

MEMO# 35663

March 28, 2024

Mississippi Secretary of State Enters Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty Against an Asset Manager Regarding ESG Activity

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TO: ESG Advisory Group

SEC Rules Committee RE: Mississippi Secretary of State Enters Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty Against an Asset Manager Regarding ESG Activity

On March 26, 2024, the Securities Division of the Mississippi Secretary of State's Office entered a Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty (the "Order") against an asset manager, alleging that it "has made and continues to make untrue statements of material fact, and to omit material facts to make its statements not misleading, to investors and potential investors in Mississippi."[\[1\]](#) The Order alleges that "[t]hese misrepresentations pertain to [asset manager's] provision of investment services, especially its involvement in pushing Environmental, Social, and Governance ('ESG') factors on portfolio companies," and that "many of [asset manager's] acts, practices, and courses of business operate or would operate as a fraud or deceit upon investors and potential investors in Mississippi." The Order states that the Secretary of State "is entering this [Order] to stop [asset manager] from inflicting immediate and irreparable public harm."

The Order requires the asset manager to "immediately CEASE AND DESIST from making fraudulent statements, omissions, and other misrepresentations that operate or would operate as a fraud upon investors," and "immediately CEASE AND DESIST from offering securities in or from Mississippi through an offer containing a statement that is materially misleading or otherwise likely to deceive the public." The Order also notes that "[t]he Division has uncovered thousands of potential violations and will continue to investigate before issuing a final order to impose an administrative penalty," and that a "\$25,000 penalty may be imposed for each of these violations." The Order permits the asset

manager "to contest the allegations ... or offer evidence and arguments to mitigate the allegations," by filing a request for hearing.

The Order asserts that the asset manager's "untrue and misleading statements fall into two main categories," with the first relating to the asset manager's "funds that are marketed as non-ESG funds ('non-ESG funds')." The Order says that "[s]tatements in this first category are misleading to investors who are not interested in ESG and who are led to believe that [asset manager]'s non-ESG funds will be managed for the sole purpose of investors' financial return without regard to ESG criteria." The Order cites the asset manager's "claims that its non-ESG funds 'do[] not seek to follow a sustainable, impact, or ESG investment strategy'" and then asserts that the "claim is untrue and deceptive because [asset manager] has committed to use all assets under management to advance the environmental agenda of reducing carbon emissions to 'net zero.'"

According to the Order, the second category of the asset manager's "deceptive statements relate[] to [asset manager's] funds that are marketed as ESG funds ('ESG funds')." The Order states that the asset manager "has claimed and claims that ESG benefits companies' long-term financial prospects and drives financial outcomes for clients," and goes on to assert that "[t]hese statements are untrue, or omit to state material facts to make them not misleading, because the consideration of ESG factors does not provide an indication of better financial returns or current or future risk profiles."

The Order alleges that the asset manager "makes numerous untrue or misleading statements regarding its non-ESG funds," and that these statements relate to: "(1) [asset manager's] investment strategy for the funds; (2) [asset manager's] policies on company disclosures regarding climate risk; (3) [asset manager's] position on matters of public policy and political lobbying; and (4) [asset manager's] objective to establish specific goals for reducing carbon emissions."

The Order identifies website disclosure for certain non-ESG funds sponsored by the asset manager indicating that "[t]his fund does not seek to follow a sustainable, impact or ESG investment strategy" and "there is no indication that a sustainable, impact or ESG investment strategy will be adopted by the fund." The Order cites to statements that representatives of the asset manager have made with respect to engagement with portfolio companies, specific instances of proxy votes, the fact that asset manager is a signatory of the Net Zero Asset Managers initiative and Climate Action 100+, and statements made in the asset manager's climate-disclosure reports to support its assertion that these "representations are untrue or misleading because they are contrary to [asset manager's] ESG commitments, ESG-oriented engagement and proxy votes, and other ESG policies that demonstrate [asset manager's] plan to implement 'a sustainable, impact, or ESG investment strategy' for all assets under management."

The Order also cites disclosure in the Statement of Additional Information of funds managed by the asset manager regarding climate commitments made by countries and asserts that they are "untrue or deceptive because they omit material facts regarding the limited impact of countries' climate commitments," and further claims that the asset manager "also fails to mention that the countries that have committed to net zero are not following through on their commitments." The Order also identifies statements regarding public policy, political lobbying and reducing carbon emissions as "untrue or misleading" or "false and deceptive." Finally, the Order claims that the asset manager has made deceptive statements regarding its ESG funds," which "lead investors to believe that [asset manager's] ESG strategy provides a financial benefit to its ESG funds—when in fact [asset

manager] has admitted elsewhere that the use of ESG metrics does not lead to improved financial returns."

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Notes

[1] See In the Matter of BlackRock Inc., et al., Administrative Order LS-24-6726 (Mar. 26, 2024), available at:
<https://www.sos.ms.gov/content/enforcementactionssearch/EnforcementActions/BlackRock%20Inc.,%20et%20al..pdf>.

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