AUSTIN KNUDSEN
STATE OF MONTANA

August 29, 2024

Abrdn
Allianz Global Investors
Allspring Global Investments
Amundi Asset Management
AQR Capital Management
Aviva Investors
AXA Investment Managers
BMO Global Asset Management
D.E. Shaw Investment Management
Gateway Investment Advisers, LLC
Guggenheim Investments
HSBC Global Asset Management
IndexIQ Advisors LLC
Legal & General Investment Management
M&G Investments
Manulife Investment Management
Morgan Stanley
Mutual of America Capital Management Corp.
Northern Trust
Principal Global Investors LLC
ProShares & ProFund Advisors LLC
TD Asset Management
Thrivent Investment Management, Inc.
UBS Asset Management Americas
Wilmington Trust Investment Management

Dear Asset Managers:

We, the undersigned attorneys general, are the chief legal officers of our respective states. Among other duties, we enforce our states' civil laws against unfair and deceptive acts and practices, state securities laws, and state common law to protect our residents and the integrity of the marketplace. Your company is among the twenty-five large asset managers or their affiliates ("Asset Managers")[*] who voted 75% or more of the time with Institutional Shareholder Services ("ISS") recommendations "for" environmental proposals flagged by the activist group Ceres.[1] The Asset Managers' support for these shareholder proposals was ***over twice as high*** as the overall market, which supported them only 37% of the time, and only 17% of these proposals received majority support.[2] Given this wide disparity, we are concerned that the Asset Managers may have outsourced their voting in this area to ISS or another third party and are failing to carry out their

[*] Copies of this letter are being sent directly to each of the Asset Managers identified above.

[1] This was recently documented in a report of 192 shareholder proposals from 2020-2023. Consumers' Research, *Analysis: Are Asset Managers Blindly following ISS on ESG?*, at 3, https://perma.cc/NXY7-KFLX.

[2] *Id.* at 2.

fiduciary duties, so we are writing to request information about whether the Asset Managers' disproportionate support for ISS recommendations was consistent with their fiduciary duties.

Company management opposed all the identified proposals, and many of them are harmful to shareholder value 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.[3]

One insurer's board wrote that "setting [underwriting] targets would be impractical, would impose unreasonable limits on [its] discretion to responsibly address climate change while supporting energy security, and would expose [it] to substantial risk in the event that the targets could not be met."[4] Yet all of the Asset Managers voted with ISS in favor of that proposal, even though the overall support for it was only 29%. Similarly, a traditional energy company's board explained that a proponent of a proposal to require Scope 1, 2, and 3 medium- and long-term targets admitted such proposals are nothing more than a "'Trojan horse' to force companies to eliminate oil and natural gas investments."[5] Yet all but one of the Asset Managers voted with ISS in support of that proposal, even though it only received 27% overall support.

We are also concerned about whether voting with ISS's recommendations, without further analysis on the Asset Managers' part, violates their fiduciary duties. 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. When an ISS executive was questioned at a Texas Senate hearing about certain recommendations, the executive simply pointed to the applicable policy provisions and did not claim that ISS performed any additional analysis.[6] Moreover, ISS's benchmark policy makes no mention of financial analysis of specific environmental shareholder proposals, which suggests that ISS is not evaluating these proposals on their specific financial merits to ensure they are in the shareholders' financial interest.

Further, we are concerned about conflicts of interest between financial and non-financial objectives given that ISS's parent, the Deutsche Börse Group, is part of the Net Zero Financial Service Providers Alliance (NZFSPA), whose members sign a commitment to "[s]et an interim target for relevant services and products offered to be aligned to the net zero transition."[7] ISS itself

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[3] We highlight these specific categories of proposals in the body of this letter and in Appendices A-C.

[4] Chubb, *Proxy Statement for 2023 Ann. Gen. Meeting of S'holders*, at 53, https://perma.cc/3A3R-Q3PZ.

[5] ExxonMobil, *Notice of 2023 Ann. Meeting and Proxy Statement*, at 86, https://perma.cc/JT93-ZAXX.

[6] *See infra* notes 47-50 and accompanying text.

[7] *See* NZFSPA, *Commitment*, https://perma.cc/4BGR-K6D4 .

is an affiliate member of the Interfaith Center on Corporate Responsibility (ICCR), whose members "seek to move companies in key industries to reduce their … [GHG] emissions," and "to phase out fossil fuels."[8]

<u>Data Shows That Asset Managers Have Voted With ISS "For" Recommendations At Least 75% of the Time For Certain Management-Opposed Climate Change Proposals</u>

The Asset Managers (or one of their affiliates) voted at least 75% of the time in accordance with ISS recommendations in favor of certain climate-related shareholder proposals. This is at least double the support in the overall market, which supported the proposals only 37% on average, and only 17% of these proposals received majority support.[9]

The activist organization Ceres maintains a database of flagged shareholder resolutions on climate issues.[10] Ceres is a major player in the ESG movement: it is one of the founding organizations of Climate Action 100+, which seeks to leverage shareholder power to reduce GHG emissions in line with the Paris Agreement and is currently commencing "Phase 2" to force companies to implement transition plans and deliver on their emissions targets.[11] The Ceres database flags environmental and other proposals that are in line with these activist ESG goals. For 2020–2023, ISS recommended voting for 56.4% of the Ceres flagged proposals.[12]

During the four proxy seasons in 2020-2023, when ISS recommended a "for" vote on one of the Ceres-flagged environmental proposals, the Asset Managers (or one of their affiliates) voted in favor of the proposal 75% or more of the time.[13]

Asset Manager	**How frequently Asset Manager voted "for" when ISS Recommended "for" (2020-2023)**
Legal & General Investment Manager	94.3%
Allianz Global Investors	93.2%
Parametric Portfolio Associates LLC, an affiliate of Morgan Stanley Investment Management	93.2%
ProFund Advisors LLC and ProShares	93.2%
UBS Asset Management	93.2%
Mutual of America Capital Management Corporation	91.7%
Wilmington Trust Investment Management, an affiliate of M&T Bank Corporation	88.0%

[8] ICCR, *Climate Change and Env't Justice*, https://perma.cc/M96Z-JB92.

[9] *See* Consumers' Research, *supra* note 1, at 2.

[10] Ceres, *Engagement Tracker*, https://engagements.ceres.org/.

[11] *Climate Action 100+ Phase 2: Summary of Changes*, at 7 (June 2023), https://perma.cc/HYL9-5WNQ.

[12] *See* Consumers' Research, *supra* note 1, at 3. The report noted that the ISS for recommendations are based on synthetically generated assessments from the Insightia platform (aka Diligent Market Intelligence). *Id.*

[13] *Id.* at 2. The report noted that "split" votes were counted as no votes, which was a conservative approach that reduced the percentage of asset manager support. *Id.*

Aviva Investors	87.0%
Principal Global Investors LLC	87.0%
AQR Capital Management	86.5%
Amundi Asset Management	85.9%
BMO Global Asset Management	84.9%
Gateway Investment Advisers, an affiliate of Natixis Investment Managers	84.9%
Abrdn	84.4%
Guggenheim Investments	83.9%
Manulife Investment Management	83.9%
Northern Trust	82.8%
Allspring Global Investments	82.3%
AXA Investment Managers	81.8%
HSBC Global Asset Management	80.2%
D.E. Shaw Investment Management	79.7%
IndexIQ Advisors LLC, an affiliate of New York Life Investments	78.1%
Thrivent Investment Management, Inc.	77.1%
M&G Investments	76.6%
TD Asset Management	75.0%

The high correlation between ISS recommending a "for" vote on an environmental shareholder proposal and an Asset Manager or its affiliate voting "for" a proposal—combined with the disparity between their high level of support and the overall market's low level of support—suggests that the Asset Managers are simply following ISS's recommendations to vote for such proposals (or some other third party that is making recommendations consistent with those of ISS).

