



ASIC
Australian Securities &
Investments Commission

ASIC's interventions on greenwashing misconduct: 2023–2024

Report 791 | August 2024

About this report

This report outlines ASIC's regulatory interventions made between 1 April 2023 and 30 June 2024 in relation to concerns about greenwashing claims and summarises the high-level findings, key recommendations and good practice examples identified from ASIC's greenwashing surveillance activities during the financial year 2023–2024.



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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

Sustainable finance and acting to reduce harm from greenwashing misconduct have been strategic priorities for ASIC since 2022.

Since then, we have supported market integrity and efficiency by supervising and enforcing governance and disclosure standards, while engaging closely on climate-related financial disclosure requirements.

Our greenwashing interventions

ASIC has a mandate to promote fair and efficient markets and confident and informed participation by investors in the financial system. When potential greenwashing misconduct is identified, we intervene to prevent harm to investors and consumers, and to maintain market integrity.

During the period 1 April 2023 to 30 June 2024, our interventions related to:

- › underlying investments that are inconsistent with disclosed ESG investment screens and investment policies,
- › sustainability-related claims made without reasonable grounds,
- › insufficient disclosure on the scope of ESG investment screens and investment methodologies, and
- › sustainability-related claims made without sufficient detail.

Over this period, we made the following interventions:

2	civil penalty proceedings commenced
1	civil penalty proceeding finalised
\$11.3m	in civil penalties imposed
8	infringement notices issued
37	corrective disclosure outcomes obtained

Note: We have included the Mercer Superannuation (Australia) Ltd case in the above statistics (following a liability and penalty hearing on 7 December 2023, the case was finalised on 2 August 2024 with an order to pay \$11.3 million in civil penalties) to ensure this report provides the most up-to-date information on matters that were substantively progressed over the reporting period.

These interventions were made across a range of sectors and entities, spanning listed companies, investment managers, superannuation trustees and responsible entities. Our actions have been commensurate with the seriousness of the conduct and the resulting levels of harm.

For a summary of the greenwashing interventions ASIC has made over the past two financial years, see Table 1.

Table 1: ASIC's greenwashing interventions for financial years 2022–2024

Greenwashing intervention	2022–2023	2023–2024	Totals
Civil penalty proceedings	1	2	3
Civil penalties	–	\$11.3m	\$11.3m
Infringement notices	11	8	19
Value of infringement notices paid	\$146,520	\$123,840	\$270,360
Corrective disclosure outcomes	26	34	60

Our surveillance activities

During the 2023–2024 financial year, ASIC undertook several surveillance activities to identify potential greenwashing misconduct. The sectors we covered included corporations, managed funds, superannuation funds and the wholesale green bond market.

We also continued to review the environmental, social and governance (ESG) disclosures (including prospectuses) lodged with us by companies raising capital from retail investors, and responded to reports of misconduct and breach reports.

These surveillance activities indicate that there remains room for improvement in relation to the quality of sustainability-related disclosures and governance practices. This report sets out the high-level findings as well as key recommendations and good practice examples, that emerged from these activities.

At a glance, our key recommendations are:

- › Entities disclosing climate-related metrics and targets voluntarily should consider and be informed by the disclosure requirements set out in the Australian Sustainability Reporting Standards (ASRS), once published. These standards have been designed in consultation with, and for the benefit of, the end users of this information and capture key details that will assist investor decision making.
- › Entities, including responsible entities and superannuation trustees, need to ensure that investments made by their managers or sub-managers are competently and independently verified as being consistent with the claims being made about the funds' sustainable investment strategies.
- › Entities, including superannuation trustees and responsible entities, should ensure they provide adequate explanations of investment exclusions or screening criteria, including in relation to any terms or thresholds used and whether screens are absolute or thresholds based.
- › Entities issuing green bonds or sustainability-linked loans should avoid ambiguity when disclosing potential use of proceeds and ensure disclosure aligns with any current intended use of proceeds.

Looking ahead

ASIC's greenwashing focus in a changing regulatory environment

We recognise the crucial role that Australian businesses and asset managers will play in helping to facilitate Australia's transition to net zero and the mobilisation of private capital to achieve this goal.

Investors can only make financial decisions based on the information available to them, which is why it is important that entities are prepared to disclose to the market the business plans and sustainability-related strategies they are pursuing. It is, however, equally important that these disclosures, when made, are well-founded, transparent and consistent with the actions being taken by the entity.

While the landscape for sustainability-related disclosures in Australia is undergoing significant change, we remain focused on supporting market integrity. ASIC will maintain current governance and disclosure standards and ensure that entities comply with their existing legal obligations, including the longstanding prohibition against misleading and deceptive conduct.

We will continue our focus on addressing greenwashing misconduct through surveillance and enforcement activities, and our continued supervision of carbon markets and the issuance of sustainable bonds.

We are currently investigating suspected greenwashing cases, with future enforcement action anticipated.

Key sustainable finance reforms and ASIC's role

Since the publication of Report 763 *ASIC's recent greenwashing interventions* ([REP 763](#)) on 10 May 2023, the International Sustainability

Standards Board (ISSB) has published its inaugural sustainability disclosure standards, and the Australian Government has proposed the introduction of a mandatory climate-related financial reporting regime.

In addition, under its [Sustainable Finance Roadmap](#) (PDF 1,168 KB), the Government is progressing a suite of initiatives which will contribute to reducing greenwashing misconduct in the Australian market. These include partnering with the Australian Sustainable Finance Institute to develop an Australian sustainable finance taxonomy and the proposed introduction of a sustainable investment product labelling regime. Together, these reforms will increase the transparency, comparability and consistency of sustainability-related disclosures and strengthen our ability to respond to misconduct.

