PROPOSED MEETING SCHEDULE & AGENDA
MRTI COMMITTEE
October 7 and 20, 2022
VIA Zoom

MEETING OBJECTIVES:
1. Approve 2022/2023 MRTI work plan
2. Approve 2022 GA proscription/ divestment list
3. Review Directives from 225th General Assembly
4. Update Committee Procedures Manual

<u>Friday, October 7, 2022: 2:00 – 4:00 p.m. ET</u>

Session 1	2:00 – 2:30 p.m.	Opening devotion – Brenton Thompson Introductions / joys and concerns Staff Updates Review/ approve meeting agenda **(action item)** Q and A RE written staff report, agency and entity updates Review/ approve Winter 2022 meeting record (**action item)**
Session 2	2:30 – 3:30 p.m.	Review/ approve 2022 divestment/ proscription list (**action item**)
Session 3	3:00 – 4:00 p.m.	Review/ approve updates to Committee Procedures Manual **(action item**) Discuss meeting plans for 2023 Response to state-level anti-ESG push

Revised 10.4.22 at 10:38 a.m.

Thursday, October 20, 2022: 2:00 – 4:00 p.m

Session 5	2:00 – 2:15 p.m.	Opening prayer Review any unfinished business from Day 1
Session 6	2:15 – 2:45 p.m.	Review/ approve 2022/2023 work plan (**action item**)
Session 7	2:45 – 3:30 p.m.	Review MRTI-related Directives from the 225th General Assembly (e.g. Development of policy on Guns from ACSWP; MRTI Report, MRTI Directive on Guns, Reproductive Health engagement)
Session 8	3:30 – 4:00 p.m.	Engagement with guests and observers

Meeting papers include:

- Meeting schedule
- Updated MRTI Bios (with new members)
- Entity/ agency reports
- Staff report
- Winter 2022 meeting record
- Pre-Final 2022 Divestment/ Proscription list
- Pre-Final 2022/2023MRTI work plan
- MRTI-related Directives from 225th General Assembly
- Updated Committee Procedures Manual (Unapproved)

Report on ACSWP for MRTI

Friends,

Like MRTI, the members of ACSWP took some well-deserved time off after General Assembly. And, like MRTI, ACSWP is now gearing up for work over the coming two years in anticipation of the next one. Toward that end, ACSWP has met twice in the last month: once online in August and once in person in Baltimore from September 22 to 24.

The online meeting was relatively brief and consisted primarily as an opportunity to welcome new members and rehearse our larger purposes within the denomination. The meeting in Baltimore, though, was our annual fall meeting and occurred over the course of several days. While in Baltimore, we spent some time reconnecting (it was our first face-to-face meeting since early 2020), reflected back on things we learned at General Assembly, and began to plan for the 2024 General Assembly, receiving both suggestions from stakeholders about topics they would like to see addressed (e.g., student debt, mental health) brainstormed some topics that we think may be important to begin exploring (e.g., climate change, violence, and refugees; a reaffirmation of the importance of K-12 public education), and did some thinking about how to tell the story of the denomination's social witness policy (including exploring revivifying *Salt and Light*, our dormant journal). We also looked through items coming out of General Assembly that we will need to address.

I would highlight a few matters that may be of special interest to the members of MRTI:

- Gun Violence. Both ACSWP and MRTI have been asked to do further work on gun violence, including exploring processes for divestment from gun manufacturers and distributors. I look forward to working with both committees going forward and am appreciative of the way the two committees engaged each other in planning for the 2022 General Assembly.
- Climate Change. This topic isn't going away and while there weren't specific new mandates coming from General Assembly on the matter, many enduring questions will return including, undoubtedly, greater divestment from fossil-fuel related companies.
- New Leadership. Carl Horton has been serving in an interim capacity leading social witness policy since Chris Iosso's departure. He has also maintained his leadership with Presbyterian Peacemaking. Burning a candle at both ends is tiring and he would like to return to a focus on Peacemaking even as PMA seeks to establish more enduring leadership for social witness policy. With a search process now in place, ACSWP elected three members to serve on the search committee who will work with three members from PMAB already elected.

As these projects continue to unfold, I will do my best to keep you alerted to matters of interest to MRTI in my role as liaison. And should you have questions, I will be happy to answer them as I am able.

Peace,

Mark Douglas

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Updates for MRTI – October 2022

Current Mission Statement:
New Covenant Trust Company, a vital part of the Presbyterian Foundation, is called to serve individuals, families and institutions as a trusted advisor and investment manager, consistent with our faith heritage.

2022 Focus and Activities of Note:

- Continuing efforts to strengthen client relationships, especially in climate of increasing anxieties related to market volatility
- Continuing strong interest in the Fossil Fuel Free Fund and the Diversity, Equity, and Inclusion Fund; DEI fund now has full year of performance measures
- Launched a pilot program for philanthropic services to congregations
- Engaged external Virtual Information Security Officer as part of effort to increase IS/IT security measures in response to continuing increase of cybercrime and security incidents
- New Board Nominating and Governance organized in November 2021; the committee continues work on addressing emerging governance needs and learnings of NCTC, including those related to growing assets under management, changing environment and expertise needs, the pandemic and new ways of meeting, diversity and inclusion goals, and Board member transitions
- Board Chair Dick White has stepped down; he will remain on the Board for a year to ensure a smooth transition. New Board Chair is Steve Kelly.
- Rob Fohr has joined the Board as the PMA representative.

Current Metrics:

- ~$480M assets under management as of 8/26/2022
- ~$57M new assets as of 9/2/2022

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Summary of Activity

New Covenant Trust Company, a vital part of the Presbyterian Foundation, is called to serve churches, families, and institutions as a trusted advisor and investment manager, consistent with our faith heritage.

2022 Highlights:

- NCTC resourced various committees and participated in multiple discussions during the 225th General Assembly in Louisville.
  - NCTC has incorporated the updated divestment list to our Common Fund and SMA accounts.
- NCTC was a sponsor of the 2022 Stewardship Kaleidoscope conference and presented a workshop on values-based investing. This educational workshop lifted up the various tools investors have available to them to drive impact, including the corporate engagement and proxy voting efforts of MRTI and others in coalition.
- NCTC published a 2022 'Impact Report', highlighting various initiatives our mutual fund partners and others have pursued in 2022, including an impact bond supporting Ukrainian refugees, and corporate engagement efforts on the issue of pay parity and addressing the gender pay gap in the US. (report is attached)
- NCTC continues to place investments through Community Capital Management on behalf of investors in investments qualified under the Community Reinvestment Act. NCTC also works with Praxis Funds, associated with the Mennonite Church, to place investments in similar positive impact bond investments.
- There continues to be support and ongoing investment in the Diversity, Equity, and Inclusion strategy at NCTC. Our Fossil Fuel Free divestment strategy has continued to see new investment in 2022.

Metrics:

- $450m+ assets under management for the Trust Company
- $59m+ in new assets under management for calendar year 2022 so far
- Two specialized strategies operating: Fossil Fuel Free Investment, and DEI strategy
- NCTC was once again able to pay a dividend to the Presbyterian Foundation for 2021

James Carey

From: New Covenant Trust Company <james.carey@presbyterianfoundation.org>
Sent: Monday, September 19, 2022 3:13 PM
To: James Carey
Subject: [EXTERNAL][BULK] Investment Stewardship Impact Update - September 2022

View this email in your browser

Investment Stewardship IMPACT UPDATE

September 2022

NEW COVENANT TRUST

A Subsidiary of the Presbyterian Foundation

The Presbyterian Church (U.S.A.) has a long history of responsible investing practices, or values-based investing. This dates back to a policy adopted by the General Assembly in 1971. The policy statement included a discussion about investments being "an instrument of mission and includes theological, social and economic considerations." The basis for this belief is that all are stewards of God's resources and therefore, "We confess that the Lord is really the acknowledged Master of our entire life — moral, physical and material."

Values-based investing and impact investing have seen sharp increases in attention and participation in recent years. As a part of the Presbyterian Church, New Covenant Trust Company is committed to values-based investing and to remaining on the cutting edge of this developing area of the investment industry.

This enables interested investors to participate in investment opportunities and shareholder advocacy efforts that not only support the expectation of achieving long-term market rates of return, but that also have measurable positive environmental or social impact associated with them.

Just a few of the ways these efforts have helped to drive positive change in 2022 are outlined below. We always welcome the opportunity to provide additional information or answer any questions on this meaningful and exciting part of our work.

Praxis supports funding for solar, wind, water and other sustainable energy projects in Honduras through H-REFF

Praxis Mutual Funds®

Stella Tai, Stewardship Investing Impact and Analysis Manager at Praxis Mutual Funds, covers in this article the impact that their investment in the Honduras Renewable Energy Financing Facility has had.

The article notes, "As economies in Central America have started growing at an increasing rate, dependence on fossil fuels for transportation and electricity has become unsustainably high. H-REFF, managed by Deetken Impact Sustainable Energy, provides financing to projects that utilize solar, wind, biomass, biogas and energy efficient technologies across Honduras, Guatemala, El Salvador and Nicaragua. H-REFF finances a dozen small-scale renewable energy projects while creating thousands of jobs in the region."

NCTC investors support Praxis through investment in their various funds. Read more of Stella's coverage on this and other high impact investments here.

Community Capital Management invests in social inclusion bond helping Ukrainian refugees

Community Capital Management LLC (CCM), a leading impact investment manager and a mutual fund partner of NCTC, invested $3 million in late June in the Council of Europe Development Bank's (CEB) Social Inclusion Bond, whose proceeds will be primarily used to support Ukrainian refugees hosted by CEB member countries.

The article notes that, "The CEB was the first development bank to disburse grants to its members to help meet the transportation, shelter, food and medical care needs of Ukrainian refugees ... Loans made with the proceeds of the three-year notes could also be used by member countries to support the longer term needs of refugees."

Investments made through CCM also support critical impact areas including affordable housing, renewable energy and healthy communities. NCTC investors support the work of CCM through investment in their Community Impact Bond Fund.

Learn more about the impactful work being done at CCM here.

Calvert incorporates gender gaps in company analysis, focusing on pay parity

As August 26 marked "Women's Equality Day" and the 102nd anniversary of U.S. women's right to vote, Yijia Chen, CFA, of Calvert Management provided a thorough research update on the global effort to move toward gender equity worldwide.

According to the article, while overall gender disparity across politics, work, health and education has improved globally — it will still take 132 years at this pace to close the gender gap.

Calvert incorporates company's pay gap data, transparency and policies around gender pay gaps in evaluating companies. Addressing gender pay gaps is a growing priority in Calvert's shareholder proposal strategy and corporate engagement efforts. NCTC investors support Calvert's positive investment screening efforts and shareholder advocacy work through investment in Calvert's various funds.

Read more about this and other research from Calvert Management here.

AIG makes environmental commitments requested in PC (USA) resolution

In response to a shareholder resolution filed by the Presbyterian Committee on Mission Responsibility Through Investment (MRTI), insurer American International Group Inc. (AIG) committed to achieving net-zero gas emissions across its investment portfolio by 2050.

In this article, Rich Copley with the Presbyterian News Service reports that according to its agreement, AIG will no longer invest in or insure new coal-fired power plants, thermal coal mines, oil sands or new Artic energy exploration, among other commitments. The agreement is a major victory for MRTI and other advocacy groups.

Following this agreement, only Berkshire Hathaway and W.R. Berkley still underwrite coal projects. Shares held by the Presbyterian Foundation, Board of Pensions and New Covenant Trust Company help support the advocacy efforts of MRTI.

Read more about this successful work by MRTI here.

Interfaith Center on Corporate Responsibility report highlights major shareholder successes in 2022

ICCR is a coalition of over 300 global faith-based and institutional investors, of which the Presbyterian Church (U.S.A.) has been an integral part since the coalition's founding over five decades ago.

In recent years, ICCR members have seen historic success and impact from their advocacy efforts. In 2022, these have included a record 37 proposals receiving majority support. Successful proposals included enhanced methane disclosures at Chevron, a human rights impact audit at gun maker Sturm-Ruger, and a proposal addressing packaging-related risks at Jack in the Box.

Read more about the coalition's historically successful proxy season here.

NCTC has invested meaningfully in a unique set of skills and resources to help investors incorporate their values into their investments. We take seriously the responsibility of being a lender to, or a part-owner of a company, and actively participate in shareholder activities along with broader faith-based coalitions to drive meaningful impact and change in Corporate America.

We do this because it is our call as a church agency. We are motivated and honored to be able to offer these resources to you. We are happy to provide a deeper dive into how New Covenant Trust Company works with our fund partners and other faith-based investors to drive positive environmental or social change through investments.

If this or any other resource would be helpful to you or your committees, please don't hesitate to reach out to us at at 800-858-6127, Ext. 6.

**Investment products such as stocks, bonds and mutual funds are: NOT FDIC INSURED | NOT BANK GUARANTEED|MAY LOSE VALUE | NOT A DEPOSIT | NOT INSURED BY ANY FEDERAL AGENCY | NOT GUARANTEED BY NEW COVENANT TRUST COMPANY (NCTC)*

MRTI Staff Report

October 2022

Community Engagement in South Louisiana – MRTI staff have been working with members of the Lowlander Center, a non-profit organization based in south Louisiana with decades of facilitation and collaborative cross-cultural work. The Lowlander Center has been a partner of the ministries of the Presbyterian Church U.S.A. for many years, and in March 2019, MRTI, visited South Louisiana and was hosted in part by the Lowlander Center and the Pointe-au-Chien Indian Tribe on their lands. Lowlander Center representatives initially reached out to MRTI/PCUSA staff in spring 2021 about an issue with ConocoPhillips, and after stalled conversations, reached back out to MRTI/PCUSA staff in the spring of 2022. The representatives from the Lowlander Center are trying to get the company to sign-off on some state permits to allow "backfilling" of canals (see Memo in meeting papers for additional info). MRTI staff and Lowlander Center reps met with ConocoPhillips staff on September 21 for a productive dialogue that resulted in the company agreeing to assist with the permitting process. Lowlander reps consider this a significant win.

Interfaith Center on Corporate Responsibility (ICCR) Update – ICCR held its first in-person conference since March 2020 in New York City the week of September 26th. Rob Fohr, Katie Carter and Kerri Allen attended the conference. This conference included the annual Assembly of Members Meeting, over which Rob Fohr presided in his role as Chair of ICCR's Board of Directors. The main item of business was the election of new class of Directors to the Board to a three-year term.

Post-General Assembly presentations – Since the 225th General Assembly concluded in July, MRTI have been invited to present on the outcomes and PCUSA process, focusing especially on the PCUSA's selective divestment process. These include:

- Katie presented to the Ceres Carbon Asset Risk working group (which includes many large institutional investors) in August 2022.
- Rob and Katie met with staff from Christian Brothers Investment Services about PCUSA's selective divestment process and the Guideline Metrics Framework.
- Rob presented to FaithInvest (an organization of faith-consistent investors based in the U.K.) in September 2022.
- Rob presented to the Peru Mining Network (in Spanish!) in September 2022, per the invitation from Rev. Jed Koball, PCUSA mission personnel, and Mission Advisory Delegate assigned to the Environmental Justice Committee of the 225th General Assembly.

