



April 3, 2024

Dear Climate Action 100+ Member,

Over the last two years, state attorneys general have publicly warned that Climate Action 100+ (CA100+)’s true “purpose is to ... force net zero emissions on companies”¹ in “a transparent attempt to push policies through the financial system that cannot be achieved at the ballot box.”² We have noted conflicts between CA100+’s member commitments and asset managers’ legal duties, and followed these notifications with investigations and enforcement actions.

CA100+ has now shifted to “Phase 2”—a renewed call of its members “to action”³ in using investor money to pressure companies “to reduce greenhouse gas emissions across the value chain ... consistent with the Paris Agreement’s goal of limiting global average temperature increase to well below 2°C ..., aiming for 1.5°C.”⁴ Phase 2 signatories also must press targeted companies to “*implement* transition plans to deliver on robust targets” in line with the Task Force on Climate Related Disclosures (TCFD).⁵ Ceres, the investor network that helped found CA100+ and coordinates CA100+’s North American activities, confirmed that CA100+ has the non-financial purpose of using client funds to attempt to prevent global temperature

¹ Letter from 19 State Attorneys General to BlackRock, 2–3 (Aug. 4, 2022), <https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/BlackRock%20Letter.pdf>.

² Letter from 21 State Attorneys General to Asset Managers, 3 (Mar. 20, 2023), <https://attorneygeneral.utah.gov/wp-content/uploads/2023/03/2023-03-30-Asset-Manager-Letter-Press-FINAL.pdf>.

³ Climate Action 100+, “Climate Action 100+ Announces Its Second Phase” (June 8, 2023), <https://www.climateaction100.org/news/climate-action-100-announces-its-second-phase/>.

⁴ Climate Action 100+, “Climate Action 100+ Phase 2: Summary of Changes,” 7 (June 2023), <https://www.climateaction100.org/wp-content/uploads/2023/06/CA100-Phase-2-Summary-of-Changes.pdf>.

⁵ *Id.* (emphasis added).

increases.⁶ Notably, Ceres failed to mention that a congressional antitrust investigation has issued a subpoena to it for withholding documents.⁷

We write to reiterate our legal concerns, especially given other asset managers' departures on the eve of Phase 2 and CA100+ and Ceres's responses. Five major asset managers have publicly backed away from CA100+ in recent weeks,⁸ and more than 30 others appear to have quietly left over the past six months.⁹ Ceres rushed to respond that the remaining CA100+ members "remain committed to the global effort ensuring that 170 of the largest greenhouse gas emitters take the necessary action on the global climate crisis."¹⁰ It stated that "[i]nvestors and companies alike must do their part to cut greenhouse gas emissions in half this decade to avoid catastrophic levels of global temperature rise."¹¹ It is clear from these statements that CA100+ involves coordination to force company emissions reductions, regardless of the effects on shareholder value. Given the prescriptive nature of Phase 2 and these statements from CA100+'s North American coordinator, we urge you to evaluate whether your continued participation is lawful, and if so, request you explain your position in detail.

I. Leading Asset Managers Have Belatedly Recognized the Legal Risks of CA100+ Commitments.

The world's largest asset managers are leaving CA100+ based on the very issues that state attorneys general previously identified.¹² As you are no doubt aware,

⁶ Ceres, "Ceres Statement on Climate Action 100+ Investor Departures" (Feb. 22, 2024), <https://www.ceres.org/news-center/press-releases/ceres-statement-climate-action-100-investor-departures>.

⁷ Climate Action 100+, "New Duke Energy Commitments Represent an 'Encouraging' Step" (Feb. 10, 2022), <https://www.climateaction100.org/news/new-duke-climate-commitments-represent-an-encouraging-step/>; House Judiciary Committee, "Chairman Jordan Subpoenas Documents and Communications Related to ESG and Climate Action 100+" (June 14, 2023), <https://judiciary.house.gov/media/press-releases/chairman-jordan-subpoenas-documents-and-communications-related-esg-and-climate>; Letter from House Judiciary Committee to Ceres Regarding Subpoena (June 14, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-06-14-jdi-to-miller-ceres-re-subpoena.pdf>.

⁸ See, e.g., Simon Jessop, "Invesco Joins List of US Asset Managers to Exit CA100+ Climate Group," REUTERS (Mar. 1, 2024), <https://www.reuters.com/sustainability/invesco-joins-list-us-asset-managers-exit-ca100-climate-group-2024-03-01/>.

