ASIC’s recent greenwashing interventions

Report 763 | May 2023

About this report

This report outlines ASIC regulatory interventions made between 1 July 2022 and 31 March 2023 in relation to greenwashing concerns.

Contents

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Executive summary

Listed companies, managed funds and superannuation funds are increasingly making claims about their environmental, social and governance (ESG) credentials.

In response to this, and in line with our strategic priorities, we have expanded our surveillance and enforcement activities related to greenwashing. Our aim is to ensure compliance with the law, promote fair markets, and support transparent disclosure so that retail investors and financial consumers can make informed decisions.

The purpose of this report is to provide transparency to the market on the nature of the matters where we have recently intervened. We encourage issuers and advisers to consider this report when preparing disclosures.

Our surveillance activities

Since publishing Information Sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products* (INFO 271), we have undertaken both reactive and proactive surveillance in relation to greenwashing. Our work has covered disclosure documents, Product Disclosure Statements (PDSs), advertisements, websites and other market disclosures. More specifically, our work has included:

- a surveillance of the managed funds sector, including a review of the PDSs of 122 funds, and further consideration of the investment processes of 17 funds
- a surveillance of ESG-related disclosures in disclosure documents lodged with us by companies raising capital from retail investors, and
- responding to reports of misconduct and breach reports.

Greenwashing interventions

Where our recent surveillance work has identified concerns, including potential misleading marketing and/or greenwashing by entities, we have intervened to prevent harm to investors, consumers and market integrity, and to deter greenwashing misconduct.

Between 1 July 2022 and 31 March 2023, we achieved the following results:

23	total corrective disclosure outcomes
11	infringement notices issued
1	civil penalty proceeding commenced

In the managed funds sector, 14 responsible entities amended their disclosure in 21 PDSs and one fund's name was changed. In relation to listed companies, 9 entities amended disclosure documents, company websites or market announcements.

In this report we have provided examples of our regulatory interventions with reference to the following themes:

- net zero statements and targets
- use of terms such as 'carbon neutral', 'clean' or 'green'
- fund labels, and
- scope and application of investment exclusions and screens.

Looking ahead

Since its publication in June last year, INFO 271 has assisted product issuers to improve their disclosures and manage their risk of greenwashing. We will continue to encourage all product issuers and advisers to consider the questions and principles set out in INFO 271 and to keep up to date with both international and domestic developments in relation to sustainable finance.

We will continue to work towards achieving ASIC's strategic priorities over the course of 2023, focusing on identifying and preventing harm arising from misleading marketing and greenwashing.

We will be progressing our surveillance on the superannuation fund sector and the wholesale green bond market, and will continue our surveillance of the managed fund and corporate sectors.

We are continuing to investigate a number of entities in relation to suspected greenwashing and anticipate further enforcement action.

Where our surveillance work has identified concerns … **we have intervened to prevent harm** to investors, consumers and market integrity, **and to deter greenwashing misconduct**.

Net zero statements and targets

We identified net zero statements and targets, and claims of decarbonisation, that did not appear to have a reasonable basis, or were factually incorrect. These representations were identified across a range of disclosures, including prospectuses, websites and market announcements. Our interventions resulted in corrective disclosures (see examples below). We also issued three infringement notices to a listed company.

Examples of corrective disclosure outcomes

- An oil and gas company removed net zero emissions statements, including a target to achieve net zero emissions by 2050, from its prospectus. The company was unable to provide additional information about how the targets would be achieved and the potential feasibility of achieving them.
- A mining company provided clarification to the market, through a market announcement, about previous statements it had made about its commitment to maintain a zero carbon emissions footprint. The clarification included further detail about the remit of this statement, the steps that had been taken to date, expected timeframes and further detail about its offsetting strategy.
- A mining company removed ESG-related information on its website to ensure consistency with disclosure in its prospectus. The company's website included information about the benefits and emissions reductions associated with using a particular technology for mining, but the prospectus indicated that the company was only at the exploration phase. For this reason, the company decided to remove the content from its website rather than include it in the prospectus.

Infringement notices for net zero statements

We issued three infringement notices to listed energy company Black Mountain Energy Limited (BME) for statements contained in three ASX announcements.

The statements claimed that:

- BME was creating a natural gas development project ('Project Valhalla') with 'net-zero carbon emissions'
- the greenhouse gas emissions associated with Project Valhalla would be net zero.

We were concerned that BME either did not have a reasonable basis to make the representations, or that the representations were factually incorrect.

