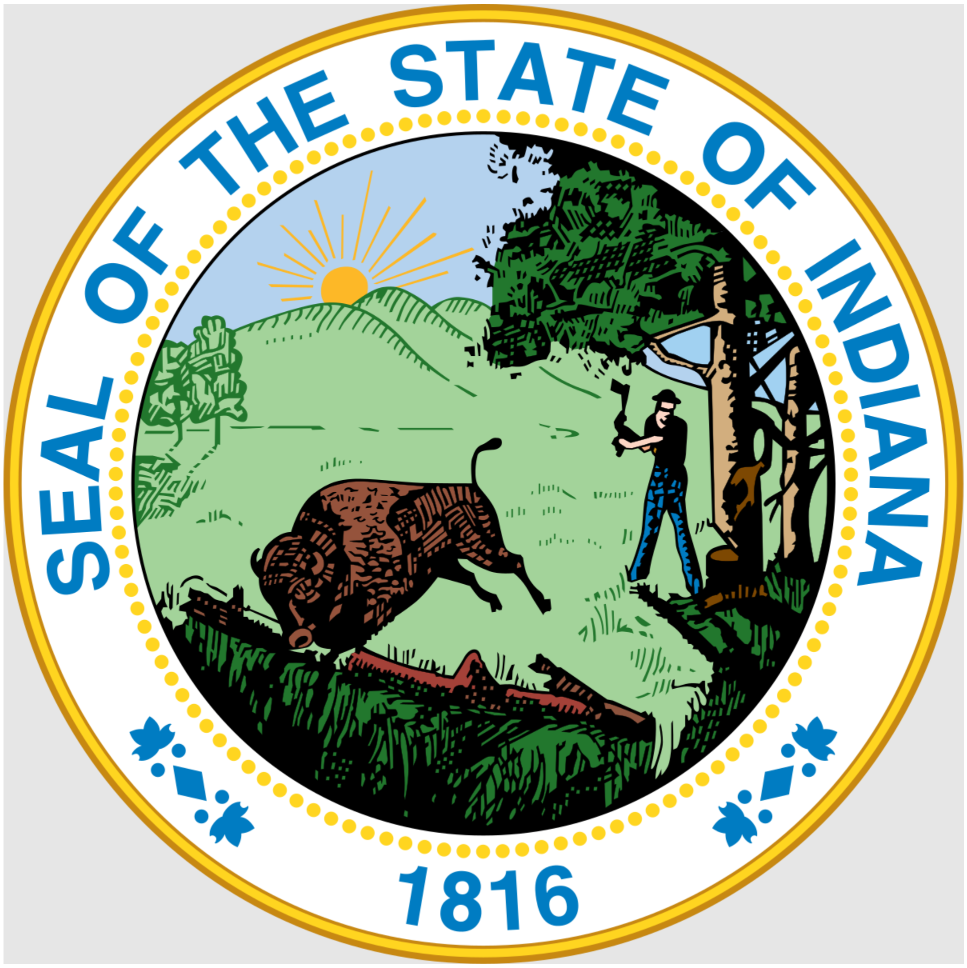
The Treasurer's Report On An ESG Commitment



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I. INTRODUCTION

In accordance with IC 5-10.2-14-7, if the Treasurer of State (“TOS”) has reasonable cause to believe that a service provider has made an ESG commitment, as defined by IC 5-10.2-14-2, TOS shall research the matter and attempt to consult with the service provider and consider any information the service provider provides. If, after considering the provided information, TOS concludes that the service provider made an ESG commitment, TOS shall provide the name and supporting research to the Indiana Public Retirement System (“INPRS”) board. In this case, after having met the requirements provided above, TOS concludes that BlackRock, Inc. has engaged in an ESG commitment, as defined by IC 5-10.2-14-2. This written determination, completed in accordance with IC 5-10.2-14-7, will lay out applicable law and show that BlackRock, as evidenced by (1) its most recent 10-K annual filing with the U.S. Securities and Exchange Commission (“SEC”) and (2) by being a signatory to the Net Zero Asset Management initiative (“NZAM”), is engaging in an ESG commitment.

