



# Environmental Defenders Office

Our Ref: SE-10504

19 February 2026

Mel Smith  
Senior Specialist, Enforcement & Compliance Portfolio Coordination  
Enforcement & Compliance  
Australian Securities and Investments Commission

By email: Mel.Smith@asic.gov.au; Agency.Reporting@asic.gov.au

Dear Mel

## **Complaint regarding potentially misleading representations by UniSuper**

1. We act for John Dixon, who is a member of UniSuper.
2. Our client is concerned that UniSuper may have engaged in conduct that is misleading or deceptive or likely to mislead or deceive, by making certain statements about its 'Global Environmental Opportunity' option (the **GEO option**) which are inconsistent with the GEO option's investment criteria and with investments held by the GEO option, including in Microsoft Corporation and Nvidia.
3. Our client wrote to UniSuper on 22 August 2025 expressing concerns about UniSuper's change in investment strategy for the GEO option and requesting further information about UniSuper's GEO option investment requirements. Our client's correspondence and UniSuper's response dated 1 September 2025 is at **Attachment A**.
4. Our client considers that UniSuper's response is unsatisfactory and requests that ASIC investigate whether UniSuper's conduct may amount to misleading or deceptive conduct or conduct that is likely to mislead or deceive, in contravention of s12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and/or s1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**).

## **Background**

5. UniSuper is an Australian superannuation fund, with over 670,000 members and approximately \$158 billion in funds under management as at 30 June 2025.<sup>1</sup>

---

<sup>1</sup> UniSuper, 'Who We Are' <https://www.unisuper.com.au/about-us/who-we-are> (accessed 12 February 2026).

6. UniSuper offers various portfolio options, comprising seven pre-mixed and nine sector-specific options. Three of these options are described as ‘sustainable and environmental branded options’.<sup>2</sup> These include the GEO option.

### Summary of concerns

7. Our client is concerned by UniSuper’s use of vague terminology in describing the GEO option, which may be characterised as headline claims. This includes:
  - a. naming the option ‘Global Environmental Opportunities’ and retaining this name after significantly reducing the environmental requirements in the option’s investment criteria; and
  - b. presenting the GEO option on UniSuper’s website under the heading ‘sustainable and environmental branded options’.<sup>3</sup>
8. UniSuper also states on the GEO option website that the GEO option’s portfolio of assets is selected on the basis of environmental consideration and the application of some negative screens.<sup>4</sup>
9. Copies of the websites on which UniSuper makes these claims are at **Attachment B** and **C**.
10. Our client is concerned that UniSuper’s statements may be misleading or deceptive or likely to mislead or deceive given:
  - a. UniSuper’s investment criteria for the GEO fund require listed equity securities to derive only a small proportion of their revenue from ‘environmental themes’ to be considered for inclusion in the option. UniSuper’s ‘How we invest your money’ document dated 25 September 2025 (at **Attachment D**) specifies that to be eligible for inclusion in the GEO option, in addition to fund-wide negative screens, ‘a listed equity security must have at least 20% of its reported revenue derived from environmental themes’.<sup>5</sup> These eligibility criteria are not included on UniSuper’s website for the GEO option; and
  - b. consequently, certain of the investments held by the GEO option are inconsistent with what a reasonable person would understand the terms ‘sustainable’ and/or ‘environmental’ to mean.
11. Further detail is set out below.

---

<sup>2</sup> UniSuper, ‘Our sustainable and environmental branded options’ <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 12 February 2026).

<sup>3</sup> UniSuper, ‘Our sustainable and environmental branded options’ <https://www.unisuper.com.au/investments/how-we-invest/responsible-and-sustainable-investing/our-sustainable-and-environmental-options> (accessed 12 February 2026).

<sup>4</sup> UniSuper, ‘Global Environmental Opportunities investment option’ <https://www.unisuper.com.au/investments/our-investment-options/global-environmental-opportunities> (accessed 12 February 2026).

