NEWS RELEASE

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Attorney General Marshall Issues Letters Demanding Answers From Top Asset Managers

(**Montgomery, Ala.**) – Alabama Attorney General Steve Marshall joined a coalition of 24 attorneys general in demanding answers from the nation’s top asset managers to determine if they are neglecting their fiduciary duty to their clients. The letter sent to 25 of the nation’s top asset managers raises concerns that the asset managers may be violating their fiduciary duties to their clients by supporting environment shareholder proposals recommended by Institutional Shareholder Services (ISS), which were flagged by the environmental activist group Ceres. Because it does not appear that ISS has conducted any independent financial analysis of the proposals, the attorneys general question whether the asset managers may have outsourced their voting to ISS or another third party.

Attorney General Marshall stated, “This letter is an important reminder that companies that hold themselves out as dispassionate asset managers for millions of Americans are not supposed to be acting as political or social activists. Asset managers must not allow the vast savings entrusted to them to be hijacked by activists to advance non-financial goals.”

Evidence suggests that the asset managers are outsourcing their vote by simply following ISS’s (or another third party’s) recommendations to vote for the environmental shareholder proposals flagged by Ceres because the asset managers’ support for these proposals was over twice as high as the overall market. The 25 asset managers voted in line with ISS recommendations at least 75 percent of the time, while the overall market supported the proposals only 37 percent on average and only 17 percent of these proposals received majority support.

Additionally, the asset managers’ company management even opposed several identified proposals that are harmful to shareholders on their face. This includes: six proposals to set greenhouse gas (GHG) targets for lenders and underwriters based on their customers’ emissions, thirteen proposals to set GHG targets for traditional energy producers and closely aligned companies (which would effectively limit sales of their products), and ten proposals to limit company free speech to conform with the Paris Agreement and net zero by 2050. Yet the asset managers supported each of these proposals.

There may also be potential conflicts of interest created by ISS or a parent company's membership in several activist organizations who have the purpose to achieve environment goals such as net zero greenhouse gas emissions, rather than solely focusing on financial return. For example, ISS's parent, Deutsche Börse Group, is a member of the Net Zero Financial Service Providers Alliance whose members signed a commitment to "[s]et an interim target for relevant services and products offered to be aligned to the net zero transition which is consistent with a fair share of the 50% global reduction in carbon emissions needed by 2030".

Lastly, there is an apparent lack of financial analyses conducted by ISS before recommending "for" on environmental proposals. In their process for developing benchmarks and other policies, there is no mention of a requirement for an economic or financial analysis that the policy is in the financial interest of the shareholders.

"There are significant reasons to believe that ISS was not conducting financial analyses of these proposals but rather following a presumption of recommending in favor of them. ISS's process for developing its benchmark policy is modeled on federal notice-and-comment rulemaking and is driven by third-party comments. But there is no requirement in this process for conducting financial analyses," the attorneys general wrote.

The attorneys general are asking the asset managers to answer the following questions within the next 30 days:

1. How are the votes supporting the shareholder proposals identified in this letter consistent with your fiduciary duties? In answering this question, please also explain how you can carry out your fiduciary duties of loyalty and care if you are not developing or obtaining specific financial analyses as to whether the proposals are designed and likely to increase shareholder returns such that overriding company management's opposition is appropriate in these circumstances.

2. When voting on shareholder proposals relating to environmental issues, do you consult or rely at all on recommendations of any proxy advisory firms, including but not limited to ISS, or any other third parties? Please also describe in detail which recommendations and other policies you rely or have relied on since 2020 and your process for selecting those.

3. For every proxy advisory firm and other third party identified in your response to Question 2, what specific financial analyses do you receive regarding voting recommendations?

4. Describe in detail your actual process for reviewing votes on shareholder proposals before the votes are actually cast. Do you use software that pre-

populates the voting choices? How many levels of review do you have? How (if at all) do you ensure that if a shareholder proposal is opposed by the company's board of directors, someone reviews the opposition and ensures that voting for the proposal over the board's opposition is in the financial interest of the company's shareholders?

5. Do you agree that you must exercise voting rights in a manner that is consistent with your fiduciary duty to your customers to act solely in their financial interest? If not, please describe how you view your fiduciary duty to your clients with respect to voting on shareholder proposals.
6. What analysis, if any, have you done to determine if the commitments by the Deutsche Börse Group (ISS's parent) to 1) the Net Zero Financial Service Providers Alliance, part of GFANZ; and 2) and ISS's affiliation with the Interfaith Center on Corporate Responsibility, including to "to phase out fossil fuels", to "[s]et an interim target … to be aligned to the net zero transition," and "ensuring their products and services support a high ambition, credible net zero transition that we need to achieve our 1.5 degree goal" creates a conflict of interest that precludes relying on ISS for financially-based voting recommendations.
7. Do you make any representations to your customers that relate to how you exercise voting rights for funds they invest in? If so, please provide copies of all public-facing documents containing those statements.
8. Describe in detail all proxy voting policies that you have or had in place at any time since 2020 that apply to shareholder proposals on environmental topics, including providing links to all such policies, or if the policies are not available online, copies of the policies.

Attorneys general from Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming also joined the letter led by the Montana Attorney General.

Click here to read the letter.

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