ASIC's role will involve supporting the Government's implementation of the Sustainable Finance Roadmap through our participation in the Council of Financial Regulators' Climate Working Group.

Once implemented, ASIC will be responsible for the administration and enforcement of the new mandatory climate reporting regime. We will engage closely with industry as these new requirements roll out, to facilitate high quality climate reporting by large Australian business and financial institutions.

How can entities avoid greenwashing?

ASIC continues to encourage product issuers, company directors and advisers to improve the quality of sustainability-related disclosures and the data that underpins them.

Sustainability-related information should be based on reasonable grounds, use language that ensures sufficient understanding by investors, and be accurate and data-driven.

We encourage entities to consider the matters identified in both REP 763 and this report when preparing disclosures, and to undertake a review of any existing sustainability-related disclosures with these matters in mind.

Entities should also consider the guidance set out in Information Sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products* ([INFO 271](#)), which applies across sectors including to listed entities and entities issuing green bonds.

ASIC will support the transition to mandatory climate-related financial disclosures while ensuring governance and disclosure standards are upheld.

We will strategically act on greenwashing misconduct to protect investors and maintain market integrity.

ASIC's greenwashing interventions

Where greenwashing misconduct has been identified, ASIC has intervened to prevent harm to investors and consumers, and to maintain market integrity.

This section demonstrates the range of measures we have taken in response to greenwashing misconduct, which has included obtaining corrective disclosure, issuing infringement notices, and commencing civil penalty proceedings. Our actions are always commensurate with the seriousness of the conduct and the resulting level of harm.

Four broad areas of concern have emerged from the greenwashing interventions made over the reporting period:

- › underlying investments that are inconsistent with disclosed ESG investment screens and investment policies,
- › sustainability-related claims made without reasonable grounds,
- › insufficient disclosure on the scope of ESG investment screens and investment methodologies, and
- › sustainability-related claims made without sufficient detail.

We encourage entities to consider these areas of concern, as well as the types of issues identified in the subsequent examples, when preparing sustainability-related disclosures.

Underlying investments that are inconsistent with disclosed ESG investment screens and investment policies

The following examples represent cases where underlying investments were inconsistent with disclosed ESG investment screens and policies:

- › We observed instances of investment screens and methodologies being applied differently for indirect investments, as opposed to direct investments.
- › We identified instances where funds' underlying investments did not align with their disclosed ESG investment policies or screens.

We pursued civil penalty proceedings when we identified particularly serious instances of a mismatch between investments held and stated ESG investment screens and objectives. We issued four infringement notices to a responsible entity and investment manager for investments that did not match disclosed investment screens and policies.

Civil penalty proceedings for misleading statements about investment exclusions

ASIC won its first greenwashing civil penalty action against Vanguard Investments Australia Limited (Vanguard) in March 2024, after Vanguard admitted to engaging in conduct that was liable to mislead the public, and to making representations that were false or misleading.

Justice O'Bryan found that Vanguard contravened the ASIC Act numerous times when it made false or misleading representations – across a range of communications – about the ESG exclusionary screens applied to the Vanguard Ethically Conscious Global Aggregate Bond Index Fund (fund). Investments held by the fund were based on an index called the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Adjusted Index (index). Vanguard had claimed the index only excluded companies with

significant business activities in a range of industries, such as those involving fossil fuels, but admitted that a significant proportion of securities in the index, and in the fund, were from issuers that were not researched or screened against applicable ESG criteria.

The penalty hearing in the Vanguard matter was heard on 1 August 2024. The judgment was reserved.

For more information, see Media Release ([24-016MR](#)) *ASIC wins first greenwashing civil penalty action Vanguard* (28 March 2024).

Civil penalty proceedings for misleading statements about investment exclusions

In August 2023 we commenced civil penalty proceedings alleging misleading conduct and misrepresentations to the market by LGSS Pty Ltd as trustee for Local Government Super (Active Super).

In June 2024 the Federal Court found that Active Super had published misleading and deceptive representations and, from 1 February 2021 to 30 June 2023, Active Super invested in various securities it had claimed were eliminated or restricted by ESG investment screens. These securities were held by Active Super both directly and indirectly (via managed funds or ETFs).

Justice O'Callaghan found that the use of terms such as 'not invest', 'no way' and 'eliminate' (see **Figure 1**), were unequivocal and not the subject of any potential qualifications by Active Super's 'sustainable and responsible investment policy'.

His Honour stated, '*... if such a consumer was told, as they were told, that there was "no way" that LGSS [Active Super] would invest in tobacco or gambling, he or she would not search around for some investment policy that might qualify such statements.*'

The Court also disagreed with Active Super's argument that an ordinary and reasonable member 'would undoubtedly draw a distinction between holding shares in a company and indirect exposures through a pooled fund', and that 'they would appreciate that when LGSS makes statements about its investments, those statements are likely to be about matters LGSS

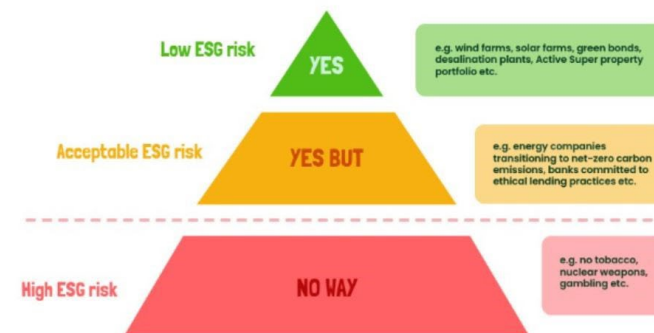
can control (for example, its direct holdings in companies) and not about matters LGSS cannot control (for example, its indirect exposure to companies via a pooled fund managed by a third party manager).'

