



Mr. Laurence D. Fink, CEO  
BlackRock Inc.  
55 East 52<sup>nd</sup> Street  
New York, NY 10055

August 4, 2022

Dear Mr. Fink:

BlackRock's Chief Client Officer, Mark McCombe, recently wrote a letter to many of our states describing BlackRock's position on energy investments with respect to our pension funds. Mr. McCombe's letter contains many statements that appear to conflict with BlackRock's previous public statements and commitments.

Based on the facts currently available to us, BlackRock appears to use the hard-earned money of our states' citizens to circumvent the best possible return on investment, as well as their vote. BlackRock's past public commitments indicate that it has used citizens' assets to pressure companies to comply with international agreements such as the Paris Agreement that force the phase-out of fossil fuels, increase energy prices, drive inflation, and weaken the national security of the United States. These agreements have never been ratified by the United States Senate. The Senators elected by the citizens of this country determine which international agreements have the force of law, not BlackRock. We have several additional concerns that fall under our jurisdictional authority as attorneys general.

#### 1. Neutrality

Mr. McCombe's letter posits that BlackRock is agnostic on the question of energy, and merely offers investing clients a range of investment options in the energy sector. But this claimed neutrality differs considerably from BlackRock's public commitments which indicate that BlackRock has already committed to accelerate net zero emissions across all of its assets, regardless of client wishes. BlackRock joined the Net Zero Managers Alliance ("NZAM"),<sup>1</sup> which, among other things, directs members to "acknowledge that there is an urgent need to *accelerate* the transition towards global net zero emissions and for asset managers to *play our part to help deliver* the goals of the Paris Agreement."<sup>2</sup> Furthermore, BlackRock has committed to "[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for *all assets under management* to achieve net zero emissions by 2050 or sooner."<sup>3</sup> Accelerating and delivering the goals of the Paris Agreement across all assets under management through an escalation and voting strategy is a far cry from neutrality.

Rather than being a spectator betting on the game, BlackRock appears to have put on a quarterback jersey and actively taken the field. As a firm, BlackRock has committed to implementing an ESG engagement

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<sup>1</sup> BLACKROCK, Corporate Sustainability, Committed to Sustainability, *Our partners on the Path to Net Zero*, [www.BlackRock.com/corporate/sustainability/committed-to-sustainability#](http://www.BlackRock.com/corporate/sustainability/committed-to-sustainability#).

<sup>2</sup> The Net Zero Asset Managers Commitment, [www.netzeroassetmanagers.org/commitment/](http://www.netzeroassetmanagers.org/commitment/) (emphasis added). BlackRock is on the Steering Committee for NZAM's parent organization, the Glasgow Financial Alliance for Net Zero.

<sup>3</sup> *Id.* (emphasis added).

and voting strategy across all assets under management, and held over 2,300 company engagements on climate, the most of any category of engagement.<sup>4</sup> BlackRock took voting action against 53 companies on climate issues, with 191 companies put on watch.<sup>5</sup> A governance engagement strategy primarily focused on BlackRock's climate agenda necessarily overlays ESG factors on the core index portfolios that comprise a substantial part of many state pension funds. BlackRock's engagement strategy, in which a net zero climate agenda is a significant or main consideration, would covertly convert states' core index portfolios to ESG-Focused funds should the SEC's recently proposed definition of an ESG fund be adopted.<sup>6</sup>

## 2. Dialogue

Regarding BlackRock's commitments to climate change advocacy organizations, you state that you have joined them "to participate in dialogue with governments, companies, and financial institutions on sustainability issues important to our clients."<sup>7</sup> Under our state laws, the desired "dialogue" regarding any potential energy transition would be how to maximize financial returns, which would potentially include the opportunistic purchasing of fossil fuel assets discarded by companies seeking to meet net zero commitments. However, any discussion of purchasing such assets to maximize returns is conspicuously absent from GFANZ or Climate Action 100+.