⁹ Compare Climate Action 100+, "Investors" (Sep. 27, 2023), <https://web.archive.org/web/20230927043308/https://www.climateaction100.org/whos-involved/investors/page/19/> (archived copy showing 19 40-member pages of members, with 20 members listed on last page) with Climate Action 100+, "Investors," <https://www.climateaction100.org/whos-involved/investors/page/18/> (whole page of 40 investors is gone, 20 members on new last page).

¹⁰ Ceres, *supra* note 6.

¹¹ *Id.*

¹² See Utah Attorney General's Office, *AG Reyes Leads Coalition & Warns Asset Managers About ESG Investments* (March 31, 2023), <https://attorneygeneral.utah.gov/ag-reyes-leads-coalition-warns-asset>

J.P. Morgan Asset Management, State Street Global Advisors, PIMCO, and Invesco all recently announced their withdrawal from CA100+.¹³ In particular, State Street reportedly noted “potential legal risks” and stated Phase 2 was “not consistent with [its] independent approach to proxy voting and portfolio company engagement.”¹⁴

In addition, BlackRock announced that it will limit involvement with CA100+ to its international arm and now will pursue net-zero goals in engagements and proxy votes only for clients who have expressly asked it to do so.¹⁵ BlackRock thus appears to finally have acknowledged what attorneys general told it in 2022: using client assets to pursue climate goals is inconsistent with duties to clients to solely pursue financial goals.¹⁶ BlackRock also noted that it “owes contractual and fiduciary duties to [its] clients and is subject to various antitrust and competition laws across various jurisdictions”¹⁷—the exact issues state attorneys general previously raised.¹⁸

II. CA100+’s Phase 2 Commitments Heighten Our Legal Concerns.

CA100+ membership appears to conflict with at least six different legal duties, which we briefly outline below. If you intend to remain in CA100+, then we ask that you explain your reasoning for doing so in detail.

First, the fiduciary duty of loyalty requires asset managers to act solely in the financial interests of their clients.¹⁹ Generally speaking, a “trustee’s decisions ordinarily must not be motivated by a purpose of advancing or expressing the trustee’s personal views concerning social or political issues or causes.”²⁰ Continued

[managers-about-esg-investments/](#); see also State of Tennessee Complaint Against BlackRock, 23CV-618, ¶¶ 15-16 (Dec. 18, 2023), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-59-complaint.pdf>; 19 State Attorneys General, *supra* note 1.

¹³ Jessop, *supra* note 8.

¹⁴ David Gelles, “More Wall Street Firms Are Flip-Flopping on Climate,” N.Y. TIMES (Feb. 19, 2024), <https://www.nytimes.com/2024/02/19/business/climate-blackrock-state-street-jpmorgan-pimco.html>; Patrick Temple-West and Brooke Masters, “JPMorgan and State Street Quit Climate Group as BlackRock Scales Back,” FINANCIAL TIMES, Feb. 15, 2024, <https://www.ft.com/content/3ce06a6f-f0e3-4f70-a078-82a6c265ddc2>.

¹⁵ Letter from BlackRock to Climate Action 100+ Steering Committee (Feb. 2, 2024), <https://www.blackrock.com/corporate/literature/publication/2024-our-participation-in-climate-action-100.pdf>.

¹⁶ Compare *id.* with 19 State Attorneys General, *supra* note 1, at 3–4 (criticizing BlackRock for acting with mixed motives rather than solely for the benefit of state pension systems).

¹⁷ BlackRock, *supra* note 15.

¹⁸ 19 State Attorneys General, *supra* note 1.

¹⁹ See, e.g., 29 U.S.C. § 1104 (sole-interest ERISA standard); see also 21 State Attorneys General, *supra* note 2, at 2.

²⁰ RESTATEMENT (THIRD) OF TRUSTS, § 90, cmt. c; see also Uniform Prudent Investor Act § 5 cmt. (1994) (“No form of so-called ‘social investing’ is consistent with the duty of loyalty if the investment activity

membership in CA100+ appears to constitute, at minimum, a mixed motive, because CA100+ openly requires signatories to push target companies in which their clients are invested to “take necessary action on climate change” and “implement transition plans to deliver on robust targets.”²¹ Signatories must urge portfolio companies to “[t]ake action to reduce greenhouse gas emissions across the value chain” in line with the Paris Agreement’s goal.²² Reflecting its political rather than financial objectives, the CA100+ commitment has no regard for whether pursuing any of these goals would be in the financial interest of a company’s shareholders.