<u>Specific Proposals Further Call into Question the Asset Managers' Independence and Whether They Are Voting in the Financial Interests of Their Clients</u>

While the overall voting statistics are troubling, a review of specific shareholder proposals calls into further question why the Asset Managers are following ISS's lead on shareholder proposals that are so obviously contrary to the clients' financial interests. This section outlines proposals related to (1) requiring financial institutions to cut off lending or insurance to their customers for non-financial reasons; (2) mandating emissions targets for traditional energy producers and other companies; and (3) limiting companies' free speech to policymakers so that it is in line with the Paris Agreement and net zero by 2050. As shown below, many management recommendations against these proposals are so clear that whoever made the decision to overrule management either did not read the proposals and management discussions or has a non-financial activist agenda.

Cutting Off Lending or Insurance to Customers Based on Emissions-Reduction Targets

It is highly troubling that the Asset Managers have followed ISS's lead and voted to establish targets that would force financial services and insurance companies to cut off business relationships with their customers for non-financial reasons. These companies are in the business of lending or insuring, so limiting their output for environmental-activist reasons is clearly contrary to the shareholders' financial interests. The proposals identified in this letter at Appendix A-1 received only 22.8%–35.4% support, but the Asset Managers voted with ISS in favor of all or nearly all of them.[14] It seems highly unlikely that an asset manager voting solely in the financial interests of its shareholders and making independent decisions would support these harmful proposals at this substantially higher level than the overall market.

Moreover, the company board of directors' opposition statements made the harmfulness of the proposals abundantly clear. One insurer's board wrote that "setting such targets would be impractical, would impose unreasonable limits on [its] discretion to responsibly address climate change while supporting energy security, and would expose the Company to substantial risk in the event that the targets could not be met."[15] A large bank's board flatly stated, "we do not believe that producing the report required by the proposal would ultimately serve the best interests of our shareholders."[16] Yet they overruled the companies' boards and threw in their lot with ISS to support an activist agenda.

The list of proposals and board of directors' oppositions are in **Appendix A-1** at the end of this letter. The votes on these shareholder proposals in alphabetical order by portfolio company are in **Appendix A-2**, which shows the Asset Managers' consistently high level of support for ISS's recommendations.

Cutting Off Energy Production Based on Emissions-Reduction Targets

A second egregious category of voting consistent with ISS but contrary to the shareholders' financial interest is the Asset Managers' support for proposals to establish GHG emissions targets for companies that produce, transport, or are heavily dependent on fossil fuels. It is not clear why it would be in the financial interests of the Asset Managers' clients as shareholders to support *any* such proposals, as forcing companies in the energy business to limit their or their customers' emissions is equivalent to reducing the energy companies' sales.

Unsurprisingly, these proposals were uniformly opposed by the portfolio companies' boards. One target company's board noted that a proponent of these proposals admitted they are nothing more than a "'Trojan horse' to force companies to eliminate oil and natural gas investments."[17] Another board explained a shareholder proposal was "(i) unnecessary; (ii) unclear; and (iii) undermining of the Board's responsibility and accountability for the Company's

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[14] *See* App. A-1, *infra* (hyperlinked page lists overall level of support for each proposal).
[15] *Supra* note 4, at 53.
[16] Wells Fargo, *2023 Notice of Ann. Meeting and Proxy Statement*, at 112, https://perma.cc/RPZ6-TFVG.
[17] ExxonMobil, *supra* note 5, at 86.

strategy."[18] Another stated that a proposal "seeks commitments to set targets on a timeframe that is not operationally viable or advisable, that rely on speculative future technologies, and that dismiss the potentially adverse consequences to our business and all of our shareholder's interests if we make expensive, technologically impossible commitments."[19]

The Asset Managers' support also departed from the overall market support. For example, a 2022 proposal to set targets at DTE Energy received only 28.1% of the vote overall, yet all but three of the Asset Managers supported the proposal. Another 2022 proposal at Occidental Petroleum received only 16.6% of the vote, yet all but three supported it. And a 2023 proposal at the Southern Company received only 19.8% of the vote, yet all but one supported it.

The list of proposals and board of directors' oppositions are in **Appendix B-1** at the end of this letter. These votes for 2022 and 2023 in alphabetical order by company are in **Appendix B-2**, and this Appendix shows the Asset Managers' consistent support for ISS in this area.

Limiting Companies' Speech With Policymakers to Force Conformity with the Paris Agreement and Net Zero by 2050

A final troubling area consists of votes to limit companies' free speech with policymakers, so that those companies cannot freely advocate for their shareholders' financial interests. Companies should be able, under the direction of their board, to engage with policymakers and seek public policy changes that are in their best financial interests. As one energy company wrote in opposition to one of these proposals, "[w]e strongly believe that [our] long-term value to our shareholders is enhanced by a business environment that protects and supports the oil and gas industry's ability to responsibly operate to provide important resources to consumers."[20] Another company wrote that "holding the Company to a higher [disclosure] standard than other participants in the political process could have negative consequences."[21]

However, certain activists have figured out that they can use shareholder proposals to limit companies' speech over management's opposition. The Asset Managers appeared to follow ISS's "for" recommendations on these proposals. This is particularly concerning since ISS is majority owned by Deutsche Börse AG, a foreign entity. And, as discussed in the next section, ISS or its parent are also members of international organizations that expressly seek to implement the Paris Agreement. Foreign entities and organizations should not be limiting American companies' free speech activities; yet this is exactly what is occurring.

The Asset Managers' votes are also contrary to the overall market's low level of support. For example, a proposal in 2022 to limit Alphabet's lobbying to be in line with the Paris agreement received only 19% overall support, yet all of them voted in favor of it. A similar proposal in 2023

[18] Glencore, *Notice of the 2023 Ann. General Meeting*, at 17, https://www.glencore.com/dam/jcr:cef18693-a970-4ae7-a3c6-cb371e11328b/AGM%20NOM%202023_3%20May%20release%20CLEAN.pdf.

[19] Martin Marrieta, *2023 Ann. Meeting of S'holders and Proxy Statement*, at 95, https://perma.cc/D4GY-8UMV.

[20] Coterra, *2023 Proxy Statement and Notice of Ann. Meeting*, at 78, https://perma.cc/M9SD-TD35.

[21] DTE, *2023 Proxy Statement and Notice of Ann. Meeting*, at 71, https://perma.cc/VTK4-UCGZ.

to limit Caterpillar's lobbying received only 28.4% overall support, yet all but one of the Asset Managers supported it.

The list of proposals and board of directors' oppositions are in **Appendix C-1** at the end of this letter. These votes for 2022 and 2023 in alphabetical order by company are in **Appendix C-2**, and this Appendix shows the Asset Managers' consistent voting in line with ISS.