His Honour stated that such a consumer would not draw that distinction, given the absence of disclosure within Active Super's Impact Reports, or on the website to suggest that such a distinction existed.

For more information, see Media Release ([24-121MR](#)) *Court finds Active Super made misleading ESG claims in a greenwashing action brought by ASIC* (5 June 2024).

Figure 1: Active Super promotional graphic, 'Are we in? Or out?'
Are we in? Or out?

Once assessed for both performance and ESG impact, companies generally fall into one of three categories. Then we decide whether to invest.



Note: See alt-text for the description of this figure

Civil penalty proceedings for misleading statements about investment exclusions

ASIC commenced its first greenwashing civil penalty proceedings in February 2023 alleging that Mercer Superannuation (Australia) Ltd (Mercer) had made misleading statements about its Sustainable Plus investment options, stating that it 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.

On 2 August 2024, the Federal Court ordered Mercer to pay an \$11.3 million penalty after it admitted it made misleading statements about the sustainable nature and characteristics of some of its superannuation investment options.

Justice Horan commented in that case that '*... it is vital that consumers in the financial services industry can have confidence in ESG claims made by providers of financial products and services ... Any misrepresentations in relation to ESG policies or practices associated with financial products or services, whether as an aspect of "greenwashing" practices or otherwise, undermines that confidence to the detriment of consumers and the industry generally.*'

For more information, see Media Release ([24-173MR](#)) *ASIC's first greenwashing case results in landmark \$11.3 million penalty for Mercer (2 August 2024)*.

Infringement notices for statements about investment screens

ASIC issued two infringement notices to Northern Trust Asset Management Australia Pty Ltd (Northern Trust), the investment manager of the NT World Green Transition Index Fund (fund). We alleged that representations about their carbon emissions exclusion screen were misleading, as the screen was not properly applied.

The PDSs of the Fund claimed to exclude companies that 'derive 5% or more of their total annual revenues (either reported or estimated) from thermal coal-based power generation' and have a score of 3 or 4 in the low carbon transition management score quartile. However, at least three companies were not excluded by MSCI, despite failing the low carbon transition management score quartile.

Northern Trust paid the infringement notices on 19 December 2023.

For more information, see Media Release ([23-344MR](#)) *ASIC issues infringement notices to Northern Trust Asset Management for greenwashing* (19 December 2023).

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

Infringement notices for statements about investment exclusions

ASIC issued two infringement notices to Morningstar Investment Management Australia Limited (Morningstar), the responsible entity of the Morningstar International Shares (Unhedged) Fund (MISF). We alleged that Morningstar exposed MISF investor funds to controversial weapons investments, contrary to Morningstar's ESG Policy, which stated that such investments would be excluded.

Further, the product disclosure statement (PDS) for the MSIF stated that it would apply exclusions in accordance with the ESG Policy.

Morningstar paid the infringement notices on 30 November 2023.

For more information, see Media Release ([23-324 MR](#)) *ASIC issues infringement notices to Morningstar for statements regarding exposure to weapon investments* (1 December 2023).

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

Sustainability-related claims made without reasonable grounds

We identified instances where sustainability-related claims, including claims about emissions profiles and environmental impacts, and statements about projected revenues and project status, did not appear to be based on reasonable grounds.

These representations were identified across a range of disclosures, including prospectuses, websites, promotional materials and market announcements. We issued three infringement notices, to a super fund promotor and a listed company, and obtained corrective disclosure outcomes.

Infringement notice for statements made about the positive environmental impact of a superannuation fund

ASIC issued an infringement notice in relation to a Facebook post, to Future Super Investment Services Pty Ltd (Future Super) the promoter of the Future Super Fund (operating under Diversa).

We alleged that the promotion overstated the positive environmental impact of the fund. The post included the statement, 'Naysayers don't join together and move nearly \$400 million out of fossil fuels', but at the time, Future Super's total funds under management was approximately \$400 million.

We were concerned there was no basis to represent that the entirety of those funds had been invested in fossil fuels prior to being invested in the fund.

Future Super paid the infringement notice on 27 April 2023.

For more information, see Media Release ([23-110MR](#)) *ASIC issues infringement notice to superannuation fund promoter for greenwashing* (2 May 2023).

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

Infringement notices for statements made about the progress of a listed company's reforestation project

ASIC issued two infringement notices to Fertoz Limited, an ASX listed entity specialising in fertiliser mining, manufacturing and supply.

We alleged that Fertoz made false and misleading statements in a presentation published on the ASX, by claiming that it would obtain an offtake partner, or receive funding for its reforestation project in the Philippines by the end of 2023, and begin planting the initial hectares in the respective area of the project in quarter 4, 2023.

At the time of the ASX publication, Fertoz had no funding partner or funding to progress its project.

Fertoz paid the infringement notices on 21 June 2024.

For more information, see Media Release ([24-133MR](#)) *ASX listed company pays two infringement notices for greenwashing in market announcements* (25 June 2024).

