

## [Securities Regulation Daily Wrap Up, FINANCIAL INTERMEDIARIES—19 state AGs pressure Blackrock over ESG investments, \(Aug. 9, 2022\)](#)

Securities Regulation Daily Wrap Up

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BlackRock has navigated a rocky course in climate-related investment, caught between investors demanding greater ESG focus and certain states warning against fossil fuel divestment.

Attorneys general for 19 states warned BlackRock Inc. CEO Larry Fink that the global investment management firm may be acting illegally by taking environmental, social, and governance factors (ESG) into account in selecting investments for state pension funds. In a [letter](#), the AGs stated that state laws require fiduciaries like BlackRock to invest funds with a “sole focus on financial return.”

“BlackRock has an obligation to act in the sole financial interest of its clients,” the AGs wrote. “BlackRock’s actions on a variety of governance objectives may violate multiple state laws.”

The AGs also suggested that in selecting investments with an aim of mitigating climate change, BlackRock may be harming state economies and violating certain state laws prohibiting energy boycotts.

“‘ESG’ goals, while ostensibly well-intentioned, make little economic sense, and have a direct adverse effect on Texas’s oil and gas economy and state pension fund performance. BlackRock’s actions may also violate state and federal law,” [stated](#) a press release by Texas Attorney General Ken Paxton.

**BlackRock letter to states.** The AGs referred to a letter recently sent by BlackRock’s chief client officer, Mark McCombe, to a number of states describing BlackRock’s position on energy investments with respect to state pension funds. The AGs said McCombe’s letter contains “many statements that appear to conflict with BlackRock’s previous public statements and commitments.”

**Energy neutrality.** The AGs first challenged BlackRock’s assertion that it is “agnostic on the question of energy” and merely offers investing clients a range of investment options in the energy sector. The AGs pointed to BlackRock’s public commitments to climate change mitigation, including joining the Net Zero Managers Alliance (NZAM), which 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.” The AGs stated that the Paris Agreement has not been ratified by the United States Senate.

The AGs next questioned BlackRock’s assertion that it has joined climate change advocacy organizations to “participate in dialogue.” According to the AGs, BlackRock’s commitments “display a purpose of activism.” The AGs said that under their state laws, “dialogue” would include a discussion of maximizing financial returns, including potentially purchasing discarded fossil fuel assets, but this discussion was “conspicuously absent” from GFANZ and Climate Action 100+. The AGs added that these groups “stifle” opposing viewpoints.

“Squelching political speech is the action of an activist whose mind is made up, not that of a neutral fiduciary seeking ‘dialogue,’” wrote the AGs.

**Fiduciary duty.** Next, the AGs asserted that BlackRock may be violating its duties of loyalty and care. Quoting the Texas Government Code, the AGs said many of their state laws require a fiduciary to discharge its 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.

According to the AGs, promoting net zero, the Paris Agreement, or taking action on climate change indicate “rampant violations of this duty” and “acting with mixed motives.”

“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,” wrote the AGs. “Investors have wide latitude over their own money, but our state pensions must be invested only to earn a financial return.”

On the duty of care, the AGs said that BlackRock’s public commitments treat the “energy transition” as a *fait accompli*, but governments are not implementing net zero policies. The AGs said that 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. The AGs suggested that BlackRock’s belief that the world will require net zero by 2050 “could be a pretext” to force companies to adopt its preferred climate policies.

**Antitrust and boycotts.** The AGs further warned that coordinated conduct with other financial institutions to impose net-zero “raises antitrust concerns” and could run afoul of federal antitrust law. The AGs said that Climate Action 100+ boasts of having “over 50 percent of all global assets under management,” while GFANZ touts its members’ \$130 trillion “committed to transforming the economy for net zero.”

Finally, the AGs called attention to state laws prohibiting energy company boycotts, which “many of our states” have adopted” and “others will likely join them.” The AGs stated that the definition of an energy boycott includes “actions to penalize companies for failing to meet emissions standards beyond what is required by relevant law.” They pointed to BlackRock votes against boards for failing to meet disclosure standards not required by law.

“Voting against the board is an action to penalize,” wrote the AGs.

**Response requested.** The AGs requested that BlackRock respond by August 19.

“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,” wrote the AGs.

The letter was signed by the attorneys general of Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, Utah, and West Virginia.

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