

NOTICE OF FILING

Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	8/12/2025 4:48:08 PM AEDT
Date Accepted for Filing:	8/12/2025 4:51:39 PM AEDT
File Number:	VID1614/2025
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v DIVERSA TRUSTEES LIMITED (ACN 006 421 638)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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.



Concise Statement

No. of 2025

Federal Court of Australia

District Registry: Victoria

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

DIVERSA TRUSTEES LIMITED

Defendant

A. INTRODUCTION

1. Between around 6 August 2020 and 30 July 2024, the defendant (**Diversa**) as trustee of various superannuation funds (**Diversa Funds**) offered to members, on its product investment menu for each fund, three investment options in the First Guardian Master Fund (**FGMF**).
2. In breach of the covenants imposed by s 52 of the *Superannuation Industry (Supervision) Act 1993* (**SIS Act**), and in contravention of s 54B(1), Diversa did not act with the same degree of care, skill and diligence as a prudent superannuation trustee, did not exercise due diligence or act in the best interests and best financial interests of members, and did not promote the financial interests of the Diversa Funds' beneficiaries. These breaches arose in approving and offering those investment options; in acting on each member's direction to invest in them; by failing to warn each member of the risk of illiquidity of the FGMF; and by failing to enforce a limit on the level of investment by members. Diversa also did not formulate or give effect to an investment strategy for each investment option.
3. As a consequence of those matters, Diversa also did not do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and 912A(5A) of the *Corporations Act 2001* (Cth) (**Corporations Act**).
4. ASIC claims declarations of contraventions and civil penalties, and also claims that Diversa should pay compensation to the Diversa Funds pursuant to s 215 of the SIS Act, or alternatively be ordered to prepare and institute a remediation program pursuant to s 1101B of the Corporations Act.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Tom Jarvis		
Law firm (if applicable)	Johnson Winter Slattery		
Tel	+61 3 8611 1336	Fax	+61 3 8611 1300
Email	tom.jarvis@jws.com.au		
Address for service (include state and postcode)	Level 34, 55 Collins Street MELBOURNE VIC 3000		

B. IMPORTANT FACTS GIVING RISE TO THE CLAIMS

B1. Diversa and the Diversa Funds

5. Diversa operates a business in which it acts as trustee of numerous superannuation funds. It holds a Registrable Superannuation Entity (**RSE**) licence (no. L0000635) and an Australian Financial Services Licence (**AFSL**) (no. 235153).
6. Diversa was, at different times during the period between July 2020 and July 2024 (**Relevant Period**), the trustee of the following funds (together, the **Diversa Funds**):
 - (a) the Powerwrap Master Plan (**Powerwrap Fund**);
 - (b) the Praemium SMA Superannuation Fund (**Praemium Fund**);
 - (c) YourChoice Super (**YourChoice**) and Australian Practical Superannuation (**AusPrac**), which were sub-plans of the MAP Master Superannuation Plan (**MAP Fund**) (until 1 December 2020) and OneSuper (**OneSuper Fund**) (after 1 December 2020).
7. The Diversa Funds are each, and were at all relevant times, a 'choice' superannuation fund, in which Diversa, as trustee, selected and approved investment options to be added to a menu for the superannuation product held by the members, listed on an online platform (**Diversa Platform**). Members, through advisers, were able to give directions to the trustee to invest assets credited to the member's account in the investment options. The trustee reserved power not to act on a member's direction. Members hold a beneficial interest in the relevant Diversa Fund assets as a whole, but the value of a member's beneficial interest is calculated, and recorded in the member's account, by reference to the specific investments and assets selected, and in which Diversa invested as a result. A Diversa Fund member could not select or direct the trustee to make an investment that was not on the applicable investment menu.
8. Diversa as trustee maintained policies for investment, valuation, unit pricing, liquidity, and stress testing for the relevant Diversa Funds. 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.
9. Diversa's investment policy provided (Section 6.3) that the aim of the investment selection process was for the trustee to ensure that effective due diligence was completed that was commensurate with the nature and characteristics of the investment. The investment policy statements of each of the Diversa Funds provided that, in addition, certain criteria were required to be met, among which was there being a satisfactory rating of the investment option by a research house. Diversa's approval of managed funds for investment would typically be subject to holding limits for members (Section 3). The policy also provided that Diversa would conduct investment monitoring (section 7), with a principal goal of ascertaining the existence of any particular weakness or significant changes in investments offered to members so as to allow Diversa to assess the ability of the proposed investments to successfully meet fund objectives, and 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.
10. At all relevant times, Diversa's valuation policy required Diversa to review inherent valuation risks associated with investments with sub-funds that had multiple management layers, complex investment structures and/or underlying assets that were opaque in nature, by having a sufficient understanding of the nature of underlying assets

and the investment manager's policies and processes. Further, SPG-223 *Fraud Risk Management June 2015* provided that a prudent RSE licensee would consider fraud risk of chains of investments by assessing and understanding ultimate investments.

