

AUSTIN KNUDSEN



STATE OF MONTANA

July 6, 2023

R. Glenn Hubbard  
W. Carl Kester  
Cynthia L. Egan  
Frank J. Fabozzi  
Lorenzo A. Flores  
Stayce D. Harris  
J. Phillip Holloman  
Catherine A. Lynch  
Robert Fairbairn  
John M. Perlowski  
c/o Janey Ahn  
Secretary of the Trusts  
50 Hudson Yards  
New York, NY 10001

Dear Directors:

The undersigned attorneys general are the chief legal officers of our respective States. We have authority under state laws prohibiting deceptive and unfair acts and practices, state securities laws, and state common law to act for the protection of our States' residents and the integrity of the marketplace, and many of us have authority to represent state entities that hold mutual funds.<sup>1</sup> We are inquiring into potential issues related to mutual funds for which you serve as a director and BlackRock, Inc. through affiliate(s) (collectively, "BlackRock") serves as the investment adviser. Examples of the mutual funds in question are listed in the definitive proxy statement for 44 mutual funds dated May 23, 2023 (the "BlackRock Mutual Funds" or "Mutual Funds").<sup>2</sup> We write to request information about whether the Mutual Fund boards

---

<sup>1</sup> See generally Mont. Code § 30-14-103 (consumer protection act); *People v. Merkin*, 907 N.Y.S.2d 439 (Table), 2010 WL 936208, at \*9-\*10 (N.Y. Sup. Ct. Feb. 8, 2010) (internal quotation marks omitted) (holding that the New York Attorney General had standing as *parens patriae* to bring common law claims—including a breach of fiduciary duty claim—against an asset manager and his investment management company).

<sup>2</sup> See BlackRock Closed-End Funds, 2023 Joint Proxy Statement (DEF 14A), at 1–2, <https://www.sec.gov/Archives/edgar/data/835948/000119312523151865/d505157ddef14a.htm> [hereinafter "BlackRock Funds' Proxy Statement"].

DEPARTMENT OF JUSTICE

215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

(406) 444-2026  
Contactdoj@mt.gov  
mtdoj.gov

have conducted a sufficiently thorough inquiry into both BlackRock's potential conflicts of interest and whether BlackRock should continue as an investment adviser to the Mutual Funds. The information you provide in response to our letter will help us determine the future course of our actions.

*First*, we are inquiring into financial relationships that could undermine director independence and over-boarding. Six of the nine Mutual Fund directors have a relationship with BlackRock as either a BlackRock employee or a board member of a company where BlackRock owns more than a 5% stake and in many cases is the first or second largest shareholder.<sup>3</sup> That financial entanglement between the Mutual Fund directors and BlackRock undermines the principles of independence undergirding the Investment Company Act of 1940 (the "ICA"), 15 U.S.C. § 80a-1, *et seq.*, as well as state law principles of independence. In addition, the same mutual fund directors serve on at least 44 BlackRock Mutual Fund boards (just focusing on the one set of Mutual Funds discussed above), and that level of board commitment ironically exceeds by a factor of ten the ESG standards for over-boarding that BlackRock imposes on other companies. Serving on this many different boards also results in compensation totaling \$400,000–\$500,000 or more for many of the directors.<sup>4</sup> We are also inquiring into whether financial relationships and over-boarding reinforce each other to threaten the board's independence and ability to give proper attention to each fund—which is the board's fundamental role and duty.

*Second*, we are inquiring into whether there has been sufficient disclosure, oversight, and investigation by the board into potential conflicts of interest by BlackRock as investment adviser to the Mutual Funds. A mutual fund adviser must make "full disclosure . . . in every area where there was even a possible conflict of interest." *Tannenbaum v. Zeller*, 552 F.2d 402, 418 (2d Cir. 1977).<sup>5</sup> BlackRock and its CEO Larry Fink have made commitments to use Mutual Fund assets for non-financial purposes by joining groups that engage with companies to "accelerate" the global achievement of net zero greenhouse gas emissions. It has been publicly reported that these commitments were made in the face of "mounting concerns" by environmental activists,<sup>6</sup> and BlackRock has previously admitted that "[c]lients representing more

---

<sup>3</sup> Where BlackRock directly or indirectly owns, controls, or holds with power to vote at least 5% of the shares in a company, the company becomes an "affiliated person" of BlackRock for purposes of the Investment Company Act. 15 U.S.C. § 80a-2(a)(3)(B). As discussed *infra*, this is the case for at least one company for six of the nine directors.

<sup>4</sup> BlackRock Funds' Proxy Statement at B-2.

<sup>5</sup> See also *Moses v. Burgin*, 445 F.2d 369, 376-77 (1st Cir. 1971); *Cambridge Fund, Inc. v. Abella*, 501 F. Supp. 598, 619-23 (S.D.N.Y. 1980).

<sup>6</sup> Sinead Cruise et al., *BlackRock vows tougher stance on climate after activist heat*, Reuters (Jan. 14, 202), available at <https://www.reuters.com/article/us-blackrock-fink/blackrock-vows-tougher-stance-on-climate-after-activist-heat-idUSKBN1ZD12B>

than \$3.3 trillion in assets entrusted to BlackRock have made net zero commitments as their own investment objective.”<sup>7</sup> Yet many retail investors have no interest in ESG investing and simply want the best financial return on their investments.<sup>8</sup> This appears to present a conflict-of-interest. BlackRock also makes representations that certain Mutual Funds do not “seek to follow a sustainable, impact or ESG investment strategy.” BlackRock’s commitments and obfuscation of the role of ESG in its activities is problematic for ordinary investors. Under the *Tannenbaum* standard, these facts and circumstances should have been evaluated by you as the directors to determine whether they indicate a potential conflict of interest warranting further investigation and potentially resulting in the board voting to stop continuing BlackRock as the Mutual Funds’ investment adviser.

