



ASIC
Australian Securities &
Investments Commission

M01682166

INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)*

Date of giving this notice: 3 November 2023

Unique identification code: M01682166

TO: Morningstar Investment Management Australia Limited
ACN 071 808 501

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**).
2. Payment for this infringement notice is due on 2 December 2023, being 28 days from the day after this notice is given, unless the time is extended, an arrangement is made for payment by instalments, or the notice is withdrawn.
3. ASIC has reasonable grounds to believe that Morningstar Investment Management Australia Limited (**Morningstar**) has contravened an infringement notice provision as follows.
4. From 31 May 2023 to 13 June 2023 (**Relevant Period**), Morningstar contravened section 12DF of the ASIC Act by, in trade or commerce, engaging in conduct that was liable to mislead the public as to the nature or the characteristics of the Morningstar International Shares (Unhedged) Fund (**Fund**).
5. Morningstar was the trustee and responsible entity of the Fund during the Relevant Period.
6. On 30 September 2022, Morningstar issued a Product Disclosure Statement (**PDS**) for the Fund, which incorporated Morningstar's ESG Policy of May 2022.
7. During the Relevant Period, the PDS stated the Fund may exclude "certain securities or sectors based on environmental, social or governance factors" as listed in Morningstar's ESG Policy.
8. Morningstar's ESG Policy is published on the Morningstar website and stated during the Relevant Period:

"The [Morningstar International Shares (Unhedged) Fund], will not have exposure to stocks that have controversial weapons exposure as determined by Sustainalytics (unless they are included as part of an equity index futures basket or as part of an exchange-traded fund exposure)." (Controversial Weapons Statement)
9. On 31 May 2023, Morningstar acquired securities for the Fund in **General Dynamics Corp** (13,700 units), **Leidos Holdings Inc** (23,600 units), **Northrop Grumman Corp** (11,000 units) and **Raytheon Technologies Corp** (12,400 units) (**May 2023 Investments**).
10. According to Sustainalytics, these entities are involved in controversial weapons as follows:
 - (a) General Dynamics is involved in the production of the key components of a nuclear weapon. The company also provides depleted uranium and white phosphorus ammunition;

- (b) Leidos Holdings is involved in maintenance and refurbishment of nuclear weapons, site operations management, information technology, engineering and supply chain management at nuclear weapons facilities;
- (c) Northrop Grumman is involved in the production of US nuclear weapons as well as the production of ammunition which utilises depleted uranium; and
- (d) Raytheon Technologies is involved in research and development activities for nuclear-capable missiles.

11. The May 2023 Investments were divested by Morningstar on 13 June 2023.
12. Because of the matters listed in paragraphs 5 - 11, the Controversial Weapons Statement made by Morningstar was liable to mislead the public regarding the nature or characteristics of the Fund during the Relevant Period, in contravention of section 12DF of the ASIC Act.

Amount payable under this notice

13. The amount payable under this notice in relation to the alleged contravention is \$16,500. This amount can be paid using the method detailed in the covering letter accompanying this notice.
14. The payment period for the notice will be 28 days, beginning on the day after this notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.
15. Morningstar may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.

Consequences of paying the amount payable under this notice

16. If Morningstar pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
 - (e) any liability of Morningstar for the alleged contravention is discharged;
 - (f) Morningstar will not be liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention of the infringement notice provision; and
 - (g) Morningstar will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
17. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of not paying the amount payable under this notice

18. Morningstar may choose not to pay the amount specified in this notice.
19. If Morningstar does not pay the amount specified in this notice within the time for payment mentioned above, and the notice is not withdrawn, Morningstar may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.
20. The maximum pecuniary penalty that a court may order Morningstar to pay for the alleged contravention is the greatest of:
 - a) \$13,750,000; and

- b) if the Court can determine the benefit derived and detriment avoided because of the contravention – that amount multiplied by 3; and
- c) either:
 - i. 10% of annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision;
 - ii. if the amount worked out under subparagraph (i) is greater than an amount equal to \$687.5 million - \$687.5 million.

21. The maximum criminal penalty that a court may order Morningstar to pay for the alleged contravention is \$2,750,000.

Applying for more time to pay the amount payable under this notice

22. ASIC may at its discretion extend the time to pay the amount payable under this notice if ASIC is satisfied that it is appropriate to do so.
23. If Morningstar wishes to apply for an extension of time to pay the amount specified in this notice, Morningstar must do so in writing within 28 days after the day the notice is issued (see paragraph 30).

Applying to pay the amount payable under the notice by instalment

24. ASIC may at its discretion make an arrangement for Morningstar to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.
25. If Morningstar wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, Morningstar must do so in writing within 28 days after the day the notice is issued to you (see paragraph 30).

Applying to have this notice withdrawn

26. Within 28 days after the day on which this notice is given, Morningstar may apply to have this notice withdrawn by making written representations to ASIC (see paragraph 30).

Withdrawal of this notice

27. ASIC may at its discretion, by written notice given to Morningstar, withdraw this notice if ASIC is satisfied that it is appropriate to do so, whether or not Morningstar has applied to have this notice withdrawn (**withdrawal notice**).
28. If the withdrawal notice is given after Morningstar has paid the amount specified in this notice, ASIC will refund to Morningstar the amount paid under the notice.
29. If the notice is withdrawn, then Morningstar may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention of the infringement notice provision.

Requirements for applications

30. An application to have this notice withdrawn, for more time to pay the amount payable under this notice or to pay by instalments:
- a) must be in writing;
 - b) must include the unique identification code set out at the top of this notice;
 - c) must include your reasons for making the application; and

d) may be made by forwarding your application to ASIC at the address in paragraph 31.

31. You may contact ASIC in relation to this notice by contacting:

Brendan Caridi
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
or by email: ACLInfringementNotices@asic.gov.au (please copy to Sophie.Cox@asic.gov.au)

Signature of delegate giving the notice

A handwritten signature in blue ink, appearing to be 'B. Caridi', written in a cursive style.

Brendan Caridi
as a delegate of the Australian Securities and Investments Commission