(a) to 32(g) above; or
  - (b) verify that Diversa's promoter for the MAP Fund had taken any of those steps as part of due diligence it stated it had conducted when seeking Diversa's approval.
41. On around 16 November 2020, in the circumstances alleged in paragraphs 37–40 above, Diversa:
- (a) approved each of the FGMF Classes as Investment Options of the MAP Fund and inclusion on the Investment Menu (on condition that Falcon and/or First Guardian agree not to apply an establishment fee in respect of MAP Fund members); and

- (b) determined to apply a holding limit, in respect of each FGMF Class, of 50% of a MAP Fund member's account.

### **Particulars**

The approval was issued by Rachel Griffith in an email to Daniel Strachan dated 16 November 2020.

- 42. Diversa's conduct as alleged in paragraphs 40 and 41 above was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as alleged in paragraphs 17(d)-(f), 18, and, in respect of the MAP Fund, to the effect of that in paragraph 21(b)(iii)-(iv) above (as alleged in paragraph 23(a)).
- 43. From around 16 November 2020, Diversa offered each of the FGMF Classes as Investment Options on the MAP Fund Investment Menu to members of the YourChoice or AusPrac sub-plans.
- 44. Diversa did not, at or from the time that it offered each of the FGMF Classes as Investment Options on the MAP Fund Investment Menu:
  - (a) provide or require information be provided to MAP Fund members that each Investment Option was or may be illiquid; or
  - (b) formulate and give effect to an investment strategy for each FGMF Class as an Investment Option for the purposes of the covenant alleged in paragraph 15(c)(ii) above.

### **D3. Praemium Fund**

- 45. On around 19 February 2021, Diversa received a request for approval of the addition of each of the FGMF Classes to the Praemium Fund Investment Menu, which request included the following information:
  - (a) a checklist for each of the FGMF Classes which stated the recommended holding limit for each class was 50%; and
  - (b) a copy of the SQM Report.

### **Particulars**

Praemium Australia's request for Diversa approval was made by email from Ms Vivienne Koutsis (Investment Analyst, Praemium) sent to Mr Andrew Loveridge (Senior Account Executive) of Diversa on 19 February 2021, attaching a copy of the SQM Report and checklists.

46. From about 5 March 2021, Diversa considered the request for addition of the FGMF Classes to the Investment Menu of the Praemium Fund, with:
- (a) the material alleged in paragraphs 27-29, 37-38 and 45 above;
  - (b) a factsheet for the First Guardian Growth Strategies Class dated 5 March 2021; and
  - (c) an investment recommendation paper, which:
    - (i) stated that the Diversa ~~E~~executive confirmed that the FGMF Classes conformed to the Praemium Fund Investment Policy Statement; and
    - (ii) recommended each of the FGMF Classes be approved with a 50% holding limit.

### Particulars

Consideration was given for Diversa by Rachel Griffith (Head of Investment Governance) pursuant to authority to do so under Diversa's Investment Policy ~~Statement~~ (section 3).

Ms Griffith received an email from Andrew Loveridge (Senior Account Executive) dated 5 March 2021 requesting approval of the addition of the FGMF Classes to the investment menu for the Praemium Fund and attaching the checklists, a copy of the SQM Report, a Growth Strategies Class factsheet, and an investment recommendation paper.

47. As at 12 March 2021:
- (a) Diversa was aware of the matters alleged in paragraph 30, 37, 38 and 46, and that the information it held contained the differences alleged in paragraph 31 above; and
  - (b) Diversa did not, before it approved each of the FGMF Classes on the Praemium Fund Investment Menu:
    - (i) take any of the steps alleged in paragraph 32(a) to 32(g) above; or
    - (ii) verify that Diversa's promoter for the Praemium Fund had taken those steps.
48. On around 12 March 2021, in the circumstances alleged in paragraphs 45–47 above, Diversa:
- (a) approved each of the FGMF Classes as Investment Options of the Praemium Fund and inclusion on the Investment Menu; and

- (b) determined to apply a holding limit, in respect of each FGMF Class, of 50% of a Praemium Fund member's account.

### Particulars

Email from Ms Griffith to Andrew Loveridge dated 12 March 2021.

- 49. Diversa's conduct as alleged in paragraphs 47 and 48 above was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as alleged in paragraphs 17(d)-(f), 18, and, in respect of the Praemium Fund, to the effect of that in paragraph 21(b)(iii)-(iv) above (as alleged in paragraph 22).
- 50. From around 12 March 2021, Diversa offered to members each of the FGMF Classes as Investment Options on the Praemium Fund Investment Menu.
- 51. Diversa did not, at or from the time that it offered each of the FGMF Classes as Investment Options on the Praemium Fund Investment Menu:
  - (a) provide or require information be provided to Praemium Fund members that each Investment Option was or may be illiquid; or
  - (b) formulate and give effect to an investment strategy for each Investment Option for the purposes of the covenant alleged in paragraph 15(c)(ii) above.

#### **D4. Contraventions in approving each of the FGMF Classes as Investment Options**

##### ***D4.1 Care, skill and diligence – section 52(2)(b) of the SIS Act***

- 52. A prudent superannuation trustee in the position of Diversa as trustee of each of the Diversa Funds, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of the policies as alleged in paragraphs 17-23 above, and aware of the matters alleged in paragraphs 30, 31, 37 and 46 above, on each of the dates alleged in paragraphs 33, 41 and 48 above would have been aware of and had regard to:
  - (a) by reason of the matters alleged in paragraphs 30 and 31, risks:
    - (i) in the reliability and completeness of:
      - (A) the FGMF disclosure documents, which it and its members may consider in making any future investment directions; and
      - (B) responses given by or for Falcon or First Guardian in the course of on-boarding as to asset allocation and risk;

- (ii) in placing undue reliance on recommendation or information provided to it by contracted service providers, based on information obtained from Falcon and First Guardian without adequate verification or inquiry by Diversa;
- (iii) of illiquidity (at the time or in the future) of:
  - (A) the FGMF and the FGMF underlying funds; and
  - (B) in consequence, any funds invested by the Diversa Funds in any FGMF Class, including by reason of the potential for investment of significant funds from the Diversa Fund relative to the volume of other investments in the FGMF;
- (iv) that financial returns and timely payment of redemptions to members of the respective Diversa Fund would be adversely affected by illiquidity of the FGMF Classes as Investment Options;
- (v) of the FGMF being:
  - (A) operated without adequate compliance with policies for management of conflicts of interest and other governance and prudential matters; and
  - (B) invested in assets which did not correspond with the description of investments in the respective PDS;
- (b) by reason of the matters alleged in paragraphs 30(a) to 30(d) above:
  - (i) a risk of material misrepresentation of asset risk and return profile, and fraud in the conduct of the FGMF, including misappropriation or misapplication of funds; and
  - (ii) a risk of valuation in respect of the FGMF and its assets not being fair and reasonable or timely; and
- (c) [the risk](#) that Diversa may become the holder of a substantial proportion of the units in the FGMF or in a FGMF Class, having regard to:
  - (i) the size of each Diversa Fund; and
  - (ii) the stated funds under management of the FGMF at the time of approval.