The Asset Managers' Support of Activist Environmental Proposals Appears to Conflict with Their Fiduciary Duties to Their Clients

The Asset Managers' high percentage of following ISS recommendations on climate-related proposals, as well as their support for the vast majority of specific shareholder proposals discussed above, calls into question whether they are complying with their fiduciary duties. The Investment Advisers Act "establishes federal fiduciary standards to govern the conduct of investment advisers."[22] The fiduciary duty of loyalty requires asset managers to "disclose their conflicts of interest, act in their clients' best interest, and seek best execution for their clients' transactions."[23] A "trustee's decisions ordinarily must not be motivated by a purpose of advancing or expressing the trustee's personal views concerning social or political issues or causes."[24] The fiduciary duty of care requires asset managers to provide advice that is in the best interest of their clients, based on the client's objectives, and to provide advice and monitoring over the course of the relationship.[25] Investment advisers also "must employ reasonable care to avoid misleading clients," and can violate their fiduciary duty under Section 206 "by what is done, what is said, and what is not said."[26]

These duties extend to voting and engagement, and an asset manager cannot simply delegate those activities related to share ownership and thereby absolve itself of its duty to its customers.[27] In 2004, the SEC issued no-action letters to Egan-Jones Proxy Services[28] and Institutional Shareholder Services, Inc.[29] that addressed the requirements for investment advisers that rely on independent third parties to vote client proxies. Although these letters were withdrawn

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[22] *Robare Grp., Ltd. v. SEC*, 922 F.3d 468, 472 (D.C. Cir. 2019) (citations and quotation marks omitted); *see also SEC v. Nutmeg Grp., LLC*, 162 F. Supp. 3d 754, 778 (N.D. Ill. 2016) (Section 206(2) of the Investment Advisers Act "establishes a statutory fiduciary duty for investment advisers").

[23] *SEC v. Ambassador Advisors, LLC*, 576 F. Supp. 3d 286, 293 (E.D. Pa. 2021). ERISA imposes a sole-interest standard as well. *See* 29 U.S.C. § 1104; *see also* Letter from 21 State Attorneys General to Asset Managers ("21 State AGs Letter"), at 2 (Mar. 30, 2023), https://perma.cc/9T6J-Z7RL.

[24] Letter from 20 State Attorneys General to FERC ("20 State AGs FERC Letter"), at 15 n.81 (Mar. 16, 2024), https://perma.cc/3WEH-ST43.

[25] 21 State AGs Letter, *supra* note 23, at 2.

[26] *Nutmeg Grp.*, 162 F. Supp. 3d at 778.

[27] *See, e.g.*, 17 C.F.R. § 275.206(4)-6.

[28] Letter from Douglas Scheidt, Associate Director and Chief Counsel, to Kent S. Hughes, Managing Director, Egan-Jones Proxy Services (May 27, 2004) ("SEC Eagan-Jones Letter"),

https://www.sec.gov/divisions/investment/noaction/egan052704.htm

[29] Letter from Douglas Scheidt, Associate Director and Chief Counsel, to Mari Anne Pisarri, Esq. (Sept. 15, 2004) ("SEC ISS Letter"), https://www.sec.gov/divisions/investment/noaction/iss091504.htm

as part of the SEC's 2018 "roundtable on the proxy process,"[30] the substance of the letters was incorporated into a 2014 Staff Legal Bulletin that was not withdrawn.[31] In the 2004 letter to Egan-Jones, SEC staff stated:

> An investment adviser should not, however, conclude that it is appropriate to follow the voting recommendations of an independent proxy voting firm without first ascertaining, among other things, whether the proxy voting firm (a) has the capacity and competency to adequately analyze proxy issues, and (b) can make such recommendations in an impartial manner and in the best interests of the adviser's clients.[32]

In the letter to ISS, SEC staff stated:

> In the Egan-Jones Letter, we stated that an investment adviser should obtain information from any prospective proxy voting firm to enable the adviser to determine that the firm is in fact independent, and can make recommendations for voting proxies in an impartial manner and in the best interests of the adviser's clients. We suggested that an investment adviser also obtain such information on an ongoing basis from any proxy voting firm that it employs. … Whether an investment adviser breaches or fulfills its fiduciary duty of care when employing a proxy voting firm depends upon all of the relevant facts and circumstances. Consistent with its fiduciary duty, an investment adviser should take reasonable steps to ensure that, among other things, the firm can make recommendations for voting proxies in an impartial manner and in the best interests of the adviser's clients. Those steps may include a case by case evaluation of the proxy voting firm's relationships with Issuers, a thorough review of the proxy voting firm's conflict procedures and the effectiveness of their implementation, and/or other means reasonably designed to ensure the integrity of the proxy voting process. The relevant facts and circumstances will dictate what steps an investment adviser should take in evaluating a prospective proxy voting firm.[33]

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[30] SEC Division of Investment Management, *Statement Regarding Staff Proxy Advisory Letters* (Sept. 13, 2018), https://www.sec.gov/news/public-statement/statement-regarding-staff-proxy-advisory-letters.

[31] Staff Legal Bulletin No. 20, "Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms." https://www.sec.gov/investment/slb20-proxy-voting-responsibilities-investment-advisers; *see also* Ropes & Gray, *SEC Withdraws Two No-Action Letters Regarding Use of Proxy Advisory Firms – Chairman Clayton Issues Statement Regarding Staff Views* (Sept. 18, 2018) ("In 2014, the Division affirmed the substance of the two letters in a Staff Legal Bulletin for the purpose of 'providing guidance about investment advisers' responsibilities in voting client proxies and retaining proxy advisory firms.' Last week's Update referred to, but did not withdraw, the Staff Legal Bulletin. Therefore, notwithstanding the Division's withdrawal of the two no-action letters, the Update should not have any practical effect at this time on investment advisers that rely on proxy advisory firms."), https://perma.cc/V7D2-BM5X.

[32] SEC Egan-Jones Letter, *supra* note 29.

[33] SEC ISS Letter, *supra* note 30.

State laws may provide similar protections to federal law regarding a breach of fiduciary duty by an investment adviser related to improper reliance on a third-party proxy advisor. As noted above, these federal duties are grounded in the anti-fraud provisions of the federal Investment Advisers Act.[34] State laws contain parallel anti-fraud language.[35] To the extent an investment adviser relies on a proxy advisor without verifying that the proxy advisor can make recommendations in the best interests of the client (and makes this inquiry "on an ongoing basis"[36]), it may be in breach of its obligation to act in its client's best interests. In addition, an investment adviser that fails to adequately disclose or misrepresents its relationship to a proxy advisor could also be in violation of state law.

Three main points suggest that the Asset Managers may be violating their fiduciary duties to the extent they are relying on ISS or another third party to vote on climate-related proposals. The first is the votes themselves, which have been discussed at length in this letter and shown in the appendices below. It is noteworthy that these votes have all been over management opposition and are at a much higher rate than the overall market. This suggests an agenda besides acting in their clients' financial interests: specifically, an environmental agenda.

The second is the potential conflicts created by ISS or a parent's membership in several activist organizations whose purpose is to achieve environmental goals such as net zero greenhouse gas emissions, rather than solely focusing on financial return. For example, ISS's parent, the Deutsche Börse Group, is a member of the Net Zero Financial Service Providers Alliance (NZFSPA).[37] Members of this group sign 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" and to "[r]eview and update such targets at least every five years with a view to increasing the proportion of services and products to achieve full alignment."[38] The NZFSPA is one of the sector-specific alliances within the Glasgow Financial Alliance for Net Zero (GFANZ). NZFSPA's main website, which is titled "Committed to Net Zero," states that "[b]y joining the alliance and GFANZ, these firms are committing to ensuring their products and services support a high ambition, credible net zero transition that we need to achieve our 1.5 degree goal."[39] Given the votes on underwriting proposals discussed above, it is noteworthy that another GFANZ group, the Net Zero Insurance

[34] *Nutmeg Grp.*, 162 F. Supp. 3d at 778.

[35] *See, e.g.*, *As You Sow v. AIG Fin. Advisors, Inc.*, 584 F. Supp. 2d 1034, 1039 (M.D. Tenn. 2008) (observing that the Tennessee Securities Act "draws upon the language of its federal counterpart," but that it is broader and more protective of investors than federal securities laws).

[36] SEC ISS Letter, *supra* note 30.

