

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 5/10/2023 2:33:34 PM AEDT
Date Accepted for Filing: 5/10/2023 2:49:45 PM AEDT
File Number: VID563/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
VANGUARD INVESTMENTS AUSTRALIA LTD ACN 072 881 086
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: First Case Management Hearing
Time and date for hearing: 27/11/2023, 9:30 AM
Place: Court Room Not Assigned, Owen Dixon Commonwealth Law Courts Building
Level 7, 305 William Street, Melbourne



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 2
Rule 2.2

Amended Originating Process

No. VID 563 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

**IN THE MATTER OF VANGUARD INVESTMENTS AUSTRALIA LTD
(ACN 072 881 086)**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

VANGUARD INVESTMENTS AUSTRALIA LTD (ACN 072 881 086)
Defendant

A. DETAILS OF APPLICATION

This application is made under ss 12DB(1)(a) and (e), 12DF(1), 12GBA(1) (as in force before 13 March 2019 (amendment day) and as remaining in force after the amendment day (old s 12GBA(1)), 12GBA(1) (as inserted on the amendment day and as in force on and after the amendment day (new s 12GBA(1))), 12GBB(1) (as inserted on the amendment day and as in force on and after the amendment day) and 12GLB(1) of the *Australian Securities and Investments Commissions Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).

The Plaintiff (**ASIC**) seeks declarations, pecuniary penalties and adverse publicity orders against the Defendant (**Vanguard**) in respect of conduct liable to mislead the public and/or false or misleading representations comprising statements made by Vanguard regarding the Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged) (ARSN 618 349 090) (the **Fund**). The composition of the Fund was based on the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Adjusted Index (**Index**).

On the facts stated in the accompanying ~~Concise Statement~~ Statement of Claim, ASIC claims:

1. Declarations pursuant to new s 12GBA(1) of the ASIC Act (in respect of conduct occurring wholly on or after the amendment day) and/or s 21 of the Federal Court Act (in respect of all conduct whether occurring before or after the amendment day) that, between at least 7 August 2018 and at least 17 February 2021, Vanguard contravened s 12DF(1) of the ASIC Act by making false or misleading representations that:

Filed on behalf of (name & role of party)	The Plaintiff, Australian Securities and Investments Commission
Prepared by (name of person/lawyer)	Nick Kelton, Lawyer, ASIC
Tel (03) 9280 4787	Fax 1300 729 000
Email nicholas.kelton@asic.gov.au	
Address for service (include state and postcode)	Level 7, 120 Collins Street, Melbourne, Victoria, 3000



- a. securities in the Index and the Fund were researched and screened against applicable environmental, social and governance criteria; and
- b. the Index and the Fund excluded securities that violated the applicable environmental, social and governance criteria,

In each of the following product disclosure statements (**PDS**):

- i. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) AUD Hedged dated 7 August 2017;
 - ii. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) NZD Hedged dated 7 August 2017;
 - iii. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) ETF dated 31 August 2018;
 - iv. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) AUD Hedged dated 1 November 2018;
 - v. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) NZD Hedged dated 1 November 2018;
 - vi. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) ETF dated 1 November 2018;
 - vii. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) AUD Hedged dated 1 July 2020;
 - viii. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) NZD Hedged dated 1 July 2020;
 - ix. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) ETF dated 1 July 2020;
 - x. PDS for Vanguard Ethically Conscious Global Aggregate Bond index Fund (Hedged) AUD Hedged dated 10 July 2020;
 - xi. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged) NZD Hedged dated 10 July 2020;
 - xii. PDS for Vanguard Ethically Conscious Global Aggregate Bond Index (Hedged) ETF dated 10 July 2020.
2. Declarations pursuant to new s 12GBA(1) of the ASIC Act (in respect of conduct occurring wholly on or after the amendment day) and/or s 21 of the Federal Court Act (in respect of all conduct whether occurring before or after the amendment day) that, between at least 30 August 2018 and at least 17 February 2021, Vanguard contravened ss 12DB(1)(a) and (e) and 12DF(1) of the ASIC Act by making false or misleading representations in a media release, statements on its website, an interview with the Finance News Network, and a presentation at a Finance News Network Fund Manager Event that:



- a. securities in the Index and the Fund were researched and screened against applicable environmental, social and governance criteria; and
 - b. the Index and the Fund excluded securities that violated the applicable environmental, social and governance criteria.
3. Orders pursuant to old s 12GBA(1) (in respect of conduct occurring wholly or partly before the amendment day) and s 12GBB(1) (in respect of conduct occurring wholly on or after the amendment day) of the ASIC Act that Vanguard pay pecuniary penalties in respect of its contraventions of s 12DF(1) and/or s 12DB(1)(a) and (e) of the ASIC Act.
4. Adverse publicity orders pursuant to s 12GLB(1) of the ASIC Act, requiring Vanguard to:
- a. disclose the contraventions alleged in this proceeding, and the circumstances giving rise to those contraventions; and
 - b. publish by form, means and channels to be determined by the Court, at its own expense, those disclosures.
5. An order that Vanguard pay ASIC's costs.
6. Such further or other order as the Court considers appropriate.

Date: ~~24 July 2023~~ 5 October 2023

Nick Kelton
Litigation Counsel, Australian Securities and Investments Commission

This application will be heard by the Federal Court of Australia at Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000 at
. . . *am/*pm on

B. NOTICE TO DEFENDANT

TO: VANGUARD INVESTMENTS AUSTRALIA LTD

Level 13, 130 Lonsdale Street
Melbourne VIC 3000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.



Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:

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Registrar

This amended originating process is filed by Nick Kelton, solicitor for the plaintiff.

D. SERVICE

The plaintiff's address for service is Level 7, 120 Collins St, Melbourne VIC 3000.

It is intended to serve a copy of this originating process on the defendant.