



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID563/2023

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

VANGUARD INVESTMENTS AUSTRALIA LTD ACN 072 881 086
Defendant

ORDER

JUDGE: Justice O'Bryan

DATE OF ORDER: 25 September 2024

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. The defendant pay an aggregate pecuniary penalty to the Commonwealth of \$12,900,000 in respect of its contraventions of ss 12DF and 12DB(1)(a) and (e) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) set out in the declarations made on 28 March 2024.
2. Pursuant to s 12GLB(1)(a) of the ASIC Act, within 30 days of this order, the defendant publish, at its own expense, a written adverse publicity notice (**Notice**) in the terms set out in the Annexure to these orders.
3. The defendant ensures that the Notice:
 - (a) is published on the following webpages maintained by it (the **Webpages**):
 - (i) <https://www.vanguard.com.au/personal/about-us/our-esg-approach/our-approach-to-esg>
 - (ii) <https://www.vanguard.com.au/personal/invest-with-us/etf?portId=8224>;
 - (iii) <https://www.vanguard.com.au/personal/invest-with-us/fund?portId=8136>;



- (iv) <https://www.vanguard.com.au/personal/invest-with-us/fund?portId=8135>;
 - (b) is maintained on the Webpages for 12 months from the date of these orders;
and
 - (c) appears immediately upon access by a person to the Webpages as a picture tile with the heading, "Notification of Misconduct by Vanguard".
4. The plaintiff pay the defendant's costs of and incidental to the hearing on 8 March 2024, and the defendant otherwise pay the plaintiff's costs of the proceeding.

Date orders authenticated: 25 September 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



ANNEXURE – ADVERSE PUBLICITY NOTICE

The Federal Court of Australia has ordered Vanguard Investments Australia Ltd (ACN 072 881 086) (**Vanguard**) to publish this notice.

Following action by the Australian Securities and Investments Commission (**ASIC**), on 25 September 2024, the Federal Court ordered Vanguard to pay a pecuniary penalty of \$12,900,000 for contravening Australia's financial services laws.

On 28 March 2024, the Court declared that Vanguard contravened these laws by making false or misleading statements about the Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged) (**Ethically Conscious Fund**) in:

- 12 Product Disclosure Statements (**PDSs**), which related to the AUD Hedged, NZD Hedged and ETF classes of the Ethically Conscious Fund;
- a media release;
- material on Vanguard's website;
- an interview that was published on YouTube; and
- a presentation that was given at a fund manager event and then published online.

By those statements, Vanguard represented that:

- the Ethically Conscious Fund offered an ethically conscious investment opportunity and it did this by seeking to track the return of an index;
- before being included in the index, and therefore the Ethically Conscious Fund, securities were researched and screened against applicable economic, social and governance (**ESG**) criteria; and
- securities that violated applicable ESG criteria were excluded or removed from the index and therefore from the Ethically Conscious Fund.

In the PDSs and on the website, the second and third representations were limited to securities issued by companies. In the other statements, those representations related to all securities.

These representations were false or misleading and liable to mislead the public for the following reasons.

- First, the research and screening for the index, and therefore for the Ethically Conscious Fund, had significant limitations:
 - not all issuers of securities that were included in the index were researched and screened against applicable ESG criteria; rather, only companies, and generally only publicly listed companies, were researched and screened against applicable ESG criteria;
 - for companies with multiple issuing entities that shared a particular stock exchange "ticker", ESG research was not conducted on each entity; rather, ESG research was only conducted for the company with the largest debt outstanding (by market value) and was applied to all other companies with the same "ticker"; and



- the fossil fuel screen, as in effect from 15 July 2020, did not cover companies that derived revenue from the transportation or exploration of thermal coal.
- Second, a significant proportion of securities in the index and the Ethically Conscious Fund were from issuers that were not researched or screened against applicable ESG criteria.
- Third, the index and the Ethically Conscious Fund included issuers that violated applicable ESG criteria, including ESG criteria regarding fossil fuels and alcohol. These issuers included, but were not limited to:
 - in the index: 39 issuers which collectively issued at least 144 securities; and
 - in the Ethically Conscious Fund: 12 issuers which collectively issued at least 23 securities.

Further Information

Vanguard's misconduct contravened the following financial services laws:

- section 12DB(1)(a) and (e) of the *Australian Securities and Investments Commission Act 2001* (Cth); and
- section 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth).

For further information about Vanguard's misconduct, see the following links:

- [statement of facts agreed between ASIC and Vanguard \[to be hyperlinked\]](#);
- [the Court's judgments against Vanguard on liability and penalty \[to be hyperlinked\]](#);
and
- [ASIC's media releases \[to be hyperlinked\]](#).