



ASIC
Australian Securities &
Investments Commission

INFRINGEMENT NOTICE

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

Date of giving this notice: 21 April 2023

Unique identification code: S02515914

TO: Future Super Investment Services Pty Ltd
ACN 621 040 702
c/- WMS Chartered Accountants
Suite 1401, Level 14
203 Robina Town Centre Drive
Robina QLD 4226

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 Future Super Investment Services Pty Ltd (**Future Super**) has contravened an infringement notice provision of the ASIC Act as follows:
 - (a) From on or about 29 May 2019 to 25 October 2022 (**Relevant Period**), Future Super contravened section 12DB(1)(a) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation that services are of a particular standard, quality, value or grade.
 - (b) Future Super was the promoter of the Future Super Fund (ABN 45 960 194 277) (**Fund**) during the Relevant Period.
 - (c) Future Super developed, approved and published a post on the Facebook page for the Fund <https://www.facebook.com/myfuturesuper/>. The post was published on or about 29 May 2019 and remained on the Facebook page during the Relevant Period. The post states, among other things:

“Naysayers don't join together to move nearly \$400million out of fossil fuels.”
 - (d) Future Super made a representation about services being of a particular quality that is false or misleading in contravention of section 12DB(1)(a) of the ASIC Act because:
 - i. the post conveyed that the Fund had, on or about the date of the post, moved nearly \$400 million out of fossil fuels;
 - ii. the total funds under management held by the Fund was approximately \$400 million as at that date;
 - iii. Future Super had no basis upon which to represent that the entirety of funds under management had been invested in fossil fuels prior to being invested in the Fund; and

- iv. Future Super overstated the positive environmental impact of the Fund.

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 Future Super 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) Future Super 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 Future Super for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. Future Super 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. Future Super may choose not to pay the amount payable under the notice. If Future Super 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 Future Super 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 Future Super to pay for the alleged contravention is the greatest of:
 - (a) \$11,100,000;
 - (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 Future Super wishes to apply for an extension of time to pay the amount specified in this notice, it should do so in writing within 28 days after the day the notice is given to Future Super (see paragraph 18).

Applying to have this notice withdrawn

12. Within 28 days after the day on which this notice is given, Future Super may apply to ASIC in writing to have this notice withdrawn.
13. Evidence or information that Future Super or Future Super's representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against Future Super or Future Super'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 Future Super, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not Future Super has applied to have this notice withdrawn.
15. A withdrawal notice must be given to Future Super within the time for payment of this infringement notice to be effective.
16. If the withdrawal notice is given after Future Super has paid the amount specified in this infringement notice, ASIC will refund to Future Super 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 Future Super 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 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 Future Super's reasons for making the application; and
 - (d) may be made by forwarding Future Super's application to ASIC at the address in paragraph 19.

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

Marita Hogan
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4000
or by email: ACLInfringementNotices@asic.gov.au (please copy to
nicki.gunn@asic.gov.au)



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