Rather, these public commitments display a purpose of activism rather than "dialogue." For example, as one of our colleagues noted in a recent opinion, the Steering Committee for GFANZ (of which BlackRock is a member) describes its purpose as follows:

*The systemic change needed to alter the planet's climate trajectory can only happen if the entire financial system makes ambitious commitments and operationalises those commitments with near-term action.*

\* \* \*

*That is why we formed [GFANZ], to bring together over 450 leading financial enterprises united by a commitment to accelerate the decarbonisation of the global economy."<sup>8</sup>*

Clearly, the expressed purpose is to "alter the planet's climate trajectory," not to "dialogue." As noted above, BlackRock's commitment to, and execution of, an escalation and voting policy is designed to use the leverage of the financial sector to change behavior. Indeed, the first phrase on the GFANZ website is "[b]ringing together the financial sector to accelerate the transition to a net-zero economy."<sup>9</sup>

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<sup>4</sup> BLACKROCK, *Pursuing Long-Term Value for Our Clients, BlackRock Investment Stewardship: A Look into the 2020-2021 Proxy Voting Year*, at 8, [www.BlackRock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf](http://www.BlackRock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf).

<sup>5</sup> BLACKROCK, *Our Approach to Sustainability*, BlackRock Investment Stewardship, at 4, [www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf](http://www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf).

<sup>6</sup> 'ESG-Focused Fund' is a Fund that focuses on one or more ESG factors by using them as a *significant or main consideration* (1) in selecting investments or (2) *in its engagement strategy with the companies in which it invests*. Securities & Exchange Commission, Proposed Rule, Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, at 317 (May 25, 2022) [www.sec.gov/rules/proposed/2022/33-11068.pdf](http://www.sec.gov/rules/proposed/2022/33-11068.pdf). (emphasis added)

<sup>7</sup> *Id.*

<sup>8</sup> Op. Ky. Att'y Gen. 22-05 (May 26, 2022), at 3 n.10, <https://ag.ky.gov/Resources/Opinions/Opinions/OAG%2022-05.pdf> (quoting *Forward from the Principals Group*, GLASGOW FINANCIAL ALLIANCE FOR NET ZERO (Nov. 2021), at

6, <https://perma.cc/N3KS-KTZG> (emphasis added)).

<sup>9</sup> GLASGOW FINANCIAL ALLIANCE FOR NET ZERO, [www.gfanzero.com](http://www.gfanzero.com).

Similarly, Climate Action 100+ is very clear that its purpose is to prevent climate change and force net zero emissions on companies:

The 160 companies engaged by the Climate Action 100+ initiative represent over 80% of global industrial emissions and are, as a group and individually, critical to progressing the global economy to net-zero emissions by 2050. This level of ambition is necessary according to the IPCC3 in order to hold global warming to 1.5°C above pre-industrial levels, and to avoid the most catastrophic effects of climate change.

BlackRock has chosen to lead detailed, comprehensive efforts to retire fossil fuels. BlackRock has emphasized its status as a leader in GFANZ’s work on sectoral decarbonization pathways,<sup>10</sup> which aims “to catalyse successful agreement on net-zero pathways with several major global industries,” prioritizing “hard-to-abate sectors and fossil fuels” and “developing a set of solutions to provide owners of carbon-intensive assets with tools to incentivise and facilitate asset retirement and decarbonisation in line with a science-based net-zero pathway.”<sup>11</sup> BlackRock chairs a steering committee as part of GFANZ focused on the managed phaseout of fossil fuels.<sup>12</sup> This goes beyond mere “dialogue,” to advocating for specific results. And, notably missing from these efforts are an exclusive focus on maximizing financial return from client’s fossil fuel assets, even if such efforts increase emissions.

Moreover, BlackRock joined groups so focused on promoting the Paris Agreement that they want to *stifle* opposing viewpoints altogether. Climate Action 100+ “aims to ensure the world’s largest corporate greenhouse gas emitters take necessary action on climate change.”<sup>13</sup> Members of Climate Action 100+ commit to forcing portfolio companies to “align[] political lobbying with the Paris Agreement,” without allowance for whether such an alignment would be in the financial best interests of the company.<sup>14</sup> The nature of our legislative process produces carve outs, exceptions, delays, or exemptions, any of which may be in the financial interest of the companies requesting them. Yet BlackRock appears to have determined that every company should support the Paris Agreement without exception. Squelching political speech is the action of an activist whose mind is made up, not that of a neutral fiduciary seeking “dialogue.”

### 3. Duty of Loyalty

BlackRock’s commitment to the financial return of state pensions should be undivided. Many of our laws state that a fiduciary must “discharge [their] duties *solely in the interest of the participants and beneficiaries* . . . for the exclusive purposes of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the system.”<sup>15</sup> The stated reasons for your actions around promoting net zero, the Paris Agreement, or taking action on climate change indicate rampant violations of this duty, otherwise known as acting with “mixed motives.” As one commentator has put it: “Acting with mixed motives triggers an irrebuttable presumption of wrongdoing,

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<sup>10</sup> BLACKROCK, Corporate Sustainability, Committed to Sustainability, *Our Partners on the Path to Net Zero*, [www.BlackRock.com/corporate/sustainability/committed-to-sustainability#](https://www.BlackRock.com/corporate/sustainability/committed-to-sustainability#).

