



ASIC
Australian Securities &
Investments Commission



M01521950

INFRINGEMENT NOTICE

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

Date of giving this notice: 15 December 2023

Unique identification code: M01521950

TO: Melbourne Securities Corporation Limited
ACN 160 326 545

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. Payment for this infringement notice is due on 13 January 2024, being 28 days from the day after this notice is given, unless the time is extended, an arrangement is made for payment by instalments, or the notice is withdrawn.
3. ASIC has reasonable grounds to believe that Melbourne Securities Corporation Limited (**Melbourne Securities**) has contravened an infringement notice provision as follows.
4. From 7 March 2022 to 8 June 2023 (**Relevant Period**), Melbourne Securities 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 or the characteristics of the Bloom Climate Impact Fund (ARSN 656 971 881) (**Bloom Fund**).
5. Melbourne Securities was the trustee and responsible entity of the Bloom Fund.
6. Melbourne Securities was responsible for the Bloom Fund's compliance with its constitution, the *Corporations Act 2001* (Cth) and other relevant laws.
7. On 7 March 2022, Melbourne Securities issued a Product Disclosure Statement (**PDS**) for the Bloom Fund, which incorporated a document called the Investment Options List of the same date.
8. The Investment Options List stated:

"A negative screening process for labour standards and environmental, social and ethical considerations will also be applied by Bloom to those securities within the investable universe, by which Bloom will seek to avoid the investment of the Fund's assets in the following activities:

- fossil fuels – including coal, gas & oil;
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- tobacco;
- armaments and militarism, support for regressive regimes or operations in countries of concern;

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The portfolio of assets will be updated quarterly, where Bloom will ensure that investments adhere to the ESG negative screens. If an asset is found to be inconsistent with the ESG negative screens, it will be disposed of. The time frame for disposal will be on a case by case basis."

(Investment Exclusion Statement)

9. During the Relevant Period, the Bloom Fund applied a 'quantitative materiality' threshold based on a company's revenue as part of the negative screening process (**Revenue Thresholds**) under which:
 - a) if less than 5% of a company's revenue was generated by an excluded activity, the activity would be considered not material to the company, and the asset could be held by the Bloom Fund;
 - b) if more than 5% and less than 33% of the company's revenue was generated by an excluded activity, the Bloom Fund had to consider whether the company's engagement in the activity was material based on a qualitative assessment, and there was discretion to still hold the asset;
 - c) if 33% or more of the company's revenue was generated by an excluded activity, that activity would be considered material and the asset could not be held.
10. Contrary to the Investment Exclusion Statement, which represented to the public that the Bloom Fund would apply *'a negative screening process for labour standards and environmental, social and ethical considerations...by which Bloom [would] seek to avoid the investment of the Fund's assets'* in the certain activities, the Revenue Thresholds allowed the Bloom Fund to invest in companies that derived up to 33% revenue from excluded activities, which was not disclosed to investors in the PDS, in the Investment Options List or on the Bloom Fund's website.
11. During the Relevant Period, the Bloom Fund also directly invested in General Electric Co which, contrary to the Investment Exclusion Statement, engaged in fossil fuel activity.
12. Because of the matters listed in paragraphs 9, 10 and 11, the Investment Exclusion Statement was liable to mislead the public regarding the nature or characteristics of the Bloom Fund, in contravention of section 12DF of the ASIC Act.

Amount payable under this notice

13. 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.
14. Melbourne Securities 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

15. If Melbourne Securities pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is withdrawn):
 - (a) any liability of Melbourne Securities for the alleged contravention is discharged;

- (b) Melbourne Securities 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) Melbourne Securities will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

16. 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

17. Melbourne Securities may choose not to pay the amount specified in this notice.
18. If Melbourne Securities does not pay the amount specified in this notice within the time for payment specified in paragraph 2, and the notice is not withdrawn, then Melbourne Securities 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.
19. The maximum pecuniary penalty that a court may order Melbourne Securities 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 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 \$555 million - \$555 million.

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

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

Applying to pay the amount payable under the notice by instalment

22. ASIC may at its discretion make an arrangement for Melbourne Securities to pay the amount payable by instalments if ASIC is satisfied that it is appropriate to do so.
23. If Melbourne Securities wishes to apply for an arrangement to pay the amount payable under the infringement notice by instalments, Melbourne Securities must do so in writing within 28 days after the day the notice is issued to you (see paragraph 28).

Applying to have this notice withdrawn

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

Withdrawal of this notice

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

28. 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 29.
29. You 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 Melisande.guanlao@asic.gov.au)

Signature of delegate giving the notice



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