Second, the fiduciary duty of care requires asset managers to provide advice that is in the best interest of their clients, based on the client’s objectives, and to provide advice and monitoring over the course of the relationship.²³ As noted above, Phase 2 requires single-minded pursuit of political and environmental net-zero goals, not financial returns. Thus, adoption of these goals by an asset manager reflects a fundamentally flawed process that is not directed at the best financial interests of your clients and based on their objectives. Moreover, as we have explained before, those goals are unrealistic, making continued pursuit of them an even bigger apparent departure from the duty of care. For example, in the first half of 2023, the capacity of new coal power plants in China (either approved or in construction) exceeded the current coal power capacity of the entire United States.²⁴ The U.S. Deputy Secretary of Energy was unable to say if aligning even the *entire U.S. economy* with net zero by 2050 would have a material impact on global temperatures.²⁵ Chasing unreachable environmental goals rather than financial returns is improper under long-standing fiduciary principles.

entails sacrificing the interests of trust beneficiaries—for example, by accepting below-market returns—in favor of the interests of the persons supposedly benefitted by pursuing the particular social cause.”); Richard A. Posner & John H. Langbein, *Social Investing and the Law of Trusts*, 79 MICH. L. REV. 72, 96 (1980) (“It remains to consider whether social investing is contrary to trust law and its statutory counterparts. We conclude that it is . . .”).

²¹ Climate Action 100+, *supra* note 4, at 7.

²² *Id.*

²³ 21 State Attorneys General, *supra* note 2, at 2 (quoting *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, 84 Fed. Reg. 33,669, 33,671 (July 12, 2019)).

²⁴ Compare Vijay Jayarej, “Beijing’s Coal Boom Is Here to Stay,” REAL CLEAR ENERGY (Nov. 20, 2023), https://www.realclearenergy.org/articles/2023/11/20/beijings_coal_boom_is_here_to_stay_993518.html (China approved 52 GW of new coal plants in the first half of 2023 and has 136 GW in construction, totaling 188 GW) with U.S. Energy Information Administration, “Table 6.07.A. Capacity Factors for Utility Scale Generators Primarily Using Fossil Fuels,” https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_6_07_a (U.S. coal pwr. cap. 181 GW at end of 2023).

²⁵ U.S. Senator John Kennedy, “Kennedy to Biden Official: You Want Us to Spend \$50T, and You Don’t Know If It’s Going to Reduce World Temperatures?” (May 4, 2023), <https://www.kennedy.senate.gov/public/2023/5/kennedy-to-biden-official-you-want-us-to-spend-50t-and-you-don-t-know-if-it-s-going-to-reduce-world-temperatures>.

Third, antitrust laws prohibit, among other things, contracts or combinations in restraint of trade, yet Phase 2 signatories agree to coordinate to force targeted companies and entire sectors to restrict their activities. CA100+ has stated that investor signatories are “required to ... liaise with relevant network staff and/or lead investors to ensure engagement priorities and ambition are aligned with the goals of the initiative, as well as with the overall collaborative approach.”²⁶ CA100+ members still appear to have over \$50T in AUM.²⁷ Even before Phase 2, CA100+ bragged about its successful coordination efforts. For example, its 2021 progress update stated:

[T]he oil and gas sector faced its own reckoning this proxy season, with investors demonstrating their willingness to hold boards accountable on climate change. ExxonMobil shareholders elected three new board members This was backed publicly by three of the largest pension funds in the U.S. and Climate Action 100+ signatories – CalPERS, CalSTRS, and the New York State Common Retirement Fund. This followed extensive engagement coordinated by Climate Action 100+.²⁸

CA100+’s attempted disclaimer²⁹ lacks credibility, given that coordination is the entire point of CA100+. With Phase 2, the apparent coordination to force action is even clearer. Furthermore, a recent report states that an “executive director at one continental European asset owner” stated that U.S. based asset managers that left the group would face “a ‘slight handicap’” in competition, and “any European asset manager taking the same path would be ‘very heavily penalised.’”³⁰ Agreements to enforce a coordinated agreement through the imposition of “handicaps” or “penalties” heighten antitrust concerns.