Revised 10.4.2022 at 2:00 p.m.

MEETING RECORD
COMMITTEE ON MISSION RESPONSIBILITY THROUGH INVESTMENT
2022 Winter Meeting
Via Zoom
February 28, 2022

MEETING PARTICIPANTS: Kerri Allen (Advocacy Committee on Women's Concerns), Chair; Lindley DeGarmo (Board of Pensions); Mark Douglas (Advisory Committee on Social Witness Policy); Fairfax Fair (Board of Pensions); Elizabeth Hinson-Hasty (At-Large); Sandra Moon (At-Large); Sam Muse (Presbyterian Foundation); Bisi Shofu (REAC); Gregory Simpson (At-Large) Brenton Thompson (PMAB); Richard White (Presbyterian Foundation/ New Covenant Trust Company)

ABSENT: Gina Meester (Presbyterian Mission Agency Board)

STAFF: James Carey (NCTC); Katie Carter (Presbyterian Mission Agency); Anita Clemons (Presbyterian Foundation); Rob Fohr (Presbyterian Mission Agency); Robyn Davis Sekula (Presbyterian Foundation); Don Walker (Board of Pensions)

GUESTS AND OBSEVERS: Rich Copley (PMA communications)

<u>Monday, February 22– Business Session I</u>

Kerri Allen called the meeting to order at 2:02 p.m. and **Mark Douglas** opened with a devotion. Kerri introduced MRTI's latest member, **Bisi Shofu**, representing REAC and invited other members to introduce themselves and share joys and concerns. **Katie Carter** was appointed meeting recorder. **Mark Douglas** moved to approve the meeting agenda, **Fairfax Fair** seconded, the motion carried.

Rob Fohr highlighted some items in the staff report, including scheduling check-in meetings with MRTI members. MRTI's report to the General Assembly passed the PMAB at its February meeting. Staff will be reviewing comments from 2020 General Assembly to see if they are still relevant. Rob shared comments from Emma Lockridge RE MRTI's report and divestment recommendations. She thanked the committee for its work.

Gregory Simpson moved, **Mark Douglas** seconded the approval of the October MRTI Meeting record. The motion carried.

Brenton Thompson moved to break into Executive Session, inviting staff and MRTI members to stay, **Dick White** seconded, the committee voted to break into executive session.

<u>Monday, February 22– Business Session 2</u>

At 2:28 MRTI broke into executive session. No action was taken and the Executive Session adjourned at 2:38 p.m.

Monday, February 22– Business Session 3

Katie Carter presented the 2022 Proxy Voting Recommendations and Cover Memo. **Gregory Simpson** moved, **Mark Douglass** seconded, the motion to approve the 2020 Proxy Voting Recommendations passed.

Rob Fohr outlined updates made to MRTI Committee Procedures Manual regarding sign-on letter processes. **Mark Douglas** moved, **Lindley DeGarmo** seconded, and the updated committee procedures manual was approved.

Dick White provided an update from the Nominating Committee. **Dick White** was nominated chair. The committee discussed nominees for MRTI leadership and nominees for MRTI nominating committee, both post-General Assembly. It was suggested to survey MRTI with their interest for serving in a leadership position on MRTI. The nominating committee plans to meet again and will put together a slate of leadership nominees to be approved by email vote.

The committee took a break at 3:03 p.m. ET.

The committee celebrated **Dick White's** 8-year service to MRTI.

The meeting adjourned at 3:27 p.m. and **Fairfax Fair** closed the meeting in prayer.

Respectfully submitted,

Katie Carter

Meeting Recorder

February 28, 2022

PRESBYTERIAN CHURCH (USA)
2023 General Assembly Divestment/ Proscription List

Effective January 1, 2023
Committee on Mission Responsibility Through Investment (MRTI)
Compassion, Peace and Justice Ministries
Presbyterian Mission Agency
Approved by MRTI on [INSERT DATE]

The General Assembly of the Presbyterian Church (USA) urges divestment and/or proscription of some corporations due to their involvement in military-related production (MR), tobacco (TO), human rights violations (HR), environmental concerns (EN) and operating for-profit prisons (FPP).[1] The following is a comprehensive list of corporations or securities affected by those General Assembly policies, organized by policy screen.

	Top 5 Military-Related	**Ticker**	**ISIN**	**Industry**
1	Lockheed Martin Corporation	LMT	US5398301094	MR
2	Raytheon Technologies Corporation	RTX	US75513E1010	MR
3	Boeing Company, The	BA	US0970231058	MR
4	Northrop Grumman Corporation	NOC	US6668071029	MR
5	General Dynamics Corporation	GD	US3695501086	MR

	Corporations among 100 leading military contractors with 50% of sales coming from military contracts			
1	AAR Corp.	AIR	US0003611052	MR
2	Aerojet Rocketdyne Holdings, Inc.	AJRD	US0078001056	MR
3	Aselsan Elektronik Sanayi Ve Ticaret AS (Aselsan AS)	ASELS	TRAASELS91H2	MR
4	Austal Ltd	ASB	AU000000ASB3	MR
5	Babcock International Group PLC	BCKIF	GB0009697037	MR
6	BAE Systems Plc	BAESF	GB0002634946	MR
7	Bharat Electronics Ltd.	BEL	INE263A01024	MR
8	Booz Allen Hamilton Holding Corporation	BAH	US0995021062	MR
9	BWX Technologies, Inc.	BWXT	US05605H1005	MR
10	CACI International Inc.	CACI	US1271903049	MR
11	Curtiss-Wright Corporation	CW	US2315611010	MR
12	Dassault Aviation SA	DUAVF	FR0000121725	MR
13	Elbit Systems Ltd.	ESLT	IL0010811243	MR

[1] The 183rd General Assembly, UPCUSA (1971) outlined investment policy guidelines, affirm that church investment is an instrument of mission and includes theological, social and ethical considerations (available here: https://www.presbyterianmission.org/wp-content/uploads/mrti_ga_policy_-_19711.pdf). The 116th General Assembly, PCUS (1976), also outlines guidelines around social responsibility and investments and highlights the importance of balancing social factors and priorities with investment decisions (available here: https://www.presbyterianmission.org/wp-content/uploads/mrti_ga_policy_-_19761.pdf). The 196th General Assembly, PCUSA (1984) outlines steps MRTI must follow when considering divesting from a company (available here: https://www.presbyterianmission.org/wp-content/uploads/GA-1984-Divestment-Strategy.pdf).

14	Hensoldt Holding GmbH	HAG	DE000HAG0005	MR
15	HII (Formerly Huntington Ingalls Industries)	HII	US4464131063	MR
16	Hindustan Aeronautics Ltd.	HAL	INE066F01012	MR
17	Israel Aerospace Industries	ARSP.B1	IL0011275471	MR
18	KBR, Inc.	KBR	US48242W1062	MR
19	Korea Aerospace Industries, Ltd.	047810	KR7047810007	MR
20	L3Harris Technologies	LHX	US5024311095	MR
21	Leonardo S.p.A.	FINMF	IT0003856405	MR
22	Leidos Holdings, Inc.	LDOS	US5253271028	MR
23	LIG Nex1 Co., Ltd.	079550	KR7079550000	MR
24	ManTech International Corporation	MANT	US5645631046	MR
25	Maxar Technologies, Inc.	MAXR	US57778K1051	MR
26	Mercury Systems, Inc.	MRCY	US5893781089	MR
27	Mitsubishi Group	MSBHF	JP3898400001	MR
28	Parsons Corporation	PSN	US70202L1026	MR
29	QinetiQ, Inc.	QQ	GB00B0WMWD03	MR
30	Rheinmetall Group	RNMBF	DE0007030009	MR
31	Saab Group	SAAB-B	SE0000112385	MR
32	Thales Group	THLEF	FR0000121329	MR
33	TransDigm Group Inc.	TDG	US8936411003	MR
34	Ultra Electronics Holdings PLC	ULE	GB0009123323	MR
35	Vectrus	VEC	US92242T1016	MR

Weapons whose use can lead to mass or indiscriminate injury (Nuclear/Chemical/Biological)[2]

1	AECOM	ACM	US00766T1007	MR
2	Aeroteh SA	AER	ROAROBACNOR1	MR
3	Airbus SE	EADSY	NL0000235190	MR
4	Anhui Great Wall Military Industry Co.,Ltd.	601606	CNE1000036L1	MR
5	Aryt Industries Ltd.	ARYT	IL0005870147	MR
6	Ashot Ashkelon Industries	ASHO	IL0003120172	MR
7	AviChina Industry & Technology Company Limited	2357	CNE1000001Y8	MR
8	Bharat Dynamics Limited	BDL	NE171Z01018	MR
9	Brookfield Asset Management Inc.	BROXF	CA1125851040	MR
10	Brookfield Business Partners LP	BBU	BMG162341090	MR
11	China Aerospace Science & Industry Corp Ltd	CASZ (CH)	CND1000142N4	MR
12	China Aerospace Science & Technology Corp	CASTCZ (CH)	CND000000LJ6	MR
13	China Isotope & Radiation Corp.	1763 (HKG)	CNE1000031F4	MR
14	China National Nuclear Power Co., Ltd.	601985 (SHA)	CNE1000022N7	MR

[2] Several companies were sanctioned via Executive Order 14032 on June 3, 2021, were not included in this list (https://home.treasury.gov/system/files/126/14032.pdf). Both the Board of Pensions of the Presbyterian Church U.S.A. and the Presbyterian Church U.S.A. Foundation/New Covenant Funds have policies against holding companies sanctioned by the government of the United States.

Revised 10.4.2022 at 10:32 a.m.

15	China North Industries Group Corporation	000065 (SZSE)	CND10000KPW0	MR
16	China Poly Group Corporation	600048	CND100005VK1	MR
17	China Shipbuilding Industry Co Ltd	601989 (CH)	CNE100000J75	MR
18	China Spacesat Co Ltd	600118 (CH)	CNE000000SM3	MR
19	CNNC International Limited	2302 (HKG)	KYG2352X1262	MR
20	Cohort plc	CHRT	GB00B0YD2B94	MR
21	Constructions Industrielles de la Mediterranee SA	COM	FR0000053399	MR
22	Ducommun Incorporated	DCE	US2641471097	MR
23	Fluor Corporation	FLR	US3438611002	MR
24	Fortive Corporation	FTV	US34959J1088	MR
25	GP Strategies Corporation	GPX	US36225V1044.	MR
26	Hanwha Aerospace Co Ltd	012450	KR7012450003	MR
27	Hanwha Corporation	000880	KR7000880005	MR
28	Honeywell Automation India Limited	HONAUT	INE671A01010	MR
29	Honeywell International Inc.	HON	US4385161066	MR
30	Jacobs Engineering Group Inc.	J	US4698141078	MR
31	L&T Finance Holdings	L&TFH	INE498L01015	MR
32	L&T Technology Services Limited	LTTS	INE010V01017	MR
33	Larsen & Toubro Ltd	LTOUF	INE018A01030	MR
34	Larsen & Toubro Infotech Limited	LTI	INE214T01019	MR
35	Mindtree Limited	MINDTREE	INE018I01017	MR
36	Moog, Inc.	MOG.A MOG.B	US6153942023	MR
37	Oceaneering International, Inc.	OII	US6752321025	
38	Poongsan Corporation	103140	KR7103140000	MR
39	Poongsan Holding Corp.	005810	KR7005810007	MR
40	Premier Explosives Ltd.	PREMEXPLN	INE863B01011	MR
41	Rolls-Royce Holdings Plc	RYCEY; RR	GB00B63H8491	MR
42	S&T Dynamics Co., Ltd.	003570	KR7003570009	MR
43	S&T Holdings Co., Ltd.	3928	KR036530	MR
44	Safran S.A.	SAFRY; SAF	FR0000073272	MR
45	Science Applications International Corporation	SAIC	US8086251076	MR
46	SGL Carbon SE	SGLFF	DE0007235301	MR
47	Solar Industries India Ltd	SOLARINDS	INE343H01029	
48	Steel Partners Holdings LP	SPLP	US85814R1077	MR
49	Tata Power Company Limited	TATAPOWER	INE245A01021	MR
50	Textron Inc.	TXT	US8832031012	MR
51	Walchandnagar Industries	WALCHANNAG	INE711A01022	MR

	Weapons whose use can lead to death of civilians			
1	American Outdoor Brands Corporation	AOBC	US8317561012	MR
2	Clarus Corporation	CLAR	US18270P1093	MR
3	National Presto Industries, Inc.	NPK	US6372151042	MR
4	Olin Corporation	OLN	US680665AL00	MR
5	S&T Motiv Co., Ltd	064960	KR7064960008	MR
6	Smith & Wesson Brands, Inc.	SWBI	US8317541063	MR
7	Sturm, Ruger & Co., Inc.	RGR	US8641591081	MR
8	Taurus Armas SA	TASA4	BRFJTAACNOR5	MR
9	Vista Outdoor, Inc.	VSTO	US9283771007	MR
	Top 10 Tobacco by Revenue			
1	British American Tobacco p.l.c.	BATS	GB0002875804	TO
2	British American Tobacco PLC Sponsored ADR	0A76	US1104481072	TO
3	Philip Morris International Inc.	BMT	US7181721090	TO
4	PT Gudang Garam Tbk	BMTA	ID1000068604	TO
5	PT Gudang Garam Tbk Unsponsored ADR	BTI	US40157Q1094	TO
6	PT Hanjaya Mandala Sampoerna Tbk	BATS	ID1000074008	TO
7	Karelia Tobacco Company Inc.	BATSN	GRS120003009	TO
8	British American Tobacco Bangladesh Co Ltd	BMT	BD0259BATBC9	TO
9	Philip Morris CR as	BTAFF	CS0008418869	TO
10	British American Tobacco Malaysia Bhd.	BTI	MYL4162OO003	TO
	Human Rights Violation			
1	DXC Technology	DXC	US23355L1061	HR
2	Hewlett Packard Enterprise Co	HPE	US42824C1099	HR
3	HP Inc[3]	HPQ	US40434L1052	HR
4	Caterpillar	CAT	US1491231015	HR
5	Motorola Solutions	MSI	US620076BF55	HR
	For Profit Prisons			
1	CoreCivic Plc	CXW	US22025Y4070	FPP
2	GEO Group	GEO	US36162J1060	FPP
3	Serco Group Plc	SRP	GB0007973794	FPP
	Environmental			
1	Chevron	CVX	US1667641005	EN
2	ExxonMobil	XOM	US30231G1022	EN
3	Marathon Petroleum	MPC	US56585A1025	EN
4	Phillips 66	PSX	US7185461040	EN
5	Valero	VLO	US91913Y1001	EN

[3] MRTI has received consistent reports that HPE and HPQ are no longer in violation of PCUSA policies. MRTI will make a recommendation to remove these companies from the list at the next 226th General Assembly (2024).

Revised 10.4.2022 at 10:32 a.m.