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

Examples of corrective disclosure outcomes

- › **Unfounded 'zero carbon' claim corrected** – A chemicals company stopped using the term 'zero carbon' because it was not possible to produce their product on a 'zero carbon' basis. References to the misused term were replaced with 'net zero carbon'.
- › **Unfounded 'negative carbon' claim removed** – A metals and mining company stopped using the term 'negative carbon' to describe the carbon footprint of one of its development projects, because the project did not involve carbon removal, which is central to the IPCC's definition of 'net negative greenhouse gas emissions'. The company clarified that its project was instead, 'net zero'.
- › **Scope of 'carbon neutral' claim clarified** – A metals and mining company corrected its website by amending wording from 'will' to 'intends to', clarifying that one of its exploration and development projects was not yet carbon neutral. While the company had obtained a certification for carbon neutral status, this did not encompass the mining project. As such, there were no reasonable grounds for the carbon neutral claim to be linked to that project.
- › **Carbon, capture and storage revenue projections retracted** – An energy company provided clarification to the market relating to the future revenue potential of its carbon, capture and storage project. A forward-looking statement about revenue potential was retracted because it relied significantly on prospective resource estimates. Prospective resource estimates are, by definition, a quantity of accessible undiscovered storage

resource estimates. Under the ASX's listing rules for traditional oil and gas companies, future revenue forecasts cannot be based on these estimates.

- › **Unsupported environmental claims removed** – A metals and mining company stopped making 'green' claims and representations that its processing plant was 'net zero' and 'carbon neutral.' The company had promoted its innovative processing technique as having a lower environmental footprint compared to traditional processing methods without disclosing test results or key underlying assumptions to support its claims.
- › **Sustainable operations claims withdrawn** – A metals and mining company retracted sustainability-related statements made in investor presentations that were not supported with reasonable grounds. The statements claimed that the company would establish environmentally friendly and sustainable processing facilities, as well as produce critical minerals in a sustainable manner to facilitate its energy transition. However, at the time the statements were made, the company's proposed technology to achieve this sustainable processing had not been proven for commercialisation.

Insufficient disclosure on the scope of ESG investment screens and investment methodologies

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

We observed instances where the scope of investment screens or investment methodologies was vague or ambiguous, with inadequate information disclosed for investors to understand the underlying criteria or any associated limitations, qualifications or exceptions.

These concerns were identified across a range of documents including PDSs and AIBs as well as on websites and in investment policy documents. We issued infringement notices to a trustee and responsible entity, and obtained corrective disclosure outcomes.

Infringement notice for statements made about investment exclusions

We issued an infringement notice to Melbourne Securities Corporation Limited (Melbourne Securities), the trustee and responsible entity of the Bloom Fund.

We alleged that Melbourne Securities engaged in misleading conduct, as numerous representations were made in the Bloom Fund's PDS about investments in activities that they sought to avoid, including fossil fuels. However, the Bloom Fund used revenue thresholds that allowed it to invest in companies that derived 33% revenue from excluded activities such as fossil fuels.

We contended that the revenue thresholds were not disclosed to investors and were contrary to representations in the PDS. ASIC believes that applying a negative screening process that allows a company to derive up to 33% of its revenue from an excluded activity is not seeking to avoid investments in those activities.

Melbourne Securities paid the infringement notice on 26 February 2024.

For more information, see Media Release ([24-029MR](#)) *ASIC issues infringement notice to Melbourne Securities for greenwashing* (28 February 2024).

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

Examples of corrective disclosure outcomes

- › **Investment screening processes clarified** – A responsible entity amended its PDS and AIB to explain how it determined whether a company had 'dominant exposure' to a prohibited business activity, and the acceptable levels of revenue exposure tolerated, before excluding a company under these criteria – noting that specific thresholds did not apply. Additional clarification covered how the fund assessed for alignment with certain 'sustainable investment themes', including the criteria and other factors applied, and how frequently alignment with these themes was reviewed. It was made explicit that the factors listed were not exhaustive and that, while there was no specific threshold for revenue alignment, an internal threshold was used. The amendments also disclosed how the responsible entity determined other criteria under the screen, such as including when a company was making a 'meaningful positive contribution' to one of the sustainable investment themes. In addition, the responsible entity disclosed a summary of its engagement program, including the forms and frequency of engagement, the outcomes sought and how progress was monitored and reported.
- › **ESG scoring process explained** – A responsible entity for a fund amended its PDS and the incorporated AIB to disclose how ESG scoring metrics were integrated as part of fund selection and in investment screening criteria. Additional detail was provided about assigning ESG scores, and how they were derived and applied.
- › **Fund's exposure to fossil fuels clarified** – A superannuation fund promoter updated its marketing materials, including social media accounts, to clarify its investments in fossil fuels. There was concern that the promotions attempted to mislead consumers by representing that the fund had no fossil fuel exposure at all (either directly or indirectly) when, in fact, the fund did have indirect exposure to fossil fuels.
- › **Sustainability-related considerations explained** – A responsible entity for a fund amended its PDS, website and responsible investment policy to provide a more detailed explanation about how sustainability-related considerations were factored into the investment process and disclosed a list of pre-defined investment exclusions. In an online statement and within the responsible investment policy, the responsible entity clearly advised that not all funds under management incorporate ESG considerations in the same manner. It also clarified the sustainability-related considerations factored into its investment process.
- › **Disclosure on the application of screens and approach to achieve ESG objectives refined** – A superannuation trustee amended its website about its approach to ESG at both the fund and investment option level. Its investment guide was improved to explain how investment screens are applied in its ESG focused investment options, and to outline how the trustee engages with its investment managers to achieve ESG objectives.
- › **Additional disclosure on fund's use of negative screening provided** – A responsible entity for a fund amended its website, PDS and other documentation to provide greater consistency of disclosure on the fund's use of negative screening to exclude investments in tobacco and controversial weapons. The responsible entity added disclosures about the scope of its negative screens, the limitations of ESG integration across its multi-asset and multi-manager products (identifying where restrictions do not apply, i.e. indirect holdings, cash, sovereign bonds, exchange traded funds and derivatives) and its discretion in the application of screens to underlying funds.

