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ATTORNEY GENERAL



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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Re: Pension Funds Calling to Supplant Fiduciary Duty

To Exxon Mobil Shareholders:

Activist shareholders are asking you to buy into President Biden’s radical green agenda and destroy shareholder value. If you do what they ask, you will never be able to push back against inappropriate regulation in court. They ask you to just sit back and accept regulations that may have some impact on the environment or climate—even at the expense of operating your company. The letter instructs you to cease your zealous protection of fiduciary duty and instead to accept unlawful regulation as part of a partisan and controversial policy agenda. You should decline.

Earlier this week, a group of woke investors sent you a letter asking you to forsake your fiduciary duty, prompted by the company’s decision to challenge an inappropriate regulation in court. That letter asked you to vote against an energy company’s directors for supposedly undermining the U.S. Securities and Exchange Commission by exercising the company’s right to seek a judicial interpretation of key standards in federal court. Accessing the courts for a such a determination is entirely proper: it prevents the SEC from assuming a politicized role that undermines state corporate law, and it protects shareholders from “wealth-reducing outcomes.”¹

You should play no role advancing the Biden Administration’s coordinated climate agenda. Asset managers’ sole duty is to maximize risk-adjusted financial returns. Complying with the letter would indicate a breach of your fiduciary duty, collusion, and a conflict of interest.

¹ *Cf. Melzer v. CNET Networks, Inc.*, 934 A.2d 912, 917 (Del. Ch. 2007) (“Permitting a single shareholder to hound a corporation with exclusively personal requests for books and records is a waste of corporate resources that engenders no benefit for the shareholders in general. The proper purpose requirement protects against such wealth-reducing outcomes.”) (citing *Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 122 (Del. 2006)).

I. The Letter Punishes Companies for Exercising Access to the Courts

Activists and the letter’s signatories have distorted the SEC’s review process for shareholder proposals and now want companies to remain subject only to the Biden Administration’s SEC. Under long-standing SEC regulations, shareholder proposals cannot “deal[] with a matter relating to the company’s ordinary business operations.”² But after a 2021 letter from Climate Action 100+ member—members being part of activist group of investors committed to pressuring companies to ignore their legal duties—Arjuna Capital complained that the SEC’s rule and practices had “dramatically restricted” ESG proposals,³ the SEC announced it would no longer give “no-action” relief on proposals asking companies to set GHG emission reduction targets.⁴ That empowered CA100+ and its members to push hundreds of ESG proposals. To the activists, whether those proposals create shareholder value is “really beside the point,” in the words of a recent federal court decision.⁵

The letter you received says that companies’ relief should be restricted to seeking an SEC memo from a Biden Administration that has declared a “whole-of-government” approach to using all agencies to promote a climate agenda⁶ and whose SEC has stated that it will allow proposals requiring emissions targets.⁷ Clearly, that letter aims to empower the Biden Administration, rather than increase shareholder value.

Before State Attorney General scrutiny, asset managers supported many ESG proposals that destroyed shareholder value and violated companies’ fiduciary duty. In 2021, CA100+ declared that it was on the verge of a “tipping point” where ESG proposals would usually pass.⁸ But since Attorneys General began highlighting the absence of a financial basis for those proposals, investor support has plummeted. Only 3% of environmental and social proposals passed

² 17 C.F.R. § 240.14a-8(i)(7)

³ <https://www.corpgov.net/2021/02/reform-no-action-process/>.

⁴ <https://www.sec.gov/corpfin/staff-legal-bulletin-141-shareholder-proposals>.

⁵ Decision on Arjuna MTD, p. 2.

⁶ <https://www.whitehouse.gov/climate>.

⁷ <https://www.sec.gov/corpfin/staff-legal-bulletin-141-shareholder-proposals>.

⁸ <https://www.climateaction100.org/news/as-climate-risks-skyrocket-largest-asset-managers-vote-for-more-climate-related-shareholder-proposals-tipping-support-to-record-levels-in-2021>.

last year.⁹ Proposals prescribing targets have been widely rejected, including a 2023 GHG emissions reduction targets proposal from activist organization Follow This that almost 90% of shareholders voted against.¹⁰ Undeterred, Follow This filed a similar proposal for 2024, along with CA100+ member Arjuna Capital. These proposals are clearly designed to destroy shareholder value by requiring energy companies to sell less of their products to meet emissions reduction goals. Arjuna believes the companies it targets should “shrink.”¹¹ Follow This has expressly stated it does *not* attempt to get shareholder returns¹² and has admitted these proposals are “Trojan Horses” to force companies to move away from oil and gas.¹³

Under State corporate law, corporations have the right, and sometimes the duty, to litigate to avoid wasting corporate assets under a “Trojan Horse” proposal.¹⁴ As evidence of the validity of litigating, a court recently denied Arjuna’s motion to dismiss. Preventing a company from exercising its legal rights to prevent value-destruction cannot be squared with your fiduciary duty to maximize risk-adjusted financial returns.