[37] *See Commitment*, *supra* note 7.

[38] *See id.*

[39] *See* NZFSPA, *Committed to Net Zero*, https://perma.cc/ADG7-R9S9.

Alliance, dropped from 29 members down to 11[40] and then ultimately collapsed.[41] Yet it appears that ISS is recommending—and the Asset Managers are voting in support of—the same actions that many large insurers themselves appear to have concluded are unlawful.

Another ISS membership that may create a conflict, and clearly warrants the Asset Managers conducting further investigation before relying on ISS, is the Interfaith Center on Corporate Responsibility (ICCR).[42] ISS is an affiliate member of this group.[43] ICCR states under "Current Initiatives" that that its "members are pressing companies to phase out of fossil fuels" and that its "members seek to move companies in key industries to reduce their … [GHG] emissions that are responsible for climate change. We do this by pressing companies for a phasing out of fossil fuels, and a phasing in of low-carbon, renewable energy sources. We also engage the oil & gas sector on the need for transition planning for a 2 degree C or less world."[44] These commitments are not about maximizing shareholder value—which is the Asset Managers' duty to their clients.

The third point indicating a violation of fiduciary duty is the apparent lack of financial analyses conducted by ISS before recommending "for" on environmental proposals. On their face, these proposals should raise huge red flags. ISS's describes its process for developing its benchmark and other policies as a "bottom-up policy formulation process [that] collects feedback from a diverse range of market participants through multiple channels: an annual Policy Survey of institutional investors and corporate issuers, roundtables with industry groups, and ongoing feedback during proxy season."[45] There is no mention in this discussion of a requirement for an economic or financial analysis that the policy, as applied to shareholder proposals at any particular company, is in the financial interest of the shareholders.

ISS's own benchmark policy states—without any financial analysis—that when "evaluating the merits of a shareholder proposal with requests related to [GHG]," ISS considers whether "the company has set emissions reductions targets that are aligned with Paris Agreement goals of limiting warming to well below 2 degrees C," whether "the company has realistic strategies and incentives in place to achieve those targets," whether "the company reports according to the TCFD framework and/or whether it answered the CDP climate-related survey,

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[40] *Compare* U.N. Environment Programme, *World-Leading Insurers and United Nations Launch Pioneering Target-Setting Protocol to Accelerate Transition to Net-Zero Economy* (Jan. 2023) (touting 29 members) https://perma.cc/4ZRQ-JK2J, *with* U.N. Environment Programme – Finance Initiative, Net-Zero Insurance Alliance, *Members*, https://web.archive.org/web/20231003044453/https://www.unepfi.org/net-zero-insurance/members/ (archived Oct. 3, 2023) (listing only 11 members).

[41] Alastair Marsh, *Insurers Group Targeted by Anti-ESG Campaign Is Being Replaced*, Bloomberg (Apr. 25, 2024), https://www.bloomberg.com/news/articles/2024-04-25/insurers-group-targeted-by-anti-esg-campaign-is-being-replaced

[42] ICCR, https://www.iccr.org/.

[43] ICCR, *Member Directory*, https://www.iccr.org/member-directory/.

[44] ICCR, *Climate Change*, *supra* note 8.

[45] ISS, *Policy Formulation & Application*, https://perma.cc/MTG8-ZUUS.

and the company's CDP rating."[46] None of these factors expressly include *financial* considerations, even though the Asset Managers' duty is to vote in the financial interests of shareholders.

The lack of any financial analysis by ISS is further evidenced by statements from ISS executives. An ISS executive testified before a Texas Senate committee and "recognize[d]" that ISS was there "in part because we let down our long-term client [the Employees' Retirement System of Texas (ERS)] this year in assisting them with several critical voting recommendations."[47] One Senator asked: "How did you advise ERS four times to vote by proxy … against Texas energy projects?"[48] The ISS executive answered: "We unfortunately did not have enough dialog with … ERS to understand their view on that particular issue. And so the policy that we had, we thought we were … recommending in their interests."[49] The ISS executive further testified that when the SEC changed a rule in approximately 2022 to loosen the reins for shareholder proposals, ISS saw an unprecedent number of shareholder proposals and new issues that it had not seen before, and ISS looked to the policy as the framework for making recommendations.[50] The ISS executive did not mention any financial analyses but rather only following the voting policy.

Similarly, the ISS executive stated in a CNBC interview that the ISS benchmark policy is "pretty centrist," not that it was based on specific financial analyses by ISS—or anyone else—of the effect of environmental proposals on shareholder returns.[51] This statement is troubling for two reasons. First, as shown above, it does not fit the data which suggests the ISS benchmark policy is activist, not centrist, on climate issues. Second, even if it were "centrist," simply reflecting the prevailing zeitgeist is not the same thing as conducting a financial analysis. The Asset Managers' fiduciary duty is to act for the financial interests of their clients, and ISS's approach does not appear to comport with the focus of that duty.

For these reasons, it appears that there is a lack of financial analysis underlying many of the "for" recommendations by ISS discussed in this letter. Instead, ISS seems to be following the non-economic provisions in its policy regarding "emissions reductions targets that are aligned with Paris Agreement goals of limiting warming to well below 2 degrees C." Simply following these recommendations may well constitute a violation of the Asset Managers' fiduciary duties.

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[46] ISS, Procedures & Policies (Non-Compensation): Frequently Asked Questions, at 41 (July 25, 2023), https://perma.cc/Y67D-2W2A.

[47] *Hearing: BlackRock, State Street and ISS Testify before the Texas Senate*, at 2:46:20-2:46:48, YOUTUBE (Dec. 15, 2022), https://www.youtube.com/watch?v=lmrcc1YYkcI.

[48] *Id.* at 2:48:15

[49] *Id.*

[50] *Id.* at 2:49:40-2:50:24.

[51] *See* Squawk Box, *ISS Outlook on 2024 Proxy Season*, at 2:55, CNBC (Mar. 11, 2024), https://perma.cc/2JAU-RHJD.

Conclusion and Questions

In addition to responding to the concerns outlined in this letter, we also ask that you provide a written response that includes answers to the following questions. We will review your answers to assist us in determining our future courses of action. Please provide a written response to the concern raised above and the questions below by October 4, 2024.

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.

Sincerely,

AUSTIN KNUDSEN
ATTORNEY GENERAL OF MONTANA

STEVE MARSHALL
ATTORNEY GENERAL OF ALABAMA

TIM GRIFFIN
ATTORNEY GENERAL OF ARKANSAS

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

CHRISTOPHER M. CARR
ATTORNEY GENERAL OF GEORGIA

RAÚL LABRADOR
ATTORNEY GENERAL OF IDAHO

TODD ROKITA
ATTORNEY GENERAL OF INDIANA

BRENNA BIRD
ATTORNEY GENERAL OF IOWA

KRIS KOBACH
ATTORNEY GENERAL OF KANSAS

LIZ MURRILL
ATTORNEY GENERAL OF LOUISIANA

ANDREW BAILEY
ATTORNEY GENERAL OF MISSOURI

JOHN FORMELLA
ATTORNEY GENERAL OF NEW HAMPSHIRE

GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

MARTY JACKLEY
ATTORNEY GENERAL OF SOUTH DAKOTA

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

JASON MIYARES
ATTORNEY GENERAL OF VIRGINIA

BRIDGET HILL
ATTORNEY GENERAL OF WYOMING

LYNN FITCH
ATTORNEY GENERAL OF MISSISSIPPI

MIKE HILGERS
ATTORNEY GENERAL OF NEBRASKA

DREW H. WRIGLEY
ATTORNEY GENERAL OF NORTH DAKOTA

ALAN WILSON
ATTORNEY GENERAL OF SOUTH CAROLINA

JONATHAN SKRMETTI
ATTORNEY GENERAL OF TENNESSEE

SEAN REYES
ATTORNEY GENERAL OF UTAH

PATRICK MORRISEY
ATTORNEY GENERAL OF WEST VIRGINIA

Appendix A-1 – Proposals on Cutting Off Lending or Insurance Based on Emissions-Reduction Targets