Together, these issues raise questions about whether you are sufficiently independent and active to conduct the appropriate inquiry into the propriety of BlackRock serving as the Mutual Funds’ investment adviser and whether you have in fact received the requisite disclosures and conducted inquiries based on such disclosures. We outline our inquiry in more detail below and request information through questions at the end of this letter.

*Background Regarding Mutual Fund and Investment Adviser Structure and State Law Duties*

As you know, a mutual fund is a pool of assets, consisting primarily of a portfolio of securities and belonging to the individual investors holding shares in the fund. *Burks v. Lasker*, 441 U.S. 471, 480 (1979). Typically, a separate entity called an investment adviser creates the mutual fund, which may have no employees of its own. *See Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90, 93 (1991); *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 536 (1984); *Burks*, 441 U.S. at 480–81. As a typical example, the

---

<sup>7</sup> *BlackRock Supports Consistent Climate-Related Disclosures; Urges Global Coordination*, available at <https://corpgov.law.harvard.edu/2022/08/17/blackrock-supports-consistent-climate-related-disclosures-urges-global-coordination/#:~:text=Clients%20representing%20more%20than%20%243.3.to%20inform%20their%20investment%20decisions>.

<sup>8</sup> *See, e.g., Consumers’ Research Comment on SEC’s Proposed Rule on Climate Disclosures*, <https://www.sec.gov/comments/s7-10-22/s71022-20132345-302910.pdf> (discussing a recent survey in which “[m]ore than half of retail investors ranked ESG as the least important factor when making decisions about their investments,” and in which “70% of retail investors indicate[d] that the primary use of their investment income is to save for retirement or supplement their income, as opposed to the 3% who are seeking to drive sustainability and the 2% seeking to drive social change”); *The Proposed SEC Climate Disclosure Rule: A Comment from Twenty-Two Professors of Law and Finance*, <https://corpgov.law.harvard.edu/2022/07/06/the-proposed-sec-climate-disclosure-rule-a-comment-from-twenty-two-professors-of-law-and-finance/> (noting that a “recent survey of individual investors co-sponsored by FINRA indicates that most do not share the institutional enthusiasm for ‘ESG investing’” and that “many are unfamiliar with it”).

BlackRock Utilities, Infrastructure, & Power Opportunities Trust is a Delaware statutory trust, established pursuant to an agreement and declaration of trust.<sup>9</sup> The trust is then governed by its board of trustees.<sup>10</sup> The board subsequently approves BlackRock as the investment adviser.<sup>11</sup>

Investment advisers exert substantial control over mutual funds, including managing the fund's investments, and providing other services. *See Burks*, 441 U.S. at 481. Because of the relationship between a mutual fund and its investment adviser, “the forces of arm’s-length bargaining do not work in the mutual fund industry in the same manner as they do in other sectors of the American economy.” *Id.* (citation omitted). Before becoming S.E.C. chair, Gary Gensler noted that “mutual fund boards fire their advisers with about the same frequency that racehorses fire their jockeys.”<sup>12</sup> This functional dependence and potential for conflicts of interest highlights the importance of actual director independence and vigilance on mutual fund boards.

Because trusts are created by state law, trustees of those trusts have duties of loyalty and care. *See, e.g., Smith v. Van Gorkom*, 488 A.2d 858, 873 (Del. 1985) (setting forth the general standard applicable to the duty of care). A corporate director has a conflict of interest “where a corporate decision will have a materially detrimental impact on a director, but not on the corporation and the stockholders. In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the adverse personal consequences resulting from the decision.” *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993). Also, in certain circumstances, state attorneys general have authority as *parens patriae* to protect their citizens, including from breach of fiduciary duties. *See People v. Merkin*, 907 N.Y.S.2d 439 (Table), 2010 WL 936208, at \*9–\*10 (N.Y. Sup. Ct. Feb. 8, 2010) (internal quotation marks omitted) (holding that the New York Attorney General had standing as *parens patriae* to bring common law claims—including a breach of fiduciary duty claim—against an asset manager and his investment management company).

---

<sup>9</sup> BlackRock Utility and Infrastructure Trust, Prospectus at page 18 (Nov. 23, 2011), available at <https://www.sec.gov/Archives/edgar/data/1528988/000095012311100255/y93113ee497.htm#Y93113113>.

<sup>10</sup> *Id.* at page A-25 (“The Board has overall responsibility for the oversight of the Trust.”).

<sup>11</sup> See BlackRock, Certified Shareholder Report of Registered Management Investment Companies at page 120 (July 2, 2012), available at <https://www.sec.gov/Archives/edgar/data/1528988/000119312512292082/d366920dncsrs.htm>

<sup>12</sup> Testimony of Gary Gensler, Hearing before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, 108th Cong., 1st Sess. (Mar. 12, 2003).

*Independence of Mutual Fund Directors and Their Ability to Give Each Fund Sufficient Attention*

Our first inquiry to you relates to both potential conflicts of interest for directors of mutual fund boards and also the apparent over-boarding of directors on dozens of BlackRock Mutual Funds.

