



**ASIC**  
Australian Securities &  
Investments Commission



## INFRINGEMENT NOTICE

### Section 12GX of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 11 November 2022

Unique identification code: S02553192

TO: Vanguard Investments Australia Ltd  
ACN 072 881 086  
Level 13, 130 Lonsdale Street  
Melbourne VIC 3000

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Vanguard Investments Australia Ltd (**VIA**) has contravened an infringement notice provision of the ASIC Act as follows:
  - (a) From on or about 7 December 2016 to 18 May 2022, VIA 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, the characteristics or the suitability for their purpose of a financial service.
  - (b) On or about 7 December 2016, VIA issued a Product Disclosure Statement (**PDS**) for the Vanguard International Shares Select Exclusions Index Fund – NZD Hedged (**the Fund**). The Fund seeks to track the return of the Morgan Stanley Capital International (**MSCI**) World ex Australia, ex Tobacco, ex Controversial Weapons, ex Nuclear Weapons Index (**MSCI Index**) and mirrors the investments that comprise the MSCI Index.
  - (c) The Fund's PDS stated that the MSCI Index '*...excludes securities involved in the production, manufacturing, or significant sales of tobacco*' (**the Representation**).
  - (d) The Representation was liable to mislead because the MSCI Index only excluded securities involved in the production and manufacturing of cigarettes and other tobacco products and did not exclude companies involved in the sale of tobacco products.
  - (e) The PDS was provided to the public via VIA's website, linked through third party product pages, unitholder notices or on the ASX website. Hard copies of the PDSs could be requested from time to time by clients of the Fund and were provided to clients by VIA's Client Services team.
  - (f) The Representation remained in the PDS until it was amended on 19 May 2022.

#### Amount payable under this notice

3. The amount payable under this notice in relation to the alleged contravention is **\$13,320**. 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 the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.

#### **Consequences of complying with this notice**

5. If VIA pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is subsequently withdrawn and any amount paid refunded) VIA is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against VIA for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. VIA 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.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

#### **Consequences of failing to comply with this notice**

8. VIA may choose not to pay the amount payable under the notice. If VIA does not pay the amount specified in this notice within the time for payment mentioned above, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against VIA for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
9. The maximum pecuniary penalty that a court may order VIA to pay for the alleged contravention is the greatest of:
  - (a) \$11,100,000; 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 the 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; or
    - ii. If the amount worked out under subparagraph (i) is greater than an amount equal to \$555,000,000 — \$555,000,000.

#### **Applying for more time to pay the amount under this notice**

10. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
11. If VIA wishes to apply for an extension of time to pay the amount specified in this notice, VIA should do so in writing within 28 days after the day the notice is given to VIA (see paragraph 18).

### **Applying to have this notice withdrawn**

12. Within 28 days after the day on which this notice is given, VIA may apply to ASIC in writing to have this notice withdrawn.
13. Evidence or information that VIA or VIA's representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against VIA or VIA's representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

### **Withdrawal of this notice**

14. ASIC may, by written notice given to VIA, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not VIA has applied to have this notice withdrawn.
15. A withdrawal notice must be given to VIA within the time for payment of this infringement notice to be effective.
16. If the withdrawal notice is given after VIA has paid the amount specified in this infringement notice, ASIC will refund to VIA the amount paid under the infringement notice.
17. If the infringement notice is withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against VIA for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

### **Requirements for applications**

18. An application to have this notice withdrawn, or for more time to pay the amount specified under this notice:
  - (a) must be in writing;
  - (b) must include the unique identification code set out at the top of this notice;
  - (c) must include VIA's reasons for making the application; and
  - (d) may be made by forwarding VIA's application to ASIC at the address in paragraph 19.

19. VIA may contact ASIC in relation to this notice by contacting:

**Marita Hogan**  
**Australian Securities and Investments Commission**  
**GPO Box 9827**  
**SYDNEY NSW 2000**  
or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au) (please copy to  
[nicki.gunn@asic.gov.au](mailto:nicki.gunn@asic.gov.au))



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