Proposal	**Board of Directors' Opposition**
Bank of America (2023 Proposal 9): "issue a report … that describes how it intends to align its financing activities with its 2030 sectoral greenhouse gas emissions reduction targets, including the specific measures and policies to be implemented, reductions to be achieved by such measures and policies, and timelines for implementation and associated emission reductions."[52]	"In light of our disclosures and declared strategy, the issuance of our 2030 Financing Activity Targets, and our carefully developed and well-articulated risk management framework, our Board believes that the report requested in Proposal 9, which would substantially duplicate our existing transition planning, would not be a productive use of time or effort."[53]
Berkshire Hathaway (2023 Proposal 6): "issue a report … addressing if and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions."[54]	"The primary business of Berkshire's insurance operations is to monitor, assess and price risk at an expected economic profit to address the risk-transfer needs of its insurance customers. … The insurance operations' continual assessment of the risk of natural disasters, strong underwriting controls to limit exposure and stress testing lead the Board to conclude that climate-related risks within the insurance group are appropriately monitored and managed within the Board's risk appetite."[55]
Berkshire Hathaway (2022 Proposal 4): "issue a report … addressing if and how it intends to measure, disclose, and reduce the GHG emissions associated with its underwriting, insuring, and investment activities, in alignment with the Paris Agreement's 1.5°C goal, requiring net zero emissions."[56]	"The Board does not believe issuing a report addressing if and how Berkshire intends to measure, disclose and reduce the greenhouse gas emissions associated with its underwriting, insuring and investment activities is necessary. … The primary business of Berkshire's insurance operations is to monitor, assess and price risk at an expected economic profit to address the risk-transfer needs of its insurance customers. The insurance risks associated with climate change are assessed within the enterprise risk management framework, along with the

[52] Ceres, *Report on climate transition plan (<2C or unspecified) (BAC 2023 Resol.)*, https://perma.cc/MX9W-Q8TT.

[53] Bank of Am., *2023 Proxy Statement*, at 101, https://perma.cc/5HX6-67HP.

[54] Ceres, *Report on GHG emissions and finance (BRK.A, 2023 Resol.)*, https://perma.cc/2ADM-SS4B.

[55] Berkshire Hathaway, Inc., Sch. 14A Info., at 16, https://www.sec.gov/Archives/edgar/data/1067983/000119312523073948/d362436ddef14a.htm.

[56] Ceres, *Report on GHG emissions and finance (BRK.A, 2022 Resol.)*, https://perma.cc/QAA4-MMHJ.

	adoption of climate-specific risk management procedures."[57]
Chubb (2023 Item 14): "issue a report, at reasonable cost and omitting proprietary information, disclosing 1.5ºC aligned medium and long-term GHG targets for its underwriting, insuring, and investment activities."[58]	"We disagree that forcing Chubb to set targets related to the emissions produced by its insureds, rather than Chubb's own emissions, would advance [the goal of a net zero economy by 2050] … setting such targets would be impractical, would impose unreasonable limits on Chubb's discretion to responsibly address climate change while supporting energy security, and would expose the Company to substantial risk in the event that the targets could not be met. … Chubb has no control over its insureds' emissions and no basis to know how any change in any of its underwriting or investment activity would reduce its insureds' emissions or could be aligned with the Paris Agreement."[59]
JP Morgan (2023 Proposal 9): "issue a report disclosing a transition plan that describes how it intends to align its financing activities with its 2030 sectoral greenhouse gas emissions reduction targets, including the specific measures and policies necessary to achieve its targets, the reductions to be achieved by such measures and policies, and timelines for implementation and associated emission reductions."[60]	"our climate ambitions are subject to important prerequisites and considerations … including the necessity of technological advancements, the evolution of consumer behavior and demand, and the need for thoughtful climate policies—as well as the potential impact of legal and regulatory obligations and the challenge of balancing our commitment to short-term targets with the need to facilitate energy security. The detail required in the proposal does not give appropriate weight to these realities and the potential need to adjust course as circumstances may merit. … The requested report … would not necessarily be in the best interests of long-term shareholder value."[61]
Wells Fargo (2023 Item 8): "issue a report disclosing a transition plan that describes how it intends to align its financing activities with its 2030 sectoral greenhouse gas emissions	"We believe Wells Fargo's existing work developing transition plans in line with evolving market practices remains the prudent approach, and we do not believe that

[57] Berkshire Hathaway, Inc., *2022 Notice of Ann. Meeting of S'holders*, at 14, https://perma.cc/N5VN-66RA.

[58] Ceres, *Adopt underwriting policy in line with IEA Net Zero Scenario (CB, 2023 Resol.)*, https://perma.cc/6FDA-VHCZ.

[59] Chubb, *supra* note 4, at 53.

[60] Ceres, *Report on climate transition plan (<2C or unspecified) (JPM, 2023 Resol.)*, https://perma.cc/PQS9-8AS6.

[61] JPMorgan Chase & Co., *Ann. Meeting of S'holders Proxy Statement 2023*, at 92, https://perma.cc/XXC3-F7YH.

reduction targets, including the specific measures and policies to be implemented, the reductions to be achieved by such measures and policies, and timelines for implementation and associated emission reductions."[62]	producing the report required by the proposal would ultimately serve the best interests of our shareholders."[63]

[62] Ceres, *Report on climate transition plan (<2C or unspecified) (WFC, 2023 Resol.)*, https://perma.cc/W8ZL-8TP4.

[63] Wells Fargo, *supra* note 16, at 112.

Appendix A-2 - Votes (“X” represents a “For” vote; percent overall support in parentheses)	Bank of America 2023 Prop. 9 (overall support 28.5%)	Berkshire Hathaway 2023 Prop. 6 (overall support 22.8%)	Berkshire Hathaway 2022 Prop. 4 (overall support 26.5%)	Chubb 2023 Item 14 (overall support 28.9%)	JP Morgan 2023 Prop. 9 (overall support 35.4%)	Wells Fargo 2023 Item 8 (overall support 31.1%)
Abrdn	X	X	X	X	X	X
Allianz Global Investors	X	X	X	X	X	X
Allspring Global Investments	X	X	X	X		X
Amundi Asset Management	X	X	X	X	X	X
AQR Capital Management	X	X	X	X	X	X
Aviva Investors	X	X	X	X	X	X
AXA Investment Managers	X	X	X	X	X	X
BMO Global Asset Management	X	X	X	X	X	X
D.E. Shaw Investment Management	X	X	X	X	X	X
Gateway Investment Advisers	X	X	X	X	X	X
Guggenheim Investments	X	X	X	X	X	X
HSBC Global Asset Management	X	X	X	X	X	X
IndexIQ Advisors	X	X	X	X	X	X
Legal & General Investment Management	X	X	X	X	X	X
M&G Investments	X	X	X	X	X	X
Manulife Investment Management	X	X	X	Split	X	X
Mutual of America Capital Management Corporation	X	X	X	X	X	X

Northern Trust Investments	X	X	X	X	X	X
Parametric Portfolio Associates	X	X	X	X	X	X
Principal Global Investors	X	X	X	X	X	X
ProFund Advisors	X	X	X	X	X	X
ProShares	X	X	X	X	X	X
TD Asset Management	Split	X	X	X	Split	X
Thrivent Investment Management	X	X	X	X	X	X
UBS Asset Management	X	X	X	X	X	X
Wilmington Trust Investment Management	X	X	X	X	X	X

