

Article Information

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ASIC takes investment management company Vanguard to court over allegations of greenwashing

The Australian Securities and Investments Commission (ASIC) has commenced civil penalty proceedings in the Federal Court against Vanguard Investments Australia (Vanguard) over allegations of greenwashing.

Background

In March this year ASIC launched greenwashing action against retail superannuation fund Mercer, alleging it misled members of its Sustainable Plus fund by claiming that fund excluded investments in “companies involved in carbon-intensive fossil fuels, alcohol production and gambling”. You can read about that action in our Insight article [here](#).

Following on from the action against Mercer, last month ASIC lodged civil penalty proceedings in the Federal Court against investment management company Vanguard, alleging misleading conduct in relation to claims about certain environmental, social and governance (ESG) exclusionary screens applied to investments in a Vanguard bond fund.

What ASIC has alleged

As at 23 February 2021, the total funds or assets under management of Vanguard’s Ethically Conscious Global Aggregate Bond Index Fund (Hedged) (**Fund**) was over \$1B. The Fund is a registered managed investment scheme, of which Vanguard is the Responsible Entity and the Investment Manager.

Vanguard’s marketing of its Fund included a focus on investors seeking securities with an ethically conscious screen. ASIC alleges that Vanguard made false and misleading statements and engaged in conduct liable to mislead the public in representing that all securities in the Fund were screened against certain ESG criteria.

Investments held in the Fund were based on an index called the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Index (**Index**) that Vanguard claimed in its Product Disclosure Statement that the Index excluded issuers of bonds with “significant business activities involving fossil fuels, alcohol, tobacco, gambling, military weapons and civilian firearms, nuclear power and adult entertainment”.

The ESG research was performed by MSCI ESG Research and provided to Bloomberg for use in the Index. However, ASIC alleges that the ESG research was not conducted over a significant proportion of the issuers of bonds in the Index, and therefore the Fund. The claim by ASIC focuses on whether investment screens were applied effectively by Vanguard with ASIC alleging that the Index and the Fund included issuers that violated the applicable ESG criteria that exposed investor funds to investments which had ties to fossil fuels, including those with activities linked to oil and gas exploration.

In bringing its claim, ASIC alleged Vanguard misled the public in

- its Product Disclosure Statement published between 7 August 2018 to 17 February 2021;
- a media release issued in August 2018;
- statements on its website;
- a statement made in an interview with Finance News Network; and
- statements made in a presentation at a Finance News Network Fund Manager Event.

ASIC Deputy Chair Sarah Court said “We consider that the screening and research undertaken on behalf of Vanguard was far more limited than that being promised to investors, and we consider this constitutes another example of

greenwashing”.

ASIC is seeking declarations and pecuniary penalties from the Court. ASIC is also seeking orders requiring Vanguard to publicise any contraventions found by the Court.

Key Takeaways

The most recent claim against Vanguard comes as ASIC has announced that action against greenwashing is one of ASIC’s 2023 Enforcement Priorities. In addition, the ACCC has also announced that it is prioritising consumer and fair-trading issues in relation to environmental and sustainability claims as part of its 2023 Compliance and Enforcement Priorities. You can find out more information on this in our Insight article [here](#).

To this end, ASIC has issued over \$140,000 in infringement notices in response to concerns about alleged greenwashing, including three against Vanguard in separate greenwashing conduct claims. ASIC’s most recent claim against Vanguard highlights the importance of a robust investment screening process to ensure investment portfolios comply with published representations.