Military-Related Investment Policy

The General Assembly military-related divestment policy was first adopted in 1982 and has since been revised four times, most recently by the General Assembly in 1998. This policy is an outgrowth of the General Assembly's adoption of *Peacemaking: A Believer's Calling,* which asked the church to review its witness and seek additional ways to promote peacemaking. MRTI conducted a review of its engagements with military-related companies and developed guidelines consistent with the historic concerns of the General Assembly. These included concern about the overall spending on the military, over-dependence on military contracts by a company, and weapons that do not distinguish between combatants and non-combatants. Later amendments stemmed from General Assembly actions on foreign military sales and landmines, while this latest revision was conducted in collaboration with our research partner.

The guidelines that identify affected companies are:

1) Corporations that are among the five leading military contractors (measured as dollar volume of military contracts in the most recent year) until such time as the United States is no longer among the top ten nations ranked according to per capita military expenditures.
2) Corporations that are among the 100 leading military contractors and in addition are dependent on military contracts (domestic and/or foreign) for more than 50 percent of their sales. Insofar as sales to the military can be shown by the corporation to be merely general supplies readily available to civilians, rather than weapons production, such general supplies sales shall be excluded from the percentage of sales to the military for purposes of these criteria.
3) Corporations that are among the top five firms engaged in foreign military sales during the most recent fiscal year for which statistics are available.
4) Corporations that manufacture, use, repair, exhibit (for the purpose of selling), sell, distribute, import, or export, warehouse, or transport controversial weapons whose use can lead to mass or indiscriminate injury and/or death to civilians. Such weapons include:
   a) Nuclear weapons: Explosive devices that derive their destructive force from nuclear reactions, either fission (fission bomb) or from a combination of fission and fusion reactions;
   b) Chemical weapons: Chemicals used to cause intentional death or harm through its toxic properties as well as munitions, devices, and other equipment specifically designed to weaponize toxic chemicals;
   c) Biological weapons: Microorganisms (e.g.,virus, bacteria, fungi, toxins) that are produced and released deliberately to cause disease and death in humans, animals or plants;
   d) Anti-personnel landmines: Devices designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons;
   e) Cluster munitions: Conventional munitions that are designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions;
   f) White phosphorus: Incendiary and toxic chemical substance used as a filler in a number of different munitions that can be employed for a variety of military purposes;
   g) Depleted uranium: Chemically toxic and radioactive heavy metal which is produced as a by-product of the enrichment of uranium for civil nuclear power programs and is used in armor-piercing munitions; and
   h) "Assault-type" automatic and semi-automatic weapons.
   i) Lethal Autonomous Weapon Systems (LAWS) (see explanation below)[4]

[4] Recommendation #7 from *Drones, War and Surveillance,* A Resolution, by the 221st General Assembly (2014) of the Presbyterian Church (U.S.A.) supports the inclusion of LAWS to this list: "[The PCUSA] supports the prohibition of fully autonomous or 'robot' drones that designate targets and 'decide' to shoot combatants based on computer calculations and

Further, MRTI considers Lethal Autonomous Weapon Systems (LAWS) to be controversial since the decision to deploy lethal force is made by a machine, absent any meaningful human supervision. In MRTI's view, it is fundamentally problematic that such critical decisions concerning the use of force are not subject to meaningful human control.[5]

MRTI considers corporations that manufacture, use, repair, exhibit (for the purpose of selling), sell, distribute, import, or export, warehouse, or transport LAWS to be affected by the divestment policy. They are defined as a special class of weapon system that use sensor suites and computer algorithms to independently identify a target and employ an onboard weapon system to engage and destroy the target without manual human control of the system.

Finally, MRTI is concerned by the sale of weapons to states involved in armed conflicts where there are heightened risks of those weapons being used in ways that constitute serious and systematic violations of international humanitarian law (IHL). Through ongoing monitoring of current armed conflicts, MRTI's research provider identifies those states whose conduct of hostilities may result in violations of IHL (e.g., target selection, proportionality assessments, precautions taken to minimize harm to civilians) and those companies that are supplying the weapons being used. Criteria for additional research and analysis that may lead to conduct-based engagement, observation, or exclusion among military-related companies include corporations that supply weapons to governments of one or more countries/territories that receive a "severe risk" rating from our research provider as well as those that supply weapons to state or non-state actors that have been documented to violate IHL and human rights.

Tobacco Policy

The General Assembly's policy on tobacco-related investments recommends divestment and/or proscription of the top ten tobacco companies according to revenues.

The Presbyterian Church (U.S.A.) Foundation/New Covenant Funds proscribe investments in all tobacco companies.

Alcohol and Gambling

The General Assembly has never adopted a formal policy regarding investments in companies producing alcoholic beverages or engaged in gambling. However, the Presbyterian Church (U.S.A.) Foundation/New Covenant Funds have comprehensive policies proscribing investments in all such companies. These policies apply to both domestic and international companies.

Human Rights

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automated reactions and urges the review of targeting decisions… that may lead to unintended deaths," (Available here: https://www.presbyterianmission.org/wp-content/uploads/drones_war__surveillance-2014.pdf).

[5] This position reflects the concern highlighted by the report, *Drones, War, and Surveillance*, A Resolution, by the 221st General Assembly (2014) of the Presbyterian Church (U.S.A.), which states: "It is claimed that in November of 2012 the Department of Defense issued a ten-year moratorium on robotic drones, to analyze the ethics of "smart drones," as there is concern about the moral implications of self-directed robot drones that remove human decision from the killing process" (Available here: https://www.presbyterianmission.org/wp-content/uploads/drones_war__surveillance-2014.pdf).

It is in conflict-affected and high-risk areas (CAHRA), characterized by widespread human rights abuses and violations of national or international law, that people are most vulnerable to violations of their human rights. CAHRA may include international armed conflict (e.g., Syria); internal armed conflict (e.g., Myanmar); and military occupations (e.g., Occupied Palestinian Territories) or other areas of heightened risk (e.g., Xinjiang Uygur Autonomous Region). Companies operating in CAHRA are at greater risk of causing, contributing to, or being directly linked with human rights harms, as defined by the UN Guiding Principles on Business and Human Rights.

Working with our research provider, MRTI identifies those companies whose countries of operation, value chain partners, and/or specific business activities result in heightened proximity to human rights harms. Once identified, MRTI engages selected companies to request that they take risk prevention and/or mitigation measures. If a company fails to sufficiently address their proximity to human rights harms within three years, MRTI will consider adding that company to the GA Divestment/Proscription list. Further, MRTI will consider recommending adding a company to the GA Divestment/ Proscription if that company is unresponsive to multiple requests for dialogue, via letter of engagement and/or shareholder resolution.[6] Currently, five companies are on the list because of General Assembly action.[7]

Publicly Traded For-Profit Prison Companies

As the 2003 General Assembly adopted a policy calling for the abolition of for-profit prisons, jails and detention centers, the 2014 General Assembly approved a recommendation that publicly traded companies operating such institutions would be added to the divestment and/or proscription list.

Environmental Policy

The 222nd General Assembly in 2016 directed MRTI to "pursue its focused engagement process on climate change issues with all corporations, particularly with those in the oil, gas, and coal sectors, and report back to the 223rd General Assembly (2018) with recommendations, including possible selective divestment if significant changes in governance, strategy, implementation, transparency and disclosure, and public policy are not instituted by the corporations during the engagements of MRTI and ecumenical partners." Based on this directive, MRTI developed the Guideline Metrics to measure progress on governance, strategy, implementation, transparency and disclosure. The 223rd General Assembly (2018) adopted the Guideline Metrics as policy and named nine companies for focused engagement and to report back possible selective divestment recommendations to the 224th General Assembly (2020). The nine companies included: **Chevron, ExxonMobil, ConocoPhillips, Marathon Petroleum, Valero Energy, Phillips 66, Duke Energy, Ford Motor Company and General Motors.**

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[6] "The Pursuit of Peace" is highlighted as an investment goal in MRTI's foundational 1971 policy (https://www.presbyterianmission.org/wp-content/uploads/mrti_ga_policy_-_19711.pdf). It discusses being critical of enterprises used to support increase military spending and private enterprises producing weapons "whose use does not permit a distinction between civilian and combat." The importance of "peaceful pursuits" is further examined in the divestment from companies involved in Apartheid South Africa (1985-1993) and the divestment from Talisman, for unpeaceful pursuits in Sudan (2001-2004), and the 2014 action of the General Assembly (https://www.pc-biz.org/#/search/4715).

[7] The General Assembly action was taken in 2014 (https://www.pc-biz.org/#/search/4715) and emphasized that financial investments of the PCUSA be invested in only peaceful pursuits. As of December 31, 2016, due to corporate proximity to human rights harms, there are now three companies including Hewlett Packard Enterprise, HP Inc., and DXC Technology.

In 2019, MRTI voted to adopt a policy for the purposes of its report to the 224th General Assembly that any company scoring in the red by January 15, 2020, be recommended to be added to the 2021 General Assembly Divestment/Proscription list. Three companies scored in the red: **ExxonMobil, Marathon Petroleum, and Valero Energy**.

Due to the impact of COVID-19, the 224th General Assembly did not consider the MRTI Report and referred it to the 225th General Assembly (2022). As a result, **ExxonMobil, Marathon Petroleum, and Valero Energy** remained on MRTI's focused engagement list, and along with the remaining companies named by the 223rd General Assembly (2018), continued to be evaluated against the Guideline Metrics Framework. In 2022, the 225th General Assembly approved MRTI's report, which included adding five companies to this list: Chevron, ExxonMobil Marathon Petroleum, Phillips 66, and Valero Energy. . The latest Guideline Metrics with company scores can be found here.

Additional Information

In 2020, MRTI engaged Heartland Initiative, Inc. to provide research for implementing the Military-Related Divestment Policy by reviewing companies' business activities and their revenue sources. Following historical practice, when a company is first identified as meeting the General Assembly criteria for investment proscription (e.g., military-related revenues), it is placed on a watch list for potential action the following year. Similarly, should a company which has been on the General Assembly Divestment List not be identified during the subsequent year's screening process, it will remain on the list for one year and may be removed the following year if it is not identified during that year's screening process.

In 2019, due to increased research costs for implementing the Military-Related Divestment Policy, MRTI, in the interest of good stewardship of the church's resources, voted to move to a biennial full review of the policy in General Assembly years, and provide an update (if companies had been merged, acquired, or delisted) in non-General Assembly years.

For more information about these policies, and other MRTI activities including, proxy voting recommendations, dialogues with corporations and sample socially responsible investment policies for congregations and other PCUSA entities, please contact the Office of Faith-Based Investing and Corporate Engagement, at 888-728-7228, ext. 5035 or MRTI@pcusa.org.

COMMITTEE ON MISSION RESPONSIBILITY THROUGH INVESTMENT

COMMITTEE PROCEDURES

Rev. 9.21.2022~~2.15.2022~~

I. INTRODUCTION

The Presbyterian Church (U.S.A.) believes that "Church investment is an instrument of mission and includes theological, social and economic considerations." (183rd General Assembly, United Presbyterian Church U.S.A., 1971). This belief flows from our understanding of the stewardship of God's resources entrusted to the church. Thus, "we confess that the Lord is really the acknowledged Master of our entire life – moral, physical and material." (116th General Assembly, Presbyterian Church in the U.S., 1976). As the "Life and Mission Statement" (197th General Assembly, 1985) affirmed a call "to demonstrate the new creation" by doing justice and practicing stewardship, it specifically noted the "importance of the church's stewardship of its resources, including the management of its investments in a manner consonant with its commitment to justice."

II. HISTORICAL BACKGROUND

In recognition of the church's unique opportunity to advance its mission faithfully and creatively through the financial resources entrusted to it, both predecessor denominations established committees on corporate social responsibility. Both became known as Mission Responsibility Through Investment. In the United Presbyterian Church U.S.A. (headquartered in New York), Mission Responsibility Through Investment was structured as a sub-committee of the General Assembly Mission Council in the 1972 reorganization and was the church's principal agent for carrying out the Investment Policy Guidelines adopted by the 183rd General Assembly in 1971. By General Assembly definition, Mission Responsibility Through Investment was composed of elected members of the investing and mission agencies of the General Assembly and served by a staff person and a staff team from the member agencies. In the Presbyterian Church in the U.S. (headquartered in Atlanta), the General Assembly Mission Board formulated Policy and Guidelines for its investments which were reviewed and approved by the 116th General Assembly in 1976. Implementation was assigned by the General Assembly Mission Board to the Division of Corporate and Social Mission, with certain actions such as filing shareholder resolutions lodged in the Mission Board on recommendation of the Division. The Division created a Mission Responsibility Through Investment sub-committee composed of elected members from the church-at-large. Staff service was included in a portfolio of assignments assigned to a member of the staff of the Division of Corporate and Social Mission. Since reunion in 1983, both Mission Responsibility Through Investment committees functioned as one on the basis of an interim policy developed jointly and approved by the Mission Board and the General Assembly Council[1].

The experience of working as one committee revealed the strengths of both Mission Responsibility Through Investment committee structures. The United Presbyterian Church U.S.A. Mission Responsibility Through Investment composition insured the involvement of elected representatives of the relevant investing agencies and the agencies and councils responsible for mission policy and program in the implementation of the General Assembly's policies and decisions. The Presbyterian Church in the U.S. Mission Responsibility Through Investment composition allowed for recruitment of members from the church-at-large possessing particular skills and expertise or representing important constituencies such as institutions of higher learning. The Structural Design for Mission approved by the 1986 General Assembly accommodated the strengths of both approaches in its description of the mission responsibility through investment function.

From 1986 to 1993, the Committee on Mission Responsibility Through Investment ("MRTI") functioned under the Social Justice and Peacemaking Unit as a fifteen-member committee. In October 1994, the General Assembly Council authorized the continued work of MRTI Committee the National Ministries Division according to the Shape and Form Process. The action of the General Assembly Council is described in Section III of these Committee Procedures.

III. COMPOSITION, DUTIES, AND RESPONSIBILITIES

A. PURPOSE: MRTI, as a committee of the General Assembly, will be responsible for implementing General Assembly policy related to mission responsibility through investment in coordination with the ministries of the Presbyterian Mission Agency and other General Assembly-level entities.

B. ASSIGNED TASKS:

1. Develop and implement a coordinated strategy to effectuate the Investment Policy Guidelines for the General Assembly and subsequent General Assembly action related to investment or divestment. These policies are:

    a. Investment Policy Guidelines, 183rd General Assembly (1971), United Presbyterian Church U.S.A.

    b. Investment Policy and Guidelines, 116th General Assembly (1976), Presbyterian Church in the U.S.

[1] The General Assembly Mission Council became the Presbyterian Mission Agency Board by action of the 220th General Assembly in 2012.

c. Participation in Development Assistance, 191st General Assembly (1979), United Presbyterian Church in the U.S.A.

d. Military-Related Investment Guidelines, 203rd General Assembly (1981), Presbyterian Church (U.S.A.), revised in 1991 and 1996.

e. The Presbyterian Church and Transnational Corporations: A Report to the 195th General Assembly (1983), Presbyterian Church (U.S.A.).

f. The Divestment Strategy, Principles and Criteria, 196th General Assembly (1984), Presbyterian Church (U.S.A.).

g. Resolution on Tobacco-Related Investments, 202nd General Assembly (1990), Presbyterian Church (U.S.A.).

h. Tobacco Investment Guidelines, 204th General Assembly (1992), Presbyterian Church (U.S.A.).

i. Resolution on Human Rights, 220th General Assembly (2014), Presbyterian Church (U.S.A.).

j. Resolution on For-Profit Prison-related Investments, 220th General Assembly (2014), Presbyterian Church (U.S.A.).

k. Environmental policy established, 223rd General Assembly (2018), Presbyterian Church U.S.A.