II. INDIANA LAW APPLIED TO BLACKROCK’S SEC REPORT

Pursuant to the Securities Exchange Act of 1934, the SEC requires a public company to annually file a report via a 10-K form, in which the company is directed to provide a financial update and detail risks the company faces. BlackRock’s 10-K report (“SEC report”) filed for the “fiscal year ended December 31, 2023” will be analyzed in accordance with IC 5-10.2-14-6(4), which provides that TOS may use a report as a factor to consider evidence of an ESG commitment. In its SEC report, BlackRock describes ESG investment-related risks. The analysis below will show how these risks, as examined under IC Chapter 5-10.2-14, are non-fiduciary risks and amount to ESG commitment under IC 5-10.2-14-2. To those points, Section A of this document provides statutory definitions of "ESG commitment" and "financial" for the purposes of an ESG commitment. Section B examines BlackRock's SEC report, which, by BlackRock's own telling, describes risks associated with ESG-engagement that could result in declining revenue and earnings. Section C analyzes how ESG-related risks described by BlackRock in its SEC report meet the definition of ESG commitment under IC 5-10.2-14-2.

A. Defining "ESG Commitment" and "Financial" under IC Chapter 5-10.2-14.

IC 5-10.2-14-2 defines "ESG commitment" as:

(a) an action taken or a factor considered by a service provider:
(1) with respect to or including the system's assets; and
(2) with the nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose.
(b) The term defined in subsection (a) includes a commitment to further, through portfolio company engagement or board or shareholder votes, any of the following for nonfinancial purposes beyond the applicable law requirements:
(1) Eliminating, reducing, offsetting, or disclosing greenhouse gas emissions.
(2) Instituting or assessing:
(A) corporate board;
(B) employment;
(C) composition;
(D) compensation; or
(E) disclosure;
criteria that incorporate characteristics protected under IC 22-9.
(3) Divesting from, limiting investment in, or limiting the activities or investments of a company that does any of the following:
(A) Fails to meet or does not commit to environmental standards or disclosures.
(B) Engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or component parts and accessories of firearms or ammunition.
(C) Contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border security laws, regulations, and policies.

> (D) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel based energy, timber, mining, agriculture, and food animal production.

IC 5-10.2-14-3 defines "financial" as “a prudent determination by a fiduciary to have a material effect on the monetary risk or the monetary return of an investment” and as not including “an action taken or a factor considered by a fiduciary with the nonfinancial purpose to further social, political, or ideological interests as set forth in [IC 5-10.2-14-2].”

B. BlackRock’s ESG engagement indirectly relates to INPRS assets.

It is TOS’ position, based on research conducted in accordance with IC 5-10.2-14-7, that BlackRock’s ESG engagement is so fundamental and intertwined to BlackRock’s mission and investment practices as to relate, indirectly, with respect to INPRS assets. It is on this ground that TOS concludes BlackRock has engaged in an ESG commitment. With this conclusion in mind, the following sections detail BlackRock’s SEC report and membership of ESG organization.

C. BlackRock’s SEC report demonstrates an ESG Commitment with respect to and including INPRS assets for the nonfinancial purpose to further social and ideological interests in accordance with IC 5-10.2-14-2 and IC 5-10.2-14-3.

As Indiana’s chief investment office, TOS appreciates the intrinsic risk of investment management and balancing fiduciary duty with market risks to maximize returns. However, as evidenced by BlackRock’s SEC report, ESG investments create their own type of risks that exist outside the scope of maximizing earnings. Moreover, as detailed below in its own ink, BlackRock, in its pursuit of “promoting ESG investing” and championing “strategies with sustainable investment objectives,” is risking its reputation, “ability to attract and retain clients;”

further, in its effort to serve ESG investors, BlackRock relies on third-party providers for ESG data who "commonly disclaim the accuracy and completeness of data." Form 10-K, Ann'l Report Pursuant to the Securities Exchange Act of 1934, BlackRock, Inc., https://www.sec.gov/ix?doc=/Archives/edgar/data/1364742/000095017024019271/blk-20231231.htm, at 27 and 32. These are risks that, according to BlackRock, could result in declining revenues and earnings. *Id*. at 32.

i. *BlackRock's SEC report says management and reputational risks related to ESG engagement may cause revenue and earnings to decline.*

