

IN THE SUPREME COURT OF NEW SOUTH WALES No.

of 2025

374274

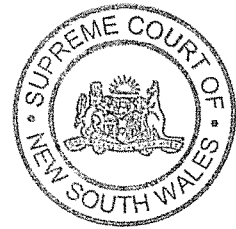
DIVISION: EQUITY

LIST: CORPORATIONS

REGISTRY: SYDNEY

FILED

2 OCT 2025



IN THE MATTER OF FIDUCIAN INVESTMENT MANAGEMENT SERVICES
LIMITED ABN 28 602 441 814

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

FIDUCIAN INVESTMENT MANAGEMENT SERVICES LIMITED

ABN 28 602 441 814

Defendant

Originating process

A. DETAILS OF APPLICATION

This is an application for:

- (a) declaratory relief pursuant to s 1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), s 12GBA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), s 75 of the *Supreme Court Act 1970* (NSW) (**Supreme Court Act**) and/or the Court's inherent jurisdiction;
- (b) orders for pecuniary penalties pursuant to s 1317G of the *Corporations Act* and s 12GBB of the *ASIC Act*;

- (c) orders requiring adverse publicity pursuant to s 12GLB(1) of the ASIC Act, or in the alternative orders requiring adverse publicity pursuant to s 12GLA(1) and (2)(d) of the ASIC Act;
- (d) costs; and
- (e) such further or other orders or relief as the Court sees fit,

in respect of alleged contraventions of s 12DF(1) of the ASIC Act and s 601FC(1)(b) and 601FC(1)(h) of the Corporations Act.

The following definitions are used in this Originating Process:

- (a) **Contravention Period** means 3 October 2019 to 30 May 2024;
- (b) **DSAF** means Diversified Social Aspirations Fund;
- (c) **PDS** means Product Disclosure Statement;
- (d) **SOC** means Statement of Claim; and
- (e) **Underlying Funds** means investments in which the DSAF was invested.

This application is made under ss 1317E(1), 1317G(1) and 1317J(1) of the Corporations Act, ss 12GBA and 12GBB of the ASIC Act and s 75 of the Supreme Court Act and/or the Court's inherent jurisdiction.

On the facts stated in the Plaintiff's statement of claim, the Plaintiff claims:

Declarations

1. A declaration pursuant to s 12GBA(1) of the ASIC Act, s 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, during the Contravention Period, the PDS's published by the Defendant in respect of the DSAF, contained statements as pleaded in paragraph 98 SOC (**ESG Statements**) which:
 - (a) represented that:

- i. the DSAF would only make investments (including through any Underlying Funds) in companies that were considered to be positive for society and the environment;
- ii. the DSAF would avoid making investments (including through any Underlying Funds) in companies that were considered to have activities that were harmful for society or the environment;
- iii. the DSAF would avoid making investments (including through any Underlying Funds) in companies that:
 - 1. polluted the air, land or water unnecessarily;
 - 2. extracted or created goods or services harmful to humans and animals;
 - 3. deceived or mislead in their promotional activities;
 - 4. exploited people through low wages or poor working conditions;
 - 5. discriminated on the basis of race, religion or sex; or
 - 6. impeded human rights;

(b) were made in trade or commerce and in relation to financial services; and

(c) were liable to mislead the public as to the nature and/or the characteristics of financial services, in contravention of s 12DF(1) of the ASIC Act.

2. A declaration pursuant to s 12GBA(1) of the ASIC Act, s 75 of the Supreme Court Act and/or the Court's inherent jurisdiction to the effect that, during the Contravention Period, the PDSs published by the Defendant in respect of the DSAF, contained statements pleaded in paragraph 99 of the SOC (**Systems and Processes Statements**) which:

(a) represented that:

- i. the portfolio exposure of the DSAF (including through any Underlying Funds) would be routinely monitored;

- ii. the portfolio exposure of the DSAF (including through any Underlying Funds) would be monitored to ensure that such exposure was in accordance with the ESG Statements; and
 - iii. the investment managers making investments on behalf of the DSAF (including through any Underlying Funds) would be constantly monitored to ensure that they maintained their investment styles and processes;
 - (b) were made in trade or commerce and in relation to financial services; and
 - (c) were liable to mislead the public as to the nature and/or the characteristics of financial services, in contravention of s 12DF(1) of the ASIC Act.
3. A declaration of contravention pursuant to s 1317E(1) of the Corporations Act that the Defendant, in its capacity as the responsible entity of the DSAF, contravened s 601FC(1)(b) of the Corporations Act by failing to discharge its duties to act with the care and due diligence that a reasonable person would exercise if they were a responsible entity in the Defendant's position by reason of the matters pleaded at paragraphs 128 to 130 of the SOC.
4. A declaration of contravention pursuant to s 1317E(1) of the Corporations Act that the Defendant, in its capacity as the responsible entity of the DSAF, contravened s 601FC(1)(h) of the Corporations Act, or alternatively s 601FC(1)(b) of the Corporations Act, in that it failed to comply with the compliance plan of the DSAF by reason of the matters pleaded at paragraphs 131 to 135 of the SOC.

Pecuniary Penalties

5. An order pursuant to s 12GBB(1) of the ASIC Act that the Defendant pay to the Commonwealth a pecuniary penalty or penalties in respect of the contraventions referred to in paragraphs 1 and 2 above, in such amount as the Court considers appropriate.
6. An order pursuant to s 1317G(1) of the Corporations Act that the Defendant pay to the Commonwealth a pecuniary penalty or penalties in respect of the contraventions

referred to in paragraph 3 and 4 above, in such amount as the Court considers appropriate.


Adverse Publication / Disclosure Orders

7. An order pursuant to s 12GLB(1)(a) and/or ss 12GLA(1) and (2)(d) of the ASIC Act that, commencing within 30 days of the date of these orders, the Defendant take all reasonable steps to send to each DSAF member during the Contravention Period, at their own expense, a notice on such terms and in a manner and form approved by the Court.

Other orders

8. An order that the Defendant pay the Plaintiff's costs of and incidental to this proceeding.
9. Such other orders as the Court sees fit.

Date: 2 October 2025


Signature of plaintiff or
plaintiff's legal practitioner
ANNA ROSS, BY HER
PARTNER, ANDREW KORBEL

This application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW at*am/*pm on

B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: FIDUCIAN INVESTMENT MANAGEMENT SERVICES LIMITED of Level 4,
1 York Street, Sydney NSW 2000.

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

- (a) the application may be heard and final relief given,

(b) directions may be given for the future conduct of the proceeding,

(c) any interlocutory application may be heard.

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

Note.

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

C. FILING

Date of filing: 2 October 2025

This originating process is filed by the plaintiff.

E. SERVICE

The plaintiff's address for service is Level 37, Quay Quarter Tower, 50 Bridge Street, Sydney NSW 2000.

It is intended to serve a copy of this originating process on the Defendant.