*Inquiry Into Potential Lack of Independence, Given BlackRock's Holdings in Other Public Companies on Which Mutual Fund Directors Serve*

We question the practical independence of a director that is also a director of a publicly traded company where the investment adviser owns at least 5% of the shares in that publicly traded company. As will be explained below, such share ownership gives the adviser power over the public company's directors and may limit the independence of the person serving as a mutual fund director for fear of reprisals in their role as a public company board member. This appears to conflict with the overall purpose of the ICA's independent director requirement.

Congress passed the ICA to protect mutual fund shareholders from the potential divergence of interest between the fund and its investment adviser. *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 536–38 (1984). The ICA requires that at least 40% of a mutual fund's board are not "interested persons" of the fund. 15 U.S.C. § 80a-10(a). It also requires investment adviser contracts and fees to be reviewed and approved by the unaffiliated board members and/or the shareholders, *id.* at § 80a-15. This responsibility serves an "independent watchdog" function. *See, e.g., In re BlackRock Mut. Funds Advisory Fee Litig.*, 327 F. Supp. 3d 690, 711 (D.N.J. 2018).

An "interested person" in a mutual fund can mean multiple things, one of which is an "interested person" in the fund's investment adviser or principal underwriter. *Id.* at § 80a-2(a)(19)(A)(iii). An "interested person" in the fund's investment adviser includes "any affiliated person of such investment adviser," *id.* at § 80a-2(a)(19)(B)(i), which in turn is defined to include "any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by" the investment adviser, as well as any officer, director, or employee of the investment adviser, *id.* at § 80a-2(a)(3)(B), (D). Other examples of when someone is an interested person include being an immediate family member of an affiliated person or serving as legal counsel to the investment adviser. *Id.* § 80a-2(a)(19)(B)(i), (iv). All of these examples in the statute show that Congress intended the ICA to require actual independence by directors.

In addition to these specific categories, the SEC also has the authority to find that someone is an interested person in the investment adviser if the "natural person" has had "a material business or professional relationship with such investment adviser."

*Id.* at § 80a-2(a)(19)(B)(vii). SEC staff guidance has described these relationships as those that “might tend to impair the independence of [a] director.” Interpretive Matters Concerning Indep. Directors of Inv. Companies, Release No. IC-24083, 64 Fed. Reg. 59877, 59879 (Oct. 14, 1999) (hereinafter “SEC Staff Guidance”) (citation omitted).

Some of the mutual fund directors that serve on funds where BlackRock is the investment adviser also serve on boards of publicly traded companies, receiving (on information and belief) substantial compensation and prestige for those roles. As one example, on May 25, 2023, forty-four BlackRock mutual funds filed their definitive proxy statement for their 2023 annual meeting and identified nine board members/nominees.<sup>13</sup> **Only 3 of the 9 (less than 40%)** of the directors are not an employee of BlackRock or a director of at least one company/entity where BlackRock owns at least 5% of the shares,<sup>14</sup> making that company/entity an “affiliated person” of BlackRock under 15 U.S.C. § 80a-2(a)(3)(B). Serving as a director of an “affiliated person” raises important questions about independence as a practical matter. We believe this warrants further consideration by you in your role as director of a mutual fund that owes fiduciary duties to its shareholders. In fact, being a director of an affiliate—whose position depends on BlackRock’s votes—is clearly a much closer financial relationship than simply being an immediate relative of an affiliated person of BlackRock. *See* 15 U.S.C. § 80a-2(a)(19)(B)(i).

For example, Cynthia L. Egan and R. Glenn Hubbard are listed as two of the “Independent Board Members/Nominees,” and they each serve as directors of multiple public companies where BlackRock owns more than 5% of the shares.

Ms. Egan serves as the Chair of the Board of Directors and Independent Presiding Director of The Hanover Insurance Group,<sup>15</sup> the Vice Chair of the Board of Directors and Lead Independent Director of the Huntsman Corporation,<sup>16</sup> and a member of the Board of Directors of Unum Group.<sup>17</sup> BlackRock is the second largest shareholder of

---

<sup>13</sup> *See* BlackRock Funds’ Proxy Statement, *supra* note 1, at 9.

<sup>14</sup> *See id.* at 9–11.

<sup>15</sup> The Hanover Ins. Grp., 2023 Proxy Statement (DEF 14A), at 9, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000944695/0ea64993-a9a8-41dd-8f4f-754fd9ec97c0.pdf>.

<sup>16</sup> The Huntsman Corp., 2023 Proxy Statement (DEF 14A), at 14, [https://d1lio3yog0oux5.cloudfront.net/7c02939aeabc705d25c793b069d8e290/huntsman/db/800/6904/proxy\\_statement/0001104659-23-034590.pdf](https://d1lio3yog0oux5.cloudfront.net/7c02939aeabc705d25c793b069d8e290/huntsman/db/800/6904/proxy_statement/0001104659-23-034590.pdf).

<sup>17</sup> *Board of Directors*, Unum Grp., <https://investors.unum.com/governance/board-of-directors/default.aspx#Cynthia-L.-Egan>.

The Hanover Insurance Group, owning 9.3% of its shares.<sup>18</sup> BlackRock is the largest shareholder of the Unum Group, owning 12.5% of its shares.<sup>19</sup> And BlackRock is the second largest shareholder of the Huntsman Corporation, owning 7.2% of its shares.<sup>20</sup> Moreover, BlackRock voted for the retention of Ms. Egan as director for each of these public companies.<sup>21</sup>

Professor Hubbard serves as the Chairman of the Board of the Metropolitan Life Insurance Company.<sup>22</sup> BlackRock is MetLife's second largest shareholder, owning 7.1% of the company.<sup>23</sup> Professor Hubbard also serves on the Board of Directors of TotalEnergies SE.<sup>24</sup> BlackRock appears to be one of the largest shareholders of Total, owning 6.6% of the company.<sup>25</sup> And BlackRock voted for the retention of Professor Hubbard as director of MetLife and on the director remuneration policy for Total.<sup>26</sup>

As noted, serving as a director of an "affiliated person" does not automatically make the director "interested" under the specific per se examples in 15 U.S.C. § 80a-

---

<sup>18</sup> Hanover Ins. Grp., *supra* note 15, at 6.