II. Climate Action 100+ Already Is Being Investigated for This Type of Collusion

Many of the letter’s signatories, such as the California Public Employees Retirement System (CalPERS), Connecticut Retirement Plans & Trusts, Maryland State Retirement and Pension System, New York City Comptroller, New York State Common Retirement Fund, Oregon State Treasurer, Vermont State Treasurer, and the Washington State Investment Board, are CA100+ members.¹⁵ State and federal antitrust investigations are examining CA100+’s

⁹<https://cdn2.assets-servd.host/shareaction-api/production/resources/reports/Voting-Matters-2023.pdf>.

¹⁰

<https://www.sec.gov/ix?doc=/Archives/edgar/data/34088/000003408823000036/xom-20230531.htm> (2023 proposal 9).

¹¹ <https://arjuna-capital.com/archive/news/now-exxon-investors-float-climate-measures-shrink-company-within>.

¹² <https://www.follow-this.org/wp-content/uploads/2022/11/Articles-of-Association-English.pdf>.

¹³ <https://www.follow-this.org/for-investors/>.

¹⁴ *See Melzer*, 934 A.2d at 917.

¹⁵ <https://www.climateaction100.org/whos-involved/investors/> (California Public Employees Retirement System, Connecticut Retirement Plans &

collusive efforts “pushing climate goals at shareholder meetings and voting against directors and proposals that don’t comport with the agenda.”¹⁶ Consistent with CA100+’s goals to “reduce [GHG] emissions across the value chain”¹⁷ and force companies to “phase out investment in unabated carbon intensive assets or products,”¹⁸ any company that earns returns from fossil fuels is a target.

CA100+ members like Arjuna and the letter’s signatories push proposals restricting activities that earn returns from fossil fuels, and vote against directors who do not comply.¹⁹ In 2021, CA100+ members, including letter signatories CalPERS and New York City, bragged that their efforts to oust company board members promoted the clearly political goal of obtaining a “day of reckoning” for climate change.²⁰

III. Voting Against Company Directors to Appease Climate Activists Indicates a Conflict of Interest

The letter signatories are intending to leverage their substantial assets²¹ to force you to pursue ESG goals “across [your] entire portfolio.”²² Forcing these political motivations onto other clients, including consumers in our states, indicates a conflict of interest and would implicate fiduciary duty laws, as we

Trusts, Maryland State Retirement and Pension System, New York City Comptroller, New York State Common Retirement Fund, Oregon State Treasurer, Vermont State Treasurer, Washington State Investment Board).

¹⁶ <https://judiciary.house.gov/media/in-the-news/republicans-launch-antitrust-investigation-into-climate-obsessed-corporate-cartel> (quoting former Arizona Attorney General Mark Brnovich).

¹⁷ <https://www.climateaction100.org/the-three-goals/> .

¹⁸ <https://www.climateaction100.org/wp-content/uploads/2021/10/Climate-Action-100-v1.1-Benchmark-Indicators-Oct21.pdf> (p. 3).

¹⁹ See, e.g., <https://web.archive.org/web/20230906162359/https://www.climateaction100.org/approach/proxy-season/> .

²⁰ <https://www.washingtonpost.com/washington-post-live/2021/10/12/transcript-protecting-our-planet-role-business-investing-with-mark-carney-anne-simpson/> (stating CalPERS worked with NYC) <https://www.climateaction100.org/news/in-stunning-vote-shareholders-elect-two-new-directors-put-forth-by-shareholders-at-exxonmobil-seeking-climate-expertise-and-action/> .

²¹ <https://www.pionline.com/largest-us-retirement-plans/2023> .

²² See, e.g., <https://comptroller.nyc.gov/newsroom/comptroller-lander-sends-letter-to-blackrock-ceo-larry-fink-demanding-stronger-action-toward-net-zero-emissions-reduction-across-portfolio/> .

have explained before.²³ The stock of the company targeted by the signatories is trading near its all-time high,²⁴ presenting what appears to be a clear contrast between pursuing financial interests and advancing political or ESG goals.

The activists demand that you destroy shareholder value and empower the Biden Administration at the expense of our states and consumers. We write to remind you of your legal duties to maximize risk-adjusted financial returns.

Sincerely,



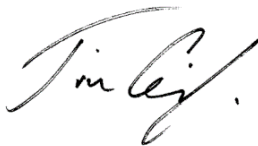
Brenna Bird
Attorney General of Iowa



Steve Marshall
Attorney General of Alabama



Austin Knudsen
Attorney General of Montana



Tim Griffin
Attorney General of Arkansas



John Formella
Attorney General of New Hampshire



Todd Rokita
Attorney General of Indiana



Dave Yost
Attorney General of Ohio

²³ <https://attorneygeneral.utah.gov/wp-content/uploads/2023/03/2023-03-30-Asset-Manager-letter-Press-FINAL.pdf> .

²⁴ <https://www.marketwatch.com/investing/stock/xom> .

A handwritten signature in blue ink, appearing to read 'S. D. Reyes', with a stylized flourish extending to the right.

Sean D. Reyes
Attorney General of Utah