<sup>11</sup> GFANZ, *Our Progress and Plan Towards a Net-Zero Global Economy* (Nov. 2021) at 16, 44, 52, <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf>.

<sup>12</sup> [https://assets.bbhub.io/company/sites/63/2022/06/GFANZ\\_-\\_Managed-Phaseout-of-High-emitting-Assets\\_June2022.pdf](https://assets.bbhub.io/company/sites/63/2022/06/GFANZ_-_Managed-Phaseout-of-High-emitting-Assets_June2022.pdf).

<sup>13</sup> See Op. Ky. Att’y Gen. 22-05, at 3-4 (quoting CLIMATE ACTION 100+, *About*, <https://perma.cc/K64N-J69K>).

<sup>14</sup> Climate Action 100+, 2021 Year in Review, p. 8, [www.climateaction100.org/wp-content/uploads/2022/03/Climate-Action-100-2021-Progress-Update-Final.pdf](https://www.climateaction100.org/wp-content/uploads/2022/03/Climate-Action-100-2021-Progress-Update-Final.pdf).

<sup>15</sup> Tex. Gov’t Code § 802.203. (emphasis added)

full stop.”<sup>16</sup> Whether mixed motives arise from a desire to save the world or attract investment from European or left-leaning pension funds, is ultimately irrelevant to the legal violation. Investors have wide latitude over their own money, but our state pensions must be invested only to earn a financial return.

#### 4. Duty of Care

BlackRock’s public commitments treat the “energy transition” as a *fait accompli*. As noted above, you have committed to manage “*all assets under management* to achieve net zero emissions by 2050 or sooner.”<sup>17</sup> BlackRock’s belief that the world will require net zero by 2050 could be a pretext to force companies to adopt your preferred climate policies. This would not be the first time that a fiduciary claimed unsupported assumptions as the basis for its actions. For this reason, many of our states require a fiduciary to “make a reasonable effort to verify facts relevant to the investment.”<sup>18</sup> BlackRock’s past failure to predict fossil fuel demand warrants caution regarding its enforcement of net zero policies on portfolio companies.

Governments are not implementing policies to require net zero. As the International Energy Agency has noted, “In many cases, pledges have not yet been backed up by the strong and credible near-term policies needed to make them a reality.”<sup>19</sup> Furthermore, “the pledges themselves – even if implemented in full – do not yet put the world on track for a 1.5 °C stabilisation in global average temperatures.”<sup>20</sup> BlackRock knows governments are not taking the predicted actions because it calls on them to adopt policies requiring net zero, and to live up to their pledges.<sup>21</sup>

In particular, the United States has not implemented net zero mandates. Despite doing everything in his power at the beginning of his presidency to shut down fossil fuels, even President Biden is appearing to reverse course given the harm his inflationary policies have inflicted on the American people. Given this history, it is not reasonable for a prudent fiduciary to assume that the Paris Agreement will be implemented within the United States, and by all of its signatories, on time and in full by 2050.

Neither has Europe followed your predicted net zero, renewable energy-focused course. Mr. McCombe’s letter written on May 24<sup>th</sup> states the following about the Russian invasion:

These events [Russian invasion] may drive short-term increases in demand for traditional energy and associated emissions in some regions, *while potentially accelerating investments into renewable energy in Europe and other regions where energy security goals are aligned with decarbonization.*

In fact, energy security is not aligned with decarbonization. When the two conflict, energy security wins. This should not have been surprising to you. Contrary to your predictions, Europe has restarted its coal plants less than a month after Mr. McCombe’s letter.<sup>22</sup> As discussed below, this is occurring after

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<sup>16</sup> Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 Stan. L. Rev. 381, 400-401 (2020)

<sup>17</sup> The Net Zero Asset Managers Commitment, [www.netzeroassetmanagers.org/commitment/](http://www.netzeroassetmanagers.org/commitment/) (emphasis added).

<sup>18</sup> Utah Code § 75-7-902(4).