~~k.~~l. Resolution on Application of Environmental Policy for Investments, 225th General Assembly (2022), Presbyterian Church U.S.A.

2. Recommend to the Compassion, Peace and Justice ministry area, as needed, revisions or additions to investment policy and guidelines designed to reach mission goals of the General Assembly for recommendation to the Presbyterian Mission Agency Board and the General Assembly.

3. Recommend to the Presbyterian Mission Agency Board through the Compassion, Peace and Justice ministry area specific actions related to the exercise of investor rights and responsibilities.

   These investor rights and responsibilities are:

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a. The filing of shareholder resolutions. Following initial authorization by the Presbyterian Mission Agency Board of shareholder resolutions on particular issues or concerns recommended by MRTI, the resolution(s) may be refiled or filed with another company upon approval by MRTI. All shareholder resolutions filed or refiled shall be reported at the next meeting of the appropriate body of the Presbyterian Mission Agency Board.

b. The initiation of collaboration with other shareholders in litigation calling for regulatory oversight or other forms of redress.

4. Recommend to appropriate General Assembly-related agencies, mid-councils, institutions and communicant members of the Presbyterian Church (U.S.A.) ways and means to carry out General Assembly investment policies respecting social concerns, including the voting of proxies on shareholder resolutions.

5. Appoint representatives to organizations through which the Presbyterian Church (U.S.A.) seeks to advance its work in the area of mission responsibility through investments.

6. Assist the Compassion, Peace and Justice ministry area in coordinating corporate responsibility concerns with mission program and strategies on economic and social justice.

7. Work ecumenically both in the U.S. and around the world with churches and ecumenical agencies on coordinated strategies for mission responsibility through investment.

8. Report regularly to the Compassion, Peace and Justice ministry area and other bodies represented on MRTI on its work and the fulfillment of its assigned tasks.

C. COMMITTEE MEMBERSHIP

1. The Committee will be composed of twelve (12) persons. Representatives, who may be members of the appointing entities' governing boards, will be appointed by the following entities:

   a. Two from the Presbyterian Mission Agency,

b. Two from the Presbyterian Church (U.S.A.) Foundation Inc. and/or the New Covenant Trust Company

c. Two from the Board of Pensions

2. Each of the following committees will appoint one representative, who may be a member of the committee:

   a. Advisory Committee on Social Witness Policy

   b. Racial Equity Advocacy Committee

   c. Advocacy Committee for Women and Gender Justice~~'s Concerns~~

3. Three members will be members-at-large, chosen for particular expertise and/or institutional involvements, such as governing body representatives, etc. Members-at-Large will be nominated by the General Assembly Nominating Committee and elected by the General Assembly.

D. ACCOUNTABILITY

MRTI is responsible to and will report regularly to the appropriate body of the Presbyterian Mission Agency Board. MRTI will make any recommendations requiring Presbyterian Mission Agency Board and General Assembly action through the Compassion, Peace and Justice ministry area. Amendments to these guidelines will be recommended through the appropriate body of the Presbyterian Mission Agency Board to the Presbyterian Mission Agency Board for approval. Budget and staff services will be provided by the Compassion, Peace and Justice ministry area of the Presbyterian Mission Agency.

IV. COMMITTEE ORGANIZATION

A. OFFICERS OF MRTI AND NOMINIATIONS PROCESS: MRTI, which will be composed of 12 voting members, shall elect one chairperson and one vice chairperson at the meeting immediately before the General Assembly meets. Their terms will begin immediately following the conclusion of General Assembly.

1. NOMINATING COMMITTEE:
   i. MEMBERSHIP: The Nominating Committee will consist of no fewer than three members and shall be appointed to a two-year term by MRTI.
   ii. CHAIR: The chair shall be elected by the Nominating Committee members.

iii. PURPOSE AND FUNCTIONS: The Nominating Committee shall make nominations to MRTI of persons to serve as:
   a) Chair and Vice-Chair of MRTI
   b) Chair of the standing sub-committees

iv. Before MRTI votes on nominations submitted by the Nominating Committee, it will offer an opportunity for nominations from the floor.

v. REPRESENTATION: All councils higher than the session shall have a process for nominating persons to serve in positions requiring election by that council. The process shall ensure that nominations are made by an entity broadly representative of the constituency of the council, and in conformity with the Church's commitment to unity in diversity (F-1.0403).

B. MEETINGS

1. MRTI shall meet at least annually and ordinarily three times a year on dates and at locations it determines included electronically. Additional meetings may be called by the Chair within budgeted funds.

   The "Annual Meeting" at which the officers are elected shall be the meeting immediately preceding the next General Assembly. Meetings other than the annual meeting may be held electronically when previously authorized by MRTI.

2. All 12 voting members of MRTI shall be entitled to voice and vote. No person is allowed to serve as proxy for voting members of MRTI.

3. Seven (7) voting members present shall constitute a quorum.

4. A simple majority of members present shall be required for any action.

5. Staff resource persons are entitled to voice but no vote.

6. Meetings of MRTI are open to visitors and observers. They participate upon invitation by MRTI and attend at their own expense. Meetings may also occur by video or teleconference. Voting may occur electronically.

7. MRTI may meet in executive session by its own decision and in accordance with the Open Meeting Policy of General Assembly entities. Only voting members are entitled to participate in executive session, although others may be invited to attend.

C. MEMBERSHIP TERMS OF SERVICE

1. Members-at-large are elected for four years on a rotating basis and may be reelected once.

2. Members from appointing entities and committees will be placed in classes of service. The appointing entities and committees will be asked to appoint new representatives in time for their attendance at the first MRTI meeting following the conclusion of the General Assembly at which the term of service for their current representative(s) expires. They will exercise their judgment in appointing representatives with a goal of providing both continuity and rotation. Members will be eligible to serve up to eight consecutive years.

3. Officer Terms: The terms of MRTI Chair, Vice-Chair, and chairs of the standing sub-committees shall be for two years. Terms may be renewed one time. Terms will commence at the first MRTI meeting after conclusion of the General Assembly.

4. Non-current MRTI members invited to serve on standing sub-committees may serve two-year terms that can be renewed one time.

V. OPERATIONS:

A. STANDING SUB-COMMITEES: As appropriate, the Committee, may create standing sub-committees comprised of current serving members of MRTI to focus on a certain issue or issues to build expertise among members and manage MRTI's work in a more focused manner.

1. MEMBERSHIP: Shall consist of no fewer than three members currently serving a term on MRTI. Up to three additional members may serve on the sub-committee at its invitation. Upon recommendation of the standing sub-committee, MRTI may invite others to join the work of these sub-committees. The sub-committee shall make every effort to ensure invited members have the appropriate expertise on the issue (or issues) and represent diversity in perspective and in conformity with the Church's commitment to unity in diversity (F-1.0403).

2. CHAIR: The chair of each sub-committee shall be nominated by the Nominating Committee and elected by MRTI.

3. PURPOSE AND FUNCTIONS: These standing sub-committees shall be responsible for engaging with their assigned issue or issues and making

programmatic recommendations to MRTI as to how best to advance its work on the issue (or issues).

B. TASK FORCES ON PRIORITY ASSIGNMENTS: MRTI may appoint Task Forces to work on specific assignments. Each task force at its creation, should include a clear purpose and service term (normally between stated MRTI meetings), and choose a convener.

C. STAFF SERVICES:

1. The lead staff person for MRTI will be the primary liaison with staff of the Board of Pensions, the Presbyterian Church (U.S.A.) Foundation Inc., and other member bodies designated to assist in providing staff services to MRTI, and with other staff as necessary to implement MRTI programs.

2. The lead staff person for MRTI shall be assigned to maintain and publish the records of MRTI meetings.

D. BUDGET:

1. The Compassion, Peace and Justice ministry area is responsible for approving the MRTI budget taking into consideration actions of the General Assembly and the work of MRTI currently under way.

2. The lead staff person for MRTI is responsible for the administration of the approved MRTI budget.

3. Staff resource persons will cover their own travel expenses to MRTI meetings. All other expenses at the MRTI meeting shall be covered by the MRTI budget.

VI. IMPLEMENTATION OF GENERAL ASSEMBLY POLICY

A. ADOPTION OF PRIORITY ISSUES FOR MRTI WORK:

1. MRTI will review issues raised by governing bodies, organizational partners, individuals and referrals from the General Assembly.

2. MRTI may select issues and engage in further analysis and study.

3. MRTI will report its priority issues annually to the appropriate body of the Presbyterian Mission Agency Board. MRTI members will have the

responsibility of reporting MRTI priority issues to their appointing entities and committees.

B. ECUMENICAL & INTERRELIGIOUS RELATIONS:

1. MRTI will work ecumenically and interreligious whenever possible and will participate in ecumenical and interreligious arenas or organizations to advance its work.

   MRTI will appoint representatives to faith-based and values-based organizations through which the Presbyterian Church (USA) seeks to advance mission responsibility through investment work.

C. PASTORAL AND PROPHETIC COMMUNICATION:

1. MRTI will make regular reports to the appropriate body of the Presbyterian Mission Agency Board. MRTI representatives will have the responsibility of keeping their entities and committees informed about MRTI work.

2. MRTI will ensure that member entities and committees will be able to participate in the policy development process.

3. MRTI will make periodic news releases through appropriate channels.

4. MRTI will seek to educate the constituency of the church on corporate social responsibility and ethical investment issues.

5. MRTI will seek to develop and nurture helpful relationships with individuals, groups and agencies within the church.

6. MRTI may publish periodic newsletters to the church at large.

7. MRTI members and staff will be available for presentations and discussions at congregations, presbyteries or special meetings when invited.

D. INTERACTION WITH CORPORATIONS: MRTI may initiate or respond to correspondence and/or attend meetings with corporations.

E. SIGN-ON LETTERS:

1. MRTI will accept an invitation to sign a letter after considering the following: i) that the recipient of the letter is either a publicly-traded company or relevant entity or governmental organization relevant to MRTI's scope of work; ii) if the letter addresses a company, shares of that company are currently held by the Board of Pensions and/or the

Presbyterian Church (U.S.A.) Foundation Inc.; iii) that there is adequate time, normally at least ten business days, to review and respond to the request; iv) that there is existing General Assembly policy concerning the topic of the letter; and v) the appropriate MRTI sub-committee agrees with the request.

2. Signing on to requests not meeting the above criteria will be at the discretion of the MRTI Chair and Vice-Chair, upon recommendation by the staff.

3. The lead staff person to MRTI will normally complete the sign-on process. The signatory organization will be "The Committee on Mission Responsibility Through Investment of the Presbyterian Church U.S.A." The reported assets under management will be the combined value of the portfolios of the Board of Pensions of the PCUSA and the Presbyterian Church U.S.A. Foundation, based on the latest available information.

F. SHAREHOLDER RESOLUTIONS:

1. **PROXY VOTING:** MRTI will recommend whether a shareholder resolution should be supported or opposed, or whether a formal abstention should be recorded. MRTI's action will be communicated to the Board of Pensions and the Presbyterian Church (U.S.A.) Foundation Inc., with the urging that the recommendations be followed. MRTI's action will be communicated to the church at large, urging that proxies be voted in accordance with the recommendations.

   MRTI recommendations will be reported to the appropriate body of the Presbyterian Mission Agency for its review and affirmation.

2. **FILING OR CO-FILING SHAREHOLDER RESOLUTIONS:** MRTI will recommend to the Presbyterian Mission Agency Board whether a resolution should be filed or co-filed. Following Presbyterian Mission Agency Board authorization of a resolution addressing a particular issue, MRTI can direct MRTI staff to file the resolution. A previously authorized resolution may be refiled upon approval of MRTI and additional resolutions addressing the same issue may also be filed upon MRTI approval.

3. MAINTENANCE OF OWNERSHIP: Upon decision to initiate shareholder action with a corporation, whether through dialogue or filing of a resolution, MRTI will communicate with the Board of Pensions and the Presbyterian Church (U.S.A.) Foundation Inc. requesting that they maintain the legally required ownership position to permit shareholder resolutions. The investing agencies will establish procedures to guarantee that the ownership position will be maintained throughout the process, including the period after the shareholders meeting, should MRTI decide to refile. The investing agencies may request that MRTI rescind its action on maintenance of an ownership position.

4. **WITHDRAWAL OR AMENDMENT OF RESOLUTION:** If agreement is reached with the company prior to the meeting of the Presbyterian Mission Agency Board, the recommendation to file a stockholder resolution will be withdrawn. When the filing of a resolution addressing a new issue has been approved by the Presbyterian Mission Agency Board, the Chairperson of MRTI or appropriate sub-committee chair is authorized to modify editorially the resolution when necessary, or to withdraw the resolution, with the concurrence of the full committee when feasible on the basis of substantial compliance with the objectives of the resolution.

5. **SOLICITATION OF PROXIES:** MRTI may solicit proxies in accordance with the Rules and Regulations of the Securities and Exchange Commission.

6. **SHAREHOLDER LITIGATION:** MRTI will recommend to the Presbyterian Mission Agency Board the initiation of collaboration with other shareholders in litigation calling for regulatory oversight or other forms of redress.

7. **COMMUNICATION:** MRTI shall communicate about shareholder resolutions as set out in Section VI.C. above.

G. PROSCRIPTION AND/OR DIVESTMENT:

1. MRTI will recommend to the General Assembly through the appropriate body of the Presbyterian Mission Agency Board policies or policy implementation actions, which advocate the use of proscription and/or divestment to achieve mission responsibility through investment.

2. In the case of a divestment recommendation, MRTI will recommend adding a company or companies to the Divestment/ Proscription list in its report to the General Assembly. This recommendation will be presented to the General Assembly for approval. If the General Assembly approves that recommendation and adopts MRTI's report, MRTI will add the company or companies to the Divestment/ Proscription list for the following year. That new list will be provided to the Boards of the Foundation and the Board of Pensions for approval, which can adopt the list in full or in part.

   Once a company has been added to the Divestment/ Proscription list, MRTI will monitor that company directly and through its partners and networks. If MRTI learns of possible changes in the operations and/or policies of the company, it will research the company more extensively and will consider recommending that the company be removed from the Divestment/ Proscription list. In order to remove a company from the Divestment/Proscription list, MRTI's recommendation must be approved by the General Assembly or the Presbyterian Mission Agency Board in years when the General Assembly does not meet.

H. INTRA-CHURCH RELATIONSHIPS:

1. **GENERAL INFORMATION:** The lead staff person for MRTI will make available on an annual basis an outline of the priority issues under consideration in the corporate responsibility area and corporations being researched or approached.