#### **Particulars**

As to (b)(i), ASIC refers to paragraph 16, and SPS 530 (July 2013), SPS 220 and SPG 223 Prudential Practice Guide: Fraud Risk Management (June 2015) at pg 13, Annexure A.

As to (b)(ii) ASIC refers to the terms of Diversa's ~~v~~Valuation ~~p~~Policy referred to in paragraph 18.

53. A prudent superannuation trustee in the position of Diversa as trustee of each of the Diversa Funds, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of its policies as alleged in paragraphs 17-23 above, with the awareness of all or any of the matters alleged in paragraph 52, would not have approved each of the FGMF Classes for selection as Investment Options and inclusion on the Investment Menu for each Diversa Fund, or offered them to Diversa Fund members, imposing a holding limit or otherwise, without at least:

- (a) taking all (or, in the alternative, some or any) of the actions alleged in paragraph 32, 40 and 47(b) above; or
- (b) obtaining adequate information as to the matters alleged in paragraph 32, 40 and 47(b) above as to the non-existence, mitigation or accurate identification to Diversa Fund members of risks identified in paragraph 52 individually and cumulatively; or
- (c) further or in the alternative to subparagraph (a) or (b), determining to inform members that each ~~i~~Investment ~~e~~Option may be illiquid.

#### Particulars

As to (b), ASIC refers to s 52(6)(b) of the SIS Act, SPS 530 (July 2013) at [22] and [23], SPS 220 and SPG 223 at page 19, Annexure A), and the terms of Diversa's ~~v~~Valuation ~~p~~Policy at 2.3.7 as alleged in paragraph 18 above.

54. Further, a prudent superannuation trustee in the position of Diversa as a Diversa Fund trustee, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of its policies as alleged in paragraphs 17-23 above, with the awareness of all or any of the matters alleged in paragraph 52, having approved each of the FGMF Classes for selection as Investment Options and inclusion on the Investment Menu for each Diversa Fund, would have formulated and given effect to an investment strategy for each of the FGMF Classes as Investment Options offered to Diversa Fund members as required by the covenant alleged in paragraph 15(c)(ii) that had regard to at least:

- (a) the matters listed in s 52(6)(a)(i)-(vii) of the SIS Act; and
- (b) the matters alleged in paragraphs 52(a)(iii)-(iv), 52(b) and 52(c) (as relevant matters for the purposes of the matters provided by s 52(6)(a)(viii) of the SIS Act).

55. By reason of the matters alleged in paragraph 53 above, Diversa as trustee of each of the Diversa Funds, by its approval of each of the FGMF Classes for inclusion on the Investment Menu of each of the Diversa Funds as alleged in paragraphs 33, 41 and 48 above:
- (a) failed to exercise in relation to all matters affecting the respective Diversa Fund 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;
  - (b) so breached, in respect of the respective Diversa Funds, the covenant alleged in paragraph 15(a) above; and
  - (c) thereby contravened s 54B(1) of the SIS Act.
56. Further or alternatively, by reason of the matters alleged in paragraph 53 above, Diversa as trustee of each of the Diversa Funds, by its approval of each of the FGMF Classes for inclusion on the Investment Menu of each of the Diversa Funds as alleged in paragraphs 33, 41 and 48 above while failing to inform members as alleged in paragraphs 36(a), 44(a) and 51(a) above:
- (a) failed to exercise in relation to all matters affecting the respective Diversa Fund 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;
  - (b) so breached, in respect of the respective Diversa Funds, the covenant alleged in paragraph 15(a) above; and
  - (c) thereby contravened s 54B(1) of the SIS Act.
57. Further or alternatively, by reason of the matters alleged in paragraphs 33, 41, 48 and 54 above, Diversa as trustee of each of the Diversa Funds, by failing to formulate and give effect to an investment strategy as alleged in paragraphs 36(b), 44(b) and 51(b) above:
- (a) failed to exercise in relation to all matters affecting the respective Diversa Fund 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;
  - (b) so breached, in respect of the respective Diversa Fund, the covenant alleged in paragraph 15(a) above; and

(c) thereby contravened s 54B(1) of the SIS Act.

**D4.2 Best financial interests of members – sections 52(2)(c) and 52(12) of the SIS Act**

58. Further or alternatively, by reason of the matters alleged in paragraph 53 and 54 above, Diversa as trustee of each of the Diversa Funds, by its approval of each of the FGMF Classes for inclusion on the Investment Menu of each of the Diversa Funds as alleged in paragraphs 33, 41 and 48 above:

- (a) performed its duties and exercised its powers other than in the best interests of the respective Diversa Fund members; and
- (b) failed to promote the financial interests of the respective Diversa Fund members;

**Particulars**

The financial interests of members of the Diversa Funds included Investment Options being offered to members after consideration by Diversa of adequate information as to the **i**Investment **e**Option meeting the strategy and policies of the fund, and addressing risks of the **i**Investment **e**Option, and with information from Diversa as to potential illiquidity of the FGMF Classes.

- (c) so breached the covenants alleged in each of:
  - (i) paragraph 15(b) above; and
  - (ii) paragraph 15(e) above; and
- (d) thereby contravened s 54B(1) of the SIS Act.

59. Further or alternatively, by reason of the matters alleged in paragraphs 53 and 54 above, Diversa as trustee of each of the Diversa Funds, by its approval of each of the FGMF Classes for inclusion on the Investment Menu of each of the Diversa Funds as alleged in paragraphs 33, 41 and 48 above while failing to inform members as alleged in paragraphs 36(a), 44(a) and 51(a) above:

- (a) performed its duties and exercised its powers other than (up to 30 June 2021) in the best interests and (after 30 June 2021) in the best financial interests of the respective Diversa Fund members; and
- (b) failed to promote the financial interests of the respective Diversa Fund members;

**Particulars**

The particulars to paragraph 58(b) above are repeated.