<sup>19</sup> <https://iea.blob.core.windows.net/assets/aa17bd09-2ad0-4d0a-b5aa-ee418900c4af/Theimpactsnewemissionspledgesonlongtermtemperatures.pdf> (p.7)

<sup>20</sup> <https://iea.blob.core.windows.net/assets/aa17bd09-2ad0-4d0a-b5aa-ee418900c4af/Theimpactsnewemissionspledgesonlongtermtemperatures.pdf>

<sup>21</sup> [www.gfanzero.com/press/call-to-action/](http://www.gfanzero.com/press/call-to-action/).

<sup>22</sup> [www.euronews.com/green/2022/06/24/all-the-european-countries-returning-to-dirty-coal-as-russia-threatens-to-turn-off-the-gas](http://www.euronews.com/green/2022/06/24/all-the-european-countries-returning-to-dirty-coal-as-russia-threatens-to-turn-off-the-gas).

BlackRock voted to penalize the board of directors for a European utility, Fortum, for investing in coal.<sup>23</sup> BlackRock's inability to predict demand for fossil fuels in the short-term for one region calls into question BlackRock's confidence in predicting such demand across the entire world in the decades to come.

Perhaps recognizing that the predicted government actions are not materializing, BlackRock sometimes mentions alternative paths to net zero, such as technological breakthroughs or shifting consumer preferences. Based on the facts available to us, your assumptions appear poorly supported. One climate group estimated that simply meeting projections for emissions reductions by 2030 would require 22x faster adoption of electric vehicles, and accelerating the share of low-carbon fuels by 8x, events that seem quite unlikely.<sup>24</sup>

Given these facts, it strains credulity to believe that a sole focus on financial returns would lead an asset manager to manage all assets for the achievement of net zero by 2050 and make climate issues the number one portfolio company engagement factor.

## 5. Antitrust

BlackRock's coordinated conduct with other financial institutions to impose net-zero also raises antitrust concerns. Group boycotts, restraining trade, or concerted refusals to deal, "clearly run afoul of" Section 1 of the Sherman Act.<sup>25</sup> Section 1 prohibits "[e]very . . . combination . . . , or conspiracy, in restraint of trade or commerce."<sup>26</sup> Regarding the definition of a "combination," the Supreme Court has held that this language prohibits "concerted action."<sup>27</sup>

BlackRock's actions appear to intentionally restrain and harm the competitiveness of the energy markets. Disturbingly, a survey last year from the Federal Reserve Bank of Dallas asked: "Which of the following is the primary reason that publicly traded oil producers are restraining growth despite high oil prices?"<sup>28</sup> Sixty percent of respondents referenced a form of "investor pressure."<sup>29</sup>

These antitrust concerns are especially acute because BlackRock and other asset managers affirmatively tout their market dominance. BlackRock is the world's largest investment management company, with \$10 trillion in assets, "more than the gross domestic product of every country in the world, except for the US and China."<sup>30</sup> Climate Action 100+ boasts of having "over 50 percent of all global assets under management,"<sup>31</sup> while GFANZ touts its members \$130 trillion "committed to transforming the economy for net zero."<sup>32</sup>

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<sup>23</sup> BLACKROCK, *Our Approach to Sustainability*, BlackRock Investment Stewardship, at 12, [www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf](http://www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf).

<sup>24</sup> [www.wri.org/research/state-climate-action-assessing-progress-toward-2030-and-2050](http://www.wri.org/research/state-climate-action-assessing-progress-toward-2030-and-2050).

<sup>25</sup> *Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 625 (1953).

<sup>26</sup> 15 U.S.C. § 1.

<sup>27</sup> *American Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 190 (2010).

<sup>28</sup> [www.dallasfed.org/research/surveys/des/2021/2102.aspx#tab-comments](http://www.dallasfed.org/research/surveys/des/2021/2102.aspx#tab-comments).

<sup>29</sup> *Id.*

<sup>30</sup> Rebecca Ungarino, Here are 9 fascinating facts to know about BlackRock, the world's largest asset manager, Business Insider (Mar. 10, 2022), [www.businessinsider.com/what-to-know-about-BlackRock-larry-fink-biden-cabinet-facts-2020-12](http://www.businessinsider.com/what-to-know-about-BlackRock-larry-fink-biden-cabinet-facts-2020-12).

<sup>31</sup> [www.climateaction100.org/about/](http://www.climateaction100.org/about/).

<sup>32</sup> [www.gfanzero.com/press/amount-of-finance-committed-to-achieving-1-5c-now-at-scale-needed-to-deliver-the-transition/](http://www.gfanzero.com/press/amount-of-finance-committed-to-achieving-1-5c-now-at-scale-needed-to-deliver-the-transition/).