Appendix B-1 – Proposals on Emissions-Reduction Targets

Proposal	Board of Directors' Opposition
Chevron (2022 Item 5): "medium- and long-term targets to reduce the greenhouse gas (GHG) emissions of the Company's operations and energy products (Scope 1, 2, and 3) consistent with the goal of the Paris Climate Agreement"[64]	"We are … mindful that the journey to a lower carbon future will still require oil and gas, particularly in areas where there are currently no effective substitutes, such as shipping and transportation."[65]
ConocoPhillips (2022 Item 7): "short-, medium- and long-term targets to reduce the greenhouse gas (GHG) of the Company's operations and energy products (Scope 1, 2, and 3) consistent with the goal of the Paris Climate Agreement"[66]	"[W]e do not believe that Scope 3 targets are appropriate for an upstream-only E&P company like ConocoPhillips…"[67]
DTE Energy (2022 Proposal No. 5): "revise its net zero by 2050 target, and interim targets, to integrate its full Scope 3 value chain emissions consistent with guidelines such as the CA100+ and SBTi"[68]	"The Board considers that the science behind measuring Scope 3 emissions is currently too unsettled for full incorporation into the Company's emissions reduction goals. Rushing to incorporate firm Scope 3 emissions targets in this unsettled environment will expose the Company to unnecessary risk without adding meaningful value toward addressing climate change."[69]
Exxon Mobil (2022 Item 9): "medium- and long-term targets to reduce the greenhouse gas (GHG) of the Company's operations and energy products (Scope 1, 2, and 3) consistent with the goal of the Paris Climate Agreement"[70]	"We believe setting Scope 3 targets can have significant unintended consequences for society, and therefore we recommend a vote against this proposal. … The proponent is an anti-oil and gas activist group using [ESG] objectives to diminish the important role ExxonMobil plays in the energy industry. The group's founder openly admitted in a TED Talk, which is available on its website, that its shareholder proposals use alignment with the Paris Climate Agreement 1.5°C as a 'Trojan horse' to force companies to eliminate oil and natural gas

[64] Ceres, *Adopt GHG reduction targets (CVX, 2022 Resol.)*, https://perma.cc/L6B4-Z8LF.
[65] Chevron, *2022 Proxy Statement*, at 91, https://perma.cc/Z63F-2GAN.
[66] Ceres, *Adopt GHG reduction targets (COP, 2022 Resol.)*, https://perma.cc/BZ6K-FG6J.
[67] CononcoPhillips, *Proxy Statement 2022*, at 128, https://perma.cc/R59M-J4DN.
[68] Ceres, *Adopt GHG reduction targets (DTE, 2022 Resol.)*, https://perma.cc/LJ2R-UST5.
[69] DTE, *2022 Proxy Statement & Notice of Ann. Meeting*, at 60, https://perma.cc/QR34-W2JN.
[70] Ceres, *Adopt GHG reduction targets (XOM, 2022 Resol.)*, https://perma.cc/EFF3-XJKD.

	investments[.]"[71]
Glencore (2023 Resolution 19): "Disclosure of how the Company's projected thermal coal production aligns with the Paris Agreement's objective … [and] Details of how the Company's capital expenditure allocated to thermal coal production will align with the disclosure in a. above"[72]	"The Board does not support Resolution 19 because it is: (i) unnecessary; (ii) unclear; and (iii) undermining of the Board's responsibility and accountability for the Company's strategy."[73] "[I]t is clear that the nature of the disclosures sought, together with the supporting statement, gives a strong indication that Resolution 19 is in fact intended to direct the Company's strategy. For instance, the supporting statement refers to 'coal phase-out', which does not form part of Glencore's climate strategy."[74]
Martin Marietta Materials (2023 Proposal 5): "issue near, medium and long-term science- based GHG reduction targets aligned with the Paris Agreement[]. … The targets should cover the Company's full range of operational and supply chain emissions."[75]	"[T]he Proposal seeks commitments to set targets on a timeframe that is not operationally viable or advisable, that rely on speculative future technologies, and that dismiss the potentially adverse consequences to our business and all of our shareholder's interests if we make expensive, technologically impossible commitments."[76]
NewMarket (2023 Proposal 6): "publish … GHG emissions, and set short-, medium-and long-term emission reduction targets to align business activities with net zero emissions by 2050 in line with the Paris Climate Agreement."[77]	"Given the impact [emissions rules from the SEC] will likely have on future GHG emission and other climate-related disclosures, we believe it is prudent for the company to refrain from devoting the required time and other resources towards the disclosure of its GHG emission until the rules are in final form."[78]
Occidental Petroleum (2022 Proposal 4): "targets that are consistent with the goal of the Paris Climate Agreement…. These quantitative targets should cover the short-, medium-, and long-term greenhouse gas (GHG) emissions of the company's operations and the use of its energy products (Scope 1, 2, and 3)."[79]	"We believe that support for the proposal would undermine [Occidental's net-zero strategy], create internal and external confusion and disrupt our business plans at a moment when our company should be focused on executing upon its mission to innovate for a lower-carbon future."[80]

[71] ExxonMobil, *supra* note 5, at 86.
[72] Ceres, *Needs Review (GLEN.L, 2023 Resol.)*, https://perma.cc/85YL-AF8P.
[73] Glencore, *supra* note 18, at 17.
[74] *Id.* at 19.
[75] Ceres, *Adopt GHG targets and transition plan (<2C or unspecified) (MLM, 2023 Resol.)*, https://perma.cc/3ACC-WSLB.
[76] Martin Marietta, *supra* note 19, at 95.
[77] Ceres, *Adopt scope 1-3 GHG targets (1.5C aligned) (NEU, 2023 Resol.)*, https://perma.cc/48DV-B9K7.
[78] NewMarket Corp., SEC, Form DEF 14A, at 49, https://perma.cc/NTK6-BTZ7.
[79] Ceres, *Adopt GHG reduction targets (OXY, 2022 Resol.)*, https://perma.cc/7FHN-6PZV.
[80] Oxy, *2022 Proxy Statement*, at 78, https://perma.cc/6XK5-XD95.

Phillips 66 (2022 Proposal 5): "set and publish targets that are consistent with the goal of the Paris Climate Agreement…. These quantitative targets should cover the medium- and long-term greenhouse gas (GHG) emissions of the company's operations and the use of its energy products (Scope 1, 2, and 3)."[81]	"Setting targets that require even more significant technological and social transformation outside our control could create reputational risk and potential harm to shareholders."[82]
Southern Company (2023 Item 7): "short and long-term targets aligned with the Paris Agreement's 1.5°C goal requiring Net Zero emissions by 2050 for the full range of its Scope 3 value chain GHG emissions"[83]	"[W]e believe setting reduction targets for our Scope 3 emissions at this time would be premature, not add meaningful information for stockholders unless and until more standardized reporting protocols for Scope 3 emissions, including related mitigation approaches, are widely adopted and instead only expose us to undue risk and distraction."[84]
The Mosaic Company (2023 Proposal 7): "issue a report, at reasonable expense and excluding confidential information, disclosing how the Company intends to reduce its full value chain greenhouse gas emissions in alignment with the Paris Agreement's 1.5°C goal requiring Net Zero emissions by 2050."[85]	"[W]e cannot commit to establishing Paris-aligned Scope 3 targets at this time … we feel strongly that our decision to issue Paris-aligned Scope 3 targets must be rooted in sector-based guidance and the realities of our complex business."[86]
Valero (2022 Proposal 4): "issue a report within a year, and annually thereafter, at reasonable expense and excluding confidential information, that discloses near- and long-term GHG gas reduction targets aligned with the Paris Agreement's goal … and a plan to achieve them"[87]	"We believe that this proposal seeks a pro forma commitment that does not reflect an understanding of the resilience of our assets"[88] "While our strategy to pursue these reductions reflects our deep understanding of our business and our industry, the proposal favors an untailored approach that is inappropriate for a company like ours. The proposal recommends alignment with the Science-Based Targets initiative, when guidance for the oil and gas sector is not even available yet."[89]
Valero (2023 Proposal 5): "report … on its climate transition plan to align	"Mercy seeks GHG emissions targets and reductions that can only come from refinery

[81] Ceres, *Adopt GHG reduction targets (PSX, 2022 Resol.)*, https://perma.cc/WY95-NXNZ.