<sup>19</sup> Unum Grp., 2023 Proxy Statement (DEF 14A), at 104,

[https://s201.q4cdn.com/630564768/files/doc\\_financials/2023/Unum-Group-2023-Proxy-Statement.pdf](https://s201.q4cdn.com/630564768/files/doc_financials/2023/Unum-Group-2023-Proxy-Statement.pdf).

<sup>20</sup> Huntsman Corp., *supra* note 16, at 88.

<sup>21</sup> This can be confirmed by visiting <http://vds.issproxy.com/SearchPage.php?CustomerID=10228> and searching by company name or ticker for The Hanover Insurance Group (THG), Huntsman Corporation (HUN), and Unum Group (UNM). Based on this searching, BlackRock voted for Ms. Egan as Director for the Hanover Insurance Group at the May 11, 2021 annual meeting; it voted for her as director of Huntsman Corporation at the March 25, 2022 proxy contest involving Starboard, and April 28, 2021 annual meeting; and it voted for her as director of Unum Group at the May 26, 2022, May 27, 2021, and May 28, 2020 annual meetings.

<sup>22</sup> MetLife, 2023 Proxy Statement (DEF 14A), at 24,

[https://s201.q4cdn.com/280976757/files/doc\\_financials/2023/ar/2023-Proxy-Statement.pdf](https://s201.q4cdn.com/280976757/files/doc_financials/2023/ar/2023-Proxy-Statement.pdf).

<sup>23</sup> *Id.* at 122.

<sup>24</sup> 2023 Shareholders' Meeting, TotalEnergies, at 11,

[https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-06/TotalEnergies\\_2023\\_Shareholders\\_Meeting\\_Presentation.pdf](https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-06/TotalEnergies_2023_Shareholders_Meeting_Presentation.pdf).

<sup>25</sup> See *Share ownership structure*, TotalEnergies, <https://totalenergies.com/investors/shares-and-dividends/ownership-structure>.

<sup>26</sup> This can be confirmed by visiting <http://vds.issproxy.com/SearchPage.php?CustomerID=10228>, and searching by company name or ticker for Metropolitan Life Insurance (MET) and TotalEnergies SE (TTE). Based on this searching, BlackRock voted for Professor Hubbard as Director for Metropolitan Life Insurance at the June 21, 2022, June 15, 2021, and June 16, 2020 annual meetings; and voted to approve the remuneration policy of directors for TotalEnergies SE at the May 25, 2022 annual/special meeting.

2(a)(19)(B). But it may well establish for each “a material business or professional relationship with such investment adviser.” 15 U.S.C. § 80a-2(a)(19)(B)(vii). The SEC may therefore find that the dual roles of mutual fund director and director of an “affiliated person” of BlackRock create “a material business or professional relationship with [the] investment adviser” resulting in a finding that a director is an “interested person.” See 15 U.S.C. § 80a-2(a)(19)(B)(vii). The SEC Staff Guidance identified a situation where “a fund director who serves as a chief executive officer of any company for which the chief executive officer of the fund’s adviser serves as a director also may be treated as ‘interested.’” SEC Staff Guidance, 64 Fed. Reg. at 59880. The same concerns are present here. BlackRock, for example, “has the power to vote on matters that affect” the director’s “compensation and status” as a director of these other publicly traded companies. This creates the same independence concerns that the SEC found in its Staff Guidance about a hypothetical CEO.

In addition, a corporate director has a conflict of interest “where a corporate decision will have a materially detrimental impact on a director, but not on the corporation and the stockholders. In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the adverse personal consequences resulting from the decision.” *Rales*, 634 A.2d at 936 (Del. 1993). Accordingly, the dual role of director of mutual funds and director of public companies that are affiliated persons of the mutual fund’s adviser may present impermissible conflicts-of-interest under state law.

We therefore would like to understand why you believe it is not only lawful but also appropriate to have 6 of 9 directors of Mutual Funds also serve as either an employee of the investment adviser or a director of another company that is an “affiliated person” of the investment adviser. This is particularly true where over the past few years BlackRock has adopted an activist approach that by default applies to all assets under management as it relates to ESG. For example, in 2021, BlackRock CEO Larry Fink stated, “[l]ast year we wrote to you that BlackRock was making sustainability our new standard for investing.”<sup>27</sup> Mr. Fink went on to say that BlackRock is “explicitly asking that all companies disclose a business plan aligned with the goal of limiting global warming to well below 2°C, consistent with achieving net zero global greenhouse gas emissions by 2050.”<sup>28</sup> Given this activist approach and BlackRock’s extensive reach to every public company, it strains credulity that a director of a mutual fund would not feel pressure against standing up to BlackRock’s ESG agenda—even when it is not in the financial interests of the fund’s shareholders—for fear of risking loss of the directorship in the “affiliated person” for which BlackRock is a greater than 5% shareholder.

---

<sup>27</sup> *Net zero: a fiduciary approach* (2021), BlackRock, <https://www.blackrock.com/corporate/investor-relations/2021-blackrock-client-letter>.