²⁶ Climate Action 100+, “Engagement Process,” (Jan. 22, 2021) <https://web.archive.org/web/20210122222803/https://www.climateaction100.org/approach/engagement-process/>.

²⁷ Simon Jessop & Ross Kerber, “JPMorgan, State Street Quit Climate Group, BlackRock Steps Back,” REUTERS (Feb. 15, 2024), <https://www.reuters.com/sustainability/sustainable-finance-reporting/jpmorgan-fund-arm-quits-climate-action-100-investor-group-2024-02-15/> (departures removed \$13.8T); PIMCO, “PIMCO at a Glance,” 2 (Dec. 31, 2023), <https://www.pimco.com/gbl/en/documents/b0866aca-5616-4f79-a1cc-dbc720ba4317> (PIMCO has \$1.86T AUM); Climate Action 100+, “Global Investors Driving Business Transition” (Sep. 11, 2023), <https://web.archive.org/web/20230911183505/https://www.climateaction100.org/> (\$68T AUM).

²⁸ Climate Action 100+, “2021 Year In Review: A Progress Update,” 8 (Mar. 2022), <https://www.climateaction100.org/wp-content/uploads/2022/03/Climate-Action-100-2021-Progress-Update-Final.pdf>.

²⁹ See, e.g., “Climate Action 100+ Net Zero Company Benchmark 2.0 – Disclaimer” (Mar. 2023), <https://www.climateaction100.org/wp-content/uploads/2023/03/Climate-Action-100-Net-Zero-Company-Benchmark-Framework-2.0-.pdf>; see also Climate Action 100+, *supra* note 4, at 2.

³⁰ Susanna Rust & Tjibbe Hoekstra, “European Disappointment as US Strife Shows Up in Manager CA100+ Exits,” Investments and Pensions Europe (Feb. 21, 2024), available at <https://www.ipe.com/news/european-disappointment-as-us-strife-shows-up-in-manager-ca100-exits/10071716.article>.

Fourth, various holding company laws may apply here. Federal law limits the ownership of shares in multiple utilities absent Federal Energy Regulatory Commission (FERC) approval, and CA100+ appears to be functioning as an unapproved holding company. In 2023, 17 state attorneys general argued to FERC that CA100+ should be considered a holding company, because it is an “association” or “organized group of persons whether incorporated or not” that coordinates shareholder voting power to influence utility operations.³¹ FERC responded with a notice of inquiry on this issue.³² Separately, a U.S. Senate minority staff report concluded that asset managers’ exercise of their influence to push ESG policies could result in classification as a bank holding company under federal law.³³ Similarly, repeated efforts by CA100+ members to push insurance companies to tie insurance to the Paris Agreement and flagged votes by CA100+ along those same lines could result in CA100+ being deemed an insurance holding company.³⁴

Fifth, state laws prohibit deceptive acts or practices towards consumers,³⁵ as well as making false statements or omitting material facts in connection with the offer or sale of securities.³⁶ Statements by asset managers about funds offered to consumers may be deceptive if they are not accompanied by prominent disclosures that the asset manager has committed to use fund assets to pursue environmental goals. Specifically, CA100+ describes Phase 2’s mission as urging portfolio companies to “[t]ake action ... consistent with the Paris Agreement” and “*implement* transition

³¹ State of Utah *et al.*, Motion to Intervene and Motion for Relief Regarding BlackRock’s Blanket Authorizations at 4 (May 10, 2023), https://content.govdelivery.com/attachments/INAG/2023/05/10/file_attachments/2493600/State%20AG%20FERC%20Motion%20BlackRock%20FINAL.pdf.

³² FERC, *Federal Power Act Section 203 Blanket Authorizations for Investment Companies*, 88 Fed. Reg. 88900 (Dec. 26, 2023).

³³ Minority Staff of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, “The New Emperors: Responding to the Growing Influence of the Big Three Asset Managers,” 2 (Dec. 2022), <https://www.rubio.senate.gov/wp-content/uploads/cache/files/b13b99f0-e67a-42c0-8b8f-e1d2991d5721/F3B80A447706940991377258A39B016A.the-new-emperors-responding-to-the-growing-influence-of-the-big-three-asset-managers.pdf>.