[82] Phillips 66, *2022 Proxy Statement*, at 96, https://perma.cc/6269-MPWD.

[83] Ceres, *Adopt scope 3 GHG targets (1.5C aligned) (SO, 2023 Resol.)*, https://perma.cc/274G-TLL2.

[84] Southern Co., *2023 Notice of Ann. Meeting of S'holders & Proxy Statement*, at 113, https://perma.cc/ZTM6-FZPX.

[85] Ceres, *Rep. climate transition plan (1.5C aligned) (MOS, 2023 Resol.)*, https://perma.cc/X8DJ-RBWQ.

[86] The Mosaic Co., *Notice of 2023 Ann. Meeting of S'holders*, at 80, 81, https://perma.cc/8S7E-G7JT.

[87] Ceres, *Adopt GHG reduction targets (VLO, 2022 Resol.)*, https://perma.cc/N7P8-MACT.

[88] Valero Energy Corp., *Notice of 2022 Ann. Meeting of S'holders*, at 93, https://perma.cc/N8MJ-KQZ3.

[89] *Id.* at 94.

operations and value chain emissions with a well below 2 degrees Celsius scenario, including short-, medium- and long-term reduction targets for Valero's full GHG emissions (scopes 1, 2, and 3)"[90]	closures. … [Mercy's statement] is indicative of Mercy's belief that shutting down refineries is the only way to meet the goals of the Paris Agreement."[91]

[90] Ceres, *Rep. on GHG targets and transition plan (<2C or unspecified) (VLO, 2023 Resol.)*, https://perma.cc/XG36-D9BA.

[91] Valero Energy Corp., *Notice of 2023 Ann. Meeting of S'holders*, at 102, https://perma.cc/A28Y-ASAT.

Appendix B-2 - Votes (“X represents a “For” vote; percent overall support in parentheses)	Chevron 2022 Item 5 (32.6)	Conoco Phillips 2022 Item 7 (41.8)	DTE Energy 2022 Prop. 5 (28.1)	Exxon Mobil 2022 Item 9 (27.1)	Glen-core 2023 Res. 19 (29.2)	Martin Marietta 2023 Prop. 5 (32.8)	New-Market 2023 Prop. 6 (31.9)	Occidental Petroleum 2022 Prop. 4 (16.6)	Phillips 66 2022 Prop. 5 (36.2)	Southern Co. 2023 Item 7 (19.8)	The Mosaic Co. 2023 Prop. 7 (29.8)	Valero 2022 Prop. 4 (47.1)	Valero 2023 Prop. 5 (33.1)
Abrdn	X	X	X	X	X	X		X	X	X	X	X	X
Allianz Global Investors	X	X	X	X	X	X	X	X	X	X	X	X	X
Allspring Global Investments	X	X	X	Split	X	X	X	X		X	X	Split	X
Amundi Asset Management	X	X	X	X	X	X	X	X	X	X	X	X	X
AQR Capital Management	X	X	X	X	X		X	X	X	X	X	X	X
Aviva Investors	X	X	X	X	X	X		X	X	X	X		
AXA Investment Managers	X	X		X				X	X		X	X	X
BMO Global Asset Management	X	Split	X	Split	X	X	X		X	X	X	X	
D.E. Shaw Investment Management	X		X	X		X		X	X	X	X		X
Gateway Investment Advisers	X	X	X	X		X		X	X	X	X	X	X
Guggenheim Investments	X	X	X	X		X	X	X	X	X	X	X	X
HSBC Global Asset Management	X	X	X	X	X		X	X	X			X	
IndexIQ Advisors	X	X	X	X	X	X		X	X	X	X	X	X
Legal & General Investment Management	X	X	X	X	X	X	X	X	X	X	X	X	X
M&G Investments	X	X	X	X	X	X				X		X	X
Manulife Investment Management	X	X	X	X	X	X	X	X	X	X	X	X	
Mutual of America Capital Management Corporation	X	X	X	X		X	X	X	X	X	X	X	X
Northern Trust Investments	X	X	X		X		X	X	X		X	X	X

Parametric Portfolio Associates	X	X	X	X	X	X	X	X	X	X	X	X	X
Principal Global Investors	X	X	X	X			X	X	X	X	X	X	X
ProFund Advisors	X	X	X	X		X	X	X	X	X	X	X	X
ProShares	X	X	X	X	X	X	X	X	X	X	X	X	X
TD Asset Management	X	X	X	X	X	X	X			X	X	X	X
Thrivent Investment Management	X	X	X	X	X	X	X	X	X	X	X	X	
UBS Asset Management	X	X	X	X	X	X	X	X	X	X	X	X	X
Wilmington Trust Investment Management	X	X	X	X	X	X	X	X	X	X	X	X	X

Appendix C-1 – Proposals on Limiting Companies' Speech With Policymakers to Force Conformity with the Paris Agreement and/or Net Zero by 2050

Proposal	**Board of Directors' Opposition**
Alphabet (2022 Proposal 6): "issue a report … describing if, and how, [the Company's] lobbying activities (both direct and indirect) align with the ultimate goal of the Paris Agreement to limit average global warming to 1.5° Celsius, and how [the Company] plans to mitigate risks presented by any misalignment."[92]	"Our comprehensive lobbying disclosures, with oversight from our Board, provide the information needed by our stockholders and other stakeholders to understand the scope of these activities, including as it relates to our positions on climate change and the Paris Agreement. Our Board therefore believes that publishing an additional report narrowly focused on climate-related lobbying would not provide additional meaningful information to our stockholders."[93]
Boeing (2023 Item 8): "issue a report … describing if, and how, Boeing's lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the Paris Agreement's ambition to limit global warming to "well below" 2 degrees Celsius above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5 degrees Celsius, and how Boeing plans to mitigate the risks presented by any misalignment. In evaluating the degree of alignment, Boeing should consider not only its policy positions and those of organizations of which Boeing is a member, but also the actual lobbying and policy influence activities."[94]	"Based on our efforts and transparency on lobbying disclosures and climate change strategy, the Board believes that a proposal seeking an additional report containing much of the same information we already disclose would not add value to shareholders, yet would result in the expenditure of additional resources by the Company."[95]
Caterpillar (2023 Proposal 6): "issue a report … describing if, and how, Caterpillar lobbying and policy influence activities (both	"Caterpillar's robust lobbying disclosures, including our inaugural Lobbying Report, and the oversight of lobbying activities by our

[92] Ceres, *Rep. on lobbying in line with Paris Agreement (GOOGL, 2022 Resol.)*, https://perma.cc/8MWV-LCVD.

[93] Alphabet Inc., *Notice of 2022 Ann. Meeting of S'holders and Proxy Statement*, at 17, https://www.sec.gov/Archives/edgar/data/1652044/000130817922000262/lgoog2022_def14a.htm

[94] Ceres, *Rep. on lobbying in line with Paris Agreement (BA, 2023 Resol.)*, https://perma.cc/GC44-ZQXA.