<sup>28</sup> *Id.*



Another useful analogy regarding independence in the unique situation of a mutual fund and its investment advisor, when the investment advisor is one of the largest asset managers in the world, is the analysis applied by courts to the position of a special litigation committee. For example, then-Vice Chancellor Strine in *In re Oracle Corp. Derivative Litig.*, found that “[t]he notion that anyone in Palo Alto can accuse Ellison of insider trading without harboring some fear of social awkwardness seems a stretch .... [This] is merely an acknowledgement of the simple fact that accusing such a significant person in that community of such serious wrongdoing is no small thing.” 824 A.2d 917, 945 (Del. Ch. 2003). Similarly, for an independent director of a mutual fund to exercise sufficient oversight of conflicts of interest presented by BlackRock’s embrace of ESG investing (as discussed more below), there must be true independence, and board members who also serve on boards of publicly traded companies may feel the same type of hesitation, if not outright voting action by one of the world’s most powerful asset managers.

*Inquiry into Potential Over-commitment of Directors Who Serve on Dozens of Mutual Fund Boards*

We are also trying to understand whether directors of the Mutual Funds have the time to properly carry out their duties when, in addition to all their other commitments, they are serving on *dozens* of BlackRock Mutual Fund boards. This is evident from multiple sources, including the definitive proxy statement filed for 44 BlackRock-affiliated mutual funds on May 23, 2023.<sup>29</sup>

Service on 44 or more boards ironically is far in excess of BlackRock’s own ESG policy, which states that it will consider voting against a director who serves on more than *four* public boards. According to BlackRock: “Where a director serves on an excessive number of boards, [this] may limit their capacity to focus on each board’s needs,” and BlackRock “may vote against that individual.”<sup>30</sup> BlackRock considers a director to be overcommitted if they are a public company executive and serve on more than one other public company board than the company for which they are an executive. BlackRock also considers a director to be overcommitted if they are not a public company executive and serve on more than three other public company boards.

We question how BlackRock can, on the one hand, claim that service on four boards is an overcommitment, and at the same time, sanction the directors of its own mutual

---

<sup>29</sup> See BlackRock Funds’ Proxy Statement, *supra* note 1, at 9.

<sup>30</sup> See BlackRock, BlackRock Investment Stewardship (2023), at 5,

<https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>.

funds to serve on dozens of boards in addition to their other commitments. We are also trying to better understand how you, as directors, can agree to such a structure if you subscribe to BlackRock Investment Stewardship’s principles as accurately reflecting sound corporate governance. Serving on this many different boards also results in compensation totaling \$400,000–\$500,000 or more for many of the directors, and we would like to understand your position about how that compensation interacts with board independence undergirding the ICA and state law, as this amount appears to make your compensation similar to that of many high-paid, full-time employees.<sup>31</sup>

*Whether Mutual Fund Directors Are Being Provided All Material Information Related to Conflicts-of-Interest and Benefits by BlackRock Serving as Investment Adviser*

Our second main area of inquiry relates to whether BlackRock is providing you, as directors, all material information regarding potential conflicts of interest, particularly information regarding BlackRock and its CEO Larry Fink’s commitments to use Mutual Fund assets for non-financial purposes and also to divest actively managed funds from coal assets. Related to this, we would like to better understand whether you, as directors, are considering all benefits to BlackRock from its role as investment adviser to the various mutual funds and properly investigating these issues as part of making your decision to continue BlackRock as the investment adviser for the Mutual Funds. Our understanding is that you have power to prevent continuance of the investment management agreement, or even to terminate the agreement.<sup>32</sup> Therefore, these are issues that you can and must consider, and we would like to understand what steps you have taken to do so.

As discussed above, directors of trusts are governed by state law duties. Under the duty of loyalty, one of the responsibilities of directors includes “to exercise oversight’ and to monitor the corporation’s operational viability, legal compliance, and financial performance.” *Marchand v. Barnhill*, 212 A.3d 805, 809 (Del. 2019) (discussing *Caremark* claims). This requires that “a board make a good faith effort to put in place a reasonable system of monitoring and reporting about the corporation’s central compliance risks.” *Id.* at 824. Here, one of the central compliance risks of a trust such as the Mutual Funds is that the investment advisor it appoints carries out its duties to manage funds properly. We would like to understand what processes you have in place as the directors of the mutual funds to ensure against conflicts of interest by your investment adviser. How did you change or modify your processes when Mr.

---

<sup>31</sup> BlackRock Funds’ Proxy Statement at B-2.

<sup>32</sup> See, e.g., BlackRock Utility and Infrastructure Trust, *Prospectus* at page A-18 (Nov. 23, 2011), available [at https://www.sec.gov/Archives/edgar/data/1528988/000095012311100255/y93113sec497.htm#Y93113113](https://www.sec.gov/Archives/edgar/data/1528988/000095012311100255/y93113sec497.htm#Y93113113).

