



ASIC
Australian Securities &
Investments Commission



S02535567

INFRINGEMENT NOTICE

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

Date of giving this notice: 23 November 2023

Unique identification code: S02535567

TO: Northern Trust Asset Management Australia Pty Ltd (ACN 648 476 019)

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Northern Trust Asset Management Australia Pty Ltd (**NTAMA**) has contravened an infringement notice provision by its conduct in the period 12 May 2023 to 28 July 2023 (**Relevant Period**) as follows:
 - (a) Equity Trustees Limited (ACN 004 031 298) (**ETL**) is the trustee and responsible entity of the NT World Green Transition Index Fund ARSN 643 079 930 (**Fund**).
 - (b) NTAMA is the investment manager of the Fund. It had responsibility for investing and managing the Fund's assets and promoting the Fund.
 - (c) ETL issued a Product Disclosure Statement dated 22 November 2022 (**PDS**).
 - (d) NTAMA made the PDS available to the public on a website it hosted relating to the Fund at all times during the Relevant Period.
 - (e) The PDS contained the following statements:
 - a. *The Fund is an index tracking fund which seeks to match the risk and return characteristics of a Northern Trust designed climate ESG index methodology, the MSCI World Custom ESG Climate Series A Index ("the Index") by buying all or most of the stocks of the Index. The Index has been designed in collaboration with MSCI.*
The Index, by using the MSCI World Index ("Parent Index") as its universe, captures large and mid-cap representation across Developed Markets as the portfolio's investable universe and provides investors with market exposure consistent with stated ESG and climate change criteria...¹
 - b. *The exact calculation method is available in the MSCI methodology document MSCI Custom ESG Climate Series A Index.²*
 - c. *The Index is calculated and screened by MSCI based on predetermined and objective ESG criteria chosen by the Investment Manager. Using the Parent Index as its universe, which captures large and mid-cap representations across Developed Markets, it then*
 - i. *excludes certain companies not considered to meet sustainability principles,*

¹ PDS, page 3.

² PDS, page 3.

- ii. *applies certain fossil fuel exclusions plus a low carbon screen and a nuclear energy screen to minimise current and potential exposure to carbon emissions as well as to reduce exposure to other risks; and...*³
- (f) By publishing the statements in the PDS on its website, NTAMA represented that the Fund would hold all or most of the stocks in the customised "MSCI World Custom ESG Climate Series A Index" (**Index**), which was based on the MSCI World Index (**Parent Index**) but excluded companies in the Parent Index by the application of specific ESG criteria or screens selected by NTAMA, (including a "low carbon screen"), the details of which were set out in the MSCI methodology document MSCI World Custom ESG Climate Series A Index (**Representation**).
- (g) The MSCI methodology document for the MSCI World Custom ESG Climate Series A Index (**Index Methodology**) is and was made available to the public on MSCI Inc's website. The Index Methodology describes how the 'Carbon Emission Exclusions' were to be applied to the Fund, including that "*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 4 or less in low carbon transition management or a score of 3 or 4 in low carbon transition management score quartile are excluded from the Eligible Universe*".
- (h) Companies were not screened and excluded from the Fund on the basis that they had they derived 5% or more of their total annual revenues from thermal coal based power generation and had a score of 3 in carbon transition management quartile during the Relevant Period.
- (i) During the Relevant Period the Fund held securities in certain companies contrary to the Carbon Emission Exclusions screen in the Index Methodology, including:
 - a. DTE Energy;
 - b. NiSource; and
 - c. Power Assets Holdings.
- (j) The Representation was therefore liable to mislead the public as to the application of the Index Methodology and exclusion of certain securities from the Fund during the Relevant Period.
- (k) By making the PDS available on its website during the Relevant Period and making the Representation, NTAMA engaged in conduct, in trade or commerce, that was liable to mislead the public as to the nature or characteristics of financial services, being interests in the Fund in contravention of section 12DF of the ASIC Act.

Amount payable under this notice

3. 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.
4. 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.

³ PDS, page 5.

5. NTAMA 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

6. If NTAMA pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
 - (a) any liability of NTAMA for the alleged contravention is discharged;
 - (b) NTAMA 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
 - (c) NTAMA will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.
7. 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

8. NTAMA may choose not to pay the amount specified in this notice.
9. If NTAMA does not pay the amount specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, then NTAMA 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.
10. The maximum pecuniary penalty that a court may order NTAMA 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 \$687,500,000 - \$687,500,000.
11. The maximum criminal penalty that a court may order NTAMA to pay for the alleged contravention is \$5,500,000.

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

12. 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.
13. If NTAMA wishes to apply for an extension of time to pay the amount specified in this notice, NTAMA must do so in writing within 28 days after the day the notice is issued (see paragraph 20).

Applying to pay the amount payable under the notice by instalment

14. ASIC may at its discretion make an arrangement for NTAMA to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.

15. If NTAMA wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, NTAMA must do so in writing within 28 days after the day the notice is issued to you (see paragraph 20).

Applying to have this notice withdrawn

16. Within 28 days after the day on which this notice is given, NTAMA may apply to have this notice withdrawn by making written representations to ASIC (see paragraph 20).

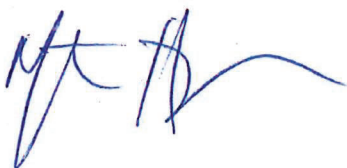
Withdrawal of this notice

17. ASIC may at its discretion, by written notice given to NTAMA, withdraw this notice if ASIC is satisfied that it is appropriate to do so, whether or not NTAMA has applied to have this notice withdrawn (**withdrawal notice**).
18. If the withdrawal notice is given after NTAMA has paid the amount specified in this notice, ASIC will refund to NTAMA the amount paid under the notice.
19. If the notice is withdrawn, then NTAMA 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

20. 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 21.
21. You may contact ASIC in relation to this notice by contacting:

Marita Hogan
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
and by email: ACLInfringementNotices@asic.gov.au; copying
Vanessa.Keir@asic.gov.au



Marita Hogan
as a delegate of the Australian Securities and Investments Commission