³⁴ *See, e.g.*, Iowa Code § 521A.1(1), (8); *see also* Climate Action 100+, “As 2022 Proxy Season Begins, Record Numbers of Climate Resolutions and Agreements Bode Well for Action” (Apr. 27, 2022), <https://www.climateaction100.org/news/as-2022-proxy-season-begins-record-numbers-of-climate-resolutions-and-agreements-bode-well-for-action/> (“shareholders filed 23 resolutions at banks and insurance companies requesting, among other things, pledges to cease financing of new fossil fuel expansion”); As You Sow, “Posts Tagged Insurance,” <https://www.asyousow.org/resolutions/tag/Insurance>; Climate Action 100+, “Proxy Season & Flagged Shareholder Votes,” <https://www.climateaction100.org/approach/proxy-season/> (three proposals at Berkshire Hathaway).

³⁵ *See, e.g.*, National Consumer Law Center “Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws” (Mar. 1, 2018), <https://www.nclc.org/resources/how-well-do-states-protect-consumers/> (50-state UDAP law report).

³⁶ *See, e.g.*, NCCUSL, “Uniform Securities Act,” 123, § 501(2) (2002), <https://www.nasaa.org/wp-content/uploads/2021/09/2002-Uniform-Securities-Act.pdf>

plans to deliver on robust targets” in line with the recommendations of the TCFD.³⁷ These environmental commitments of asset managers should be prominently disclosed to consumers and investors. BlackRock was sued on this very topic.³⁸

Sixth, the S.E.C. requires certain information to be filed pursuant to Schedule 13D.³⁹ For example, Item 6 requires the filer to “[d]escribe any contracts, arrangements, understandings, or relationships (legal or otherwise) ... between ... persons [listed in Item 2] and any person with respect to any securities of the issuer... in connection with any of the following: ... voting of any of the securities ... joint ventures ... or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings, or relationships have been entered into.”⁴⁰ Given the prescriptive nature of Phase 2, we seek to understand whether you intend to disclose any “arrangements, understandings, or relationships (legal or otherwise)” with CA100+ or other members of CA100+ regarding “voting of any of the securities” or any of the other items in the list for Item 6.

III. Questions

Given the above concerns, we ask that you address the following questions (and provide documents if requested) no later than May 3, 2024:

- 1) Are you, or any of your U.S. affiliates, still a member of CA 100+? If no, please explain when you withdrew and any remaining membership by any of your affiliates. If yes, please answer the following questions:
- 2) In leaving CA100+, BlackRock and State Street made several statements. For each of the following, state whether you agree with the statement, and if you disagree, explain in detail why you disagree:
 - a. The CA100+ Phase 2 strategy “will require signatories to make an overarching commitment to use client assets to pursue emissions reductions in investee companies through stewardship engagement.”⁴¹

³⁷ Climate Action 100+, *supra* note 4, at 7 (emphasis added).

³⁸ State of Tennessee Complaint Against BlackRock, *supra* note 12, at ¶¶ 15–16.

³⁹ 17 CFR § 240.13d-101.

⁴⁰ *Id.*

⁴¹ Nick Pope, “Major American Financial Institutions Withdraw from Global Climate Investment Org in Blow to Green Agenda,” DAILY CALLER (Feb. 15, 2024), <https://dailycaller.com/2024/02/15/jp-morgan-state-street-withdrawing-climate-investment-group/>.

- b. “[T]he phase 2 strategy, which takes effect in June, conflicted with US laws requiring money managers to act solely in clients’ long-term economic interest.”⁴²
 - c. Phase 2 “will not be consistent with our independent approach to proxy voting and portfolio company engagement.”⁴³
- 3) In response to the recent exodus from CA100+, the non-profit Ceres, which helped found and helps coordinate CA100+, stated that the purpose of CA100+ is to reduce global temperatures. How do you justify committing client assets in support of an initiative that is focused on reducing global temperatures, not increasing returns for your clients?
- a. Please explain how such a commitment aligns with the fiduciary duty of loyalty to your clients.
 - b. Please explain how such a commitment aligns with the fiduciary duty of care to your clients.
- 4) In joining CA100+, you committed to “reduce greenhouse gas emissions across the value” consistent with achieving net zero by 2050.⁴⁴ Because achieving net zero within electricity generation requires the retirement of coal and natural gas plants by 2040, CA100+ requires utility companies to announce a retirement date for all natural gas and coal plants by 2040⁴⁵ despite rising domestic demand for energy due to multiple factors, including a growing economy, increased use of electric vehicles,⁴⁶ and increased power demand from use of Artificial Intelligence systems.⁴⁷ Please explain how the premature retirement of natural gas or coal plants by 2040 amidst increasing demand for electricity is in shareholders’ financial interests, and attach the financial

⁴² Temple-West & Masters, *supra* note 14.