Fink announcing to CEOs in 2020 that he “believe[s] we are on the edge of a fundamental reshaping of finance.”<sup>33</sup>

The board of directors of a mutual fund must also engage under the ICA in a review process regarding the adviser’s compensation and continuation as the adviser for compensation. A board’s review is deficient where “an investment adviser fails to disclose material information to the board,” or where the board fails to consider the “relevant factors.” *Jones v. Harris Assocs. L.P.*, 559 U.S. 335, 351–52 (2010). Importantly, the adviser must make “**full disclosure** . . . in every area where there was even a possible conflict of interest.” *Tannenbaum v. Zeller*, 552 F.2d 402, 418 (2d Cir. 1977).<sup>34</sup> When this issue arises in the context of investment adviser compensation, courts (as well as the SEC) generally look to certain factors. *See Jones*, 559 U.S. at 344–45 (citing *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923, 929–32 (2d Cir. 1982)). The *Gartenberg* court held that a board should consider (1) “the adviser-manager’s cost in providing the service,” (2) “the nature and quality of the service,” (3) “the extent to which the adviser-manager realizes economies of scale as the fund grows larger,” (4) “the volume of orders which must be processed by the manager,” (5) the adviser’s profitability, (6) “fall-out” benefits the adviser realizes from managing the fund,<sup>35</sup> and (7) the fee structure compared to other funds. *Jones*, 559 U.S. at 344 & 344 n.5 (citing *Gartenberg*, 694 F.2d at 929–32). Reviewing courts may also consider “the expertise of the independent trustees . . . and the extent of care and conscientiousness with which they perform their duties.” *Gartenberg*, 694 F.2d at 930.<sup>36</sup>

We have fundamental questions about the information BlackRock has disclosed to you, what you have considered, and any follow-up inquiry you have made. *First*, we would like to understand whether BlackRock felt pressure that some of its larger institutional clients wanted it to join activist organizations, and whether BlackRock undertook sufficient analysis to conclude that joining these activist organizations

---

<sup>33</sup> Larry Fink, 2020 Letter to CEOs, available at <https://www.blackrock.com/us/individual/larry-fink-ceo-letter>.

<sup>34</sup> The ICA imposes a fiduciary duty on investment advisers. 15 U.S.C. § 80a-35. Specifically, for purposes of the ICA, “the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature.” 15 U.S.C. § 80a-35(b). An adviser violates this fiduciary duty if it “charge[s] a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm’s length bargaining.” *Jones*, 559 U.S. at 345–46 (citing *Gartenberg*, 694 F.2d at 928).

<sup>35</sup> *Kasilag v. Hartford Inv. Fin. Servs., LLC*, 2016 WL 1394347, at \*17 (D.N.J. Apr. 7, 2016) (“Fall-out benefits are those which accrue to the mutual fund adviser as a result of its work on behalf of the mutual fund.”).

<sup>36</sup> The SEC requires funds to disclose similar information in communicating with shareholders. 17 C.F.R. §§ 239.15A, 240.14a-101, 274.11.

would help, harm, or be neutral toward other clients, such as the retail investors in the Mutual Funds for which you are directors. We also would like to better understand what disclosure you received from BlackRock and investigation you undertook on this issue, and whether BlackRock has any other potential conflicts because of its relationship with domestic or foreign pension-funds that pursue non-financial objectives.

In particular, BlackRock has previously admitted that “[c]lients representing more than \$3.3 trillion in assets entrusted to BlackRock have made net zero commitments as their own investment objective.”<sup>37</sup> It has also been reported that in 2020, BlackRock came under mounting pressure from certain activists to adopt ESG policies.<sup>38</sup> By aligning its investment practices with the climate commitments and ESG preferences of some of its biggest institutional investors, BlackRock stood to maintain (and expand) its control of trillions of dollars of assets under management. By contrast, BlackRock has many retail-investor clients who have no interest in ESG investing and who simply want the best financial return on their investments.<sup>39</sup> But these retail investors apparently do not carry nearly the same influence or leverage as the large institutional clients that favor ESG. Accordingly, BlackRock may have an incentive to implement the ESG practices favored by its large institutional investors, even if that means acting against the interests and preferences of BlackRock’s many retail investors. This appears to present a conflict-of-interest and also fall-out benefits to BlackRock. We would like to understand what was disclosed to you and what analysis you undertook in your role as directors of BlackRock Mutual Funds.

---

<sup>37</sup> *BlackRock Supports Consistent Climate-Related Disclosures; Urges Global Coordination*, available at <https://corpgov.law.harvard.edu/2022/08/17/blackrock-supports-consistent-climate-related-disclosures-urges-global-coordination/#:~:text=Clients%20representing%20more%20than%20%243.3,to%20inform%20their%20investment%20decisions>.

<sup>38</sup> Sinead Cruise et al., *BlackRock vows tougher stance on climate after activist heat*, Reuters (Jan. 14, 2022), available at <https://www.reuters.com/article/us-blackrock-fink/blackrock-vows-tougher-stance-on-climate-after-activist-heat-idUSKBN1ZD12B>

<sup>39</sup> See, e.g., *Consumers’ Research Comment on SEC’s Proposed Rule on Climate Disclosures*, <https://www.sec.gov/comments/s7-10-22/s71022-20132345-302910.pdf> (discussing a recent survey in which “[m]ore than half of retail investors ranked ESG as the least important factor when making decisions about their investments,” and in which “70% of retail investors indicate[d] that the primary use of their investment income is to save for retirement or supplement their income, as opposed to the 3% who are seeking to drive sustainability and the 2% seeking to drive social change”); *The Proposed SEC Climate Disclosure Rule: A Comment from Twenty-Two Professors of Law and Finance*, <https://corpgov.law.harvard.edu/2022/07/06/the-proposed-sec-climate-disclosure-rule-a-comment-from-twenty-two-professors-of-law-and-finance/> (noting that a “recent survey of individual investors co-sponsored by FINRA indicates that most do not share the institutional enthusiasm for ‘ESG investing’ and that “many are unfamiliar with it”).