<sup>5</sup> UniSuper, ‘How we invest your money’ <https://www.unisuper.com.au/-/media/files/pds/ibr/how-we-invest-your-money.pdf?rev=42ce8d7ab1db4cb68509f2640db978fd&hash=8C772FD246D8E7ACDD8EC02B159D72DB> (25 September 2025).

## Why the conduct may be misleading or deceptive

12. UniSuper uses vague terminology such as ‘sustainable’ and ‘environmental’ to describe the GEO option. This terminology is displayed prominently and repeated extensively on UniSuper’s website, including in the GEO option’s name.
13. The ACCC includes ‘sustainable’ as an example of an overly broad and vague term in its ‘Making environmental claims’ guide, and states that it is ‘overly general and risks misleading consumers into thinking that a product, service, or business only uses resources at a rate that will not contribute to environmental harm’ and that ‘[a]lmost all products have an adverse impact on the environment in some way through their use of resources.’<sup>6</sup>
14. Our client considers that the GEO option’s investment criteria, and consequently certain of the investments held by the GEO option which UniSuper’s third-party data provider has assessed as meeting those criteria, are inconsistent with what a reasonable person would understand the terms ‘sustainable’ and/or ‘environmental’ to mean.

### *The GEO option’s investment criteria*

15. As set out above, the GEO option website does not contain an explanation of the investment criteria used to select companies that the option invests in. Instead, the website states that its assets are ‘selected on the basis of environmental consideration and the application of some negative screens. Refer to the ‘How we manage your investments’ section of [How we invest your money](#) for more information.’
16. ASIC’s Information Sheet 271 (How to avoid greenwashing when offering or promoting sustainability-related products) states that a headline claim about sustainability-related matters ‘should not itself be misleading and exceptions and qualifications should not be used to rectify an otherwise misleading impression’ and that ‘[s]tatements referring the investor to another website or webpage, or a document (such as a PDS, prospectus or contract), to find out information may not be sufficient to correct a misleading or deceptive impression’.<sup>7</sup>
17. The ‘How we invest your money’ document dated 25 September 2025 discloses that to be eligible for inclusion in the GEO option, in addition to fund-wide negative screens, ‘a listed equity security must have at least 20% of its reported revenue derived from environmental themes’.<sup>8</sup> UniSuper provides that ‘examples of environmental themes include but are not limited to businesses... related to... energy efficiency – supporting the maximisation of productivity with the aim to reduce energy consumption’, among other ‘themes’.

---

<sup>6</sup> ACCC, ‘Environmental and sustainability claims’ <https://www.accc.gov.au/consumers/advertising-and-promotions/environmental-and-sustainability-claims> (accessed 12 February 2026).

<sup>7</sup> ASIC, ‘Information Sheet 271 (How to avoid greenwashing when offering or promoting sustainability-related products)’ <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>; see also *ASIC v LGSS Pty Ltd* [2024] FCA 587.

<sup>8</sup> UniSuper, ‘How we invest your money’ <https://www.unisuper.com.au/-/media/files/pds/ibr/how-we-invest-your-money.pdf?rev=42ce8d7ab1db4cb68509f2640db978fd&hash=8C772FD246D8E7ACDD8EC02B159D72DB> (25 September 2025).

