



**ASIC**  
Australian Securities &  
Investments Commission

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and Investments Commission**

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Committee Secretary  
Senate Standing Committees on Environment  
and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600

8 June 2023

Dear Committee Secretary

**Senate Standing Committees on Environment and Communications – Inquiry  
into greenwashing**

We refer to the inquiry into greenwashing referred to the Senate Standing  
Committees on Environment and Communications (**Committee**) on 29 March  
2023.

**About ASIC**

The Australian Securities and Investments Commission (**ASIC**) is Australia's  
integrated corporate, markets, financial services and consumer credit  
regulator. One of our key roles is to promote confident and informed  
participation by investors and consumers in the financial system. Our vision is  
to maintain a fair, strong and efficient financial system for all Australians.

**Strategic prioritisation**

ASIC is pro-actively working to protect retail investors and financial consumers  
from potential greenwashing misconduct; to ensure they have the  
information they require to make informed investment decisions. In August  
2022, we [announced](#) that one of our strategic priorities for 2022-2023 was to  
support market integrity through proactive supervision and enforcement of  
governance, transparency and disclosure standards in relation to sustainable  
finance. In addition, one of ASIC's [Enforcement Priorities for 2023](#) is to deter  
misleading conduct in relation to sustainable finance including  
greenwashing.

Notwithstanding that ASIC's work is focused on sustainability-related  
representations to investors and financial consumers, our regulatory actions  
also impact everyday consumers of goods and services. For example, our  
focus on addressing greenwashing by listed companies has a flow on effect  
for everyday consumers who may be selecting their products and services

based on a company's sustainability-related claims such as, for example, a claim or plan to be 'net zero'.

To assist the Committee with its inquiry, we set out below an overview of ASIC's program of work to date.

### **Current legislative framework**

In relation to the laws ASIC administers, there are currently no legislative provisions that *specifically* prohibit greenwashing. Instead, there are *general* prohibitions against misleading and deceptive statements and conduct. The *Corporations Act 2001* (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) contain general prohibitions against a person making statements (or disseminating information) that are false or misleading, or engaging in dishonest, misleading or deceptive conduct in relation to a financial product or financial service (e.g. sections 1041E, 1041G and 1041H of the Corporations Act and sections 12DA and 12DB of the ASIC Act). A particular risk of breaching the misleading statement prohibitions arises in relation to representations made about future matters that are not supported with reasonable grounds (see section 769C of the Corporations Act and section 12BB of the ASIC Act).

### **Information Sheet 271**

In June 2022, we published [Information Sheet 271](#) (INFO 271) which provides information to help product issuers and advisers avoid greenwashing when offering or promoting sustainability-related products. INFO 271 summarises the current regulatory setting for communications about sustainability-related products and sets out a number of questions for product issuers to ask themselves when preparing communications and disclosures about these types of products, including:

- Is the product true to label?
- Are vague terms adequately explained?
- Are headline claims potentially misleading?
- Is it clear how sustainability-related factors are incorporated into investment decisions and stewardship activities?
- Have any investment screening criteria been clearly explained, including whether any screening criteria are subject to any exceptions or qualifications?
- Are there reasonable grounds for a stated sustainability target? And is there an explanation about how this target will be measured and achieved?

### **Report on interventions to date**

On 10 May 2023, ASIC published [Report 763 ASIC's recent greenwashing interventions](#), which outlines ASIC's regulatory interventions made between 1 July 2022 and 31 March 2023 in relation to greenwashing concerns. Over this period, we commenced one civil penalty proceeding, issued 11 infringement notices and obtained 23 corrective disclosure outcomes. In this report we have provided examples of our regulatory interventions. Examples of when we have intervened include where:

- net zero statements and targets did not appear to have a reasonable basis or were factually incorrect.
- terms such as 'carbon neutral', 'clean' or 'green' were used to describe operations, projects or products in circumstances where there appeared to be no reasonable basis.
- the names of products or funds which included sustainability-related terms were inconsistent with the fund's investments or the investment process described i.e. not 'true to label'.
- the scope or application of investment screens or exclusions was vague or overstated or applied in a way inconsistent with the description used.