In its SEC report, BlackRock provides: "BlackRock offers choice to its clients who have a variety of goals and preferences, including those who want to increase their exposure to the low-carbon transition and those who choose not to invest in products or strategies with sustainable investment objectives" but that: "If BlackRock is not able to successfully manage ESG-related expectations across varied stakeholder interests, it may adversely affect BlackRock's reputation, ability to attract and retain clients, employees, shareholders and business partners or result in litigation, legal or governmental action, which may cause its AUM [assets under management], revenue and earnings to decline." *Id*. at 32. As to its ability to "successfully manage" ESG-related expectations, BlackRock laments it is "subject to competing demands from different stakeholder groups with divergent views on ESG-related matters, including in countries in which BlackRock operates and invests, as well as in states and localities where BlackRock serves public sector clients." *Id*. As a result, "BlackRock faces increasing focus from regulators, officials, clients and other stakeholders regarding ESG matters." *Id*.

ii. BlackRock's reliance on third-party providers to navigate ESG data who commonly disclaim the accuracy and completeness of its ESG data.

In addition to providing that a failure to balance opposing interests may lead to declining revenue and earnings, BlackRock's SEC report highlights reliance on third-party providers who disclaim their findings: "BlackRock depends on a number of key third-party providers for . . . environmental, social and governance data." *Id*. at 27. Further: "Data providers commonly disclaim the accuracy and completeness of data and BlackRock does not have the ability to validate or verify the accuracy and completeness of commercially sourced datasets." *Id*. Moreover, the "failure of any key third-party provider to fulfill its obligations could result in activities inconsistent with clients' investment management or other agreements, have an adverse financial impact on BlackRock products . . . which could result in reputational harm or legal liability, fines and/or sanctions and may cause BlackRock's AUM, revenue and earnings to decline." *Id*.

D. Applying IC 5-10.2-14-2 ("ESG commitment") analysis to BlackRock's SEC report.

BlackRock invited the risks of diminished reputation, declining earnings, and commonly disclaimed ESG data for the purpose of promoting ESG investing and navigating "strategies with sustainable investment objectives." These risks, initiated and amplified by ESG investment engagement, demonstrate BlackRock's ESG commitment with respect to INPRS assets for a nonfinancial purpose in furtherance of social and ideological interests.

i. BlackRock's actions described in its SEC report amount to an ESG commitment under IC 5-10.2-14-2 because they further social and ideological interests for a nonfinancial purpose.

BlackRock's SEC report describes actions taken that – by virtue of the action itself – create risks to revenue and earnings that cannot reasonably be considered an action taken for a financial purpose. Such action by its own thrust is action of a nonfinancial purpose. For instance, BlackRock's reliance on third-party providers for ESG data who "commonly disclaim the accuracy and completeness of data" -- data that "BlackRock does not have the ability to validate or verify" -- emphasizes BlackRock's interest in promoting ESG interests despite its apparent inability to verify ESG data. Worse, the "failure of any key third-party provider to fulfill its obligation . . . may cause BlackRock's AUM, revenue and earnings to decline." This combination of promoting ESG interests at the expense of data accuracy and maximizing earnings are actions of a "nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose" under IC 5-10.2-14-2(a)(2). Stated otherwise, BlackRock cannot reasonably be expected to provide a financial purpose for ESG investments if it cannot verify the ESG data compiled for the purpose of its ESG investments. What is more, BlackRock's investment focus on the "low-carbon transition" and "strategies with sustainable investment objectives" amounts to a "commitment to further, through portfolio company engagement . . . for the non financial purpose [of] eliminating, reducing, offsetting, or disclosing greenhouse gas emissions" under IC 5-10.2-14-2(b).

Additionally, BlackRock, in describing the reputational conundrum it created for itself, noted an inability to "successfully manage ESG-related expectations across varied stakeholder interests [that] may cause its AUM, revenue and earnings to decline." BlackRock's description of its inability to verify ESG data provided by third-party providers that disclaim its accuracy does not inspire hope in BlackRock's ability to successfully manage its ESG-related expectations, a conclusion BlackRock says would cause "revenue and earnings to decline."

These SEC report entries are also at odds with BlackRock's fiduciary charge under IC 5-10.2-14-4-3. For example, BlackRock's inability to "validate or verify the accuracy and completeness of commercially sourced datasets," including ESG data, would likely have a "material effect on the monetary risk or the monetary return of an investment," which is the standard of prudence contained in IC 5-10.2-14-3. Further, BlackRock's "strategies with sustainable investment objectives" falls into the second part of IC 5-10.2-14-3, which stipulates that "financial purpose" does not include "an action taken or a factor considered by a fiduciary with the nonfinancial purpose to further social, political, or ideological interests as set forth in [IC 5-10.2-14-2]."

ii. Counterarguments to consider and rebuttals thereto.