18. UniSuper changed the investment criteria for the GEO option in March 2025. Prior to March 2025, listed equity securities were required to derive at least 40% of their revenue from 'environmental themes'. Prior to this change, Microsoft and Nvidia were not listed as major holdings of the GEO option on UniSuper's website.<sup>9</sup>
19. UniSuper's screening processes for the GEO option are inconsistent with the headline statements made by UniSuper and the statement that assets in the GEO option are selected on the basis of environmental consideration. The overarching impression created by these statements is that investments included in the GEO option progress environmental or sustainable opportunities globally.
20. Instead, the GEO option requires included listed equity securities to derive only a small proportion of their revenue from 'environmental themes' in order to be considered for inclusion in the option. The concept of 'environmental themes' is undefined by UniSuper. Instead of defining this term, UniSuper has provided non-exhaustive examples of the types of 'environmental themes' businesses may be related to in order to be considered for inclusion of the fund.
21. This definition is overly broad and vague. A business deriving only 20% of its revenue from one of the 'environmental themes' listed by UniSuper is not necessarily environmental or sustainable, leading to the creation of a misleading impression in the minds of ordinary and reasonable people.
22. Our client is also concerned that UniSuper did not amend the name of the GEO option after significantly weakening the investment criteria for the option. UniSuper alerted its members to this change (along with other changes) through an email that did not itself contain a summary of the changes to the investment criteria, and instead invited recipients to click through to a PDF explaining the changes. A copy of this email is at **Attachment E**. The weakening of the investment criteria for the GEO option and paucity of communication to members regarding this change contribute to the likelihood that option holders and prospective option holders have been misled by UniSuper's conduct.
23. Our client considers himself one such member. Mr Dixon was a GEO option holder for much of 2020 to 2023. In August 2025, four months after UniSuper amended the GEO option investment criteria, he decided to again invest in the GEO option. He did so on the erroneous understanding that the GEO option had maintained its previous investment criteria. Mr Dixon only became aware this was no longer the case after reviewing the performance of the GEO option's top 10 holdings.

#### *The GEO option's holdings*

24. The overarching impression created by the naming of the GEO option, the description of the GEO option as 'sustainable' and 'environmental' and the statement that investments in the GEO option are selected on the basis of environmental consideration is inconsistent with the

---

<sup>9</sup> GEO option website archived on 26 March 2025, with major holdings as at 30 September 2024 listed: <https://web.archive.org/web/20250326162514/https://www.unisuper.com.au/investments/our-investment-options/global-environmental-opportunities#5>

inclusion of the two largest assets in the fund, securities in Microsoft and Nvidia. This is for the following reasons.

25. *Microsoft:*

Though Microsoft has ambitious decarbonisation goals, Microsoft's expansion into cloud and AI services has increased Microsoft's environmental impact significantly in recent years. For example:

- a. Microsoft's 2025 Environmental Sustainability Report discloses that Microsoft's value chain (scope 3) emissions increased by 26% from its 2020 baseline to approximately 15 million metric tonnes of carbon dioxide equivalent in FY24.<sup>10</sup> Microsoft's scope 3 emissions account for more than 97% of its total emissions.<sup>11</sup> Microsoft acknowledges that its total emissions in 2025 grew by 23.4% compared to 2020 due to growth-related factors such as AI and cloud expansion.<sup>12</sup>
- b. Microsoft's 2025 Environmental Sustainability Report also discloses that Microsoft expanded into nuclear energy by signing a large-scale nuclear energy power purchase agreement in September 2024.
- c. Internal Microsoft documents have been reported in a September 2024 article in the Atlantic as showing that Microsoft has sought to market its AI technology to oil companies such as ExxonMobil and Chevron as a 'powerful tool for finding and developing new oil and gas reserves and maximizing their production'.<sup>13</sup>

26. *Nvidia:*

Though Nvidia appears to be investing in reducing the power required to run its hardware, Nvidia's progress towards decarbonisation has been lagging. For example:

- a. A recent Greenpeace East Asia report has ranked Nvidia last among AI tech companies on decarbonization progress.<sup>14</sup> This ranking is based on multiple factors, including:

---

<sup>10</sup> Microsoft Environmental Sustainability Report, 2025, <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/2025-Microsoft-Environmental-Sustainability-Report.pdf#page=01>, p 11; Microsoft 2025 Environmental Data Fact Sheet, <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/2025-Microsoft-Environmental-Data-Fact-Sheet-PDF.pdf>, p 3.

<sup>11</sup> Microsoft Environmental Sustainability Report, 2025, <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/2025-Microsoft-Environmental-Sustainability-Report.pdf#page=01>, p 13.

<sup>12</sup> Microsoft Environmental Sustainability Report, 2025, <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/2025-Microsoft-Environmental-Sustainability-Report.pdf#page=01>, p 5.

