

MEMO# 35809

August 27, 2024

Indiana Secretary of State Enters Cease and Desist Order Against an Asset Manager Regarding ESG Activity

[35809]

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TO: ICI Members

ESG Advisory Group

SEC Rules Committee SUBJECTS: State Issues RE: Indiana Secretary of State Enters Cease and Desist Order Against an Asset Manager Regarding ESG Activity

On August 22, 2024, the Securities Division of the Indiana Secretary of State entered a Cease and Desist Order (the "Order") against an asset manager, asserting that it "appears that [asset manager and its affiliates] have committed securities fraud in violation of" the Indiana Code.[\[1\]](#) The Order requires that the asset manager immediately cease and desist from engaging in any act that violates Indiana law, "including offering securities in Indiana through offering materials that contain untrue statements of material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading."

The Order claims that "[o]ver the past several years, [asset manager] has made numerous material misrepresentations about the implementation of environmental, social, and governance engagement standards ('ESG standards') across its investment approach." It further states that the asset manager's "ESG standards are not clearly defined in one place, but instead entail a variety of commitments, goals, targets, policies, and strategies that have been detailed in different forms over the years." The Order asserts that the asset manager has "held itself out as engaging in 'ESG integration ... across all our active portfolios in both public and private markets'" and that it has stated that "[a]ll active funds and advisory strategies are expected to fully integrate ESG." It cites the asset manager's membership in "multiple climate advocacy organizations" including Climate Action 100+ and Net Zero Asset Managers Initiative, and notes that the asset manager's "ESG standards have resulted in its ongoing advocacy for certain corporate policies and actions, as well as outright divestment." The Order asserts that while the asset manager advocates for "disclosures aligned with the reporting frameworks developed by the Task Force on Climate related Financial Disclosures (TCFD) and the Sustainability Accounting Standards Board (SASB)" the asset manager "does not so readily explain what these specific reporting

frameworks are or why they should be a priority for investors who may be more concerned with maximizing their returns rather than implementing specific policy agendas."

The Order alleges that the asset manager's "investors have been left in a precarious position given uncertainty about how their assets have been managed over the years," and "[d]espite representations that it has broadly implemented ESG standards across its funds, material changes about those same ESG standards have been made to [asset manager's] product pages for many of its [funds]."

The Order notes that statements such as "[t]his fund does not seek to follow a sustainable, impact or ESG investment strategy" "cannot be reconciled" with the asset manager's statements discussing "the firm-wide approach to incorporating ESG into all investment processes." The Order then alleges that the asset manager "has made various untrue statements of material fact about its ESG standards as well as the extent that those ESG standards have been implemented and generated 'better long-term outcomes,' necessitating the instant Cease and Desist Order for the protection of Indiana investors."

The Order alleges that by "engaging in 'ESG integration ... across all ... active portfolios in both public and private markets'" and by making statements identifying the asset manager's "firm-wide approach to incorporating ESG" but proceeding to publish documentation "imply[ing] that [specified funds] were not implementing ESG standards," the asset manager violated the provision of the Indiana Uniform Securities Act (IUSA) that prohibits "fraudulent or deceitful acts."

The Order asserts that "historical returns reflect that several of [asset manager's] ESG-screened counterparts have failed to generate better long-term outcomes for investors, when compared with traditional offerings." In alleging violation of the IUSA, the Order contrasts statements by the asset manager that "sustainable investing ... generate[s] better long-term outcomes for investors" with information indicating that certain of the asset manager's ESG-screened funds under-performed their traditional counterparts.

A party subject to the Order is permitted to request a hearing. If no hearing is requested within forty-five days of the service of the Order, the Order becomes "final by operation of law."

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Notes

[1] See In the Matter of BlackRock, Inc. et al., Cause 24-0013 CD (Aug. 22, 2024), available at:

<https://justthenews.com/sites/default/files/2024-08/24-0013%20CD%20-%20BlackRock%20Cease%20and%20Desist%20Order%20-%2008-22-2024.pdf>. ICI's summary memo of a

similar action taken earlier this year by a different state is available at:

<https://www.ici.org/memo35663>.

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