- (c) so breached the covenants alleged in each of:

- (i) paragraph 15(b) above; and
- (ii) paragraph 15(e) above; and
- (d) thereby contravened s 54B(1) of the SIS Act.

**D4.3 Investment strategy - section 52(6)(a) of the SIS Act**

60. Further or alternatively, Diversa as trustee of each of the Diversa Funds, by failing to formulate and give effect to an investment strategy for each FGMF Class that had regard to the matters alleged in paragraphs 54(a) and (b) above, or at all as alleged in paragraphs 36(b), 44(b) and 51(b) above, at or after the time that it approved each of the FGMF Classes for inclusion on a Diversa Fund Investment Menu as alleged in paragraphs 33, 41 and 48 above:

- (a) breached the covenant alleged in paragraph 15(c)(ii) above; and
- (b) thereby contravened s 54B(1) of the SIS Act.

**D4.4 Due diligence in developing and offering Investment Options – section 52(6)(b) of the SIS Act**

61. Further or alternatively, Diversa as trustee of each of the Diversa Funds, by acting as alleged in paragraphs 35, 43 and 50, while failing to act as alleged in paragraphs 32, ~~36~~, 40, ~~44~~, and 47(b) above ~~and 51 above~~:

- (a) did not exercise due diligence in developing and offering each of the FGMF Classes as an ~~I~~Investment ~~e~~Option to members of the respective Diversa Fund;
- (b) thereby breached the covenant alleged in paragraph 15(d) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

61A. Further or alternatively, Diversa as trustee of each of the Diversa Funds, by acting as alleged in paragraphs 35, 43 and 50, while failing to act as alleged in paragraphs 36(a), 44(a) and 51(a) above:

- (a) did not exercise due diligence in developing and offering each of the FGMF Classes as an Investment Option to members of the respective Diversa Fund;
- (b) thereby breached the covenant alleged in paragraph 15(d) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

61B. Further or alternatively, Diversa as trustee of each of the Diversa Funds, by acting as alleged in paragraphs 35, 43 and 50, while failing to act as alleged in paragraphs 36(b), 44(b) and 51(b) above:

- (a) did not exercise due diligence in developing and offering each of the FGMF Classes as an Investment Option to members of the respective Diversa Fund;
- (b) thereby breached the covenant alleged in paragraph 15(d) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

**D4.5 All things necessary to provide financial services efficiently, honestly and fairly – section 912A(1)(a) Corporations Act**

62. Further or alternatively, at all material times, by its approval and offering of each of the FGMF Classes on each of the Diversa Funds' Investment Menus in the circumstances as alleged in paragraphs ~~29-36~~ 27-35, ~~41-44~~ 37-43 and ~~48-51~~ 45-50 above, in respect of each of the Diversa Funds, Diversa:

- (a) did not do all things necessary to ensure that the financial services covered by its AFSL (alleged in paragraph 2(c) above) were provided efficiently, honestly and fairly;
- (b) thereby contravened s 912A(1)(a) of the Corporations Act; and
- (c) thereby contravened s 912A(5A) of the Corporations Act.

62A. Further or alternatively, at all material times, by its approval and offering of each of the FGMF Classes on each of the Diversa Funds' Investment Menus in the circumstances as alleged in paragraphs 29-35 and 36(a), 41-43 and 44(a) and 48-50 and 51(a) above, in respect of each of the Diversa Funds, Diversa:

- (a) did not do all things necessary to ensure that the financial services covered by its AFSL (alleged in paragraph 2(c) above) were provided efficiently, honestly and fairly;
- (b) thereby contravened s 912A(1)(a) of the Corporations Act; and
- (c) thereby contravened s 912A(5A) of the Corporations Act.

62B. Further or alternatively, at all material times, by its approval and offering of each of the FGMF Classes on each of the Diversa Funds' Investment Menus in the circumstances as alleged in paragraphs 29-35 and 36(b), 41-43 and 44(b) and 48-50 and 51(b) above, in respect of each of the Diversa Funds, Diversa:

- (a) did not do all things necessary to ensure that the financial services covered by its AFSL (alleged in paragraph 2(c) above) were provided efficiently, honestly and fairly;
- (b) thereby contravened s 912A(1)(a) of the Corporations Act; and

[\(c\) thereby contravened s 912A\(5A\) of the Corporations Act.](#)

**E. MONITORING: MAINTENANCE AND REMOVAL OF FGMF CLASSES AS INVESTMENT OPTIONS**

**E1. Investment by each Diversa Fund in FGMF classes**

63. In the Relevant Period:

- (a) Diversa as trustee of the Diversa Funds, upon directions of members of each of the Diversa Funds, invested in each of the FGMF Classes in amounts totalling around \$300m as set out in Annexure A to this statement of claim; and
- (b) Falcon issued units in each of the FGMF Classes to each respective Diversa Fund.

**E2. Failure to notify and enforce holding limits**

64. After determining to impose a 50% holding limit (as alleged in paragraph 33(b) above) and offering the FGMF Classes as Investment Options for members of the Powerwrap Fund (as alleged in paragraph 35 above), Diversa:

- (a) received and acted on directions by or for members of the Powerwrap Fund for investments in FGMF Classes exceeding the holding limit on the Investment Menu for the Powerwrap Fund;
- (b) did not warn members of the holding limit;
- (c) did not otherwise inform members of the holding limit;
- (d) did not monitor whether, and did not have [adequate](#) systems and processes to ensure that, there was compliance with the holding limit and to detect any infringements of it; and
- (e) did not notify members or their advisers that the holding limit had been imposed.

**Particulars**

As to (a), Diversa acted on member directions for initial investments in FGMF Classes exceeding the holding limit applicable to those members and a FGMF Class in respect of approximately 25 members, in an aggregate amount exceeding holding limits by around \$419,638.94.

As at 16 May 2025, approximately ~~409~~ of those members had investments in the FGMF Classes exceeding the holding limit, in an aggregate amount exceeding holding limits by around ~~\$176,204.66~~ [\\$156,681.42](#).

65. After determining to impose a 50% holding limit (as alleged in paragraph 41(b) above) and offering the FGMF Classes as Investment Options for members of the MAP Fund

(until 30 November 2020) and the OneSuper Fund (from 1 December 2020) with an interest in YourChoice and AusPrac from 16 November 2020 (as alleged in paragraph 43 above), Diversa:

- (a) up to February 2023:
  - (i) did not warn members of the holding limit on the Investment Menu for YourChoice; and
  - (ii) did not otherwise inform members of the holding limit;
- (b) up to around July 2024:
  - (i) did not warn members of the holding limit on the Investment Menu for AusPrac; and
  - (ii) did not otherwise inform members of the holding limit; and
- (c) up to 30 July 2024:
  - (i) did not monitor whether, and did not have adequate systems and processes to ensure that, there was compliance with the holding limit and to detect any infringements of it;
  - (ii) received and acted on directions by or for members with an interest in YourChoice and AusPrac for investments in FGMF Classes exceeding the holding limit; and
  - (iii) did not notify members or their advisers that the holding limit had been imposed.

