

**COURT ENFORCEABLE
UNDERTAKING**

Australian Securities and Investments Commission Act 2001

Section 93AA

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

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

and

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

Level 6, 180 Flinders Street Melbourne VIC 3000

1 Definitions

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

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

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

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

FGMF means the First Guardian Master Fund.

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

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

2 Background

- 2.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.2 ASIC is investigating the management and operation of the First Guardian Master Fund (ARSN 635 429 113) (**FGMF**), a registered managed investment scheme registered on 23 August 2019, which is now being wound up. Falcon Capital Limited (in liquidation) is the responsible entity of the FGMF. During the

relevant period, the FGMF offered investors units in three investment classes: the First Guardian Defensive Strategies Class (**Defensive Class**); the First Guardian Diversified Strategies Class (**Diversified Class**); and the First Guardian Growth Strategies Class (**Growth Class**).

- 2.3 Affected Investors invested in FGMF Diversified Class and Growth Class through the NSMF. The NSMF is, and was at all relevant times, a ‘choice’ superannuation fund, in which the trustee of the NSMF selected invested options to be added to a menu for the superannuation product held by the members. Between 27 February 2002 and 30 June 2021, NIL was the trustee of the NSMF. Since 1 July 2021, NSS has been the trustee of the NSMF.
- 2.4 ASIC has conducted an investigation (**Netwealth Investigation**) into the conduct of NIL and NSS in relation to the FGMF.
- 2.5 The Netwealth Investigation has resulted in:
 - 2.5.1 ASIC and NIL and NSS seeking to finalise ASIC’s concerns in relation to NIL and NSS that are the subject of the Netwealth Investigation through an agreed Court outcome, involving NIL and NSS admitting to contraventions of ss 912A(1)(a) and 912A(5A) of the Corporations Act and agreeing facts in support of those contraventions in proceedings to be commenced by ASIC against NIL and NSS, with ASIC agreeing not to seek a civil penalty in respect of those contraventions; and
 - 2.5.2 NSS pursuant to this court enforceable undertaking agreeing to make the payments pursuant to the Payment Program set out in section 3 below.
- 2.6 The proposed proceedings in relation to the agreed Court outcome (**Proceedings**) relate to failures by NIL and NSS to obtain, and therefore assess, sufficient information about the FGMF, or make sufficient independent inquiries, to understand or evaluate the risks of investment in offering or monitoring the Diversified Class or Growth Class as investment options to NSMF members.
- 2.7 NIL and NSS:
 - 2.7.1 acknowledge and admit they contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act as set out in Attachment A;
 - 2.7.2 have agreed to make certain admissions in the Proceedings that will be commenced by ASIC to support ASIC obtaining declarations from the Court regarding the contraventions as set out in Attachment A (**the Declarations**). The admissions and facts upon which those admissions are based are recorded in a signed Statement of Agreed Facts and Admissions (**SAFA**), which will be filed in the Proceedings;
 - 2.7.3 will join with ASIC in making submissions to the Court in support of obtaining the Declarations; and
 - 2.7.4 has agreed to pay ASIC’s costs of the Proceedings.

3 Undertakings

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

(Payment Program)

- 3.2 NSS will commence a program (**Payment Program**) in order to pay to each Affected Investor an amount equal to the Net Capital Amount. The Payment Program is comprised of the following steps:
- 3.2.1 by 30 January 2026, NSS agrees to sell beneficial ownership of all units in FGMF that it held for Affected Investors to Netwealth Holdings Limited in return for a cash payment that will be paid to NSS and credited to the cash accounts of Affected Investors in the NSMF on or before 30 January 2026 (**Cash for Asset Swap**); and
- 3.2.2 on or before 30 January 2026, NSS will make a payment to each Affected Investor that will be allocated to their cash account in the NSMF in an amount equal to their Net Capital Amount less the amount allocated to their cash account as part of the Cash for Asset Swap (**Compensation Payment**). NSS has agreed to make the Compensation Payment in order to settle ASIC's concerns and in recognition of potential claims for compensation that may be brought against NSS by ASIC or Affected Investors, but without admission that NSS would bear liability should such claims be brought;
- 3.2.3 on or before 13 February 2026, NSS will arrange for the preparation, by a suitably qualified third party, of a report on the Payment Program (**Payment Program Report**), which will:
- i. assess whether payments made to each Affected Investor through the Payment Program are equal to the Net Capital Amount for each Affected Investor; and
 - ii. assess whether there are any Affected Investors who have not been paid an amount at least equal to their Net Capital Amount, and identify those Affected Investors (**Identified Affected Investors**) and the amount of their Net Capital Amount that has not been paid (**Shortfall Amount**); and
- 3.2.4 if there are any Identified Affected Investors, NSS will make payments to them of their respective Shortfall Amounts on or before 20 February 2026.