## 6. Energy Boycotts

Many of our states have adopted legislation prohibiting energy company boycotts, and others will likely join them. Your letter was written in response to accusations that BlackRock may have violated one of these laws. In response to these accusations, Mr. McCombe stated: “BlackRock does not have any policies prohibiting or restricting investment in companies because they are energy companies.” As you may know, the definition of an energy boycott includes actions to penalize companies for failing to meet emissions standards beyond what is required by relevant law.<sup>33</sup> In a document entitled, “Our Approach to Sustainability,” you detail numerous votes against companies for failing to meet disclosure standards that are not required by law.<sup>34</sup>

Furthermore, BlackRock touted its vote against the board and president of Fortum for “undert[aking] a transaction that significantly increased its exposure to coal-fired power generation and therefore the carbon intensity of its business.”<sup>35</sup> Voting against the board is an action to penalize. Coal is a fossil fuel. BlackRock’s concern regarding the carbon intensity of the business does not reference current environmental legal requirements. Relevant to a fiduciary duty inquiry, BlackRock’s action to penalize the Fortum board makes no mention of the price of the transaction.<sup>36</sup> Given Europe’s renewed commitment to coal, punitive actions to penalize fossil fuels appears to be directly contrary to the financial interests of your clients.

Fiduciary duty is not lip service. BlackRock has an obligation to act in the sole financial interest of its clients. Our analysis of whether BlackRock complies with that obligation requires more than evaluating whether you claimed to have done so. Given our responsibilities to the citizens of our states, we must seek clarification on BlackRock’s actions that appear to have been motivated by interests other than maximizing financial return.

While couched in language about long-term value, BlackRock’s alignment of engagement priorities with environmental and social goals, such as the UN’s Sustainable Development Goals, suggests at a minimum a mixed motive.<sup>37</sup> Blanket statements regarding investing in particular asset classes without referencing price is not consistent with fiduciary and legal obligations. Nor are blanket commitments to vote for directors based upon protected characteristics, such as gender. Rather, BlackRock appears to be acting for a social purpose that may have a financial benefit if certain improbable assumptions occur. If BlackRock were focused solely on financial returns, its conduct would likely be different.

BlackRock’s actions on a variety of governance objectives may violate multiple state laws. Mr. McCombe’s letter asserts compliance with our fiduciary laws because BlackRock has a private motivation that differs from its public commitments and statements. This is likely insufficient to satisfy state laws requiring a sole focus on financial return. Our states will not idly stand for our pensioners’ retirements to be sacrificed for BlackRock’s climate agenda. The time has come for BlackRock to come clean on whether it actually values our states’ most valuable stakeholders, our current and future retirees,

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<sup>33</sup> See, e.g., 2022 W. Va. Acts, Chapter 235, to be codified at W. VA. CODE § 12-1C-1(2)(B) (defining “Boycott of energy companies” to include “action that is intended to penalize . . . a company because the company . . . does not commit or pledge to meet environmental standards beyond applicable federal and state law.”)

<sup>34</sup> [www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf](http://www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf).

<sup>35</sup> BLACKROCK, *Our Approach to Sustainability*, BlackRock Investment Stewardship, at 12, [www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf](http://www.BlackRock.com/corporate/literature/publication/our-commitment-to-sustainability-full-report.pdf).

<sup>36</sup> Your voting bulletin did, however, refer to the acquisition as “at odds with . . . the goals of the Paris Agreement.” See BLACKROCK, Investment Stewardship Group, *Voting Bulletin: Fortum Oyj*, at 2, [www.BlackRock.com/corporate/literature/press-release/blk-vote-bulletin-fortum-apr-2020.pdf](http://www.BlackRock.com/corporate/literature/press-release/blk-vote-bulletin-fortum-apr-2020.pdf).

or risk losses even more significant than those caused by BlackRock's quixotic climate agenda. Please respond by Friday, August 19, 2022.



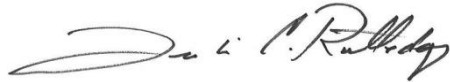
Mark Brnovich  
Arizona Attorney General



Doug Peterson  
Nebraska Attorney General



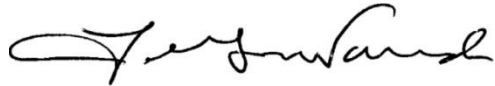
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Missouri Attorney General



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