B2. Approval of the FGMF Classes as investment options

11. On 23 August 2019, the FGMF was registered as a registered managed investment scheme (ARSN 635 429 113), of which Falcon Capital Limited (**Falcon**) was the responsible entity and First Guardian Capital Pty Ltd (**First Guardian**) was the investment manager. During the Relevant Period, the FGMF offered to investors units in three classes (**FGMF Classes**): First Guardian Defensive Strategies Class; First Guardian Diversified Strategies Class; and First Guardian Growth Strategies Class. Each of the FGMF Classes invested funds in a combination of underlying sub-funds, being unregistered managed investment schemes of which Falcon was trustee.

Powerwrap Fund

12. From around 20 July 2020, Diversa considered whether to approve the addition of each of the FGMF Classes to the Powerwrap Fund's investment menu.
13. Diversa received Product Disclosure Statements (**PDSs**) for each FGMF Class; limited further documents from Falcon, including investment overview documents for each FGMF Class; performance reports for each FGMF Class; tables of the investment performance of each FGMF Class; a table stating the funds under management and asset allocation data for each FGMF Class; a research report prepared by SQM Research dated June 2020 (**SQM Report**); and an internal recommendation report stating that the criteria of the investment policy statement were satisfied.
14. The SQM Report rated the FGMF as "Acceptable", or 3.5 stars, described as a "low investment grade" rating. It stated the FGMF was overexposed to certain sectors, and the First Guardian investment team had "relatively limited experience in managing multi-asset diversified funds", and the board was not constituted with a majority of independent directors. It also said that the FGMF's liquidity profile was "quite different to a typical Balanced Fund", a "significant proportion of the [Fund] is invested in direct/unlisted assets which are less liquid or illiquid", and that underlying funds may have lock-in periods. It said that potential investors should review the PDSs of the underlying funds.
15. On the basis of this information, Diversa was aware that the FGMF was established in 2019 and had performance history of less than two years; it had a low investment grade rating; it was invested in unlisted units in a combination of underlying sub-funds which may be illiquid and have lock-in periods and of which First Guardian Capital was the investment manager and Falcon was the trustee; and the sub-fund assets and investments were not identified and may include overseas investments.
16. Diversa did not obtain a copy of the FGMF managed investment scheme constitution, or a copy of any constitution or product disclosure statement for the nine underlying funds of the FGMF. It did not identify any of the assets held by the underlying funds, or review the valuation or the liquidity of any such assets. It did not seek a copy of or verify the implementation by Falcon or First Guardian Capital of policies or practices about related party conflict, investment due diligence, investment execution or investment valuation.
17. Despite the limited information and the apparent serious risks associated with investment in the FGMF Classes, on 6 August 2020, Diversa's investment committee approved each of the FGMF Classes for selection as investment options on the Powerwrap Fund investment menu. Diversa determined to apply a holding limit in respect of each FGMF

Class of 50% of funds held in a member's account and did not determine to notify members of their potential illiquidity.

MAP Fund, including YourChoice and AusPrac

18. From around 17 September 2020, Diversa considered whether to approve each of the FGMF Classes for addition to the approved investment list of the MAP Fund. Diversa received for review the SQM Report, PDS for each FGMF Class, an internal checklist stating that the criteria of the investment policy statement were met, performance reports for each FGMF Class and a table of investment performance for each FGMF Class dated 30 June 2020. It did not take any of the actions identified in paragraph 16.
19. Despite the limited information and the apparent serious risks associated with investment in the FGMF Classes, on around 16 November 2020, Diversa's Head of Investment Governance approved each of the FGMF Classes for selection as investment options on the MAP Fund investment menu (for members with an interest in YourChoice or AusPrac). Diversa determined to apply a holding limit in respect of each FGMF Class of 50% of funds held in a member's account.

Praemium Fund

20. From around 19 February 2021, Diversa considered whether to approve each of the FGMF Classes for addition to the investment menu of the Praemium Fund. Diversa received the SQM Report and an internal checklist for each of the FGMF Classes stating that the criteria of the investment policy statement were met, and also considered a factsheet for the First Guardian Growth Strategies Class. It did not take any of the actions identified in paragraph 16.
21. Despite the limited information and the apparent serious risks associated with investment in the FGMF Classes, on 12 March 2021 Diversa's Head of Investment Governance approved each of the FGMF Classes for selection as investment options on the Praemium Fund investment menu. Diversa determined to apply a holding limit in respect of each FGMF Class of 50% of funds held in a member's account.