#### **Particulars**

As to (c)(ii), Diversa acted on member directions for initial investments in FGMF Classes exceeding the holding limit applicable to those members and a FGMF Class in respect of approximately 2,289 members, in an aggregate amount exceeding holding limits by around \$123,178,034.52.

As at 16 May 2025, approximately 1,979 members had investments in the FGMF Classes exceeding the holding limit, in an aggregate amount exceeding holding limits of by around \$120,075,701.41.

[65A. After determining to impose a 50% holding limit \(as alleged in paragraph 48\(b\) above\) and offering the FGMF Classes as Investment Options for members of the Praemium Fund \(as alleged in paragraph 50 above\), Diversa:](#)

- (a) received and acted on directions by or for members of the Praemium Fund for investments in FGMF Classes exceeding the holding limit on the Investment Menu for the Praemium Fund; and
- (b) did not monitor whether, and did not have adequate systems and processes to ensure that there was compliance with the holding limit and to detect any infringements of it.

### **Particulars**

As to (a) and (b), in respect of 10 members between 7 December 2021 and 3 April 2023, Diversa acted on member directions for investments in FGMF Classes exceeding the holding limit applicable to those members and a FGMF Class, in an aggregate amount exceeding holding limits by around \$1,242,427.98.

As at 16 May 2025, 8 of those members had investments in the FGMF Classes exceeding the holding limit, in an aggregate amount exceeding holding limits by around \$695,313.13.

Further, as to (b), as at 31 March 2021, approximately 25 members of the Praemium Fund who had become members upon successor transfer of the Powerwrap Fund had recorded investments exceeding the holding limit.

### **E3. Investment monitoring**

66. During the Relevant Period, Diversa obtained, for the purpose of undertaking the monitoring provided by Diversa's Investment Policy ~~Statement~~ as alleged in paragraph 17(g) above and for each Diversa Fund as alleged in paragraphs 21(d), 23(c)(ii) and 23(d)(ii) above:

- (a) annual stress testing reports of modelling conducted in respect of each ~~i~~Investment ~~e~~Option on the Investment Menu of each Diversa Fund, including the FGMF Classes, and based on:
- (i) assumed liquidity and other characteristics referable to certain asset classes; and
  - (ii) an allocation of the assets of the ~~i~~Investment ~~e~~Option among those asset classes, which in the case of the FG Classes was:
    - (A) obtained from or approved by Diversa or otherwise assumed in preparation of the report; and
    - (B) not obtained directly from First Guardian or verified by Diversa; and

- (b) from time to time, quarterly investment performance reports for the Powerwrap Fund, OneSuper Fund and Praemium Fund, referable to the investment returns of each Investment Option on the Investment Menu of each such Diversa Fund, including the FGMF Classes, measured over various periods.

#### **Particulars**

The reports, or summaries, were provided to Diversa's Investment Committee.

The annual reports referred to in paragraph 66(a) were obtained from Mercer Investments (Australia) Limited (**Mercer**), which was retained by Diversa to provide ongoing investment monitoring services (including market and liquidity stress testing and performance monitoring) for each of the Diversa Funds.

The quarterly investment reports for the OneSuper Fund were obtained from OneVue pursuant to a Promotor Agreement dated 6 June 2018 (novated to OneVue pursuant to the Deed of Novation dated 24 May 2019).

The quarterly investment reports for the Praemium Fund were obtained from Praemium Australia pursuant to an Asset Consultant Agreement dated 13 February 2014.

Diversa produced its own quarterly investment reports for the Powerwrap Fund and OneSuper Fund from time to time.

67. Further, between October 2022 and February 2023:

- (a) OneVue Wealth Services Limited (**OneVue**) (as promoter of the OneSuper Fund) became aware that numerous redemption requests made by OneSuper members, in respect of one or more FGMF Classes, were met later than 30 days after the request, and sought explanation from Falcon or First Guardian;
- (b) Falcon and First Guardian stated to OneVue that:
- (i) there were no concerns with liquidity in the FGMF; and
  - (ii) the FGMF had funds under management of approximately \$300m;

#### **Particulars**

Email from Raelene Palazzolo (Iress) on 19 January 2024 to Mark Grech (Head of Accounts, Diversa) with attachments.

- (c) OneVue conducted a review and identified that (and sought explanation from Falcon or First Guardian as to):

- (i) 13 of 45 redemption requests made to Falcon between November 2022 and February 2023 were processed outside of the time then stated in the PDS for the FGMF; and
  - (ii) FGMF unit prices did not change over a 13 day period between 18 January 2023 and 31 January 2023; and
- (d) Falcon stated to OneVue that:
- (i) the delay in processing of redemption requests was due to First Guardian staff not following processes; and
  - (ii) First Guardian had been working to uplift its internal policies, procedures, governance and staff training processes including those related to unit pricing and transaction processing.

**Particulars**

Email from David Anderson to Brett Marsh, Michael Giorolami and others (Iress) dated 22 February 2023.

68. After the time that each of the FGMF Classes was added to the Investment Menu and Diversa offered each of the FGMF Classes to members as alleged in paragraphs 35, 43 and 50 above, in respect of each Diversa Fund:
- (a) Diversa was aware of the matters alleged in paragraphs 30, 63 and 66 above on and from about the times stated in those paragraphs; and
  - (b) from 19 January 2024, Diversa was aware of the matters alleged in paragraph 67(a) and (b) above.

**Particulars**

As to (a), ASIC repeats the particulars under paragraphs 30 and ~~65~~66 above, and the awareness as to the matters alleged in paragraph ~~62~~63 above is to be inferred from the matters there alleged.

As to (b), this awareness arose by reason of Mark Grech (Head of Accounts, Diversa) receiving and reviewing an email dated 19 January 2024 with attachments from Raelene Palazzolo (Iress).