In April 2023, the Government announced that it would be providing ASIC with \$4.3 million of additional funding to expand its surveillance and enforcement activities in relation to this work over 2023-24.<sup>1</sup>

### **International developments**

The International Sustainability Standards Board (**ISSB**) was established in late 2021 by the Trustees of the International Financial Reporting Standards (**IFRS**) Foundation to develop standards for a global baseline of sustainability disclosures. In March 2022, the ISSB published two draft standards for comment: Exposure Draft IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and Exposure Draft IFRS S2 *Climate-related Disclosures*. In July 2022, ASIC, alongside members of Australia's Council of Financial Regulators (**CFR**), made a submission to the ISSB expressing our support for the objectives of the ISSB and our in-principle support for the adoption of the standards (subject to their final form) as reporting standards in Australia.<sup>2</sup> The ISSB is planning to issue the final standards by the end of June 2023.

The International Organisation of Securities Commissions (**IOSCO**), of which ASIC is a member, has identified an increased risk of greenwashing as a challenge associated with the growth of ESG investing and sustainability-related products.<sup>3</sup> In February 2020, IOSCO established a Sustainable Finance Taskforce (**STF**) with objectives including to improve sustainability-related disclosures made by issuers and asset managers and to develop other investor protection initiatives.<sup>4</sup> ASIC is a member of the STF and is contributing to this work (including the STF's consideration of the ISSB standards and possible IOSCO endorsement).

### **Domestic developments**

The Treasurer late last year announced that the Government has tasked Treasury with developing a comprehensive sustainable finance strategy.

The strategy will include the introduction of a mandatory, internationally aligned, Australian climate risk disclosure framework. Treasury completed its

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<sup>1</sup> See [Budget Paper No. 2: Budget Measures](#) at page 209.

<sup>2</sup> See [Australian Council of Financial Regulators' Comment Letter](#)

<sup>3</sup> [FR04/2020 Sustainable Finance and the Role of Securities Regulators and IOSCO](#), Final Report, Report by the Board of IOSCO, 14 April 2020.

<sup>4</sup> See [IOSCO Annual Report 2020](#), pages 30-31.

first round of consultation on these proposed measures in February 2023, obtaining initial views on key considerations for the design and implementation of climate reporting requirements to be aligned with the ISSB standards. The ISSB standards build upon the framework of the Taskforce on Climate-related Financial Disclosures (**TCFD**). To improve transparency, consistency and comparability of sustainability-related disclosures, ASIC has been encouraging listed companies to voluntarily report under the TCFD framework since 2018. ASIC has publicly expressed our support for the shift to mandatory reporting and flagged those entities who are voluntarily reporting under the TCFD framework will be well placed to comply with any future reporting standards.

The Government's strategy will also involve the development of new standards or taxonomies for sustainable investment as well as further initiatives to reduce greenwashing and strengthen ESG labelling.

The CFR, comprising the Australian Prudential Regulation Authority, the Australian Treasury, the Reserve Bank of Australia and ASIC, established a [climate working group](#) in 2017 to consider and coordinate actions in relation to understanding and managing financial climate-related risks. Through our membership in this working group, ASIC is pleased to provide our support to Treasury to deliver upon the Government's sustainable finance agenda.

ASIC considers the Government's suite of proposed measures (including mandatory climate reporting based on the ISSB standards) aimed at improving the transparency and comparability of sustainability-related disclosures will assist in mitigating the risk of greenwashing in Australia's financial markets and ensuring informed and confident participation by consumers of financial products.<sup>5</sup> For example, on decarbonisation target statements, the draft ISSB climate standard proposes the disclosure of information such as:

- how progress towards reaching the target is measured,
- the specific target and type (for example, absolute or intensity),
- what is the target objective (for example, mitigation, adaptation),
- how a target compares to the latest international agreement and whether it has been validated by a third party,
- any milestones or interim targets, and
- the period the target applies to and the base period to measure progress.

Yours sincerely

Claire LaBouchardiere  
Senior Executive Leader, Corporations

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<sup>5</sup> See [Speech by ASIC Deputy Chair Karen Chester at RI Australia 2023 annual conference, 10 May 2023](#).