2. **SPECIFIC COMMUNICATION:** When the Presbyterian Church (U.S.A.) is considering filing or co-filing a stockholder resolution or divesting or proscribing a company's securities and its action may have significant impact on a local or regional Presbyterian constituency, the following procedures shall apply:

    a. MRTI meetings should be held, when feasible, in areas where corporations are headquartered while MRTI is actively engaged with those corporations and mid-council executives should be invited to the meetings. The executive(s) of synods and presbyteries impacted by any MRTI recommendations should be invited to a meeting of MRTI prior to making any recommendation.

    b. Before a recommendation to file or co-file a resolution or divest or proscribe a company's securities is considered, MRTI shall be informed of the preliminary investigation that has been done both on the particular issue and the local church situation. The investigation should include communication with mid-council executives and such local Presbyterians and company officials as deemed useful and necessary.

    c. When MRTI has recommended filing a resolution or divestment or proscription to the Presbyterian Mission Agency Board, MRTI shall:

        i. Maintain communication with the appropriate synod and presbytery staff (preferably in person), seeking to facilitate the participation of the mid-council in the process in an ecumenical and interreligious style wherever possible, and

        ii. Ensure that formal negotiation with the company is initiated with faith-based and values-based partners wherever possible.

    d. MRTI will ensure that full information on General Assembly actions and subsequent negotiation or events is communicated to the church constituencies involved.

e. All consultation teams or negotiating teams should include representation of women and minorities.

I. AMENDMENTS

1. Section III may be amended by the Presbyterian Mission Agency Board upon recommendation of MRTI.

2. Sections I, II, and IV, V, and VI may be amended by MRTI, which shall report all changes to the Compassion, Peace and Justice ministry area.

OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA

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TODD ROKITA
ATTORNEY GENERAL

September 1, 2022

OFFICIAL OPINION 2022-3

The Honorable Eric Koch
Indiana Senate
200 W. Washington Street, Third Floor
Indianapolis, Indiana 46204

RE: Indiana Public Retirement System and ESG Investments

Dear Senator Koch:

You requested an opinion from the Indiana Office of the Attorney General (OAG) presenting several questions regarding the public retirement system and possible legal implications of using investment strategies guided or influenced by environmental, social, and governance (ESG) considerations.

QUESTIONS

1. Does Indiana law prohibit the Indiana Public Retirement System's (INPRS) board (Board) from choosing investments or investment strategies based on ESG considerations?

2. Does Indiana law prohibit the Board from exercising voting rights appurtenant to its investments based on ESG considerations?

3. Does Indiana law prohibit the Board from retaining investment advisors that make investments, set investment strategies, engage with portfolio companies, or exercise voting rights appurtenant to investments based on ESG considerations?

BRIEF ANSWERS

1. Yes. As trustees of various pension funds, the Board owes fiduciary duties to beneficiaries to "invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims," Ind. Code § 5-10.3-5-3, while also investing and managing trust assets "solely in the interest of the beneficiaries." Ind. Code § 30-4-3.5-5. Investing for other purposes, such as to further general environmental, social, or governance goals, violates these duties.

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www.in.gov/attorneygeneral/

2. Yes. For the same reasons that the Board may not invest for reasons other than the financial interests of the fund beneficiaries, it may not exercise rights appurtenant to those investments based on extraneous considerations.

3. Yes. The Board is statutorily authorized to use Investment Managers, but those managers are required to act in the same manner as a trustee would owing a fiduciary duty to its beneficiaries.

BACKGROUND

Investment Managers and other agents delegated by INPRS assume the same statutory obligations and fiduciary duties as the Board. Therefore, when this Opinion refers to "the Board," unless otherwise noted the term refers to INPRS and its agents. Additionally, this Opinion should not necessarily be construed as criticism of INPRS or how it has performed its fiduciary obligations to the State and its employees. An analysis of INPRS' performance relative to the law is not within the scope of this particular Opinion.

The State of Indiana, particularly its employees and retirees, are fortunate that its pension funds are funded at a higher rate than many of its other state counterparts. At 89% funded (excluding the pre-'96 TRF [Teachers' Retirement Fund] fund)[1], this is considered a "healthy" fund.[2] Everyone expects that global and national economic health is a key factor in the performance of these funds, and there are times when the market is better than others. Most stakeholders have historically assumed that investors – trustees, in the case of pension funds – are making investment decisions *solely* for their clients' financial interest and to maximize financial return. However, a new form of activist investing that does not just focus on financial returns has gained popularity in recent years – Environmental, Social and Governance, or ESG investing. [3]

ESG is an investment strategy that focuses less on the financial health of a company and more on its social and environmental impacts, as well as how a company governs its own internal affairs regarding issues such as diversity.[4] Environmental goals include the elimination of greenhouse gases, fossil fuels and driving to zero emissions, and also supports the enforcement of the Paris Accord.[5] For example, as discussed in greater detail below, Climate Action 100+, a leading group of investors that integrate environmental policy into their decision making,

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[1] According to the 2021 INPRS Annual Report: https://www.in.gov/inprs/files/INPRSAnnualReportBook2021.pdf (last accessed Aug. 11, 2022).

[2] INPRS Summary Annual Report 2021, https://www.in.gov/inprs/about-us/inprs-summary-annual-report/ (last accessed Aug. 11, 2022).

[3] ESG is also sometimes referred to as Corporate Social Responsibility impact investing, or CSR. While not entirely the same, they are similar in their focus of "socially conscious business practices." However, ESG has more quantifiable measures by which to "rate" a business. https://www.alva-group.com/blog/whats-the-difference-between-csr-and-esg/ (last accessed Aug. 12, 2022).

[4] E. Napoletano and Benjamin Curry, *Environmental, Social, and Governance: What is ESG Investing?*, FORBES ADVISOR (Feb. 24, 2022, 10:15 a.m.), https://www.forbes.com/advisor/investing/esg-investing/ .

[5] https://www.climateaction100.org/business-case/ (last accessed Aug. 12, 2022).

described its goal as "ensur[ing] the world's largest corporate greenhouse gas emitters take necessary action on climate change" by "focus[ing] on 166 companies that are critical to the net-zero emissions transition."[6] Members do this by leveraging their investments in companies to coerce the companies to "[t]ake action to reduce greenhouse gas emissions across the value chain."[7] Similarly, the Glasgow Financial Alliance for Net Zero (GFANZ), an "industry-wide strategic alliance" of large financial services firms, markets itself as "[b]ringing together the financial sector to accelerate the transition to a net-zero economy."[8] ESG investors generally focus on having private companies align their operations with the goals of the Paris Climate Accord despite the fact that the Accord does not apply to private companies[9] and has never been adopted by the United States Senate.[10]

Social goals of ESG investing include special focus on, among other things, "underprivileged social groups,"[11] and access to abortion.[12] Governance goals include things like board diversity quotas.[13] The current campaign to enforce ESG includes pressure through financial institutions and federal regulatory mandates. To further illustrate, MCSI, an investment research and data analytics firm, describes its approach regarding ESG: "At MSCI, we define ESG Investing as the consideration of environmental, social and governance factors alongside financial factors in the investment decision-making process."[14]

The proliferation of ESG investing has begun to affect state pension funds, because some major institutional investment managers now incorporate it into all investment strategies, even those not marketed as ESG funds. This makes it difficult to tease out what is an ESG fund and what is not. BlackRock, which as of May 4, 2022, was the sole manager of Indiana's large cap

[6] https://www.climateaction100.org. (last accessed Aug. 15, 2022).

[7] https://www.climateaction100.org/approach/how-we-work/ (last accessed Aug. 15, 2022).

[8] https://www.gfanzero.com/ (last accessed Aug. 15, 2022)

[9] "The Paris Agreement works on a five-year cycle of increasingly ambitious climate action *carried out by countries*." https://www.un.org/en/climatechange/paris-agreement (last accessed Aug. 15, 2022) (emphasis added).

[10] "The United States first entered the [Paris Climate] agreement in 2016, committing the country to cut emissions by 26-28% from 2005 levels by 2025. Then-President Barack Obama declined to submit the deal to the Senate for consent . . . ." "Republicans call for Senate review before U.S. re-enters Paris climate deal," REUTERS, Jan. 20, 2021 (https://www.reuters.com/article/us-usa-biden-climate-republicans-idUSKBN29P2WF.

[11] https://www2.deloitte.com/ce/en/pages/global-business-services/articles/esg-explained-1-what-is-esg.html (last accessed Aug. 15, 2022).

[12] Patrick Temple-West, *Abortion and other ESG issues rise up the AGM agenda*, FINANCIAL TIMES (Jul. 2, 2022), https://www.ft.com/content/669a758b-3341-4c2d-ac7a-7ff84050cd0c.

[13] "We look for boards to disclose how diversity is considered in board composition, including demographic characteristics that the company identifies as being relevant to its business and market context such as gender, race, ethnicity, and age." BlackRock, "Our approach to engagement on board quality and effectiveness, Feb. 2022 (https://www.blackrock.com/corporate/literature/publication/blk-commentary-engaging-on-board-quality.pdf (last accessed Aug. 15, 2022)).

[14] https://www.msci.com/esg-101-what-is-esg/; attributed to Remy Briand, Managing Director, MSCI ESG Research (last accessed Aug. 11, 2022).

equity index fund[15] as well as one of several managers of the state's international equity fund,[16] real estate assets,[17] and public equity fund,[18] has publicized that it has made a "firm-wide commitment to integrate ESG information into [its] investment processes," to affect "all of BlackRock's investment divisions and investment teams."[19]

In January 2020, BlackRock joined Climate Action 100+. That same year, BlackRock began "asking companies to publish Sustainability Accounting Standards Board[20]- and Task Force on Climate-Related Financial Disclosures-aligned disclosures"[21] including a "company's plan for operating under a scenario where the Paris Agreement's goal of limiting global warming to less than two degrees is fully realized," threatening "to vote against management when companies have not made sufficient progress."[22] "BlackRock's initiatives are part of a broader push by Wall Street—institutional investors, money managers and banks—to wield influence through their investments."[23]

One key element of this broader push is the Climate Action 100+ initiative. Signatory investors and investor networks, overseen by a Global Steering Committee, target a focus list of companies with an explicit agenda to require compliance with net-zero emissions, impose climate change disclosures, require board-level oversight of climate issues, and secure greater disclosure on company risks.[24]

Climate Action 100+ is transparent about its agenda with respect to carbon-intensive industries. In its *Net-Zero Company Benchmark*, the group assesses focus companies based on ten criteria, including whether the company has "set an ambition to achieve net-zero GHG [greenhouse gas] emissions by 2050 or sooner," whether the "company's decarbonisation strategy includes a commitment to 'green revenues' from low carbon products and services," and, most pertinently,

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15 INPRS Large Cap Equity Fund Infographic, https://www.in.gov/inprs/files/INPRSLargeCapEquity.pdf. (last accessed Aug. 11, 2022).

16 INPRS International Equity Fund Infographic, https://www.in.gov/inprs/files/INPRSInternational.pdf (last accessed Aug. 11, 2022).

17 INPRS 2020 Comprehensive Annual Financial Report, https://publicplansdata.org/reports/IN_IN-PERF-TRS_CAFR_2020_36_37.pdf (last accessed Aug. 11, 2022).

18 *Id.*

19 https://www.blackrock.com/corporate/literature/continuous-disclosure-and-important-information/blackrock-2020-sasb-disclosure.pdf (last accessed Aug. 11, 2022).

20 "SASB Standards enable organizations to provide industry-based sustainability disclosures about risks and opportunities that affect enterprise value." https://www.sasb.org/standards/ (last accessed Aug. 12, 2022).

21 "The Financial Stability Board (FSB) created the TCFD to develop recommendations on the types of information that companies should disclose to support investors, lenders, and insurance underwriters in appropriately assessing and pricing a specific set of risks—risks related to climate change." https://www.fsb-tcfd.org/about/ (last accessed Aug. 12, 2022).

22 https://www.blackrock.com/ca/investors/en/blackrock-client-letter (last accessed Aug. 11, 2022).

23 Dawn Lim, *BlackRock Starts to Use Voting Power More Aggressively*, WALL ST. J. (Apr. 30, 2021), https://www.wsj.com/articles/blackrock-takes-aggressive-posture-on-esg-proxy-votes-11619775002.

24 https://www.climateaction100.org/about/ (last accessed Aug. 11, 2022).

whether the "company is working to decarbonise its future capital expenditures"—a factor that specifically looks to whether the company plans to cut future investment (and thus production).[25] This "Capital Assessment Indicator" analyzes companies' "capital expenditures (CapEx) and output relative to a range of future climate change scenarios."[26] To satisfy this criterion, companies must "explicitly commit[ ] to align future capital expenditures with the Paris Agreement's objective of limiting global warming to 1.5 Celsius." With respect to utility companies specifically, Climate Action 100+ is even more candid; it asserts that "[b]oth coal and gas fired generation *must be phased out* to achieve global net-zero emissions by mid-century,"[27] and, as such, requires companies to publish a "coal and natural gas-generation retirement schedule consistent with a credible climate scenario" and a "retirement date assigned to each coal or gas unit."[28] (emphasis added). The claimed justification for all this activism is to mitigate "investment exposure to climate risk."[29]

Like Climate Action 100+, the Net Zero Asset Managers Initiative seeks to proliferate ESG goals throughout the global asset management system.[30] It asserts on its own website that its members have over $61 trillion in assets under management. Blackrock notes that "As a signatory of the Net Zero Asset Managers Initiative, we are one of 100+ asset managers committed to aligning the financial sector and supporting the goals of the Paris Agreement."[31]

The goals of ESG investing inherently conflict with the duties owed by investment advisers and pension fiduciaries under state and federal law. Significantly, membership in groups such as Climate Action 100+ may be *prima facie* evidence that an asset manager is acting for reasons other than the financial interests of plan beneficiaries.

ANALYSIS

Relevant Statutes

29 CFR § 2550.404a-1(a) provides:

> Section 404(a)(1)(A) and 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) provide, in part, that a

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[25] https://www.climateaction100.org/net-zero-company-benchmark/ (last accessed Aug. 11, 2022).

[26] https://www.climateaction100.org/wp-content/uploads/2020/12/CA100-Progress-Report.pdf (last accessed Aug. 11, 2022).

[27] *Id.* (emphasis added).

[28] *Id.*

[29] *Supra*, note 5.

[30] These are just two of myriad groups working to integrate ESG considerations into every aspect of the financial system. For example, the Net Zero Banking Alliance also seeks to impose ESG goals upon the world's financial institutions. It asserts on its own website that its members represent 40% of the global banking assets. JP Morgan Chase asserts that as a member of the Net Zero Banking Alliance, it intends to align its lending and underwriting decisions in chosen sectors to work towards achieving its portfolio targets.

[31] BlackRock, "From ambition to action – the path to net zero," https://www.blackrock.com/us/individual/about-us/road-to-net-zero (last accessed Aug. 15, 2022).

> fiduciary shall discharge that person's duties with respect to the plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Ind. Code § 5-10.2-2-1.5 reads, in relevant part:

> Each retirement fund covered by this article shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to each retirement fund. In order to meet those requirements, each fund is subject to the following provisions, notwithstanding any other provision of the retirement fund law:
> (1) The board shall distribute the corpus and income of the fund to members and their beneficiaries in accordance with the retirement fund law.
> (2) No part of the corpus or income of a fund may be used for or diverted to any purpose other than the *exclusive benefit* of the members and their beneficiaries. *(emphasis added)*

Ind. Code § 5-10.3-5-3(a) (Public Employees' Retirement Fund, or PERF) provides:

> The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment standards.