- › **Investment processes explained** – A responsible entity amended its PDS and reference guide with explanations about its sustainable investment process. It added details about negative screening methods, including thresholds, the positive screening process for choosing underlying investments and how it reviewed investment performance. The responsible entity disclosed further investment risks relating to sustainable investments and the use of screens. In addition, the responsible entity improved vague and undefined terms – such as when a company is ‘involved in’ activities and how a company ‘contributes towards advancing’ one or more of the UN Sustainable Development Goals – and provided greater clarity about the types of securities the fund could hold.
- › **Sustainability disclosures improved** – A superannuation trustee amended its online sustainability-related disclosures to clarify its approach to investment screening, including how it applied positive and negative investment screens. It updated its online sustainability-related information to align with the current PDS and investment guide, which was separately amended to further clarify definitions, excluded activities or industries, exclusion thresholds and source data used.
- › **Investment screening criteria amended** – A superannuation trustee updated its website, ESG policy and investment guide with clarifications and better consistency about its investment screening criteria. The ESG policy was also edited to better explain how the policy would be applied.
- › **Overstated emphasis on ethical investment approach corrected** – A responsible entity for a fund that had appeared to overstate the extent to which its ethical investment policy was able to be implemented given the nature of the fund’s investment strategy (as a cash fund), amended its PDS, AIB and the policy to address this issue.

Further explanation was provided about how ESG factors were integrated into its investment process.

- › **Fund screening methods published online** – A superannuation fund promoter amended its website and PDS with more easily accessible details about its negative screening process. Prior to the changes, consumers had to contact the fund directly to obtain the information required to understand the extent of the application of the negative screens. This was not only time-consuming and inconvenient, but inconsistent with the fund’s ESG marketing statements promoting a ‘transparent’ fund.

Sustainability-related claims made without sufficient detail

We observed instances where investors were not provided with the information required to understand the context, status or scope of various sustainability-related claims and initiatives. This extended to claims by responsible entities and superannuation trustees about the weight placed on sustainability-related factors.

A lack of sufficient information often coincided with the use of vague terminology and undefined terms. These representations were identified across a range of disclosure types, including prospectuses, scheme booklets, PDSs, websites and other promotional materials. Our interventions involved obtaining corrective disclosure outcomes.

Examples of corrective disclosure outcomes

- › **Further detail on sustainability initiatives disclosed** – A metals and mining company provided further disclosure in a replacement prospectus to explain the company's initiatives to reduce operational power consumption and manage its carbon emissions. The amended disclosure specified the actions the company had taken in support of those initiatives, such as the use of solar power, and the company's intention to employ a system to collect and report on carbon emission data.
- › **Carbon emission statement supported** – A metals and mining company issued a supplementary prospectus disclosing further information and context to support the sustainability-related claims made in its original prospectus. The supplementary prospectus provided additional detail in relation to statements made about the company's use of renewable energy and the absence of hazardous chemicals used in its production processes. The company also provided additional disclosure to clarify how its products contributed to lower carbon emissions.
- › **Greater clarity, consistency and detail in sustainability-related claims provided** – A responsible entity amended its PDS and website, and issued a new guide on its investment process, to address the lack of clarity, consistency and detail on its sustainability-related claims and investment processes. It had previously used undefined terms and made ambiguous financial promises and claims about its funds' environmental and social impacts without any corresponding detail or objective measures. The responsible entity had also made broad claims in its PDS and AIB that were subject to qualifications disclosed outside of these documents. Separately, the group had published an advertisement comparing the sustainability-related impact of an investor staying with their current fund to one switching to a sustainability-based superannuation fund. The comparison did not appear to be supported by reasonable assumptions and was removed from the campaign.
- › **Clarification on fund product label provided** – A responsible entity amended both its PDS (for one fund) and AIB (for multiple funds) to clarify that a reference to 'Leaders' in the fund's product label was not a reference to it being a leader in sustainability-related

practices. The responsible entity provided further explanation about how two framework indicators were applied in its investment process, and how sustainability-related factors were integrated when assessing investments. Vague terminology was removed or amended.

- › **Further detail on the impact of bidder's climate-related strategy disclosed** – A metals and mining company made additional disclosures in its draft scheme booklet to better explain the bidder's climate-related strategy. The updates included detailing how the bidder's sustainability targets would facilitate the company's reduction of greenhouse gas emissions. Revisions to the booklet also explained how the bidder's sustainability-related policies enabled it to achieve a competitive advantage over the long term. Further disclosures provided in the booklet ensured that other sustainability-related statements were supported by reasonable grounds.
- › **Further detail on the application of ESG factors in investment decision-making provided** – A responsible entity amended its PDS, reference guide and website to clarify the importance placed on ESG factors and include details about the investment manager's approach to considering ESG, when making investment decisions. The amended disclosure clarified that the investment manager took account of ESG factors as a risk when making investment decisions, did not adopt a predetermined view about what amounted to an ESG factor and did not use any particular external benchmarks when considering ESG factors. Undefined terms were removed or amended, and the PDS and reference guide were updated to incorporate direct website links for additional disclosures.
- › **ESG risk assessment method explained** – A superannuation trustee amended its website to provide further information about the

trustee's approach to managing ESG risks. The update identified the issues of concern and explained how the trustee engages with its external investment manager on ESG risks. Website disclosure was also improved by adding supporting statements for ESG-related claims, and to ensure all sustainability-related information and policies were up-to-date, clear and accessible.