B3. Investments in the FGMF Classes, and monitoring of investment options

22. From the date of approval for addition onto the investment menu of each respective Diversa Fund, members (through advisors) directed Diversa as trustee to invest in the FGMF. By around July 2024, Diversa had invested around \$300m of Diversa Fund assets into the Defensive Class, Diversified Class and Growth Class at the direction of about 2,400 Diversa Fund members. Many such members had invested more than 50% of the value of their member accounts.

Monitoring arrangements

23. During the Relevant Period, Diversa obtained certain quarterly and annual reports for monitoring financial returns, stress testing and liquidity testing in respect of each of the Diversa Funds, based on information provided by Falcon and First Guardian. Diversa did not make independent enquiries as to that information or take the steps described in paragraph 16 above so as to ascertain any particular weakness or significant changes, or to continually assess whether the FGMF Classes met fund objectives.
24. Diversa did not require any of its monitoring service providers to report periodically to it as to whether investment options that were offered by the Diversa Funds had delays in processing or meeting redemption requests or as to striking unit prices. In that respect, by around 21 February 2024, Diversa became aware that in around October / November 2022 complaints were made by YourChoice members and there had been

communication with First Guardian regarding delays in the FGMF meeting redemption requests beyond 30 days.

Holding limits

25. Despite the fact that the FGMF Classes were subjected to a holding limit in respect of each FGMF Class of 50% of funds held in a member's account, that holding limit was not enforced in respect of members' accounts in YourChoice or AusPrac.
26. During the Relevant Period, YourChoice or AusPrac members were able to direct an investment in each of the FGMF Classes in excess of the 50% holding limit. Further, during the Relevant Period until around February 2023 (in respect of YourChoice) and around July 2024 (in respect of AusPrac), the applicable investment menus available to members did not identify or disclose the holding limit of 50% for each of the FGMF Classes that had been imposed by Diversa.

C. SUMMARY OF RELIEF SOUGHT

27. ASIC seeks relief as set out in the Originating Process, namely: declarations of breaches of the covenants imposed by s 52 and contraventions of s 54B(1) of the SIS Act, and contraventions of s 912A(1) and (5A) of the Corporations Act; pecuniary penalty orders under s 1317G(1) of the Corporations Act; monetary penalty orders under s 196(3) of the SIS Act; compensation orders under s 215 of the SIS Act; and orders pursuant to s 1101B of the Corporations Act to remediate loss suffered.

D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

28. During the Relevant Period, the governing rules of each of the Diversa Funds contained or were taken to contain covenants by Diversa to the effect set out in section 52 of the SIS Act. It was also a condition of Diversa's RSE licence that it must comply with prudential standards made by APRA under s 34C of the SIS Act.
29. **Approval of investment options:** ASIC alleges that Diversa's duties incorporated by ss 52(2)(b) and 52(6)(b) of the SIS Act required it not to exercise a power to add investment options to the menu and offer them to members without having and assessing information so as to exercise due diligence in the approval. The matters and FGMF characteristics identified in paragraphs 13-15 raised risks including potential illiquidity risk and valuation risk, and fraud-related investment risk, that a prudent superannuation trustee should have investigated. In those circumstances, without further investigation a prudent superannuation trustee would not have approved the FGMF Classes as investment options.
30. Exercising a power to approve the FGMF Classes based on the information available to Diversa was not in the best financial interests of Diversa Fund members (s 52(2)(c)). Approving the FGMF Classes being added to the investment menus of the Diversa Funds without determining to notify members about their potential illiquidity was also not in the best financial interests of members. The approval exposed the Diversa Funds to member directions for investment in the FGMF, and it exposed Diversa Fund members to investment choices within the Diversa Funds, and investment risk and loss, that did not promote their financial interests (s 52(12)).
31. **Making investments on member directions:** Diversa held information which exposed serious risks as to the FGMF when approving the investment options. These risks were exacerbated by failure to ensure investment limits were applied. After approval, it continued to accumulate further awareness of risks as to illiquidity in the FGMF. In those circumstances, on each occasion that Diversa made an investment in the FGMF as

directed by a member, it acted not in the best financial interests of beneficiaries of the Diversa Funds and in breach of covenant (ss 52(2)(b), 52(2)(c) and 52(12)).