69. Diversa, after the time that each of the FGMF Classes was added to the Investment Menu and Diversa offered each of the FGMF Classes to members as alleged in paragraphs 35, 43 and 50 above, in respect of each Diversa Fund did not:
- (a) take any of the steps alleged in paragraph 32, 40 and 47(b) above, save for obtaining the reports alleged in paragraph 66;

- (b) take steps to inquire as to the basis of:
  - (i) liquidity and valuation of assets in the FGMF Classes; and
  - (ii) valuation of units in the FGMF Classes;
- (c) take steps to ascertain the existence of any particular weaknesses or significant change in investments of the FGMF Classes;
- (d) monitor the proportion that investments by a Diversa Fund in the FGMF Classes bore to the total funds under management of the FGMF Classes, or to stated expected demand for those FGMF Classes at the time of onboarding;
- (e) monitor or obtain regular reports as to whether the FGMF Classes had delays in:
  - (i) processing or meeting redemption requests made by or in respect of Diversa Fund members; or
  - (ii) reporting or striking unit prices;
- (f) take any steps after 19 January 2024 to inquire as to the matters of which it became aware as alleged in para 68(b) above.

70. Diversa's conduct as alleged in paragraphs 66 and 69 above was not in compliance with or fulfilment of the provisions of the policies which it had adopted and maintained as alleged in paragraphs 17(g), 18, 19 (on and from December 2022), 21(d), 23(c)(ii) and 23(d)(ii) above.

71. Diversa, throughout the Relevant Period after approval and offering the FGMF Classes as alleged in paragraphs 35, 43 and 50 above:

- (a) maintained each of the FGMF Classes on each Diversa Fund's Investment Menu, and continued to offer them for selection by members for investment; and
- (b) acted on the directions of members to make further investments in the FGMF Classes.

#### **E4. Contraventions after offering FGMF Classes as Investment Options**

##### ***E4.1 Care, skill and diligence – section 52(2)(b) of the SIS Act***

72. A prudent superannuation trustee in the position of Diversa as trustee of a Diversa Fund, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of the policies as alleged in paragraphs 17-23 above, and aware of the matters alleged in paragraphs 30, 31 and 68 above, on and from around the time of offering each of the FGMF Classes as an investment option in each respective

Diversa Fund as alleged in paragraphs 35, 43 and 50 above, would have been aware of and had regard to the following matters:

- (a) the risks identified in paragraph 52 above;
- (b) by reason of the matters alleged in paragraph 63, that amounts invested in each of the FGMF Classes by the Diversa Funds:
  - (i) increased significantly and rapidly relative to the amount of funds under management in the FGMF at the time when each such FGMF Class had been approved for inclusion on the Investment Menu; and/or
  - (ii) may exceed the stated demand expected for that Diversa Fund's investment in FGMF Classes;
- (c) by reason of the matters alleged in subparagraph (b) above, that:
  - (i) the trustee may be or may become a holder of a substantial proportion of the units issued in the FGMF Classes; and
  - (ii) Diversa's exposure to the risks alleged in paragraph 52 increased in magnitude; and
- (d) the reports obtained as alleged in paragraph 66 above did not identify, mitigate, dispel or monitor any changes in the risks alleged in paragraph 52 above.

73. A prudent superannuation trustee in the position of Diversa as trustee of the Diversa Funds, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of the policies as alleged in paragraphs 17-23 above, and with the awareness of all or any of the matters alleged in paragraph 72 above, would not have maintained each of the FGMF Classes on the Investment Menu for each Diversa Fund or continued to make them available to Diversa Fund members, and acted on each direction of members to make further investments in the FGMF Classes, without at least:

- (a) taking all (or, in the alternative, some or any) of the actions alleged in paragraph 69(a) to 69(f) above; or
- (b) obtaining adequate information as to the matters alleged in paragraph 69(a) to 69(f) above as to the non-existence, mitigation or accurate identification to Diversa Fund members of risks identified in paragraph 52 individually and cumulatively; and
- (ba) further or in the alternative to subparagraph (a) or (b), informing members that each of the FGMF Classes may be illiquid; and
- (c) further or in the alternative to subparagraphs (a), (b) and (ba):

- (i) ~~(e)~~ giving effect to an investment strategy for each of the FGMF Classes as Investment Options as required by the covenant alleged in paragraph 15(c)(ii) that had regard to:
  - (A) ~~(i)~~ the matters set out in ~~the covenant alleged~~s 52(6)(a)(i)-(vii) of the SIS Act; and
  - (B) ~~(ii)~~ the matters alleged in paragraphs 52(a)(iii)-(iv), 52(b) and 52(c) above (as relevant matters for the purposes of the covenant alleged in paragraph 15(c)(ii)); and
- (ii) ~~(d)~~ reviewing the strategy in subparagraph (i)~~(e)~~ above by reference to the value and volume of Diversa Funds invested into each FGMF Class; ~~and~~

#### Particulars

As to (c), ASIC refers to s 52(6)(b) of the SIS Act, SPS 530 (July 2013) at [22] and [23], SPS 220 and SPG 223 at pg 19, Annexure A), and the terms of Diversa's ~~v~~Valuation ~~p~~Policy referred to in paragraph 18 at 2.3.7.

~~(c) — alternatively, informing members that each of the FGMF Classes may be illiquid.~~

74. Further, a prudent superannuation trustee in the position of Diversa as a Diversa Fund trustee, including as subject to operation of the provisions alleged in paragraphs 15–16 and application of the policies as alleged in paragraphs 17-23 above, ~~r~~having approved each of the FGMF Classes for selection as Investment Options and inclusion on the Investment Menu for each Diversa Fund and determined to impose a holding limit, would have at least:
- (a) warned members of the holding limit on the Investment Menu, or otherwise informed members of the holding limit;
  - (b) monitored whether, and had adequate systems and processes to ensure that, there was compliance with the holding limit and to detect any infringements of it; and
  - (c) not received or acted on directions by members for investments in any FGMF Class exceeding the holding limit.
75. By reason of the matters alleged in paragraphs 72 and 73 above, and all or any of Diversa's omissions in paragraph 69(a) to 69(f) ~~69~~ above, Diversa as trustee of the Diversa Funds, by maintaining each of the FGMF Classes for selection as an Investment Option by Diversa Fund members, and on each occasion by acting on the direction of members to make further investments in the FGMF Classes:

- (a) failed to exercise in all matters concerning that Diversa Fund 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;
- (b) so breached the covenant alleged in paragraph 15(a) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

76. Further or alternatively, by reason of the matters alleged in paragraph 74 above, and acting as alleged in paragraphs 64 and 65 above, Diversa:

- (a) failed to exercise in all matters concerning the Powerwrap Fund, the MAP Fund and the OneSuper Fund 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;
- (b) ~~on each such occasion that it acted on a member's direction for investments in FGMF Classes exceeding the holding limit,~~ so breached the covenant alleged in paragraphs 15(a) above (including on each such occasion that it acted on a member's direction for investments in FGMF Classes exceeding the holding limit); and
- (c) thereby contravened s 54B(1) of the SIS Act.