- › **ESG risk management approach clarified** – A superannuation trustee amended its website to clarify its approach to managing ESG risks. It updated statements about the fund's impact on sustainability goals to include greater clarity about the fund's aspirations and examples of progress towards these goals. The trustee also improved disclosure related to net zero targets and improved online access to its ESG policies.
- › **Outdated claims amended** – A superannuation trustee updated its website to replace outdated claims about its approach to sustainable investing with clear and consistent statements about its current approach. The trustee refined its disclosure about how investment screens were applied and improved online access to sustainability-related documents. It also removed statements that may have created an impression that the trustee actively considered ESG factors, when this was an overstatement of its approach.
- › **Approach to consideration of ESG factors clarified** – A superannuation trustee amended its website and investment guide to clarify that ESG factors are not considered as part of the investment decision-making process. This included removing outdated statements that were inconsistent with this position.

ASIC's greenwashing surveillance activities and findings

Over the course of the 2023–2024 financial year, ASIC conducted a range of surveillance activities focusing on sustainability-related disclosure and governance practices of listed companies, managed funds and superannuation funds.

Our surveillances looked at:

- › voluntary Taskforce on Climate-related Financial Disclosure (TCFD) reporting by very large, listed companies,
- › sustainability-related representations made by listed companies outside of the ASX 200, including 'net zero', 'carbon negative' and other climate-related claims,
- › the governance practices and processes adopted by responsible entities of ESG funds, and
- › the sustainability-related disclosures made by superannuation trustees.

This section provides a summary of our surveillances and an overview of the work we undertook in relation to the licensing and supervision of carbon markets and intermediaries and the issuance of wholesale green bonds.

We encourage listed entities to consider the high-level findings, key recommendations and good practice examples set out in the following section when preparing and reviewing sustainability-related disclosures, particularly when disclosing climate-related claims and targets.

Asset managers should consider these high-level findings, key recommendations and good practice examples when making

representations about an investment product's sustainable features and ensure the delivery of those representations.

While our findings and recommendations have emerged from sector-specific surveillance projects, they have relevance across the wider asset management industry. For example, entities operating in either of the managed fund or superannuation fund sector should carefully consider the findings and recommendations identified from both surveillances conducted on responsible entities and superannuation trustees.

Listed companies

Surveillances were conducted to review the sustainability and climate-related disclosures made to investors by a range of ASX-listed companies, including but not limited to reviews of annual and sustainability reports, investor presentations and market announcements.

The purpose of these surveillances was to test compliance with the law, identify potential greenwashing misconduct and gain a broader understanding of the current quality of climate-related disclosures and governance practices.

We looked at voluntary TCFD reporting of a selection of very large, listed companies and, while areas for improvement were observed, we did not identify any concerns about misleading or deceptive disclosure. Our findings from this surveillance project will be used to inform our ongoing work to support the introduction and administration of the mandatory climate-related financial disclosure regime, which will apply to these large companies first.

We also looked at the sustainability-related representations made by small cap listed companies outside of the ASX 200, with a focus on the corporate disclosures of entities that were making specific climate-related claims such as 'net zero' and 'carbon negative'.

Key recommendation

When disclosing climate-related metrics and targets voluntarily, entities should consider the relevant disclosure requirements set out in the Australian Sustainability Reporting Standards.

- › Any entity making voluntary climate-related disclosures about climate-related metrics and targets should consider and be

informed by the disclosure requirements set out in the Australian Sustainability Reporting Standards (ASRS), once published.

- › The disclosure requirements set out in these standards have been designed in consultation with, and for the benefit of, the end users of this information. They therefore capture key details that will assist investor decision making.
- › ASIC encourages entities to consider and be informed by the relevant paragraphs of the ASRS, which contain the information required for an investor to understand and assess climate-related metrics and targets.

Key findings

We identified the following common disclosure concerns across the sample of small cap, listed companies reviewed, including:

- › Inconsistent and interchangeable use of key terms in corporate disclosures such as 'zero emissions', 'net zero emissions' and 'carbon neutral'. Investor comprehension is not supported by this practice. Entities should ensure that they have a clear understanding of the meaning of sustainability terms used and that this meaning is clearly explained to investors.
- › Key inputs, assumptions and contingencies used for climate-related statements were not always sufficiently disclosed. Information received by the market often lacked the necessary detail for investors to properly assess the economic and commercial viability of claims and any progress made towards meeting them.
- › Mixed practices in the approaches taken when accounting for carbon emissions, particularly when making climate-related claims. This made it difficult for investors to assess and compare claims and

often had the potential to confuse and obfuscate an entity's carbon footprint.

- › Climate-related claims that were not appropriately framed or were afforded a level of prominence that did not appear to align with the level of priority the company had placed on pursuing the climate target. For example, high prominence climate-related claims that were not supported by appropriate levels of expenditure and capital investment or by well-progressed plans and feasibility studies.

Good practice example: Disclosing progress against climate targets

An ASX listed company clearly and effectively disclosed their progress towards achieving their stated climate targets in their annual sustainability report.

