Adverse Publicity Notice ordered by the Supreme Court of New South Wales

The Supreme Court of New South Wales has found that, between 3 October 2019 and 31 May 2024, in contravention of s 12DF(1) of the *Australian Securities and Investments Act 2001* (Cth), Fiducian Investment Management Services (**FIMS**), as the Responsible Entity of the Diversified Social Aspirations Fund (the **Fund**), made statements that were liable to mislead the public as to the nature and characteristics of financial services, in product disclosure statements (**PDS**s) for the Fund issued to clients and prospective clients.

These contraventions arose because the PDSs contained representations relating to certain “ethical” or “socially responsible” investment objectives of the Fund (**ESG Statements**) and that FIMS would routinely monitor the portfolio exposure of the Fund (including through underlying investments) in relation to alignment with the ESG Statements. In each case, FIMS did not have reasonable grounds for making the representations.

The Supreme Court of NSW has also found that, between 3 October 2019 and 31 May 2024, FIMS contravened s 601FC(1)(b) of the *Corporations Act 2001* (Cth) by failing to discharge its duties to act with the care and diligence that a reasonable person would exercise if they were a Responsible Entity in FIMS’s position in relation to the Fund. That contravention arose because of FIMS’s failure to:

- adequately monitor the Fund, including to review the securities or shareholdings of the underlying investments of the Fund to check for their alignment with the investment objectives of the Fund and the ESG Statements in the Fund’s PDSs; and
- take steps to either:
    - cause the investment objectives of the Fund to be amended to reflect alignment with the underlying investments;
    - review or amend the PDS to align with the representations in the PDS with the securities or shareholdings that the Fund was in fact invested in;
    - review the investment strategies of the underlying investments, including the Investment Screens applied by each of the underlying investments, for compliance with the Ethical investment objectives of the Fund, and the ESG Statements in the PDS.
    - change the underlying investments of the Fund.

On 11 August 2026, the Supreme Court of NSW ordered FIMS to pay a penalty of $7.3 million to the Commonwealth for its conduct.

FIMS admitted that it failed to discharge its duties as a Responsible Entity and contravened provisions prohibiting a person from making false or misleading representations. FIMS agreed to the penalty imposed by the Supreme Court. The Fund was closed on 30 May 2024.

FIMS has cooperated fully with ASIC in its investigation and in resolving the Proceeding. While the contravening conduct was not deliberate, it involved a lack of appropriate care.

For more information, read ASIC’s media release (26-191MR) Court orders Fiducian Investment Management Services to pay $7.3 million penalty over operation of ESG fund and the Court’s judgment In the matter of Fiducian Investment Management Services Pty Ltd - NSW Caselaw.

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