BlackRock may point to communications, worldviews, projected long-term viability, and snapshot graphs showing growth to indicate a financial purpose for ESG investments, but, as detailed above, in its statutorily required SEC report, BlackRock gave a more realistic assessment of ESG investment risks and purpose. BlackRock may also argue that the risk described in its SEC report is inapposite to TOS' analysis of ESG commitment because risk is inherent in investment management. However, as discussed above, these reputational and earnings risks are triggered by and are specific to ESG engagement. Unlike inherent risks stemming from economic conditions, technology, laws and regulations regarding taxation and securities, etc., that are foisted upon investment managers, ESG-related risks described in the

SEC report are risks initiated by BlackRock's own activity. It is on this basis that TOS determines BlackRock is making an ESG commitment.

III. BLACKROCK'S ESG ORGANIZATION MEMBERSHIP

BlackRock is a signatory to multiple coalitions that seek to extract commitments that lack non-financial or fiduciary purposes; here, TOS focuses on BlackRock being a signatory to the Net Zero Asset Managers initiative ("NZAM"). BlackRock – The Net Zero Asset Managers initiative, https://www.netzeroassetmanagers.org/signatories/blackrock/.

BlackRock's commitment to NZAM demonstrates action taken for non-financial purposes. This section analyzes how NZAM membership contributes to BlackRock's ESG commitment.

A. ESG Commitment factors provided under IC Chapter 5-10.2-14-6.

TOS will examine BlackRock being a signatory to NZAM in accordance with IC 5-10.2-14-6(8)(B), which provides that TOS may use a service provider's participation as a signatory to an initiative as evidence of an ESG commitment.

i. BlackRock being a signatory to the Net Zero Asset Management initiative is evidence of an ESG commitment.

As a signatory to NZAM, BlackRock is committed to "to support the goal of net zero greenhouse gas ("GHG") emissions by 2050, in line with global efforts to limit warming to 1.5°C ("net zero emissions by 2050 or sooner"). It also commits to support investing aligned with net zero emissions by 2050 or sooner. Commitment – The Net Zero Asset Managers initiative, https://www.netzeroassetmanagers.org/commitment/. BlackRock's commitment under NZAM also includes a pledge to implement that goal "across all assets under management." *Id*.

NZAM's pledge includes a range of actions that they are encouraged to undertake to "effect change." FAQ – The Net Zero Asset Managers initiative, https://www.netzeroassetmanagers.org/faq/.

These activities include "Engaging with clients, setting targets for assets managed in line with net zero pathways, corporate engagement and stewardship, policy advocacy." *Id*. Furthermore, the NZAM commitment sets an "interim target for the proportion of assets to be managed in line with the attainment of net zero emissions by 2050 or sooner," Commitment – The Net Zero Asset Managers initiative, https://www.netzeroassetmanagers.org/commitment/, and "review [its] interim target at least every five years, with a view to ratcheting up the proportion of AUM covered until 100% of assets are included." *Id*.

BlackRock's own reporting on its climate activity demonstrates that it is actively working towards implementing its NZAM obligations across all assets. In BlackRock's 2021 TCFD Report (no longer on the website), BlackRock writes that part of its Board's duties in its implementation include promoting "sustainability, including climate-related issues—from the integration of ESG factors into the firm's investment processes, to sustainable investment strategies and investment stewardship priorities—is a critical component of the firm's overall business strategy and the objectives of senior management over which the Board has oversight." 2021 TCFD Report: BlackRock's Climate Related Disclosures, https://climate-transparency-hub.ademe.fr/wp-content/uploads/2022/07/file/155564/Rapport-TCFD.pdf.

The 2021 TCFD report also includes steps for BlackRock that are part of its commitment to NZAM. These include: "Engaging with the companies our clients are invested in to understand how they are mitigating climate risk and considering the opportunities presented by the net zero transition," "[a]sking companies to disclose a business plan aligned with the goal of limiting global warming to well below 2ºC, consistent with achieving net zero global emissions by 2050", and "increasing the role of votes on shareholder proposals in our stewardship efforts around sustainability." *Id* at 8.