76A. Further or alternatively, by reason of the matters alleged in paragraph 74 above, and acting as alleged in paragraph 65A above, Diversa:

- (a) failed to exercise in all matters concerning the Praemium Fund 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;
- (b) so breached the covenant alleged in paragraphs 15(a) above (including on each such occasion that it acted on a member's direction for investments in FGMF Classes exceeding the holding limit); and
- (c) thereby contravened s 54B(1) of the SIS Act.

**E4.2 Best financial interests of members – sections 52(2)(c) and 52(12) of the SIS Act**

77. Further or alternatively, by reason of the matters alleged in paragraph 73 above and all or any of Diversa's omissions in paragraph 69(a) to 69(f) above~~69~~, Diversa as trustee of the respective Diversa Funds, by maintaining each of the FGMF Classes on a Diversa

Fund Investment Menu and on each occasion by acting on the direction of members to make further investments in the FGMF Classes:

- (a) performed its duties and exercised its powers other than (up to 30 June 2021) in the best interests and (after 30 June 2021) other than in the best financial interests of Diversa Fund members;
- (b) failed to promote the financial interests of Diversa Fund members;

#### **Particulars**

ASIC repeats the particulars under paragraph 58 above.

- (c) in so acting, including on each occasion that it acted on a member's direction to make further investments in the FGMF Classes, breached the covenants alleged in each of:
  - (i) paragraph 15(b) above; and
  - (ii) paragraph 15(e) above; and
- (d) thereby contravened s 54B(1) of the SIS Act.

78. Further or alternatively, by reason of the matters alleged in paragraph 73 above and all or any of Diversa's omissions in paragraph 69(a) to 69(f) above~~69~~, Diversa as trustee of the respective Diversa Funds, by maintaining each of the FGMF Classes on a Diversa Fund Investment Menu and on each occasion by acting on the direction of members to make further investments in the FGMF Classes while failing to provide or require information be provided to Diversa Fund members as to potential illiquidity of the FGMF Classes alleged in paragraphs 36(a), 44(a) and 51(a) above:

- (a) performed its duties and exercised its powers other than (up to 30 June 2021) in the best interests and (after 30 June 2021) in the best financial interests of Diversa Fund members;
- (b) failed to promote the financial interests of Diversa Fund members;

#### **Particulars**

ASIC repeats the particulars under paragraph 58 above.

- (c) in so acting, including on each occasion that it acted on a member's direction to make further investments in the FGMF Classes, so breached the covenants alleged in each of:
  - (i) paragraph 15(b) above; and

- (ii) paragraph 15(e) above; and
  - (d) thereby contravened s 54B(1) of the SIS Act.
79. Further, by reason of the matters alleged in paragraphs 64 and 65 above, Diversa:
- (a) performed its duties and exercised its powers other than (up to 30 June 2021) in the best interests and (after 30 June 2021) in the best financial interests of:
    - (i) Powerwrap Fund members; and
    - (ii) MAP Fund and OneSuper Fund members with an interest in YourChoice and AusPrac;
  - (b) including on each such occasion that it acted on a member's direction for investments in FGMF Classes exceeding the holding limit, so breached the covenants alleged in each of:
    - (i) paragraph 15(b) above; and
    - (ii) paragraph 15(e) above; and
  - (c) thereby contravened s 54B(1) of the SIS Act.

79A. Further, by reason of the matters alleged in paragraph 65A above, Diversa:

- (a) performed its duties and exercised its powers other than (up to 30 June 2021) in the best interests and (after 30 June 2021) in the best financial interests of Praemium Fund members;
- (b) including on each such occasion that it acted on a member's direction for investments in FGMF Classes exceeding the holding limit, so breached the covenants alleged in each of:
  - (i) paragraph 15(b) above; and
  - (ii) paragraph 15(e) above; and
- ~~(b)~~(c) thereby contravened s 54B(1) of the SIS Act.

**E4.3 Due diligence in developing, offering and reviewing regularly Investment Options – section 52(6)(b) of the SIS Act**

80. Diversa as trustee of each Diversa Fund, by reason of all or any of the matters alleged in paragraphs 69 and 73 above, by maintaining each of the FGMF Classes on a Diversa Fund's Investment Menu:

- (a) did not exercise due diligence in developing, offering and reviewing regularly each of the FGMF Classes as Investment Options to members of the respective Diversa Fund;
- (b) thereby breached the covenant alleged in paragraph 15(d) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

81. Further or alternatively, by reason of the matters alleged in paragraph 74 above, and acting as alleged in paragraphs 64, ~~and 65~~ and 65A above, Diversa:

- (a) did not exercise due diligence in developing, offering and reviewing regularly each of the FGMF Classes as Investment Options to members of the respective Diversa Fund;
- (b) thereby breached the covenant alleged in paragraph 15(d) above; and
- (c) thereby contravened s 54B(1) of the SIS Act.

***E4.4 All things necessary to provide financial services efficiently, honestly and fairly – section 912A(1)(a) Corporations Act***

82. Further or alternatively:

- (a) by its maintenance of each of the FGMF Classes on each Diversa Fund's Investment Menu and continuing to offer each of the FGMF Classes to members of each Diversa Fund as alleged in paragraph 71 above and in the circumstances as alleged in paragraphs 66–70 above ~~69 above~~; and
- (b) further or alternatively, by reason of each of:
  - (i) the matters alleged in paragraph 64 above in respect of the Powerwrap Fund; ~~and~~
  - (ii) the matters alleged in paragraph 65 above in respect of each of the MAP Fund and the OneSuper Fund; ~~and~~ and
  - (iii) the matters alleged in paragraph 65A above in respect of the Praemium Fund,

Diversa did not do all things necessary to ensure that the financial services covered by its AFSL (alleged in paragraph 2(c) above) were provided efficiently, honestly and fairly, and:

- (c) thereby contravened s 912A(1)(a) of the Corporations Act; and
- (d) thereby contravened s 912A(5A) of the Corporations Act.