(Costs)

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

- 3.2.6 NSS and NIL will each not seek any waiver or release from any Affected Investor of any claims it may have against NIL, NSS or any other company or individual;
- 3.2.7 NSS and NIL will each pay their costs of their compliance with this court enforceable undertaking;
- 3.2.8 NSS and NIL will provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this court enforceable undertaking.

4 Acknowledgements

- 4.1 NIL and NSS acknowledge that ASIC:
 - 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this undertaking;
 - 4.1.3 will from time to time publicly report about compliance with this undertaking;
 - 4.1.4 will make this undertaking available for public inspection;
 - 4.1.5 may issue a media release referring to the content of the Payment Program Report;
 - 4.1.6 may from time to time publicly refer to the content of the Payment Program Report; and
 - 4.1.7 may make available for public inspection a summary of the content of the Payment Program Report, or a statement that refers to its content.
- 4.2 ASIC acknowledges that it will not refer to any information from the Payment Program Report that:
 - 4.2.1 consists of personal information of Affected Investors;
 - 4.2.2 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the court enforceable undertaking;
 - 4.2.3 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of NIL, NSS or a third party otherwise than in a way that arises from the execution, implementation and reporting, of the outcomes of the enforceable undertaking;
 - 4.2.4 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.2.5 NIL or NSS has asked not to be released if ASIC is satisfied:
 - i. it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or

financial affairs of NIL or NSS otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the court enforceable undertaking; or

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


4.3 Further, NIL and NSS acknowledge that:

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

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

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


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


.....
[Matt Heine \(Dec 17, 2025 17:56:34 GMT+11\)](#).....

Signature of authorised delegate

Matthew Heine

Name of authorised delegate



.....
[Jodie Henson \(Dec 17, 2025 17:57:01 GMT+11\)](#).....

Signature of authorised delegate

Jodie Henson

Name of authorised delegate


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


.....
[Matt Heine \(Dec 17, 2025 17:56:34 GMT+11\)](#).....

Signature of authorised delegate

Matthew Heine

Name of authorised delegate


.....
[Jodie Henson \(Dec 17, 2025 17:57:01 GMT+11\)](#).....

Signature of authorised delegate

Jodie Henson

Name of authorised delegate

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



Catherine Iles

Delegate of Australian Securities and Investments Commission

17 December 2025

ATTACHMENT A: DECLARATIONS

1. A declaration that NIL (between around 26 March 2021 and 30 June 2021), in operating the Netwealth Superannuation Master Fund (NSMF), failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act, and s 912A(5A) of the Corporations Act, where:
 - a. having regard to the apparent nature and characteristics of the First Guardian Master Fund (FGMF), NIL did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the First Guardian Diversified Strategies Class (**Diversified Class**) or the First Guardian Growth Strategies Class (**Growth Class**) investment options prior to or while offering them to members with an interest in the NSMF's Super Accelerator Plus product;
 - b. in the circumstances described in paragraph (a) above, NIL:
 - i. approved the Diversified Class and Growth Class as investment options made available to members for selection;
 - ii. while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain); and
 - iii. while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the investment platform maintained and operated by NIL through which members holding an interest in the NSMF and financial advisers authorised to act on behalf of those members could:
 1. access and operate their cash account in the NSMF;
 2. select, and give direction to the NSMF trustee to acquire or divest an investment in a range of investment options made available by the NSMF trustee; and/or
 3. access information about their investments;
 - c. while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members.

(Netwealth Platform)

2. A declaration that NSS (from 1 July 2021 to around 27 May 2024), in operating the NSMF, failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act, and s 912A(5A) of the Corporations Act, where:
 - a. having regard to the apparent nature and characteristics of the FGMF, NSS did not obtain and, therefore, did not assess sufficient information about the FGMF, and did not make sufficient independent enquiries, to understand or evaluate investment risk in the Diversified Class or the Growth Class investment options while offering them to members with an interest in the NSMF's Super Accelerator Plus product;
 - b. in the circumstances described in paragraph (a) above, NSS:
 - i. while NSMF trustee, made investments in the Diversified Class and Growth Class at the direction of members up to an investment limit of 100% of the member's account (less any minimum cash holding which the affected member was required to maintain);
 - ii. while NSMF trustee, continued to offer the Diversified Class and Growth Class as investment options on the Netwealth Platform;
 - c. while NSMF trustee, it did not inform NSMF members of the potential illiquidity of the Diversified Class and Growth Class investment options while they were offered to members, prior to 6 December 2022; and
 - d. on or after removing the Diversified Class and Growth Class from the investment "menu" administered by NIL on or around 22 December 2022, NSS did not inform NSMF members whose accounts recorded an investment in those classes of concerns held about the FGMF relevant to a member's future investment directions about their investment.