*Second*, we are inquiring into your actions as Mutual Fund directors related to BlackRock’s public commitments to use client assets for the purpose of advancing ESG goals rather than for the sole purpose of maximizing shareholder value. For example, as a signatory of Climate Action 100+, BlackRock vowed to pressure companies to “[t]ake action to reduce greenhouse gas emissions across their value chain, consistent with the Paris Agreement’s goal of limiting global average temperature increase to well below 2 degrees Celsius above pre-industrial levels.”<sup>40</sup> Similarly, as a signatory of the Net Zero Asset Managers (NZAM) initiative, BlackRock expressly committed to “[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with [its] ambition for *all assets under management* to achieve net zero emissions by 2050 or sooner.”<sup>41</sup> NZAM is clear that, “[t]he commitment also ensures that several important actions – such as stewardship and policy advocacy – are comprehensively implemented,” in other words it is non-waivable.<sup>42</sup> BlackRock appears to acknowledge that its net-zero commitments are “constrained” by its “legal duties to clients.”<sup>43</sup> Yet, rather than promise to uphold those duties, BlackRock apparently promises to “overcome” them.<sup>44</sup> BlackRock’s ESG commitments thus raise questions regarding conflict of interest and BlackRock’s duty to act exclusively for the financial benefit of its shareholders. Because BlackRock’s commitments extend to “all assets under management,” they clearly implicate BlackRock’s management of the Mutual Funds for which you are a director.

*Third*, despite its climate commitments to the contrary, BlackRock repeatedly states that it does not invest all assets sustainably. For instance, many BlackRock funds contain express disclaimers averring that “[t]his fund does not seek to follow a sustainable, impact or ESG investment strategy,” and that “there is no indication that a sustainable, impact or ESG investment strategy will be adopted by the fund.”<sup>45</sup> These disavowals of “sustainable” investing are inconsistent with BlackRock’s public

---

<sup>40</sup> <https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf>. BlackRock is also a member of the Glasgow Financial Alliance for Net Zero, which is the “world’s largest coalition of financial institutions committed to transitioning the global economy to net-zero greenhouse gas emissions.” <https://www.gfanzero.com/about/>.

<sup>41</sup> <https://www.netzeroassetmanagers.org/commitment/> (emphasis added).

<sup>42</sup> See NZAM, FAQ, available at <https://www.netzeroassetmanagers.org/faq/>

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; see also <https://www.netzeroassetmanagers.org/faq/> (noting that NZAM “provides a forum to . . . overcome barriers to aligning investments to th[e] net zero goal”).

<sup>45</sup> See, e.g., BlackRock Utilities, Infrastructure, & Power Opportunities Trust, <https://www.blackrock.com/us/individual/products/240173/blackrock-utility-and-infrastructure-trust-fund> (emphasis omitted); Enhanced Equity Dividend Trust, <https://www.blackrock.com/us/individual/products/240225/blackrock-enhanced-equity-dividend-trust-usd-fund> (emphasis omitted).

commitments to use “all assets under management” to achieve net zero, and to make “sustainability” its “new standard for investing.”<sup>46</sup> We would like to understand what if anything you did to investigate and evaluate whether these and other conflicting representations about BlackRock’s use of client funds to advance ESG-related policy goals had the tendency and capacity to mislead retail investors or presented other issues related to BlackRock remaining as the Mutual Funds’ investment adviser.

*Fourth*, we would like to understand whether BlackRock disclosed to you all material information related to pledges to divest from coal, and any steps you took to review if BlackRock’s ESG commitments may have cost any Mutual Funds returns. To take just one example, in 2020 BlackRock CEO Larry Fink “pledged that the company’s actively managed funds would divest from any company that makes more than 25% of its revenue from thermal coal.”<sup>47</sup> BlackRock’s decision to divest from coal was apparently based on activist concerns rather than maximizing shareholder value, since it is beyond question that coal investments have been extremely profitable from a purely financial perspective. Indeed, the 7 largest coal companies in the United States have averaged a share price increase of 981% since July 2020.<sup>48</sup> You are the directors of certain funds that are actively managed by BlackRock, including the BlackRock Enhanced Equity Dividend Trust; the BlackRock Utilities, Infrastructure & Power Opportunities Trust; and others.<sup>49</sup> BlackRock’s activist commitment to divest from coal may have adversely affected these funds and others like them. At the very least, BlackRock’s failure to *increase* its investments in coal may have caused these funds to forgo substantial growth. We seek to understand whether BlackRock disclosed material information and whether you analyzed that information.

Finally, we are seeking to better understand what investigation you have undertaken related to potential conflicts of interest arising from BlackRock’s promotion of its

---

<sup>46</sup> See <https://www.netzeroassetmanagers.org/commitment/>; <https://www.blackrock.com/corporate/investor-relations/2020-blackrock-client-letter>.

<sup>47</sup> <https://www.cnbc.com/2020/01/15/one-of-blackrocks-biggest-critics-on-larry-finks-climate-letter.html>

<sup>48</sup> A list of the largest coal companies by market cap is available here: <https://companiesmarketcap.com/coal-mining/largest-companies-by-market-cap/>. The share prices for each of the seven largest companies can be found by going to the price history tab for each company’s website: <https://companiesmarketcap.com/peabody-energy/marketcap/>; <https://companiesmarketcap.com/alliance-resource-partners/marketcap/>; <https://companiesmarketcap.com/arch-resources/marketcap/>; <https://companiesmarketcap.com/consol-energy/marketcap/>; <https://companiesmarketcap.com/alpha-metallurgical-resources/marketcap/>; <https://companiesmarketcap.com/warrior-met-coal/marketcap/>; <https://companiesmarketcap.com/hallador-energy-company/marketcap/>.