## **F. LOSS SUFFERED AS A RESULT OF CONTRAVENING ACTS OR OMISSIONS**

### **F1. Liquidation of FGMF**

83. From around 27 May 2024, Falcon suspended acceptance of new applications to and making redemptions from the FGMF.
84. On 9 April 2025, by order of the Federal Court of Australia:
- (a) Falcon was placed into liquidation; and
  - (b) the liquidators of Falcon were directed to wind up the FGMF and its underlying sub-funds.
85. At that date, approximately \$243m of superannuation funds and retirement savings remained invested by members of the Diversa Funds into one or more of the FGMF Classes.
86. As at the date of this Statement of Claim, by reason of the matters alleged in paragraphs 83 and 84 above, Diversa as trustee of each respective Diversa Fund:
- (a) has not redeemed any units in the FGMF since 27 May 2024; and
  - (b) cannot redeem any units in the FGMF.

### **F2. Causation of loss**

87. If Diversa as trustee of the Diversa Funds had not approved and offered, and maintained and continued to offer throughout the Relevant Period, each of the FGMF Classes to members as Investment Options on the Investment Menu for each Diversa Fund as alleged in paragraphs 33, 35, 41, 43, 48, 50 and 71 above:
- (a) members of each respective Diversa Fund would not have been able to direct Diversa as trustee of the Diversa Funds to invest assets of the Diversa Fund credited to or recorded in their member accounts in the FGMF Classes; and
  - (b) Diversa would not have invested Diversa Fund assets in the FGMF Classes.
88. Further and alternatively, if Diversa as trustee of the Powerwrap Fund had not acted as alleged in paragraph 64 above:
- (a) members of the Powerwrap Fund would not have been able to direct Diversa as trustee to invest assets of the Powerwrap Fund (respectively) in a FGMF Class in an amount over 50% of their account balance; and
  - (b) Diversa would not have invested assets of the Powerwrap Fund in each of the FGMF Classes in excess of the holding limit.

89. Further and alternatively, if Diversa as trustee of the MAP Fund and OneSuper Fund had not acted as alleged in paragraph 65 above:

- (a) members of the MAP Fund and OneSuper Fund with an interest in YourChoice and AusPrac would not have been able to direct Diversa as trustee to invest assets of the MAP Fund and OneSuper Fund (respectively) in a FGMF Class in an amount over 50% of their account balance; and
- (b) Diversa would not have invested assets of the MAP Fund and OneSuper Fund in each of the FGMF Classes in excess of the holding limit.

89A. Further and alternatively, if Diversa as trustee of the Praemium Fund had not acted as alleged in paragraph 65A above:

- (a) members of the Praemium Fund would not have been able to direct Diversa as trustee to invest assets of the Praemium Fund in a FGMF Class in an amount over 50% of their account balance; and
- (b) Diversa would not have invested assets of the Praemium Fund in each of the FGMF Classes in excess of the holding limit.

90. By reason of the matters alleged in paragraphs 63 and 83 to 87 above, as a result of Diversa's acts and omissions as alleged in paragraphs 55 to 61, 61A, 61B, 75, 77 and 80 above, in each case constituting contraventions of s 54B(1) of the SIS Act, each Diversa Fund suffered loss or damage.

#### **Particulars**

The loss or damage suffered by each Diversa Fund is the difference between:

- (A) ~~(i)~~ — the value as recorded by Diversa of the units held in each FGMF Class on 27 May 2024, alternatively the net amount of funds invested in each of the FGMF Classes by Diversa as trustee of the Diversa Funds at the direction of Diversa Fund members as alleged in paragraph 63 above and not redeemed; and
- (B) ~~(ii)~~ — the amount which may be returned to Diversa Fund members following any distribution to unitholders of the FGMF referable to the units acquired by Diversa as Diversa Fund trustee,

In addition, value of any return on investments not achieved by reason of funds not being invested in alternatives to FGMF.

Further particulars may be provided after the service of expert evidence.

91. Further or alternatively, by reason of the matters alleged in paragraphs 63 and 83-86 and 88-89A above, as a result of Diversa's acts and omissions as alleged in paragraphs 64 to 65, [65A](#), 76, [76A](#), 78, 79, [79A](#) and 81 above, constituting contraventions of s 54B(1) of the SIS Act:

- (a) the Praemium Fund (including, by successor transfer, the Powerwrap Fund); and
  - (b) the OneSuper Fund (including, by successor transfer, the MAP Fund)
- suffered loss or damage.

#### Particulars

The loss or damage suffered is the difference between:

- (A) ~~(i)~~ — the net amount of funds that would have been invested in each class of the FGMF by Diversa as trustee of the Powerwrap Fund, MAP Fund, ~~and~~ OneSuper Fund ~~and~~ [Praemium Fund](#) at the direction of the applicable Diversa Fund members, had Diversa applied a holding limit of 50% to investment in each of the FGMF classes; and
- (B) ~~(ii)~~ — the amounts which may be returned to the Praemium Fund and OneSuper Fund following any distribution to unitholders of the FGMF referable to the units acquired by Diversa as trustee.

Further particulars may be provided after the service of expert evidence.

92. Further or alternatively, by reason of the matters alleged in paragraphs 63 and 83 to ~~88~~[89A](#) above, as a result of Diversa's contraventions of s 912A(5A) of the Corporations Act alleged in paragraphs 62 and 82 above, each Diversa Fund suffered loss or damage and/or Diversa Fund members suffered loss or damage.

#### Particulars

As to loss and damage to each Diversa Fund, ASIC repeats the particulars to paragraphs 90-91 ~~above~~.

As to the loss or damage suffered by Diversa Fund members, the loss or damage is the difference between:

- (A) ~~(i)~~ — the net amount of funds invested in each of the FGMF Classes at their direction; and
- (B) ~~(ii)~~ — the amount which may be returned to the Diversa Fund, and then to Diversa Fund members, following any distribution to unitholders of the FGMF referable to the units acquired upon those directions being completed.

In addition, value of any return on investments not achieved by reason of funds not being invested in alternatives to FGMF.

In the alternative, the loss or damage suffered by Diversa Fund members is the difference between:

- (A) ~~(i)~~ — the net amount of funds that would have been invested in each of the FGMF Classes at the directions of Diversa Fund

members, had Diversa as Diversa Fund applied a holding limit of 50% to investment in each of the FGMF classes; and

- (B) ~~(ii)~~ the amount which may be returned to the Diversa Fund, and then to Diversa Fund members, following any distribution to unitholders of the FGMF referable to the units acquired upon those directions being completed.

Further particulars may be provided after the service of expert evidence.

DATED ~~13 March 2026~~ 15 May 2026

This amended pleading was prepared by CM Archibald, L Hogan and S Crock of counsel.