[95] The Boeing Co., *2023 Ann. Meeting of S'holders*, at 87, https://www.sec.gov/Archives/edgar/data/12927/000119312523059893/d424500ddef14a.htm

direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to well below 2°C above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how Caterpillar plans to mitigate the risks presented by any misalignment."[96]	Board, provide the information needed by our shareholders to understand the scope of these activities, including as it relates to our positions on climate change and the Paris Agreement. Publishing an additional report narrowly focused on climate-related lobbying would be duplicative and would not provide any additional meaningful information to our shareholders."[97]
CNX Resources (2023 Proposal 5): "issue a report … describing if, and how, CNX Resources' lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to "well below" 2°C above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how CNX plans to mitigate the risks presented by any misalignment."[98]	"The Board believes that CNX, its employees, and its shareholders are better served by the continuing execution of the Corporation's business plans, including through the initiatives and efforts described above, rather than devoting attention and resources to the additional and duplicative reporting called for by the shareholder proposal."[99]
Coterra Energy (2023 Proposal 7): "issue a report … describing if, and how, Coterra Energy's lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to well below 2°C above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how Coterra plans to mitigate the risks presented by any misalignment."[100]	"We strongly believe that Coterra's long-term value to our shareholders is enhanced by a business environment that protects and supports the oil and gas industry's ability to responsibly operate to provide important resources to consumers."[101]

[96] Ceres, *Rep. on lobbying in line with Paris Agreement (CAT, 2023 Resol.)*, https://perma.cc/2TRX-Y2MF.

[97] Caterpillar Inc., *2023 Proxy Statement*, at 77 https://fintel.io/doc/sec-caterpillar-inc-18230-def-14a-2023-may-01-19478-3890.

[98] Ceres, *Rep. on lobbying in line with Paris Agreement (CNX, 2023 Resol.)*, https://perma.cc/7ZAT-SFR6.

[99] CNX Res. Corp., *Proxy Statement 2023*, at 81, https://investors.cnx.com/~/media/Files/C/CNX-Resources-IR/documents/cnx-proxy-statement.pdf.

[100] Ceres, *Rep. on lobbying in line with Paris Agreement (CTRA, 2023 Resol.)*, https://perma.cc/6PQQ-XBFP.

[101] Coterra, *supra* note 20, at 78.

Honeywell (2022 Proposal 5): "issue a report … describing if, and how, Honeywell's lobbying activities (direct and through trade associations and other organizations) align with the goal of the Paris Agreement to limit average global warming to well below 2 degrees Celsius (ideally 1.5 degrees Celsius) and how Honeywell plans to mitigate risks presented by any misalignment."[102]	"Honeywell has conducted an evaluation of its lobbying activities for alignment with the goals of the Paris Agreement, and has published a report that addresses the topics requested in the proposed resolution."[103]
PACCAR (2023 Item 6): "issue a report … describing if, and how, PACCAR Inc. lobbying and policy influence activities (both direct and indirect through trade associations, coalitions, alliances, and other organizations) align with the goal of the Paris Agreement to limit average global warming to "well below" 2°C above pre-industrial levels, and to pursue efforts to limit temperature increase to 1.5°C, and how PACCAR plans to mitigate the risks presented by any misalignment. In evaluating the degree of alignment, PACCAR should consider not only its policy positions and those of organizations of which PACCAR is a member, but also the actual lobbying and policy influence activities."[104]	"PACCAR evaluates and publicly discloses its direct and indirect (i.e., through industry trade associations) climate policy engagement activities. These activities are aligned with the goals of the Paris Climate Agreement and are publicly disclosed through PACCAR's annual environmental report to CDP … PACCAR's greenhouse gas emissions targets are aligned with the goals of the Paris Climate Agreement"[105]
Tesla (2022 Proposal 10): "issue a report … describing if, and how, Tesla Inc.'s ("Tesla's") lobbying and policy influence activities (direct and through trade associations and social welfare and nonprofit organizations) align with the Paris Agreement's goal to limit average global warming to 1.5 degrees Celsius, and how Tesla plans to mitigate risks presented by any misalignment. The evaluation should examine underlying direct	"The stockholder proponent purports to care about curbing the worst effects of climate change, and yet chooses to devote its attention and criticisms on one of the most well-known and successful clean energy companies in the world. … Because our existing disclosures already provide stockholders with ample information on our lobbying activities, and the alignment of Tesla's mission and actions to the Paris Agreement, we believe that Tesla,

[102] Ceres, *Rep. on lobbying in line with Paris Agreement (HON, 2022 Resol.)*, https://perma.cc/WAG3-AWT8.

[103] Honeywell Int'l Inc., *2022 Proxy Statement and Notice of Ann. Meeting of Shareowners*, at 100, https://www.sec.gov/Archives/edgar/data/773840/000077384022000024/a2022honeywellproxy.htm.

[104] Ceres, *Rep. on lobbying in line with Paris Agreement (PCAR, 2023 Resol.)*, https://perma.cc/FP77-84GH.

[105] Paccar Inc., *2023 Notice of Ann. Meeting of S'holders*, at 46, https://perma.cc/M6VX-SCW8.

and indirect lobbying activities and not rely solely on publicly stated positions to determine alignment with the Paris Agreement."[106]	its employees and its stockholders are better served by continuing to execute on our mission rather than devoting attention and resources to additional reporting."[107]
UPS (2022 Proposal 5): "issue a report … describing if, and how, UPS's lobbying activities (direct and through trade associations and social welfare and nonprofit organizations) align with the Paris Climate Agreement's goal of limiting average global warming to well below 2 degrees Celsius and how the company plans to mitigate risks presented by any misalignment."[108]	"preparing this requested report is unnecessary and would be an inefficient use of Company resources. … The board believes UPS's sustainability goals are robust, and its policies and practices are transparent. Approval of this proposal is unnecessary given the information that is already publicly available. Therefore, approval of this proposal would not result in an efficient use of resources and will only serve to benefit the limited interests of a small group of shareowners."[109]
Wells Fargo (2023 Item 7): "report to shareholders … whether and how it is aligning its lobbying and policy influence activities and positions, both direct and indirect through trade associations, coalitions, alliances, and other organizations, with its public commitment to achieve net zero emissions by 2050 including the activities and positions analyzed, the criteria used to assess alignment, and involvement of stakeholders, if any, in the analytical process."[110]	"we believe this proposal, which requires the Company to produce detailed and prescriptive reporting focused on a single issue, is unnecessary and would be time-consuming and costly to prepare without significant benefit to the Company, our customers, shareholders or other stakeholders."[111]

[106] Ceres, *Rep. on lobbying in line with company values/policy (TSLA, 2022 Resol.)*, https://perma.cc/W7H5-UK3T.

[107] Tesla, Inc., *Notice of 2022 Ann. Meeting of S'holders*, at 31, https://www.sec.gov/Archives/edgar/data/1318605/000156459022022992/tsla-pre14a_20220804.htm

[108] Ceres, *Rep. on lobbying in line with Paris Agreement (UPS, 2022 Resol.)*, https://perma.cc/99SA-2ESY.

[109] UPS, *Notice of 2022 Ann. Meeting of S'holders and Proxy Statement*, at 64, https://perma.cc/M6VX-SCW8.

[110] Ceres, *Rep. on lobbying in line with net zero GHG commitment (WFC, 2023 Resol.)*, https://perma.cc/WV9E-MPSP.

[111] Wells Fargo, *supra* note 16, at 110.