BME paid the infringement notices on 3 January 2023.

For more information, see Media Release (23-001MR) *ASIC issues infringement notices to energy company for greenwashing* (5 January 2023).

Note: Payment of an infringement notice is not an admission of guilt or liability.

Use of terms such as ‘carbon neutral’, ‘clean’ or ‘green’

We identified instances where entities described their operations, projects or products as ‘carbon neutral’, ‘clean’ or ‘green’ when there appeared to be no reasonable basis for these claims. These claims were identified in prospectuses, product disclosure statements and market announcements. After we raised concerns, companies made corrective disclosures (see examples below). We also issued four infringement notices to a listed company.

Examples of corrective disclosure outcomes

- A mining company qualified its ‘clean green’ claims in its prospectus. The company had not completed studies that assessed the feasibility of adopting renewable energy sources or other carbon abatement strategies that would be required to achieve a lower carbon footprint. The disclosure was amended to make clear that this was a future-focused aspiration only.
- An energy exploration company removed ‘clean energy’ claims from its prospectus. The company’s exploration activities were not sufficiently progressed to determine the viability of extracting ‘clean’ energy from its assets.
- A mining company provided, in a supplementary prospectus, more detailed information and context to the environmental and sustainability credentials of its ‘low-carbon’ processing technology.
- A mining company removed terms such as ‘high grade’, ‘low carbon’ and ‘responsibly sourced’ from its prospectus cover, website, investor presentations and other company disclosures. The company did not appear to have a reasonable basis for making these claims, given the early stage of its project.
- A company that manufactures and distributes Australian-made products removed or clarified statements in its prospectus that related to the sustainability-related characteristics of its products and the company’s sustainability practices as there did not appear to be reasonable grounds to make these statements.
- The responsible entity of a managed fund amended its PDS after ASIC raised concerns about the entity’s use of vague and insufficiently explained terms when describing its investment approach. Terms included ‘social diversity’, ‘robust sustainable practices’ and ‘protection of the planet’.
- The responsible entity of a managed fund removed vague claims from its PDS that its minerals were responsibly sourced. The entity also provided further explanation in its PDS about how its ore is refined in accordance with relevant standards.

Infringement notices for statements about carbon neutrality and 'clean' energy

We issued four infringement notices to listed energy company Tlou Energy Limited (Tlou) for statements and images contained in two ASX announcements. The representations conveyed that:

- electricity produced by Tlou would be 'carbon neutral'
- Tlou had environmental approval and the capability to generate certain quantities of electricity from solar power
- Tlou's gas-to-power project would be 'low emissions', and
- Tlou was equally concerned with producing 'clean energy' through the use of renewable sources as it was with developing its gas-to-power project.

We were concerned that Tlou either did not have a reasonable basis to make the representations, or that the representations were factually incorrect. Tlou paid the infringement notices on 25 October 2022.

For more information, see Media Release (22-294MR) *ASIC acts against greenwashing by energy company* (27 October 2022).

Note: Payment of an infringement notice is not an admission of guilt or liability.

Fund labels

We identified instances where financial products or managed funds were not 'true to label' – that is, the names of the products or funds included sustainability-related terms that were inconsistent with the funds' investments or the investment process described. In response to our concerns, one entity changed its fund name and another provided clarification in its PDS.

Examples of corrective disclosure outcomes

- The responsible entity of a managed fund deleted, from a fund name, references that suggested that the fund sought to transition away from carbon. The entity deleted the references after we raised concerns that the fund name was not consistent with some of its investments.
- The responsible entity of a managed fund provided more detailed disclosure in its PDS on how the fund's investment process aligned with its name, which included references to its ethical practices. It had not previously provided a proper explanation for its name in its PDS.

Scope and application of investment exclusions and screens

Investment screens are used to either include or exclude investments, such as shares, on the basis of certain characteristics or features.

We identified instances where we considered the scope or application of an investment screen or exclusion to be vague or overstated in a PDS or on associated websites for ESG-related financial products. We also observed instances where the investment screens were more limited in scope than the representations suggested, or applied in a way inconsistent with the description used. We also identified circumstances where stated investment exclusions were not complied with.