BlackRock's 2022 TCFD report states, "[s]ustainability, including climate-related issues is a critical component of the firm's overall business strategy and the objectives of senior management over which the Board has oversight." https://www.blackrock.com/corporate/literature/continuous-disclosure-and-imformation/tcfd-report-2022-blkinc.pdf. The 2023 TCFD report states "sustainability, including climate, is integrated into different business units across the firm. Several teams focus on sustainability, while others integrate sustainability into their broader functional responsibilities, as appropriate." BlackRock 2023 TCFD Report, https://www.blackrock.com/corporate/literature/continuous-disclosure-and-important-information/tcfd-report-2023-blkinc.pdf.

BlackRock's membership in NZAM is consistent with actions to effect ESG based changes. Examples include the following:

1. BlackRock voted against Whitehaven Coal's directors due to the Whitehaven's disclosure not including "GHG reduction targets or alignment with a global aspiration of net zero GHG emissions by 2050." www.blackrock.com/corporate/literature-release/blk-vote-bulletin-whitehavencoal-nov-2021.pdf
2. BlackRock voted against a Woodside Petroleum director due to the board not providing "scope 3 emissions reduction targets." https://web.archive.org/web/20220901021037/https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-woodside-petroleum-apr-2021.pdf
3. BlackRock voted against Transdigm's Board Chair's re-election because the company did not "adopt quantitative greenhouse gas emission goals."

https://web.archive.org/web/20230509174733/https://www.blackrock.com/corporate/literature/publication/our-commitment-to-sustainablity-full-report.pdf.

4. BlackRock voted against Exxon's directors due to a failure by Exxon to "have clear, long-term greenhouse gas reduction targets." https://web.archive.org/web/20230509174733/https://www.blackrock.com/corporate/literature/publication/our-commitment-to-sustainablity-full-report.pdf

IV. BLACKROCK'S RESPONSE

Pursuant to IC 5-10.2-14-7, TOS invited BlackRock to provide a response to TOS' research for TOS' consideration. In its response, BlackRock argues that TOS' ESG commitment analysis is inapposite to its relationship with INPRS assets because "the INPERS [*sic*] account is a passively managed index mandate, BlackRock's obligation and sole objective has been to track INPERS's [*sic*] chosen benchmark index, which does not have an ESG component or screen [and are] comprised exclusively of international government bonds." Therefore, BlackRock further argues, the SEC report is irrelevant to its relationship with INPRS assets and that the SEC report "simply highlights the reality that there are increasingly divergent views among clients, policy makers, and regulators about how BlackRock approaches sustainability and ESG and that consequently the company may face reputational challenges and may also lose assets under management and revenue [and] has no bearing on how we manage INPERS [*sic*] assets." BlackRock also rejects TOS' assertion that BlackRock's participation in NZAM as a signatory is evidence of an ESG commitment, claiming: "participation in any outside group, including NZAM, never overrides our duties to our clients – those always take precedence." BlackRock further notes: "We joined NZAM because it is important to some of our clients that we be part of the conversation regarding sustainability and how it may impact their portfolios." TOS' responses are in the subsections below.

i. INPRS assets

As detailed previously, TOS' position is that ESG engagement is so fundamental to BlackRock's mission as to touch its partnership with INPRS and, indirectly, INPRS assets. The spirit of IC Chapter 5-10.2-14 is to provide the State of Indiana with service provider partners uninfluenced and untethered to the whim of ESG entanglement. TOS steadfastly stands by its position that BlackRock has an ESG commitment despite BlackRock's assertions to the contrary,

ii. SEC report

TOS is unconvinced by BlackRock's claim that the SEC report has no bearing on how BlackRock manages assets. The risks to reputation and earnings described in the SEC report are central to BlackRock's ability to act solely with its fiduciary in mind. In its own words, prompted by the requirement of statutory candor, BlackRock spells out the risk of declining revenues and earnings resulting from serving "increasingly divergent views."

iii. NZAM membership

TOS is similarly unconvinced by BlackRock's claim that being a signatory to NZAM is irrelevant to its fiduciary charge. BlackRock maintains that it joined NZAM as a signatory simply to be "part of the conversation." This argument amounts to BlackRock claiming its participation in NZAM is meaningless and untethered to NZAM's principles. TOS takes the position that being a signatory to an initiative – especially one as action-oriented as NZAM – amounts to more than being "part of the conversation."

V. CONCLUSION

Indiana law tasked TOS to participate in protecting Indiana pensioners from service providers whose focus of returns deviate for non-fiduciary reasons. For the reasons described above, TOS concludes that BlackRock has engaged in an ESG commitment.