⁴³ AFP, “Firms with \$7 Tn Exit Climate Investment Pressure Group,” BARRON’S (Feb. 15, 2024), <https://www.barrons.com/news/big-firms-with-7-tn-exit-climate-investment-pressure-group-77df3bc8>.

⁴⁴ Climate Action 100+, “The Three Goals,” <https://www.climateaction100.org/the-three-goals/>.

⁴⁵ See Climate Action 100+, “Carbon Tracker Methodologies: Electric Utilities,” 4–5 (Aug. 2023), <https://www.climateaction100.org/wp-content/uploads/2023/10/2023-CTI-Electric-Utility-Methodology.pdf>; Climate Action 100+, “Climate Action 100+ 2020 Progress Report,” 44 (Dec. 2020), <https://www.climateaction100.org/wp-content/uploads/2020/12/CA100-Progress-Report.pdf>.

⁴⁶ World Economic Forum, “This Overlooked Solution Can Unlock Abundant and Affordable Clean Energy” (Jan. 8, 2024), <https://www.weforum.org/agenda/2024/01/energy-efficiency-abundant-affordable-clean-energy/>.

⁴⁷ Christopher Mims, “AI Is Ravenous for Energy. Can It Be Satisfied?” WALL ST. J. (Dec. 15, 2023), <https://www.wsj.com/tech/ai/ai-energy-consumption-fc79d94f>.

analysis you have conducted to determine that this action is in shareholders' interests.

- 5) CA100+ also pushes for oil producers to reduce output,⁴⁸ and pushes airlines to not only reduce flights, but actually advocate for laws banning some flights.⁴⁹ Please explain how these actions are in shareholders' financial interests, and attach the financial analysis you have conducted to determine that this action is in shareholders' interests.
- 6) Please explain whether you are aware of asset owners threatening to "handicap" or "penalize" asset managers who leave CA100+, and what investigation you are undertaking to determine the lawfulness of the organization you are part of under U.S. antitrust laws.⁵⁰
- 7) In 2023, 17 state attorneys general argued to the Federal Energy Regulatory Commission that CA100+ should be considered a holding company, because it coordinates shareholder voting power to influence control of utility operations.⁵¹
 - a. Please explain in detail why CA100+ should not be considered a holding company.
 - b. Please identify all proxy votes and engagement activities you have undertaken with respect to utilities since you joined CA100+ and explain why your actions do not constitute exercising influence over utility operations.
- 8) A U.S. Senate minority staff report has concluded that asset managers' exercise of their influence to push ESG policies could "rise to a level sufficient for [an asset manager] to be deemed to have a 'controlling influence' over that banking organization within the meaning of the Bank Holding Company Act of 1956," thus making the asset manager a bank holding company under federal law.⁵² Please identify all proxy votes and engagement activities you have undertaken with respect to banks since you joined CA100+ and explain why your actions do not constitute exercising influence over bank operations.

⁴⁸ 19 State Attorneys General, *supra* note 1, at 5.

⁴⁹ Principles for Responsible Investment, "Global Sector Strategies: Investor Actions to Align the Aviation Sector with the IEA's 1.5°C Decarbonisation Pathway," 5, 9 (Mar. 2022), https://www.climateaction100.org/wp-content/uploads/2022/07/CA100_Aviation_Sector_Strategy_Final_March2022.pdf.

⁵⁰ Rust & Hoekstra, *supra* note 30.

⁵¹ State of Utah, *supra* note 31.

⁵² Minority Staff of the U.S. Senate Committee on Banking, *supra* note 33, at 2.