<sup>13</sup> 'Microsoft's Hypocrisy on AI', Karen Hao, The Atlantic, 24 September 2024, <https://www.theatlantic.com/technology/archive/2024/09/microsoft-ai-oil-contracts/679804/>.

<sup>14</sup> 'Supply Change: Tracking AI Giants' Decarbonization Progress', Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>.

- i. Nvidia’s scope 3 emissions, which approximately doubled between FY23 and FY25 to approximately 6.9 million metric tonnes of carbon dioxide equivalent in FY25.<sup>15</sup>
  - ii. Nvidia’s failure to set a net zero climate target to reduce emissions for its own operations or its supply chains.<sup>16</sup>
  - iii. Nvidia only applies its renewable energy target to its own operational activities, and excludes its supply chain (scope 3 emissions) from this target.<sup>17</sup> This is significant as over 84% of Nvidia’s emissions came from its supply chain in 2024,<sup>18</sup> and Nvidia’s supply chain carbon footprint more than doubled in the past three years.<sup>19</sup>
- b. The Greenpeace report also finds that in contrast to data centre electricity demands, AI hardware manufacturing is currently concentrated in East Asia, where it relies heavily on fossil fuels for energy generation.<sup>20</sup> Nvidia’s 2025 Annual Report stated that its supply chain ‘is mainly concentrated in the Asia Pacific region’.<sup>21</sup>

### **Request to investigate**

27. For these reasons, our client requests that ASIC investigate whether UniSuper may have engaged in misleading or deceptive conduct or conduct that is likely to mislead or deceive in contravention of section 12DA of ASIC Act and/or Section 1041H of the Corporations Act.
28. We also bring these issues to ASIC’s attention to highlight the need for clearer guidance regarding environmental and sustainability claims in respect of superannuation funds, particularly broad headline claims such as ‘sustainable’ in the absence of a uniform definition or assessment framework.

---

<sup>15</sup> Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 8, 51.

<sup>16</sup> Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 16.

<sup>17</sup> Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 17.

<sup>18</sup> Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 12.

<sup>19</sup> Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 24.

<sup>20</sup> ‘Supply Change: Tracking AI Giants’ Decarbonization Progress’, Greenpeace East Asia, October 2025, <https://www.greenpeace.org/static/planet4-eastasia-stateless/2025/10/128afb32-supply-change-2025.pdf>, 13.

<sup>21</sup> Nvidia 2025 Annual Report, [https://s201.q4cdn.com/141608511/files/doc\\_financials/2025/annual/NVIDIA-2025-Annual-Report.pdf](https://s201.q4cdn.com/141608511/files/doc_financials/2025/annual/NVIDIA-2025-Annual-Report.pdf).

29. We note that the issues raised here are aligned with recent enforcement action taken by ASIC including against Vanguard Investments Australia,<sup>22</sup> Mercer Superannuation (Australia) Limited,<sup>23</sup> and LGSS Pty Limited (Active Super).<sup>24</sup>

30. If you have any further queries, please do not hesitate to contact me at [REDACTED] or [REDACTED]

Yours faithfully

**Environmental Defenders Office**



**Katarina Thompson**

Acting Managing Lawyer  
Corporate and Commercial

---

<sup>22</sup> See, for example, ASIC, 'ASIC wins first greenwashing civil penalty action against Vanguard' (28 March 2024) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-061mr-asic-wins-first-greenwashing-civil-penalty-action-against-vanguard/>; ASIC, 'ASIC issues infringement notices against investment manager for greenwashing' (2 December 2023) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-336mr-asic-issues-infringement-notices-against-investment-manager-for-greenwashing/>.

<sup>23</sup> See, for example, ASIC, 'ASIC launches first Court proceedings alleging greenwashing' (28 February 2023) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-043mr-asic-launches-first-court-proceedings-alleging-greenwashing/>.

<sup>24</sup> *ASIC v LGSS Pty Ltd* [2024] FCA 587.