<sup>49</sup> See <https://www.blackrock.com/us/individual/products/240173/blackrock-utility-and-infrastructure-trust-fund>; <https://www.blackrock.com/us/individual/products/240225/blackrock-enhanced-equity-dividend-trust-usd-fund>.

higher-priced ESG products. Investment managers tend to charge significantly more for ESG-themed funds (or other ESG-specific investments) than for standard exchange-traded funds that are not overtly focused on ESG.<sup>50</sup> As a result of this price discrepancy, BlackRock may have an incentive to advance the activist goals of its more expensive ESG funds over the strictly financial goals of its less lucrative non-ESG funds. Moreover, by touting its ESG strategy across all assets under management—which includes non-ESG funds—BlackRock may receive significant “fall-out” benefits, such as increased popularity with investors that favor more expansive ESG investment practices. Once again, this presents a potentially serious conflict of interest. We believe that facts on these topics should be disclosed by BlackRock and considered by the boards of the relevant mutual funds when determining if BlackRock’s fee is reasonable and whether to continue retaining BlackRock as a mutual fund’s investment adviser. We would like to understand what actions, if any, you took with respect to this issue.

\* \* \*

In addition to responding to the concerns raised in this letter, we also request that you provide a written response that includes answers to the following questions. We will review these answers to assist us in determining the future course of our actions. We would ask that you provide a detailed response to the above three topics by August 7, 2023.

1. What percentage of your annual income comes from serving as a director of the boards of BlackRock Mutual Funds? Related to this, what percentage of your professional time do you presently devote to serving on the boards of these mutual funds?
2. If you are a director of a public company in which BlackRock owns more than 5% of the shares, please describe your interactions with BlackRock in your role at these other companies, including whether BlackRock Investment Stewardship has had any engagement with you and specifically what issues they have brought up in those engagements?
3. What has BlackRock disclosed to you regarding any potential conflict of interest stemming from the ESG preferences of its large institutional investors? What systems have you established, information have you considered, and actions have you taken to ensure that BlackRock is not favoring the ESG preferences of these investors at the expense of its smaller retail investors who do not support ESG investing and who simply want the best return on their investments?

---

<sup>50</sup> See <https://www.wsj.com/articles/tidal-wave-of-esg-funds-brings-profit-to-wall-street-11615887004>.

4. Has BlackRock disclosed to you what it is doing to overcome the “constraints” that hinder its ability to advance its NZAM climate commitment? What have you done to ensure that BlackRock’s ESG commitments (such as its NZAM and CA100+ commitments) are not adversely affecting assets belonging to the many clients who do not support those commitments and who simply want the best return on their investments?
5. In light of BlackRock’s statements regarding the use of client funds to advance the ESG agenda, have you considered whether BlackRock should be your funds’ investment adviser moving forward? What actions have you taken to warn investors about these potential misrepresentations?
6. Did BlackRock disclose to you its 2020 pledge to divest from coal and all other material information regarding its coal policies and actions? Did you analyze this pledge’s financial implications on your respective funds? To the best of your knowledge, has there been any analysis and has anyone been held accountable for the substantial loss of profits that may have resulted from the decision to divest from coal, or at least to refrain from increasing investments in coal? Were these decisions disclosed to the many investors who have placed their money into your funds for the sole purpose of maximizing their financial returns?
7. In assessing the compensation that you pay BlackRock for its advisory services, have you considered the value that BlackRock receives, including fall-out benefits in addition to direct financial benefits, from promoting its use of all assets under management to achieve ESG policy goals such as net zero? Have you investigated the financial impact that these practices have on BlackRock’s non-ESG funds?

Sincerely,

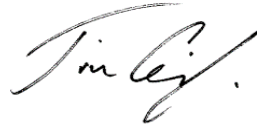
A handwritten signature in blue ink, appearing to read "Austin Knudsen", with a long horizontal flourish extending to the right.

AUSTIN KNUDSEN  
Attorney General of Montana





Steve Marshall  
ATTORNEY GENERAL OF ALABAMA



Tim Griffin  
ATTORNEY GENERAL OF ARKANSAS



Christopher M. Carr  
ATTORNEY GENERAL OF GEORGIA



Brenna Bird  
ATTORNEY GENERAL OF IOWA



Theodore E. Rokita  
ATTORNEY GENERAL OF INDIANA



Kris Kobach  
ATTORNEY GENERAL OF KANSAS



Jeff Landry  
ATTORNEY GENERAL OF LOUISIANA



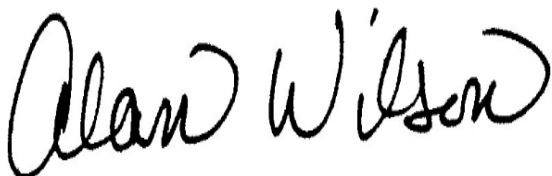
Andrew Bailey  
ATTORNEY GENERAL OF MISSOURI



Lynn Fitch  
ATTORNEY GENERAL OF MISSISSIPPI



JOHN M. FORMELLA  
ATTORNEY GENERAL TO NEW HAMPSHIRE



Alan Wilson  
ATTORNEY GENERAL OF SOUTH CAROLINA



Marty Jackley  
ATTORNEY GENERAL OF SOUTH DAKOTA



Sean Reyes  
ATTORNEY GENERAL OF UTAH



Jason Miyares  
ATTORNEY GENERAL OF VIRGINIA