The company provided a snapshot overview using a table setting out the stated target, including the time frame of the target, and details of the progress made against each of these targets, including relevant metrics, for both that financial year, as well as overall. A rating was provided on each target indicating whether progress was on track or not.

Responsible entities

ASIC conducted a surveillance into sustainable fund governance with the purpose of testing compliance with responsible entities' existing obligations. The focus was on the adequacy of governance arrangements relating to the implementation of the registered funds' sustainable investment strategies, as set out in representations made to investors.

There were two phases to the surveillance. Phase one commenced with a review of what constituted reasonable governance practices, based on existing ASIC guidance, published standards and reports, and existing industry practices and expectations. We met with a number of agencies that rate sustainable funds, as well as asset consultants and peak bodies. We then met with the responsible entities of a number of funds before selecting six to progress to phase two for a more detailed surveillance.

The six actively managed, sustainable strategy funds selected for phase two, included funds that are internally managed by the responsible entity and those where portfolio management was outsourced to external investment managers. The investment strategies in our selection covered fixed income, diversified assets, and equity funds. Some were directly invested in underlying companies or financial products and others gained much or all of their investment exposure by investing in other sustainable funds. In aggregate, the value of assets under management across the six funds was approximately \$650 million.

Key recommendation

Verify investments for consistency against disclosed investment strategies.

- › Entities, including responsible entities and superannuation trustees, need to take adequate steps to ensure investments made by their managers or sub-managers are competently and independently verified as being consistent with the claims made about the funds' sustainable strategies.
- › These reviews may be completed internally by an independent compliance or risk function, or by using a third party that is independent of the investment manager.

Key findings

Our surveillance of the governance practices of responsible entities identified several areas needing improvement. The following inadequate practices by some or all of the responsible entities were observed:

- › Not independently verifying that investments made on behalf of funds with sustainable investment strategies were consistent with those funds' stated strategies.
- › Not checking that the mandates of sub-funds aligned with the head fund's sustainable investment strategy. This was most obvious in the case of stated exclusions from portfolios of investments where the activities of companies or product issuers had exposure (often above a certain materiality threshold) to certain activities (e.g. production of tobacco, fossil fuel extraction and human rights abuses).

- › Over-reliance on investment managers' periodic attestations that their investing conformed with a fund's stated sustainable investment strategies and/or investment restrictions, as laid down in those investment managers' appointment agreements.
- › Reliance on traditional compliance and risk controls without assessing their utility in the sustainable investing context (e.g. investment mandate monitoring by fund administrators or custodians that did not take account of sustainable investment objectives).
- › Not ensuring that descriptions of a fund's investment strategy were consistent across its product disclosure document, investment management agreement, website and the investment manager's published sustainable investment policy.
- › Not periodically testing the efficacy of compliance and risk framework controls to ensure that sustainable investment strategies were being effectively implemented, and not updating those controls as a fund's sustainable investment strategies evolved.
- › Not checking that all the claimed elements of sustainable funds' strategies (including stewardship) were being implemented.
- › Not keeping adequate records of the operation of relevant compliance and risk controls.
- › Officers of responsible entities overseeing funds with sustainable strategies (particularly those with day-to-day oversight responsibility) having little or no expertise, qualifications or training in sustainable investing. We also encountered instances of investment managers claiming their assessments of the sustainable merits of investments involved use of a 'proprietary methodology' or used a 'qualitative approach'. Responsible entities cannot effectively supervise a strategy they do not understand or cannot independently test.

The investment governance obligations of responsible entities to adequately oversee the implementation of representations made about their funds' investment strategies are set out in the *Corporations Act 2001* and explained in long-standing ASIC regulatory guidance.

Development of sustainable investment strategies does, however, oblige responsible entities to consider if their established risk and compliance frameworks adequately manage the specific risk and compliance challenges these strategies present.

Superannuation trustees

Surveillances were conducted to review sustainability and climate-related disclosures made by a sample of 20 small-to-medium superannuation funds that had not previously been involved in any ASIC sustainability-related surveillances. The purpose was to consider, at a high level, how well smaller trustees' public websites aligned with ASIC's guidance on avoiding greenwashing, particularly in [INFO 271](#).

Our reviews also used externally sourced data to test trustees' claims and screens against actual portfolio holdings, and to support regulatory action, obtain improved disclosure, or both, where necessary.

Key recommendation

Provide adequate explanations of investment exclusions or screening criteria.

- › We encourage entities, including superannuation trustees and responsible entities, to ensure they provide adequate explanations of exclusions or screening criteria.
- › This includes explaining any terms used in screens or thresholds that may be vague, ambiguous or have differing accepted definitions, and clearly indicating whether screens are absolute or threshold based.

Key findings

We identified areas where improved disclosure by superannuation trustees was necessary. Of the funds that made sustainability claims or used investment screens, almost all required an uplift in at least one area of their disclosure, and at least one may attract future action by ASIC.

Common disclosure concerns among the sample of trustees included:

- › Use of vague terminology when making claims, for example, trustees made statements relating to certain kinds of investments, such as 'we aim to avoid', or 'where practicable, we avoid'. We encourage trustees to use precise language and to substantiate claims with sufficient details for fund members to gauge how investment decisions are made.
- › Instances where information about the nature of funds' engagements with companies on ESG issues was spread across external webpages and the websites of other entities in the same financial group, and instances of imprecise claims around proxy voting and direct engagement practices. We encourage trustees to ensure there is easy access to relevant information and disclosures on their website to support investors' decision making. Additionally, and as with any other claims, we expect trustees to fully substantiate claims made about proxy voting or direct engagement.
- › Unsubstantiated representations or insufficient detail on investments held, including those held through externally managed investment options, a pooled fund, or both. Even when relying on external investment managers, trustees should consider the clarity and level of information provided, and clearly explain how any sustainability-related representations made on their websites can be substantiated.
- › Concerningly, a small number of superannuation funds held investments in companies that appeared to be breaching their own investment exclusion criteria. This may result in further regulatory action by ASIC. Ensuring there is consistency between policies, practice and disclosure is the best way to avoid being misleading, and we encourage trustees to refer to INFO 271 for further guidance.