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Signed by Tom Jarvis  
Lawyer for the Plaintiff

## Annexure A

1. Total amount invested in each of the FGMF Classes through the OneSuper Fund (including YourChoice and AusPrac):<sup>1</sup>

<b>FGMF Class</b>	<b>Number of members</b>	<b>Total Amount Invested</b>
Defensive	209	\$29,968,748.34
Diversified	810	\$95,311,442.16
Growth	1,371	\$169,475,641.38
<b>Total:</b>	2,386 <sup>2</sup>	\$294,755,831.88

2. Total amount invested in each of the FGMF Classes through the OneSuper Fund (including YourChoice and AusPrac) at the time orders were made to wind-up First Guardian:<sup>3</sup>

<b>FGMF Class</b>	<b>Number of members</b>	<b>Total Amount Invested<sup>4</sup></b>
Defensive	191	\$25,992,393.20
Diversified	653	\$75,644,455.48
Growth	1,186	\$138,696,935.58
<b>Total:</b>	2,026 <sup>5</sup>	\$240,333,784.26 <sup>6</sup>

3. Total amount invested in each of the FGMF Classes through the Praemium Fund:<sup>7</sup>

<b>FGMF Class</b>	<b>Number of members</b>	<b>Total Amount Invested</b>
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<sup>1</sup> This includes the amount invested in each of the FGMF Classes made through the MAP Fund which was transferred to the OneSuper Fund via SFT on 1 December 2020.

<sup>2</sup> 4 members had investments in different classes

<sup>3</sup> This includes the amount invested in each of the FGMF Classes made through the MAP Fund which was transferred to the OneSuper Fund via SFT on 1 December 2020.

<sup>4</sup> For members who made partial redemptions of their principal, the total value of their investment at the date of the notice was attributed to the relevant class they were invested in. One of these members had investments in multiple classes, so their remaining investment was split across the classes in the same way as their principal.

<sup>5</sup> 4 members had investments in multiple classes.

<sup>6</sup> This has been calculated using the total principal amounts invested for members who didn't make partial redemptions of their principal (1,879 members) and the value of investment at date of the notice for members who made partial redemptions of their principal (147 members).

<sup>7</sup> This includes the amount invested in each of the FGMF Classes made through the Powerwrap Fund which was transferred to the Praemium Fund via SFT on 31 March 2021.

Defensive	2	\$342,421.26
Diversified	27	\$1,374,737.64
Growth	18	\$2,695,910.95
<b>Total:</b>	45 <sup>8</sup>	\$4,413,069.85

4. Total amount invested in each of the FGMF Classes through the Praemium Fund at the time orders were made to wind-up First Guardian:<sup>9</sup>

<b>FGMF Class</b>	<b>Number of members</b>	<b>Total Amount Invested<sup>10</sup></b>
Defensive	2	\$189,571.55
Diversified	16	\$745,570.82
Growth	10	\$1,726,827.09
<b>Total:</b>	26 <sup>11</sup>	\$2,661,969.46 <sup>12</sup>

5. The initial amount invested by month across all FGMF Classes through the OneSuper Fund (including YourChoice and AusPrac) in the period from February 2021 to May 2024. The initial amount invested does not include additional amounts subsequently invested by a member after making their initial investments:

<b>Month</b>	<b>Initial investment in the FGMF</b>
February 2021	\$377,011.50
March 2021	\$11,214,818.32
April 2021	\$642,509.97
May 2021	\$1,477,046.00
June 2021	\$3,953,181.65
July 2021	\$2,858,447.79
August 2021	\$3,502,487.53

<sup>8</sup> 2 members had investments in multiple classes.

<sup>9</sup> This includes the amount invested in each of the FGMF Classes made through the Powerwrap Fund which was transferred to the Praemium Fund via SFT on 31 March 2021.

<sup>10</sup> For members who made partial redemptions of their principal, the total value of their investment at the date of the notice was attributed to the relevant class they were invested in. None of these members had investments in multiple classes.

<sup>11</sup> 2 members had investments in multiple classes.

<sup>12</sup> This has been calculated using the total principal amounts invested for members who didn't make partial redemptions of their principal (16 members) and the value of investment at date of the notice for members who made partial redemptions of their principal (10 members).

<b>Month</b>	<b>Initial investment in the FGMF</b>
September 2021	\$2,919,277.43
October 2021	\$4,018,037.20
November 2021	\$3,559,163.85
December 2021	\$7,512,077.94
January 2022	\$3,010,441.69
February 2022	\$7,925,121.72
March 2022	\$8,069,350.26
April 2022	\$4,261,365.59
May 2022	\$8,395,437.76
June 2022	\$3,246,772.50
July 2022	\$1,818,844.44
August 2022	\$4,215,880.48
September 2022	\$2,897,113.10
October 2022	\$3,364,132.92
November 2022	\$4,653,317.40
December 2022	\$2,984,771.79
January 2023	\$2,087,485.23
February 2023	\$3,143,534.11
March 2023	\$7,920,449.95
April 2023	\$5,983,413.50
May 2023	\$19,239,433.68
June 2023	\$15,401,319.27
July 2023	\$30,691,134.29
August 2023	\$11,431,667.25
September 2023	\$9,399,573.61
October 2023	\$15,714,250.03
November 2023	\$15,579,005.09
December 2023	\$13,145,889.11
January 2024	\$10,509,071.59
February 2024	\$1,493,833.44
March 2024	\$2,314,004.03
April 2024	\$341,000.05
May 2024	\$47,000.01
<b>TOTAL</b>	<b>\$261,318,673.07</b>

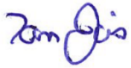
6. The initial amount invested by month across all FGMF Classes through the Praemium Fund in the period from April 2021 to May 2024. The initial amount invested does not include additional amounts subsequently invested by a member after making their initial investments:

<b>Month</b>	<b>Initial investment in the FGMF</b>
April 2021	\$914,512.50
May 2021	\$986.31
December 2021	\$1,023,910.24
September 2022	\$114,491.79
January 2023	\$1,135,306.54
February 2023	\$240,738.05
March 2023	\$228,661.56
April 2023	\$117,177.31
May 2024	\$98,223.96
<b>TOTAL</b>	<b>\$3,874,008.26</b>

## CERTIFICATE OF LAWYER

I Thomas Litchfield Jarvis certify to the Court that, in relation to the amended statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~13 March 2026~~ 15 May 2026

A handwritten signature in blue ink that reads "Tom Jarvis". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

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Signed by Tom Jarvis  
Lawyer for the Plaintiff