Examples of corrective disclosure outcomes

- The responsible entity of a managed fund amended a PDS to clarify the investment selection process. This amendment enabled investors to clearly understand which potential investments would be excluded from the fund due to generating revenue over a specified percentage from excluded activities (i.e. over the allowable materiality thresholds). The entity also provided more information on how claimed 'reputational risk of controversial factors' were taken into account in its investment process.
- The responsible entity of a managed fund amended its PDS to explain how it incorporated ESG considerations into its investment research process in circumstances where such considerations would have 'a material financial impact'. This included explaining the ESG considerations that they took into account and how they assessed these considerations when determining whether to include, retain or exclude investments. The responsible entity also replaced vague terms such as 'influence change' and 'poor sustainability characteristics' on its website with more detailed explanations.

Infringement notices for statements made about investment screening for a managed fund

We issued three infringement notices to investment manager Vanguard Investments Australia Ltd (Vanguard) regarding representations made in PDSs for the Vanguard International Shares Select Exclusions Index Fund.

We were concerned that the statements had the potential to mislead the public by overstating an investment screen that claimed to prevent investment in companies involved in the production, manufacturing or significant sales of tobacco. Vanguard, however, did not exclude companies involved in the sale of tobacco products.

Vanguard paid the infringement notices on 1 December 2022.

For more information, see Media Release (22-336MR) *ASIC issues infringement notices against investment manager for greenwashing* (2 December 2022).

Note: Payment of an infringement notice is not an admission of guilt or liability.

Infringement notice for statements made about investment screening for a superannuation product

We issued an infringement notice to superannuation trustee Diversa Trustees Limited (Diversa) for statements made on the website for one of its superannuation products, Cruelty Free Super.

We were concerned that the statements may have been false or misleading. The representations overstated investment screens that claimed to prevent investment in companies that were engaging in:

- 'polluting and carbon intensive activities'
- 'financing or support of activities which cause environmental or social harm', and
- 'poor corporate governance'.

While some investment screens were applied, they were more specific and implemented on a more limited basis than the website suggested.

Diversa paid the infringement notice on 22 December 2022.

For more information, see Media Release (22-379MR) *ASIC issues infringement notice against superannuation trustee for greenwashing* (23 December 2022).

Note: Payment of an infringement notice is not an admission of guilt or liability.

Civil penalty proceedings for misleading statements about investment exclusions

In February 2023, we commenced civil penalty proceedings against Mercer Superannuation (Australia) Limited (Mercer) for allegedly making misleading statements about the sustainable nature and characteristics of some of its superannuation investment options.

We are alleging that Mercer made statements on its website that its 'Sustainable Plus' investment options excluded investments in companies involved in carbon-intensive fossil fuels like thermal coal, as well as those involved in alcohol production and gambling. However, the Sustainable Plus options had investments in many companies that were involved in these industries.

Mercer's website statements had marketed the Sustainable Plus investment options as suitable for members who 'are deeply committed to sustainability'.

For more information, see Media Release (23-043MR) *ASIC launches first court proceedings alleging greenwashing* (28 February 2023).

Key terms and related information

Key terms

ASX	ASX Limited or the exchange market operated by ASX Limited
ESG	Environmental, social and governance
disclosure document	For an offer of securities, this includes a prospectus, a transaction-specific prospectus, a short-form prospectus, a two-part simple corporate bonds prospectus, a profile statement and an offer information statement per Chapter 6D of the *Corporations Act 2001*
infringement notice	An infringement notice issued under s12GX of the *Australian Securities and Investments Commission Act 2001*
investment screen	Investment screens are used to either include or exclude investments, such as shares, on the basis of certain characteristics or features. Positive screens seek investments that satisfy certain criteria, while negative screens exclude investments that don't meet certain criteria.
PDS	A Product Disclosure Statement – a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the *Corporations Act 2001* **Note:** See s761A for the exact definition.
sustainable finance	Refers to the process of incorporating ESG factors into financial decision-making

Related information

Headnotes

ESG, civil penalty proceedings, corrective disclosure, greenwashing, infringement notices, interventions, listed entities, sustainability

ASIC documents

22-294MR *ASIC acts against greenwashing by energy company*

22-336MR *ASIC issues infringement notices against investment manager for greenwashing*

22-379MR *ASIC issues infringement notice against superannuation trustee for greenwashing*

23-001MR *ASIC issues infringement notices to energy company for greenwashing*

23-043MR *ASIC launches first court proceedings alleging greenwashing*

ASIC Corporate Plan 2022–26: Focus 2022–23

ASIC Enforcement Priorities

INFO 271 *How to avoid greenwashing when offering or promoting sustainability-related products*