Good practice example: Disclosing proxy voting and engagement

A superannuation trustee made references about being an active owner and often meeting directly with investee companies. The trustee provided clear information on its website to support its claim, including a climate change report that effectively disclosed its approach to engagement and proxy voting.

The trustee provided a case study outlining its interactions with a company that the super fund had invested in. On its website, the trustee mentioned the number of engagements with the company, the type of feedback provided, the type of general meeting resolutions voted on and whether it was in direct engagement or collaboration with non-profit organisations that specialise in providing ESG-related research and advocacy.

Carbon markets and sustainability bonds

ASIC's approach to carbon markets regulation is focused on transparency, integrity, and accessibility. Throughout the 2023–2024 financial year, we engaged with key carbon market stakeholders to ensure the trading of carbon products was conducted efficiently, fairly, and honestly. Our surveillances of carbon derivative sales and trading included reviewing the adequacy of the compliance arrangements governing such activities.

We will continue to monitor market activities and development in carbon market infrastructure to address potential misconduct and identify areas that require regulatory intervention.

Our ongoing surveillance of the wholesale green bond market involved engagement with second party opinion (SPO) and ESG ratings providers, as well as green bond buy-side and sell-side market participants. This work helped us to understand current market practice and potential risks. We also conducted surveillances on green bond issuances.

We found that financial product issuers are increasingly seeking independent SPOs on the alignment of their financing instrument, program, or framework with industry-accepted, sustainability-based principles. As the regulatory landscape is evolving, we have issued a two-year class no-action position in relation to the requirement for SPO providers to hold an Australian financial services licence where the SPO is given in connection with an offer of financial products. The no-action position relates to offers to wholesale clients only, where certain other conditions are met.

No greenwashing misconduct was identified from our surveillance of wholesale green bond issuances. However, areas for future focus were identified, particularly in relation to disclosure, which we will continue to consider.

Key recommendation

Avoid ambiguity when disclosing potential use of proceeds to be raised under a green bond and ensure disclosure aligns with any current intended use of proceeds

- › Entities issuing green bonds or sustainability-linked loans should ensure they do not potentially mislead investors about their plans for allocating proceeds by using vague wording in their disclosures.
- › Disclosures should be clear and identify whether any specific projects or assets are intended to be financed and should not imply a greater range of projects will be financed than is actually intended.

Key terms and related information

Key terms

AIB	Additional Information Booklet
ASRS	The Australian Sustainability Reporting Standards – the sustainability standards being developed by the Australian Accounting Standards Board
ASX	ASX Limited or the exchange market operated by the ASX Limited
ESG	Environmental, social and governance
infringement notice	An infringement notice issued under s12GX of the <i>Australian Securities and Investments Commission Act 2001</i>
IPCC	Intergovernmental Panel on Climate Change
ISSB	International Sustainability Standards Board
PDS	Product Disclosure Statement
sustainable finance	Refers to the process of incorporating ESG factors into financial decision-making
TCFD	The Taskforce on Climate-related Financial Disclosures
SPO	Second Party Opinion

Related information

Headnotes

ESG, civil penalty proceedings, climate-related financial disclosures, corrective disclosure, greenwashing, infringement notices, interventions, listed entities, responsible entities, superannuation trustees, sustainability

Key domestic and international developments

[Australian Government's Sustainable Finance Roadmap](#) (June 2024)

[IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information](#)

[IFRS S2 Climate-related Disclosures](#)

ASIC documents

[23-110MR](#) ASIC issues infringement notice to superannuation fund promotor for greenwashing (2 May 2023)

[23-196MR](#) ASIC commences greenwashing case against Vanguard Investments Australia (25 July 2023)

[23-215MR](#) ASIC commences greenwashing case against Active Super (11 August 2023)

[23-324MR](#) ASIC issues infringement notices to Morningstar for statements regarding exposure to weapon investments (1 December 2023)

[23-344MR](#) ASIC issues infringement notices to Northern Trust Asset Management for greenwashing (19 December 2023)

[24-029MR](#) ASIC issues infringement notice to Melbourne Securities for greenwashing (28 February 2024)

[24-061MR](#) ASIC wins first greenwashing civil penalty action against Vanguard (28 March 2024)

[24-121MR](#) Court finds Active Super made misleading ESG claims in a greenwashing action brought by ASIC (5 June 2024)

[24-133MR](#) ASX listed company pays two infringement notices for greenwashing in market announcements (25 June 2024)

[24-173MR](#) ASIC's first greenwashing case results in landmark \$11.3 million penalty for Mercer (2 August 2024)

[ASIC Corporate Plan 2023-2027: Focus 2023-24](#)

[ASIC Enforcement Priorities](#)

[ASIC grants class no-action position to second party opinion providers](#)
(14 June 2024)

[INFO 271](#) How to avoid greenwashing when offering or promoting sustainability-related products (June 2022)

[REP 763](#) ASIC's recent greenwashing interventions (May 2023)