Ind. Code § 5-10.4-3-10(a) (TRF) provides, in relevant part:

> The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board also shall diversify investments in accordance with prudent investment standards . . .

Ind. Code § 5-10.5-2-1 provides:

> On July 1, 2011, the Indiana public retirement system is established.

Ind. Code § 5-10.5-2-5 provides:

> The system shall be managed and administered by a board of trustees established under IC 5-10.5-3.

Ind. Code § 5-10.5-5-1 reads, in relevant part:

> The board has the powers, duties, restrictions, limitations, and penalties in connection with the board's investment and management of the assets of the public pension and retirement funds of the system under the following provisions: [previous TRF, PERF, and other pension board powers, duties, and limitations].

Ind. Code § 5-10.5-7-2(a) provides:

> (a) All powers, duties, liabilities, property, equipment, records, rights, and contracts of the:
> (1) board of trustees of the public employees' retirement fund; and
> (2) board of trustees of the teachers' retirement fund;
> are transferred to or assumed by the board on July 1, 2011.

Ind. Code § 30-4-3-3(c) provides, in relevant part:

> In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. […]

Ind. Code § 30-4-3.5-2 provides:

> (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms of the trust, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
> (b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
> (c) Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following that are relevant to the trust or its beneficiaries:
> (1) General economic conditions.
> (2) The possible effect of inflation or deflation.
> (3) The expected tax consequences of investment decisions or strategies.
> (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.
> (5) The expected total return from income and the appreciation of capital.
> (6) Other resources of the beneficiaries.
> (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

Ind. Code § 30-4-3.5-5 provides:

> A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Ind. Code § 30-4-3.5-9 provides, in relevant part:

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
  (1) selecting an agent;
  (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  (3) reviewing the agent's actions periodically in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care.

Fiduciary Duty

First and foremost, as a matter of general trust law, a trustee must act in the sole interest of its beneficiaries. These interests include the "core duties" of loyalty and care.[32] "The duty of loyalty regulates potential conflicts of interest and proscribes misappropriation, while the duty of care establishes a professional benchmark for 'reasonableness' and 'prudence.'"[33] For more than a century, courts have held that relative to investment funds, the "interest" of the beneficiary a trustee must guard is the client's *financial* interest.[34] Investors and trustees have a duty to act in the beneficiaries' or clients' sole interests, which in this case means "maximiz[ing] return given a

[32] Shlomit Azgad-Tromer, *Corporations and the 99%: Team Production Revisited*, 21 FORDHAM J. CORP. & FIN. L. 163, 206, 206-07 (2016).

[33] *Id.*

[34] *See, e.g., Dodge v. Ford Motor Co.*, 204 Mich. 459 (1919) (holding that a corporation is "organized and carried on primarily for the profit of the stakeholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes."); *see also* Dept. of Labor, *Financial Factors in Selecting Plan Investments*, 85 FR 72846-01 (adopting amendments to the "investment duties" regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), requiring plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action.) (hereinafter "Dept. of Labor Rule"); Kasey Wang, *Why Institutional Investors Support ESG Issues*, 22 U.C. DAVIS BUS. L.J. 129, 149 (2021).

certain risk tolerance."[35] "Financial interest" and maximizing return means safeguarding the financial well-being of the beneficiary rather than the social interests of the beneficiary or the trustee; if it meant otherwise, the beneficiary would be left to the whims of the trustee and its socio-political motivations.

Moreover, a trustee must not work towards its own motives. It must consider *solely* the advantage any action or decision will provide to the beneficiaries of the trust.[36] This duty of loyalty is at the heart of trust law, since "all powers held in the capacity of trustee must be exercised . . . in accordance with the trustee's fiduciary obligations."[37] If trustees were free to act in a manner that was not solely in the interests of the trust beneficiaries, the beneficiaries would need to constantly monitor the trustees, which would undermine one of the primary purposes of a trust and destroy their utility. For this reason, a trustee or investment manager may not be influenced by its own interests or the interests of a third party, or by motives other than accomplishing the purposes of the trust.[38]

Investment management presents many potential conflicts of interest. For example, investment managers may have an incentive to pursue ESG policies to market their firm to millennials, who are projected to inherit $50 trillion.[39] Similarly, they may have an incentive to make ESG commitments to increase their business with blue-state and European pension funds that start climate initiatives.[40] None of these conflicts are new. The sole-interest standard was developed in anticipation of such mixed-motives, and has even extended to a trustee's (or CEO's) desire for self "aggrandizement" or "favor." *See In re Estate of Rothko*, 372 N.E.2d 291, 294-96 (N.Y. 1977). In Indiana, trustees are required to invest and manage trust *assets* "solely in the interests of the beneficiaries." (emphasis added) Ind. Code § 30-4-3.5-5. "Invest" necessarily implies a financial connotation, so it follows that the sole interest is a financial interest, and will be discussed in further detail, *infra*.

The Board's fiduciary obligations

As trustees of the state public retirement system, the Board must act consistent with the fiduciary duties imposed by law. In 2011, Indiana's various retirement funds were brought under one umbrella into INPRS to be managed by the Board. *See* Ind. Code §§ 5-10.5-2-1 and -2. Ind. Code § 5-10.5-3-1 requires the Board to manage each fund in accordance with the statutes that established each system and the retirement law applicable to each public pension or retirement fund, but Ind. Code § 5-10.5-4-1(2) permits the Board to employ others to transact the business of

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[35] Wang, *supra* note 34 at 149; Dept. of Labor Rule, *supra* note 34.

[36] RESTATEMENT (SECOND) OF TRUSTS § 170.

[37] 3 RESTATEMENT (THIRD) OF TRUSTS § 70 cmt. a (AM. LAW INST. 2007).

[38] RESTATEMENT (THIRD) OF TRUSTS § 78(1) cmt. f.

[39] https://www.goldmansachs.com/our-commitments/sustainability/sustainable-finance/index.html (last accessed Aug. 17, 2022).

[40] https://www.calstrs.com/calstrs-fellow-investors-influence-meaningful-change-through-climate-action-100 (last accessed Aug. 17, 2022).

the funds. To this end, the Board has determined that most "investment of Retirement Fund assets will be delegated to Investment Managers."[41]

Indiana law makes the Board the trustee for INPRS funds, which constitute trusts per Ind. Code § 5-10.5-2-5. *See also Good v. Indiana Tchrs. Ret. Fund*, 31 N.E.3d 978, 983 (Ind. Ct. App. 2015); 1983-84 Ind. Op. Att'y Gen. 4 (1983). These trusts are to be administered for the exclusive benefit of their members. A trustee such as the Board, "bears an unwavering duty of complete loyalty to the beneficiary of the trust, to the exclusion of the interests of all other parties." *Living Tr. Agmt. Morningstar v. Fortunka et al.*, 136 N.E.3d 1136, 1154 (Ind. Ct. App. 2019) (quoting *Amax*, 453 U.S. at 329); *see also* Restatement (Second) of Trusts § 170 cmt. d.

The Board, like all Indiana trustees, is also subject to the requirements of the Indiana Trust Code, Ind. Code ch. 30-4-3, and the Prudent Investor Rule, Ind. Code ch.30-4-3.5. The Indiana Trust Code generally requires the Board to act with loyalty and care for the beneficiaries. These statutes, consistent with the specific statutory provisions creating and governing the Board, require that the Board "shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms of the trust, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." Ind. Code § 30-4-3.5-2(a).

The Board must also "make a reasonable effort to verify facts relevant to the investment and management of trust assets." Ind. Code § 30-4-3.5-2(d). This requirement, known as the Prudent Investor Rule, requires that the Board employ "an overall investment strategy having risk and return objectives reasonably suited to the trust." Ind. Code § 30-4-3.5-2(b).[42] Put another way, a trustee can use its reasoned judgment in making investment decisions, but that judgment must always be informed by the purposes of the trust. And the purposes of the Indiana retirement funds are *only* financial in nature. *See*, *e.g.*, Ind. Code § 56-10.3-2-1(a) ("The public employees' retirement fund of Indiana . . . is established to pay benefits to officers and employees of the state and its political subdivisions. . . . The purpose of the fund is to promote economy and efficiency in the administration of state and local government by providing an orderly way for members to be retired without prejudice and without inflicting hardship on the retired member."). Choosing an investment strategy that is not reasonably calculated to maximize the risk adjusted return of trust assets would, by definition, be imprudent.

Prudent investment standards do not require complete risk avoidance, but proper and appropriate risk management.[43] This means accounting for "all hazards that may follow" from inflation, a volatile market, and so on.[44] After considering and balancing the risks and possible gains with the information at hand, only then should the investment manager make the appropriate

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[41] INPRS Investment Policy Statement, https://www.in.gov/inprs/files/INPRS_IPS.pdf (last accessed Aug. 11, 2022).

[42] It does not appear as though the Indiana Supreme Court has interpreted this specific provision of the Prudent Investor Act.

[43] RESTATEMENT (THIRD) OF TRUSTS §90 cmt. e(1).

[44] *Id.*

investment decision that is in the sole financial interest of the client.[45] Not included in these factors for consideration is the investment manager's personal views or desire to advance a social or political agenda; that should never be an influencing factor in the investment manager's decision-making.[46]

The relevant statutory provisions also impose a duty of loyalty on the Board. "One of the most fundamental duties of the trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary, and must exclude all selfish interest and all consideration of the interests of third persons." *Massey v. St. Joseph Bank & Tr. Co.*, 411 N.E.2d 751, 754 (Ind. Ct. App. 1980) (quoting Bogert, Trusts & Trustees § 543, pp. 197-98 (2d ed. 1978)). The Prudent Investor Rule creates special obligations for the investment of trust assets. Investments can be made "solely in the interests of the beneficiaries." Ind. Code § 30-4-3.5-5. A fiduciary breaches this duty merely by having a mixed motive:

> Under the sole interest rule, a trustee violates the duty of loyalty—even in the absence of self-dealing—if the trustee has any motive or rationale for undertaking an action other than the "sole interest" or "exclusive benefit" of the beneficiary. A trustee who is influenced by his own or a third party's interests is disloyal, because the trustee is no longer acting solely in the interest of the beneficiaries.
>
> *   *   *
>
> [T]he sole interest rule imposes a categorical prohibition, with "no further inquiry" into whether a conflicted transaction was fair.[47]

Further, Indiana law requires that the Board, and by extension those Investment Managers acting on behalf of the Board, must act solely in the *financial* interests of the plan beneficiaries. The United States Supreme Court has interpreted analogous provisions of federal law governing the "exclusive purpose" of management of a pension plan to be "understood to refer to the sort of financial benefits (such as retirement income) that trustees who manage investments typically seek to secure for the trust's beneficiaries." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 421 (2014). That logic applies equally here, as the entire purpose of the retirement system overseen by the Board is to provide for the financial wellbeing of public employees during their retirement.

Financial and economic considerations must be a trustee's sole consideration

As stated *supra*, Indiana law mandates that the "relevant" circumstances that trustees "shall consider in investing and managing trust assets" are financial and economic in nature. Ind. Code § 30-4-3.5-2(c). While the Indiana Supreme Court has not opined on the rule in this precise context, doctrines of statutory construction indicate that "relevant" circumstances for these

[45] *Id.* cmts. f, d.

[46] *Id.* cmt. c.

[47] Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 401 (2020) (citing in part 3 RESTATEMENT (THIRD) OF TRUSTS § 78(1)-(2) cmt. b).

purposes relate only to financial and economic issues. Here, the statute identifies eight specific factors that are "among circumstances" to be considered by a trustee when making an investment decision. All eight relate to financial or economic issues, such as "general economic conditions" and "expected tax consequences." The doctrine of *ejusdem generis* "requires that the general words [of a statute] be construed as embracing only such persons, places, and things as are of like kind or class to those designated by the specific words, unless a contrary intention is clearly shown by the statute." *Loparex, LLC v. MPI Release Techs., LLC*, 964 N.E.2d 806, 819 (Ind. 2012) (cleaned up) (quoting *Thompson v. Thompson*, 286 N.E.2d 657, 662–63 (1972)).[48] This shows that the only circumstances a trustee should consider when making investment decisions are economic and financial in nature, and not related to greater social issues such as diversity or environmental issues.

Pursuant to Ind. Code § 5-10.5-5-1, the Board has all the powers, duties, and limitations in connection with the Board's investment and management of the assets of the public pension and retirement funds of the system. For example, Ind. Code § 5-10.3-5-3 (PERF), requires the Board to "invest its assets with the care, skill, prudence, and diligence" and diversify investments. The TRF has a similar provision at Ind. Code § 5-10.4-3-10(a).

Ind. Code § 5-10.2-2-1.5 subjects the funds to § 401 of the Internal Revenue Code and requires the Board to "distribute the corpus and income of the fund to members and their beneficiaries in accordance with the retirement fund law." Ind. Code § 5-10.2-2-1.5(1). It also prohibits the Board from using any part of the fund "to any purpose other than the exclusive benefit of the members and their beneficiaries." Ind. Code § 5-10.2-2-1.5(2).

The statutory requirements are clear: the Board must make prudent investments that take into account only relevant financial considerations, and must make those investments solely in the interests of plan beneficiaries. Investing based on ESG principles does not comport with these requirements.

ESG investments are not prudent because they do not maximize economic return

ESG investments are not prudent because they are not reasonably calculated to maximize the risk adjusted return of trust assets. To compensate for this deficiency, ESG proponents make sweeping predictions of economy-wide transformations to justify categorical commitments. For example, asset managers try to justify ESG investments focused on environmental issues based on the premise that the "coming energy transition" is a *fait accompli*, and companies must act in anticipation of this transition or suffer financial consequences.[49] But this assumption does not survive scrutiny. Governments are not implementing policies to require net zero. As the

[48] While not structured the same as other statutes where *ejusdem generis* is used, with a general term following a list of specific examples, the statutory language here is similar enough that interpretation should be guided by the doctrine. The list of items is representative of the circumstances to be considered, but not exhaustive, just like the typical *ejusdem generis* case.

[49] See, e.g., BlackRock, *Climate risk and the global energy transition*, Feb. 2022, available at: https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf

International Energy Agency has noted, "[i]n many cases, pledges have not yet been backed up by the strong and credible near-term policies needed to make them a reality."[50] Furthermore, "the pledges themselves – even if implemented in full – do not yet put the world on track for a 1.5 °C stabilisation in global average temperatures."[51] ESG investors must be aware that governments are not living up to their pledges because groups such as GFANZ call on governments to adopt policies requiring net zero, and to live up to their pledges.[52]

Recent events in global energy markets have shown how imprudent these assumptions are. For example, based on its assumption about the "energy transition,"[53] BlackRock committed to divest from coal by the middle of 2020.[54] In mid-2020, coal was around $50/ton. Recently, the price of coal has exceeded $400/ton, a nearly eight times increase.[55] Because of BlackRock's ESG commitment, the opportunity to profit from this change was likely lost, meaning gains that could have been compounded for decades were foregone. Similarly, California's pension funds estimate that their commitment to divest from tobacco cost that state $8 billion.[56] Sweeping assumptions of highly uncertain government-led economic transformation are insufficient to overcome an absence of evidence that committing to a principle other than risk adjusted return will improve returns.