32. **Failure to have a strategy:** For the Diversa Funds, s 52(6)(a) required an investment strategy for each investment option to be formulated, reviewed regularly and given effect by the trustee, addressed to s 52(6)(a)(i)-(viii) matters. Diversa did not formulate, review regularly or give effect to such a strategy.
33. **Monitoring investment options:** The failures by Diversa to obtain and assess information to exercise due diligence in relation to the investment options (for example as to the valuation, liquidity and fraud risk of underlying investments) continued from August 2020 in circumstances where, having regard to the serious risks alleged above, redemption requests made to Falcon were not always satisfied in stated timeframes and Diversa Funds were receiving a significant volume and value of directions to invest in the FGMF. Without obtaining such information, a prudent trustee would not have continued to offer the FGMF Classes as investment options. Diversa did not cease offering the FGMF Classes until several months after the FGMF Classes had been frozen by First Guardian. Diversa's failures as trustee were in breach of the covenants imposed by ss 52(2)(b), 52(2)(c), 52(6)(b) and 52(12).
34. **Failure to enforce investment limits:** Diversa failed to enforce the holding limit of 50% applicable to each FGMF Class for members' accounts in YourChoice or AusPrac by making investments which exceeded the limit. It failed to have systems and processes to ensure that there was compliance with the investment limit and to detect any infringements. It also failed throughout the Relevant Period to notify members or their advisers that such a holding limit had been imposed. Each of these matters was in breach of the covenant to exercise the degree of care, skill and diligence required by ss 52(2)(b) and 52(2)(c) of the SIS Act.
35. **Provision of financial services efficiently, honestly and fairly:** At all material times from 1 January 2021, Diversa, in operating the Diversa Funds and selecting and continuing to make available investment options for members, provided a superannuation trustee service, and therefore a financial service, for the purposes of and as defined in Chapter 7 of the Corporations Act. Each time it issued or varied a member's superannuation interest in a Diversa Fund, it dealt in a financial product and provided a financial service for the purposes of Chapter 7. Diversa's AFSL covered (from 1 January 2021) provision of a superannuation trustee service and (at all relevant times) dealing in superannuation products.
36. Each of the matters set out above, individually and collectively, by which Diversa failed to take care and act in the best financial interests of members was an instance in which Diversa failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, contrary to s 912A(1)(a) of the Corporations Act.
37. **Civil penalties:** Each breach of a covenant provided by s 52 to be contained in the governing rules of a superannuation entity is a contravention of s 54B(1) of the SIS Act, a civil penalty provision (s 193). A contravention of s 912A(1)(a) constitutes a contravention of s 912A(5A), which is a civil penalty provision.
38. **Compensation:** Section 215 of the SIS Act provides that the Court may order a person to pay compensation to a superannuation entity where the person has committed a contravention of a civil penalty provision and the superannuation entity has suffered loss or damage as a result of the act or omission constituting the contravention.

39. Section 1101B of the Corporations Act permits the Court to make orders on ASIC's application if it appears to the Court that a person has contravened a provision of a provision of Chapter 7 of the Corporations Act or any other law relating to dealing in financial products or providing financial services. The SIS Act is such an other law.

E. ALLEGED HARM

40. The FGMF was frozen for redemptions and withdrawals after 27 May 2024. Falcon was placed into liquidation on 9 April 2025 with a direction that the liquidators wind up the FGMF and certain of its underlying funds. 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.
41. Diversa should not have made or maintained the offer of the FGMF Classes, or made investments in them (at all or without limitation), without having and assessing information so as to exercise due diligence in doing so. If Diversa, based on the information it actually held and the serious risks that were apparent from that information, had acted consistently with its duties, then it would not have approved the investment options or made the investments in the FGMF. Loss to the Diversa Funds arose as a result of the trustee's acts and omissions in contravention of the SIS Act.
42. The loss caused by the acts or omissions of Diversa includes the loss to the Diversa Funds (and, having regard to the manner in which investments are recorded in member accounts, applicable Diversa Fund members) of the net amount invested in the FGMF Classes, less any amounts that may be returned following any distribution to unitholders of the FGMF made at the completion of the liquidation process.
43. In the alternative, in respect of Diversa's failure to enforce or notify members of the holding limit it had imposed on each of the FGMF Classes, about 1,970 members of YourChoice (including AusPrac) remain invested in a First Guardian class at a level above the holding limit set by Diversa. The harm caused by Diversa's breaches is about \$125m, which is the amount of funds that remain invested by YourChoice members in the FGMF Classes above the holding limit set by Diversa.

This Concise Statement was prepared by C M Archibald, Lynton Hogan, Sam Crock and Alex Lee, of counsel.

Certificate of lawyer

I Thomas Litchfield Jarvis certify to the Court that, in relation to the Concise Statement 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 Concise Statement.

Date: 8 December 2025



Signed by Thomas Litchfield Jarvis
Lawyer for the Plaintiff