- 9) Repeated efforts by CA100+ members to push insurance companies to tie insurance to the Paris Agreement⁵³ and CA100+ flagging insurance company votes for its members⁵⁴ could result in CA100+ being deemed an insurance holding company under state law, because its members are coordinating to control or attempt to control insurers.⁵⁵ Please identify all proxy votes and engagement activities you have undertaken with respect to insurance companies since you joined CA100+ and explain why your actions do not constitute exercising influence over insurance company operations.
- 10) Tennessee has sued BlackRock, and the complaint's allegations include BlackRock's failure to disclose its ESG commitments across all assets to investors in purportedly non-ESG funds.⁵⁶
- a. Please provide the language in your fund prospectuses and any accompanying fund websites that would describe to potential investors the:
 - i. statements or commitments you signed when joining CA100+, and
 - ii. the engagements or votes you have taken since joining CA100+ that relate to those statements or commitments.
 - b. Please identify all funds for which you disclose other ESG commitments you have made (such as those made to the Net Zero Asset Managers initiative) and identify where the disclosure is made.
- 11) Have you considered whether and how you need to report any "arrangements, understandings, or relationships (legal or otherwise)" with CA100+ or other members of CA100+ regarding "voting of any of the securities" or any of the other items in the list for Item 6 of SEC Schedule 13 D? If so, what plans do you have to make such disclosures?

⁵³ See, e.g., Climate Action 100+, "As 2022 Proxy Season Begins, Record Numbers of Climate Resolutions and Agreements Bode Well for Action," *supra* note 36 (stating that "shareholders filed 23 resolutions at banks and insurance companies requesting, among other things, pledges to cease financing of new fossil fuel expansion in order to meet the IEA's 1.5 Celsius future scenario"); As You Sow, "Posts Tagged Insurance," <https://www.asyousow.org/resolutions/tag/Insurance>.

⁵⁴ Climate Action 100+, "Proxy Season & Flagged Shareholder Votes," *supra* note 34.

⁵⁵ See, e.g., Iowa Code Ann. § 521A.1(1)(1), (8).

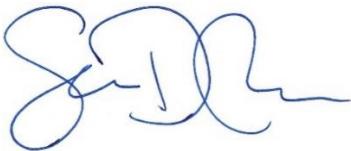
⁵⁶ State of Tennessee Complaint Against BlackRock, *supra* note 12, at ¶¶ 15–16.

IV. Conclusion

After state attorneys general explained the antitrust issues inherent in the Net-Zero Insurance Alliance, one major reinsurance company stated that the benefit of the alliance was not worth “exposing ourselves to material antitrust risks.”⁵⁷ Most of the insurers in the alliance apparently came to similar conclusions and left the group shortly thereafter.⁵⁸

We have previously raised our concerns with your membership in CA100+. Now, Phase 2 is publicly imposing prescriptive requirements and is revealing that state attorneys general have been right about CA100+’s purpose all along. With four of the world’s largest asset managers publicly backing away from the alliance and dozens more privately withdrawing over the last six months, each asset manager needs to explain why continuing membership in CA100+ does not implicate the material legal risks noted above.

Sincerely,



Sean D. Reyes
Utah Attorney General



Treg R. Taylor
Alaska Attorney General



Tim Griffin
Arkansas Attorney General



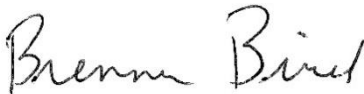
Christopher M. Carr
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Raúl Labrador
Idaho Attorney General



Todd Rokita
Indiana Attorney General



Brenna Bird
Iowa Attorney General



Russell Coleman
Kentucky Attorney General



Liz Murrill
Louisiana Attorney General

⁵⁷ Munich Re, “Munich Re Discontinues NZIA Membership” (Mar. 31, 2023), <https://www.munichre.com/en/company/media-relations/media-information-and-corporate-news/media-information/2023/media-release-2023-03-31.html>.

⁵⁸ Compare United Nations Environment Programme—Finance Initiative, “World-Leading Insurers and United Nations Launch Pioneering Target-Setting Protocol to Accelerate Transition to Net-Zero Economy” (Jan. 2023), <https://www.unepfi.org/industries/insurance/launch-of-nzia-target-setting-protocol-version-1-0/> (listing 29 members), with United Nations Environment Programme—Finance Initiative, “Members: Net-Zero Insurance Alliance,” <https://www.unepfi.org/net-zero-insurance/members/> (listing only 11 current members).



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