ESG investments focused on social or board quotas issues fare no better. For example, the state of California was unable to find academic studies to substantiate its contention that there is "a causal connection between women on corporate boards and corporate governance," leading to a court finding the state's gender mandate unconstitutional.[57]

A focus on risk-return for investments must be grounded in a reasonable, objectively-based investigation that carefully considers material economic conditions, including factors such as inflation, energy prices, geo-political conflict, and the opportunistic purchase of non-net zero compliant assets when doing so increases returns. Broad and potentially speculative predictions

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[50] https://iea.blob.core.windows.net/assets/4ed140c1-c3f3-4fd9-acae-789a4e14a23c/WorldEnergyOutlook2021.pdf

[51] *Id*.

[52] See, e.g., Glasgow Financial Alliance for Net Zero, *Call to Action*, Oct. 11, 2021 (available at https://www.gfanzero.com/press/call-to-action/) ("The Call to Action includes specific policy requests including economy-wide net-zero targets aligned to 1.5C; reform of financial regulations to support the net zero transition; phase-out of fossil fuel subsidies; pricing carbon emissions; mandatory net zero transition plans and climate reporting for public and private enterprises by 2024; unlocking the trillions of climate finance required to support developing economies meet the transition to net zero; working with farmers and businesses to stop illegal deforestation, provide viable alternatives and promote sustainable regenerative agricultural practices; support for a just transition.").

[53] BlackRock, *Sustainability as BlackRock's New Standard for Investing*, available at: https://www.blackrock.com/corporate/investor-relations/2020-blackrock-client-letter (justifying plan to divest from thermal coal in active management portfolio because it is "highly exposed to regulation because of its environmental impacts.").

[54] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/investment-giant-blackrock-marks-a-major-milestone-in-coal-divestment-movement-56669181.

[55] https://tradingeconomics.com/commodity/coal.

[56] https://www.calpers.ca.gov/docs/forms-publications/calpers-and-divestment.pdf.

[57] *See Crest v. Padilla*, No. 19STCV27561 (Cal. Super. Ct. May 13, 2022), https://s.wsj.net/public/resources/documents/Crest-et-al-v-Padilla-05-13-2022.pdf.

of future environmental impacts or governance policies (especially those that have been repeatedly rejected or disregarded) does not form an adequate basis for prudent investment decisions. A truly return-focused investment strategy cannot categorically exclude investment or assets for lack of alignment with net-zero emissions or the Paris Agreement, or force businesses to alter their operations to achieve those goals.[58] Unless amended by our citizens through their elected representatives, the only commitment an Investment Manager can make with pension funds under Indiana law is to focus on financial return, not whether the underlying asset is dirty, clean, popular, or unpopular.

Similarly, other ESG commitments are not made solely in the financial interests of plan beneficiaries. Under the sole interest standard, there can be no commitments or directives to follow ESG principles. Fiduciaries cannot use pension funds to accelerate the net zero transition, impose board quotas, or force companies to take action on climate change, or commit to any course of action except making a profit for beneficiaries. ESG commitments are invariably couched in language about reducing carbon emissions, and meeting Paris Climate Accord goals, or fostering equity and a "just transition." All of these are motivations other than acting in the financial interests of beneficiaries. As one recent academic paper plainly put it, "a trustee's use of ESG factors, if motivated by the trustee's own sense of ethics or to obtain collateral benefits for third parties, violates the duty of loyalty."[59]

Application to Board's voting rights, retained investment advisors, and duty to supervise

The Board also has the authority to contract with others, such as investment advisors, to assist with its investment decisions. Ind. Code §§ 5-10.4-3-10; 30-4-3-3.5-9. As discussed, *infra*, the Board has elected to do so, engaging firms such as BlackRock to manage fund assets. As part of its management responsibilities, on behalf of the Board, BlackRock exercises authorities appurtenant to security ownership, such as proxy voting. As agents of the Board, BlackRock and other Investment Managers owe a duty of reasonable care, Ind. Code § 30-4-3.5-9, and, like the Board, may only act in the sole interest of the plan beneficiaries.[60] Therefore, in exercising the proxy voting authority delegated to it by the Board, each Investment Manager is to vote the proxies for the exclusive benefit of the system's members and beneficiaries. Just as the Board may not select or decline investments based on ESG considerations, it may not (nor delegate its authority to) exercise voting rights based on ESG considerations apart from the exclusive benefit of the system's participants.[61]

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[58] The facts may show that much of the concern about "climate risk" is circular. Ostensibly, investments are at risk of losing value due to the "coming energy transition," so asset managers must take action to accelerate "the coming energy transition." If so, this would not be the reasoned analysis of prudent investors, but the *post hoc* justification of individuals using their positions of trust to further their own agendas.

[59] Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 381 (2020).

[60] The Board's investment policy explicitly recognizes that "all external parties who perform investment-related services for the System or Retirement Funds, including . . . Investment Managers" must act "consistent with their fiduciary responsibility to invest the assets solely in the interests of the System's members and beneficiaries." *Supra*, note 41, at 2, 8.

[61] To the extent that an investment advisor or manager is also acting as a custodian for the INPRS, it is also required to act in a fiduciary capacity. *See, e.g.*, Ind. Code §§ 5-10.3-5-5 and 5-10.4-3-13.

Likewise, the Board may not retain Investment Managers or other agents who would make decisions for the system that are not based exclusively on the financial interest of system participants. As noted *infra*, the sweeping assumptions underlying ESG strategies are imprudent, and have a purpose to benefit third parties, showing a motive that is inconsistent with fiduciary duties that bind the Board and its agents. All the reasons discussed above explaining why the Board itself cannot consider these factors apply equally, if not more so, to investment advisors and investment managers. If Hoosier pensioners and beneficiaries of the retirement system desire for their fiduciaries to pursue the investment firm's own social goals with Indiana taxpayer dollars, there will need to be a legislative change. However, as discussed *infra,* and as reflected by current law, an investment or investment strategy that specially selects or declines investments based on adherence to ESG criteria, or casts shareholder votes, or encourages companies to act based on such criteria, will conclusively result in managerial mixed motives and violations of its fiduciary duty. *Morningstar*, 136 N.E.3d at 1154 ("A fiduciary cannot contend that, although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary one.") (quoting *NLRB v. Amax Coal Co., a Div. of Amax, Inc.*, 453 U.S. 322, 330 (1981)).

Special consideration of Investment Managers who have joined global climate initiatives

Given the above conclusion that both the Board and Investment Managers and advisors with which the Board contracts may not consider ESG factors in making investment decisions or exercising rights appurtenant to ownership of securities, the next question is whether the Board is allowed to contract with an investment manager or investment advisor that has previously joined a global climate initiative such as Climate Action 100+ or GFANZ, and therefore previously pledged to integrate certain ESG factors into all aspects of its business, including engaging with companies in which it invests and proxy voting.

The Board cannot hire an Investment Manager or investment advisor that has previously joined a global climate initiative that involves integrating ESG factors into the management of beneficiaries' assets. Asset managers, of course, remain free to act however they wish with their own assets. Determining whether to use an asset manager who makes ESG commitments with its own resources would be a facts and circumstances analysis about whether the asset manager had sufficiently bifurcated its approaches to properly focused on risk-return for the management of beneficiaries' assets.

Climate Action 100+ claims that it does not "require or seek collective decision-making or action with respect to acquiring, holding, disposing and/or voting of securities" and leaves voting decisions and "scope of participation in Climate Action 100+" to the "discretion of individual signatories."[62] But other public-facing language indicates a greater degree of centralized coordination. Climate Action 100+ openly states that investor signatories are "required to . . . liaise with relevant network staff and/or lead investors to ensure engagement priorities and

[62] https://www.climateaction100.org/wp-content/uploads/2021/03/Climate-Action-100-Company-Assessments-Version-1.5.xlsx. This will download an Excel file containing the information. (last accessed Aug. 11, 2022)

ambition are aligned with the goals of the initiative, as well as with the overall collaborative approach."[63] One such goal, prominently listed on the initiative's webpage as one of "The Three Asks," seeks "to reduce greenhouse gas emissions across the value chain."[64]

Similarly, members of the Net Zero Asset Managers Initiative have committed to, among other things "implement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net zero emissions by 2050 or sooner . . . Engage with actors key to the investment system including credit rating agencies, auditors, stock exchanges, proxy advisers, investment consultants, and data and service providers to ensure that products and services available to investors are consistent with the aim of achieving global net zero emissions by 2050 or sooner . . . [and] Ensure any relevant direct and indirect policy advocacy we undertake is supportive of achieving global net zero emissions by 2050 or sooner."[65] No mention is made of maximizing returns on invested assets or ensuring that actions taken are consistent with the fiduciary duties owed to investors.[66]

Membership in a global climate initiative potentially implicates a fiduciary's duty of prudence

The first question is whether entities that are committed to "ensur[ing] the world's largest corporate greenhouse gas emitters take necessary action on climate change" like members of Climate Action 100+, or "to accelerate the transition to a net-zero economy" like members of GFANZ, are acting with the "care, skill, prudence, and diligence" required of an Indiana fiduciary. ESG investments do not always improve long-term financial value, and research is indeterminate on the net positive outcome for clients; the long-term value is also "difficult to measure," making them potentially risky or higher-risk investments.[67] Additionally, the actions of global climate initiatives to reduce the production of fossil fuels likely harms companies and consumers in myriad ways, including through increased energy costs. If ESG investments harm the portfolios in the short-term and/or long-term, pursuing them is inconsistent with any number of duties, including the duties to invest prudently and preserve trust property.[68] Because members of these initiatives pledge to take certain actions regardless of financial or economic effect on their investments and without regard for the interests of the beneficiaries on whose behalf they manage assets, it is reasonable to conclude that actions consistent with their commitments violate the duty of prudence.

Membership in a global climate initiative potentially implicates a fiduciary's duty of loyalty

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[63] https://www.climateaction100.org/approach/engagement-process/ (last accessed Aug. 11, 2022).

[64] https://www.climateaction100.org/approach/the-three-asks/ (last accessed Aug. 11, 2022).

[65] https://www.netzeroassetmanagers.org/commitment/ (last accessed Aug. 15, 2022).

[66] The Net Zero Asset Manager Initiative does contemplate potential conflict between the commitments and "mandates agreed with clients and clients' and managers' regulatory environments," as well as "legal duties to clients." *Id.* But, rather than agreeing to honor the wishes of clients and following legal requirements, the members simply commit to "overcome the constraints we face."

[67] Wang, *supra*, note 34, at 153.

[68] *See generally* Richard A. Posner & John H. Langbein, *Social Investing and the Law of Trusts*, 79 MICH. L. REV. 72, 96 (1980) (concluding that "social investing is contrary to trust law and its statutory counterparts").

The intention to coordinate[69] with other asset managers to achieve non-financial goals with beneficiaries' assets is sufficient to establish a non-financial motive that violates the duty of loyalty. Because any non-financial motive in the management of beneficiary assets is sufficient to violate the duty of loyalty, the presence of disclaimers and qualifiers cannot "cleanse" a commitment to achieve non-financial goals such as reducing greenhouse gas emissions.[70] Even if an asset manager had no intention of following through on its public commitments, it's desire to be perceived as using client assets to achieve a social goal would be sufficient to demonstrate a mixed motive that violates the duty of loyalty. To the extent investment decisions are motivated even in part by ESG concerns, rather than the exclusive financial interests of system participants and beneficiaries, an ESG investment strategy would contradict the Board's fiduciary duty of loyalty. *See Morningstar*, 136 N.E.3d at 1154 (internal quotation provided *supra*). The citizens of Indiana have chosen to focus asset managers exclusively on beneficiaries' financial interest, and their wishes must be respected.

When the investment manager has committed to ESG goals across all assets under its management, the manager is acting with mixed motives and not in the beneficiaries' sole interest.[71] Provided a commercially viable alternative exists, the Board should avoid these investment managers altogether.[72]

CONCLUSION

In summary, Indiana law prohibits the Board or its contracted Investment Managers from choosing investments or investment strategies based on ESG considerations. The Board must act consistent with its fiduciary duties of loyalty and prudence. Various chapters and sections within Ind. Code arts. 5-10.2, -10.3, -10.4, and -10.5 mandate fiduciary and other statutory responsibilities to the Board and other agents to which it may delegate any investment authority. Investing based on ESG considerations is inconsistent with these duties. For the same reasons, the Board cannot exercise any rights appurtenant to its investment, such as proxy voting rights, based on ESG considerations nor can it retain investment advisors that make investments, set investment strategies, or exercise voting rights by proxy appurtenant to investments based on ESG considerations.

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[69] Although not directly implicated by the question posed, such coordination that has the effect of restricting the supply or increasing the price of goods and service may implicate our antitrust laws.

[70] *Supra*, note 45. Membership in global climate initiatives show a motive other than financial benefit of trust beneficiaries: the purpose of these initiatives is to affect public policy and change corporate conduct to achieve the goals of the Paris Climate Accord (which has no expressed concern for financial returns).

[71] UNIFORM PRUDENT INVESTOR ACT § 5 cmt. (1994): "No form of so-called 'social investing' is consistent with the duty of loyalty [as expressed in the 'sole interest' formulation] if the investment activity entails sacrificing the interests of trust beneficiaries—for example, by accepting below-market returns—in favor of the interests of the persons supposedly benefitted by pursuing the particular social cause."; Schanzenbach & Sitkoff, *supra,* note 47, at 401 ("Acting with mixed motives triggers an irrebuttable presumption of wrongdoing, full stop.").

[72] RESTATEMENT (THIRD) OF TRUSTS §§ 80, 78(2) ("Except in discrete circumstances, the trustee is strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests.") and § 78 cmt. e ("A trustee's fiduciary transactions with third parties" may create "a risk of future conflicts between the trustee's fiduciary and personal interest.").

The state of Indiana, comparatively speaking, has a highly-funded state retirement system. Some asset managers have widely publicized their efforts to integrate ESG information into their investment processes and strategies; since Indiana is a client of such asset managers, including BlackRock, this would affect the state. Asset managers' compliance with the expectations of initiatives like Climate Action 100+, or GFANZ, organizations committed to the phasing out of fossil fuels and achieving a net-zero emissions, is inconsistent with the fiduciary duty of care required in the management of Indiana assets.

Furthermore, committing to initiatives like Climate Action 100+, GFANZ and others demonstrates a mixed motive inconsistent with a fiduciary duty of loyalty to act for the exclusive financial benefit of system participants. An asset manager's fiduciary duty is to the sole financial interest of beneficiaries. A fiduciary cannot justify its ESG commitments by asserting that they were made subject to its fiduciary duty. The term "sole" means the fiduciary is permitted only one motivation – Hoosiers' financial interest. Any other commitment or stated purpose is unlawful. Unless laws are amended through the legislative process, the only commitment an Investment Manager can make with pension funds is to focus on financial return, not other socio-political concerns. A fiduciary truly motivated to act in Hoosiers' financial interest would never need to use the term "ESG," and would instead merely describe its purpose as maximizing risk-adjusted return, regardless of future economic or government policy changes.

