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Litigation and Enforcement: Asset Manager Self-Reporting of Greenwashing Regulatory Breach

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Litigation and Enforcement

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The Australian Securities & Investments Commission (ASIC) issued three infringement notices to the Australian unit of a large U.S.-headquartered asset manager for greenwashing infringements. The breach involved three funds that were set up to exclude certain tobacco investments but excluded only manufacturers of cigarettes and related products, not companies involved in the sale of such products. The ASIC was concerned that the disclosure statements for these funds "may have been liable to mislead the public by overstating an exclusion, otherwise known as an investment screen." The asset manager described the omission in the disclosure statement as an "inadvertent error" and an "unintended misdescription" that "did not result in any adverse financial impact on investors."

The asset manager was fined a total of AUD 39,960 ($26,873) for the greenwashing infringements. ASIC Deputy Chair Sarah Court said "Greenwashing is not limited to environmental claims but extends to misleading ethical propositions. Entities which seek to promote ethical investing must ensure their statements are accurate and able to be substantiated." Deputy Chair Court also stated that "Investors can feel strongly about not investing in tobacco production, manufacturing and sales, and where tobacco-exclusion investments are promoted, the entity making those claims must be able to substantiate the full exclusion of those investments."

Taking the Temperature: The ASIC has been clear that enforcement activity against greenwashing "is a current ASIC priority," and this is the second time the Australian financial regulator has taken action against greenwashing. In October, Tlou Energy received a similar infringement notice and paid AUD 53,280 (approximately $34,000). The regulator in June also published an information guidance sheet on how to avoid greenwashing when offering or promoting sustainability-related products. The ASIC likely will continue to pay close attention for evidence of greenwashing and related

regulatory breaches. ASIC is also not alone. Other regulators across the globe are similarly pursuing ESG-related claims against financial institutions as part of a broader effort to protect investors and ensure integrity in this sector of the financial markets. For example, as we previously reported, the UK's Advertising Standards Authority ruled in October that two advertisements about a major UK retail bank's green credentials were "misleading" and "omitted material information." Financial institutions should take great care to ensure that all ESG-related statements and marketing materials meet the relevant legislative and regulatory standards and are completely accurate and defensible based on contemporaneously documented support.