

**MEMO# 35566**

December 22, 2023

# **State of Tennessee Files a Civil Enforcement Complaint Against an Asset Manager Regarding ESG Activity**

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TO: ESG Advisory Group RE: State of Tennessee Files a Civil Enforcement Complaint Against an Asset Manager Regarding ESG Activity

On December 18, 2023, the Attorney General for the State of Tennessee filed a Civil Enforcement Complaint in the Circuit Court of Williamson, Tennessee against an asset manager, alleging that its "marketing or sale of its investment products and services constitutes deceptive acts and practices under the Tennessee Consumer Protection Act (TCPA)."<sup>[1]</sup> The complaint alleges that the asset manager "misled consumers about the scope and effects of its widespread ESG [Environmental, Social and Governance] activity," and is "deceiving consumers about the company's extensive commitment to fulfilling ESG aims." The State of Tennessee asserts that it is bringing the action to "protect the public and preserve the integrity of the commercial marketplace in Tennessee" and seeks injunctive relief, civil penalties, disgorgement, restitution for consumers, and recoupment of the State's costs. The State has requested a jury trial.

The complaint alleges that the asset manager has "engaged in a series of unlawful ESG-related misrepresentations and omissions in connection with the marketing or sale of its investment products and services to Tennessee consumers, ... downplayed the extent to which ESG considerations drive its investment strategies across all holdings, even in non-ESG funds, ... [and] overstated the extent to which ESG considerations can affect companies' financial performance and outlook."

The State asserts that the asset manager engaged in "ESG evasions" by making "high-profile public commitments to manage all of its funds in line with ESG objectives, but then tell[ing] financially focused investors that it would not manage their funds in line with ESG objectives."<sup>[2]</sup> The complaint alleges that the asset manager made "deceptive statements, disclosures and omissions about its pursuit of ESG" that have "the tendency to mislead consumers about the role of purportedly non-ESG ... funds in promoting ESG." In support of its claims, the complaint contrasts statements on the asset manager's website with actions the asset manager took as part of its engagement with portfolio companies and cites the asset manager's membership in organizations such as Climate Action 100+ ("CA100+") and

the Net Zero Asset Managers Initiative ("NZAM"). The complaint contends that membership in such organizations commits the asset manager "to use the weight of all AUM to push ESG objectives on the companies in which its funds own shares" and that, as a result of such membership, the asset manager has "incorporated an 'ESG Strategy' applicable to all [of its managed] assets and related company processes."<sup>[3]</sup>

The complaint states that "according to its own publicly available statements, [the asset manager] has repeatedly used its proxy votes to further its climate commitments and related ESG agenda" and goes on to cite specific examples of proxy votes, statements made by the asset manager in comments to the Securities and Exchange Commission, and language in sustainability and voting reports and client letters. The State further alleges that the asset manager's "policies, actions, and ESG commitments directly conflict" with the disclosure of certain funds, "which state that those funds (i) 'do not seek to follow' an 'ESG investment strategy,' and (ii) that there is 'no indication' such an ESG investment strategy 'will be adopted by the fund.'" The complaint also notes that the asset manager's webpages for each of those funds do not mention the asset manager's membership in CA100+ or NZAM, or "disclose to customers what those commitments entail." The State alleges that the asset manager's "deceptive and misleading statements" in fund prospectuses, on its website, and in responses to regulatory inquiries, violate the Tennessee Consumer Protection Act."

In summary, according to the complaint, the asset manager "has falsely conveyed that certain of its funds do not incorporate ESG considerations," "downplayed its activities and its funds' role in aggressively driving the transition to net zero greenhouse gas emissions," and "has misleadingly represented the current level of country support for and the possibility of achieving such climate-change initiatives-thus deceiving consumers about these initiatives' ties to financial performance, rather than ESG aims." The complaint then asserts that "by making express and implied material misrepresentations and omissions about its investment strategies and engagement related to ESG, [the asset manager] has engaged in deceptive trade practices that are prohibited by the TCPA." Additionally, the complaint states that the asset manager has "overstated the extent to which its ESG aims bear on companies' financial reporting and performance" and "misled investors regarding its commitment to net zero by 2050 and its implementation of comprehensive ESG policies across the assets it manages."

We will continue to monitor this case.

Joshua Weinberg  
Associate General Counsel, Securities Regulation

#### Notes

<sup>[1]</sup> State of Tennessee vs. BlackRock, Inc., Williamson County Circuit Court (Dec. 18, 2023) available at <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-59-complaint.>

[pdf](#)

[2] Emphasis in the original.

[3] Emphasis in the original.

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