Sincerely,

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May 26, 2022

OAG 22-05

Subject: Whether "stakeholder capitalism" and "environmental, social, and governance" investment practices in connection with the investment of public pensions funds are consistent with Kentucky law governing fiduciary duties.

Requested by: Treasurer Allison Ball
State Treasurer of the Commonwealth of Kentucky[1]

Written by: Carmine G. Iaccarino, General Counsel
Zachary Richards, Assistant Attorney General

Syllabus: "Stakeholder capitalism" and "environmental, social, and governance" investment practices, which introduce mixed motivations to investment decisions, are inconsistent with Kentucky law governing fiduciary duties owed by investment management firms to Kentucky's public pension plans.

Opinion of the Attorney General

There is an increasing trend among some investment management firms to use money in public and state employee pension plans—that is, other people's money—to

[1] Although the Treasurer asks for the Attorney General's opinion in her capacity as State Treasurer, she also serves as chair of the State Investment Commission, KRS 42.500(1)(a), and as a trustee of the Teachers' Retirement System of the State of Kentucky, KRS 161.250(1)(b)2.

push their own political agendas and force social change.[2] State Treasurer Allison Ball asks whether those asset management practices are consistent with Kentucky law. For the reasons below, it is the opinion of this Office that they are not.

Background

To encourage public service, Kentucky offers public employees certain pension benefits. *See*, *e.g.*, KRS 61.510 to KRS 61.705. For years, however, the Commonwealth's public pension plans have hovered at severely underfunded levels. According to the Kentucky Public Pension Authority's most recent annual report, the public pension plan for most state employees is roughly 17% funded.[3] Kentucky's other public pension plans have not fared much better: the public pension fund covering Kentucky State Police is roughly 30% funded and the County plans are 46% to 52% funded.[4] And while the public pension plans administered by the Kentucky Public Pension Authority have shown year-over-year improvement in funding,[5] there is a concern that this trajectory may be threatened by extreme approaches to investment management—particularly those that put ancillary interests before investment returns for the benefit of public pensioners and state employees.

One such approach is "stakeholder capitalism." According to its advocates, "[s]takeholder capitalism is an expansion of corporate management fealty beyond shareholders to include the workforce, supply chain, customers, communities, societies, and the environment."[6] What this means in reality is that investment

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2 The social change they seek has often been rejected outright by the people's elected representatives. *See*, *e.g.*, *Will ESG Disclosures be Mandated by Law? A Legislative Analysis*, KING & SPALDING (Sept. 22, 2021), https://perma.cc/F4FZ-9JA7 (discussing environmental, social, and governance ("ESG") legislation from the 117th Congress and finding a "low likelihood" that the legislation becomes law); *see also* Stuart Loren, *ESG and the Road to Serfdom*, LINKEDIN (Oct. 22, 2021), https://perma.cc/3UVC-ETZ7 ("Even if well-intentioned and sensible, . . . do we really want a handful of senior management at BlackRock and the world's largest asset allocators pushing for policy-related changes? Isn't this the role of government?").

3 *Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021*, KENTUCKY PUBLIC PENSION AUTHORITY (Dec. 8, 2021), at 6, https://perma.cc/AN5N-9YXA (hereinafter "KPPA 2021 Report").

4 *Id*. Kentucky is not alone in its public pension experience. Pew, *Legal Protection for State Pension and Retiree Health Benefits, Findings from a 50-state survey of retirement plans* (May 30, 2019), https://perma.cc/CNR7-QK89. ("Since 2000, when public retirement systems were almost fully funded, states have seen aggregate unfunded pension liabilities grow to more than $1 trillion, with an additional $700 billion in unfunded retiree health benefit costs.").

5 KPPA 2021 Report, *supra* note 3, at 14.

6 Mark A. Cohen, *Stakeholder Capitalism: Challenges and Opportunities for Big Law*, FORBES (Jan. 19, 2022), https://www.forbes.com/sites/markcohen1/2022/01/19/stakeholder-capitalism-challenges-and-opportunities-for-big-law/?sh=760110a449e2 (last visited May 26, 2022).

management firms who embrace stakeholder capitalism propose prioritizing activist goals over the interests of their public and state employee clients.

To achieve this version of "capitalism," investment management firms are adopting "environmental, social, and governance"—or "ESG"—investment practices. ESG investing is an "umbrella term that refers to an investment strategy that emphasizes a firm's governance structure or the environmental or social impacts of the firm's products or practices."[7]

American economist Milton Friedman once criticized an earlier version of this trend whereby one set of stockholders sought to convince another set of stockholders that business should have a "social conscience." As he explained, "what is in effect involved is some stockholders trying to get other stockholders (or customers or employees) to contribute against their will to 'social' causes favored by activists. Insofar as they succeed, they are again imposing taxes and spending the proceeds."[8] Friedman found this problematic because "the great virtue of private competitive enterprise" is that it "forces people to be responsible for their own actions and makes it difficult for them to 'exploit' other people for either selfish or unselfish purposes. They can do good—but only at their own expense." [9]

Today, in perhaps an even more pernicious version of the trend, the debate is no longer left to stockholders. In fact, there is little-to-no debate. Investment managers in some corporate suites now use the assets they manage—that is, other people's money—to enforce their preferred partisan sensibilities and to seek their desired societal and political changes.

Investment management firms have publicly committed to coordinating joint action for ESG purposes, such as reducing climate change. For example, the Steering Committee for the Glasgow Alliance for Net Zero ("GFANZ") states: "*The systemic change needed to alter the planet's climate trajectory can only happen if the entire financial system makes ambitious commitments* and operationalises those commitments with near-term action. *That is why we formed [GFANZ],* to bring together over 450 leading financial enterprises united by a commitment to accelerate the decarbonisation of the global economy."[10] Similarly, Climate Action 100 "aims to

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7 Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by A Trustee*, 72 STAN. L. REV. 381, 388 (2020).

8 Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, THE NEW YORK TIMES MAGAZINE (Sept. 13, 1970), at 4, https://perma.cc/CTJ6-9FKV.

9 *Id*.

10 *Forward from the Principals Group* GLASGOW FINANCIAL ALLIANCE FOR NET ZERO (Nov. 2021), at 6, https://perma.cc/N3KS-KTZG (emphasis added).

ensure the world's largest corporate greenhouse gas emitters take necessary action on climate change."[11] Climate Action 100 explicitly concedes a mixed motive, stating that its investor signatories believe that taking action "is consistent with their fiduciary duty *and essential to achieve the goals of the Paris Agreement*."[12] As further suggestion of a political motive, some investment management firms have committed to both advocate for government-imposed climate change mandates,[13] *and* use their fiduciary role to prevent portfolio companies from advocating against such mandates.[14]

Whether these ancillary purposes are societally beneficial is beside the point when speaking of the duty of fiduciaries. Fiduciaries must have a single-minded purpose in the returns on their beneficiaries' investments.

And this affects Kentuckians. One investment management firm, at one time directing roughly $1.5 billion on behalf of the Kentucky Public Pension Authority,[15] has made a "firmwide commitment to integrate ESG information into [its] investment processes" to affect "all of [its] investment divisions and investments teams."[16] Other investment management firms that direct billions of dollars in Kentucky pension fund investments have publicly made similar commitments to ESG investment practices.[17] There is some suggestion that politically biased investment strategies have real costs and worsen outcomes for pensioners.[18] These harms are significant

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[11] CLIMATE ACTION 100+, *About*, https://perma.cc/K64N-J69K.

[12] *Id.*

[13] *Act Now, Financial Leaders Urge More Climate Action from the G20*, GLASGOW FINANCIAL ALLIANCE FOR NET ZERO, https://perma.cc/43B2-XQ4A ("More governments need to commit to the Paris target of 1.5 degrees Celsius by 2050. They need to make immediate cuts to emissions . . . .").

[14] *2020 Progress Report,* CLIMATE ACTION 100+ (2020), at 18 and 78, https://perma.cc/B5XW-XW2X (scoring companies on whether the companies and their trade associations' lobbying efforts are "Paris-agreement aligned" and noting industry associations who "engage in problematic lobbying on climate" are "holding back Paris-aligned climate policy").

[15] KPPA 2021 Report, *supra* note 3, at 137. Of course, this figure fluctuates and, as of the date of this opinion, stood at roughly $1.1 billion according to the Kentucky Public Pension Authority.

[16] 2020 Sustainability Disclosure, BlackRock, at 6, https://perma.cc/4HE5-6DXH. *Compare* Larry Fink's 2022 Letter to CEOs: A Fundamental Reshaping of Finance, https://perma.cc/H59D-R4BA, *with* Larry Fink's 2022 Letter to CEOs: The Power of Capitalism, https://perma.cc/MMF7-LESJ.

[17] *See*, *e.g.*, *Responsible Investment: Policies and Principles*, FRANKLIN TEMPLETON (2020), https://perma.cc/679E-6DQ3; Lord Abbett, *ESG Investing*, https://perma.cc/S8RS-U7M6; Putnam Investments, *Philosophy – ESG integration in our investment group*, https://perma.cc/F3LT-SYJE; *see also* KPPA 2021 Report, *supra* note 3, at 136-37.

[18] *See*, *e.g.*, Christopher Bancroft Burnham, *BlackRock's ESG Strategy Plays Politics with Public Pensions*, BARRON'S (May 28, 2020), https://perma.cc/FRU5-CX93 ("Research has consistently indicated that conventional index portfolios perform better than ESG portfolios, partly because ESG portfolios charge higher fees. . . . Fink is pursuing a course which, while possibly more profitable for

because companies employing ESG investment strategies are entrusted as fiduciaries to manage the funds in the best interests of pension beneficiaries like teachers, firefighters, and many other public servants who have ordered their lives around promises made and who depend on public pensions to finance their retirements.[19]

Law

State and federal law have long recognized fiduciary duties for those who manage other people's money. The Employee Retirement Income Security Act ("ERISA"), for example, demands that a fiduciary "discharge that person's duties with respect to the plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 CFR § 2550.404a-1(a).

Kentucky law provides similarly demanding duties for fiduciaries. KRS 61.650 provides that a "trustee, officer, employee, employee of the Kentucky Public Pensions Authority, or other fiduciary shall discharge duties with respect to the retirement system . . . *[s]olely* in the interest of the members and beneficiaries [and for] the *exclusive* purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system[.]" KRS 61.650(1) (setting forth the duties governing the fiduciaries of the Kentucky Employees Retirement System or State Police Retirement System) (emphasis added); *see also* KRS 78.790 (setting forth similar duties governing the fiduciaries of the County Employees Retirement System); KRS 161.430(2) (setting forth similar duties governing the fiduciaries of the Teachers' Retirement System of the State of Kentucky). This language draws from traditional trust principles requiring a single-minded purpose by fiduciaries that has been summarized as follows: "[a]cting with mixed motives triggers an irrebuttable presumption of wrongdoing, full stop."[20]

BlackRock, puts public pension funds and other client portfolio performance in jeopardy by opening the door to politics as part of pension portfolio management.").

[19] This Office notes a related move in this trend: the S&P Global Ratings' (S&P) recent decision to include ESG credit indicators in state credit ratings. Energy producing states, like Kentucky, may suffer under these ratings because the Commonwealth's investment in signature industries like coal, oil, and natural gas would likely result in lower ESG scores. Yet state law requires pension trustees to "give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth." *See*, *e.g.*, KRS 161.430(1)(c); KRS 78.790(3) (same); KRS 61.650(3) (same). A state's credit worthiness should be determined by the health of its economy—not activist ESG considerations.

[20] Schanzenbach, *supra* note 7, at 400–401.

Like ERISA, state law also demands that such fiduciaries discharge their duties "[w]ith the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose." KRS 61.650(1)(c)(3); KRS 161.430(2)(b) (same for the Teachers' Retirement System of the State of Kentucky); KRS 78.790(1)(c) (same for County Employees Retirement System). The duty of prudence requires more than assuming sweeping government mandates that coincide with an investment manager's policy preferences.[21] Under Kentucky law, fiduciary duty is not merely gift wrapping that a fiduciary may use to conceal a package of personal motivations.

Along with these fiduciary duties, the trustees of the Kentucky Public Pension Authority, for example, have adopted an investment policy that expressly provides that, in "instances where the Investment Committee has determined it is desirable to employ the services of an external Investment Manager," those "Investment Managers . . . agree to serve as a fiduciary to the Systems."[22] Moreover, the trustees have expressly stated that, "[c]onsistent with carrying out their fiduciary responsibilities, the Trustees will not systematically exclude any investments in companies, industries, countries, or geographic areas unless required to do so by statute."[23, 24]

Conclusion. Whether an investment management firm has breached a fiduciary duty is a fact intensive inquiry. That determination rests on a number of considerations and careful review of a fiduciary's actions, statements, and commitments. While *asset owners* may pursue a social purpose or "sacrifice some performance on their investments to achieve an ESG goal,"[25] *investment managers* entrusted to make financial investments for Kentucky's public pension systems must be single-minded in their motivation and actions and their decisions must be "[s]olely

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21 *See Jarvis v. Nat'l City*, 410 S.W.3d 148, 158 n.28 (Ky. 2013) ("Trustees must often 'conduct considerable research and analysis in each potential investment and in devising an overall investment strategy.'" (quoting *Estate of Fridenberg v. Appeal of Commonwealth of Pa.*, 33 A.3d 581, 590 (Pa. 2011)).

22 Kentucky Retirement System, *Investment Policy Statement* (adopted Nov. 16, 2021), at Section II.D.i., https://perma.cc/4LLR-KNC6.

23 *Id*. at Section I.B.

24 Although beyond the scope of this request, there are some free speech concerns when considering this scheme in light of the U.S. Supreme Court's decision in *Janus v. AFSCME*, 138 S. Ct. 2448, 2464 (2018) ("Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . . ."). Allowing investment management firms to speak on behalf of pensioners or the pension systems without notice or approval may give rise to First Amendment concerns.

25 *Domini Poll: ESG Investing is Gaining Traction,* KIPLINGER (Oct. 12, 2021), https://perma.cc/4LSV-X4DE.

in the interest of the members and beneficiaries [and for] the exclusive purpose of providing benefits[26] to members and beneficiaries," KRS 61.650(1); *see also* KRS 78.790(1)(c); KRS 161.430(2)(a). To do otherwise risks breaching clearly established statutory and contractual fiduciary duties and threatens the stability of already fragile pension systems. In sum, politics has no place in Kentucky's public pensions. Therefore, it is the opinion of this Office that "stakeholder capitalism" and "environmental, social, and governance" investment practices that introduce mixed motivations to investment decisions are inconsistent with Kentucky law governing fiduciary duties owed by investment management firms to Kentucky's public pension plans.

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[26] These "benefits" are clearly financial benefits, not an investment manager's conception of societal benefits. *See Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 420–21 (2014) (noting that the "benefits" to be pursued by ERISA fiduciaries as their "exclusive purpose" does not include "nonpecuniary benefits").