

ENTITY NAME: Vanguard Investments Australia Limited (**Vanguard**)

DATE: 27 March 2023

WARNING

1. The Financial Markets Authority (**FMA**) has issued a formal warning to Vanguard.
2. The FMA is satisfied that Vanguard has breached regulation 273(7) of the Financial Markets Conduct Regulations 2014 (**FMC Regs**) by failing to lodge the required notice on the New Zealand Companies Office Disclose Register (**the Disclose Register**) regarding the exercise of a power by the Australian Securities and Investment Commission (**ASIC**) within the prescribed timeframe.

REASON FOR WARNING:

3. On 11 November 2022 ASIC issued three infringement notices regarding Vanguard's disclosures included in the offer documents of three funds. Those funds were:
 - a. Vanguard International Shares Select Exclusions Index Fund
 - b. Vanguard International Shares Select Exclusions Index Fund – AUD Hedged; and
 - c. Vanguard International Shares Select Exclusions Index Fund – NZD Hedged
4. The ASIC infringement notices related to disclosures made by Vanguard regarding these funds purporting to exclude investments in companies involved in significant sales of tobacco, when the investment index tracked by the funds did not actually contain that exclusion.
5. Vanguard offers these funds to New Zealand investors through the Trans-Tasman Mutual Recognition regime (**MRSO regime**). They are registered on the New Zealand Disclose Register under offer number OFR11718.
6. The MRSO regime allows an issuer of financial products in Australia to passport into New Zealand without needing to comply with all of the provisions of the FMC Act on the basis that the FMA can rely on the home regulator (in this case, ASIC) to undertake core supervisory (and where necessary, enforcement) action.
7. Offerors of financial products under the MRSO regime are required to comply with the requirements under Subpart 6 of Part 9 of the FMC Act and Part 9 and Schedule 25 of the FMC Regulations. Regulation 273(3) of the FMC Regs requires an Australian offeror to lodge a "Notice of enforcement action or exercise of power by Australian regulator" as soon as practicable after the action is taken or the power is exercised and no later than 5 working days after the day on which the action is taken or the power is exercised.

8. A compliant notice was not filed on the Disclose Register until 2 February 2023 being 55 working days after ASIC issued the three infringement notices. This filing occurred following intervention from the FMA with Vanguard.
9. Vanguard is perceived in the market as a significant global market participant which should have appropriate procedures in place to identify and meet its obligations.
10. The FMA is satisfied that Vanguard has materially failed to meet its obligations under the FMC Regs by failing to identify its obligations and failing to have adequate processes in place to ensure that it filed the required notice within the prescribed timeframe.
11. The FMA has concluded that Vanguard should receive a formal warning concerning this conduct, and that it is in the interest of fair and transparent financial markets that this warning should be published. The FMA considers a warning will reinforce to overseas issuers offering investment products in New Zealand under the MRSO regime that they must ensure they are complying with the New Zealand regime as well as the regime in their local jurisdiction, particularly as they have fewer obligations to comply with than issuers not utilising the MRSO regime to offer products in New Zealand.
12. A warning may also lead other overseas issuers utilising the MRSO regime to offer products in New Zealand, to review their compliance procedures to ensure they are adequate.