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February 26, 2024

Mark E. Van Der Weide
General Counsel
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Mr. Van Der Weide,

The Committee on Oversight and Accountability is conducting an ongoing review of the integration of environmental, social, and governance (ESG) policies across the U.S. economy. As part of this review, the Committee is examining whether (1) certain asset managers are in breach of agreements with the Federal Reserve System and (2) how the broader asset management industry may be subject to the Bank Holding Company (BHC) Act, the Home Owners Loan Act (HOLA), and the Change in Bank Control (CIBC) Act as a result of ESG related pledges and actions taken pursuant to those pledges. We write to request additional information in light of your November 26, 2019[1] and December 3, 2020[2] determination letters related to this issue, as ESG policies and commitments continue to drive asset manager actions.

In recent years, several alliances were created to coordinate engagement within the financial services community to compel companies to take action to meet the goals of the Paris Climate agreement and institute other ESG measures. These alliances incorporate varying responsibilities of their members and certainly appear to require concerted actions by their signatories.

For example, the Net Zero Asset Managers Initiative (NZAM) membership pledges "to support the goal of zero greenhouse gas (GHG) emissions by 2050" and "commits to support investing aligned with zero emissions by 2050 or sooner."[3] The NZAM Commitment specifically states that signatories will "work in partnership with asset owner clients on decarbonization goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management (AUM)."[4] The pledge commits the organization to use all assets under management to "implement a stewardship and engagement strategy, with a clear

[1] Letter from Mark Van Der Weide, General Counsel, Board of Governors of the Federal Reserve System to Anne E. Robinson, The Vanguard Group (Nov. 26, 2019).
[2] Letter from Mark Van Der Weide, General Counsel, Board of Governors of the Federal Reserve System to William Sweet, Jr., Skadden Arps, Slate, Meagher, and Flom LLP (Dec. 3,2020).
[3] *The Net Zero Asset Managers Commitment*, NET ZERO ASSET MANAGERS (2024).
[4] *Id*.

escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net zero emissions by 2050 or sooner."[5]

Climate Action 100+, another global advocacy group seeking to reach Paris Climate Agreement goals, has similar calls to actions. The June 2023 Climate Action 100+ Signatory Handbook states "the three goals of the initiative, which are supported by the investor signatories, are outlined in the signatory statement."[6] The Mission Statement included in the Signatory Handbook provides that "we will work with the companies in which we invest to encourage them to work towards the global goal of halving [greenhouse gas] emissions by 2030 and delivering on net zero [greenhouse gas] emissions by 2050.[7]" The statement goes on to explain that "[a]s holders of equity and debt, investors will use both to engage companies to deliver on the above."[8]

Another group calling for broader ESG advocacy is the United Nation's (UN) supported Principles for Responsible Investment (PRI). Upon becoming a member of PRI, a company commits to (1) incorporate ESG issues into investment analysis and decision-making processes, (2) be an active owner and incorporate ESG issues into our ownership policies and practices, and (3) work together to enhance our effectiveness in implementing the Principles. Included in PRI's Blueprint for Responsible Investment, the alliance states that "we will establish that asset owners' responsibilities to their beneficiaries extend beyond the risk/return profile of their investments to include making decisions that benefit the world beneficiaries live in."[9] PRI's Blueprint includes tactics which are to be employed and states "we will continue to coordinate collaborative engagement to maximise (sic) investors collective impact…and promote alignment of proxy voting practices with responsible investment beliefs."[10]

The requirements these alliances place on their members appear to manifest as control of a Regulated Company similar to your definition in November 2019 and December 2020 responses to certain companies: "[the company] would only be deemed to control a Regulated Company under the BHC Act or HOLA, as applicable, if the Board were to find that [the company] exercises a controlling influence over the management or policies of a Regulated Company."[11]

Pledges to act in concert with other signatories, actively pursue outcomes and use all assets under management to achieve the stated goals of the various agreements, appear to directly violate the terms laid out in your 2019 and 2020 letters. Your 2019 letter notes, "For the purposes of the BHC Act, a company controls another company if the first company directly or indirectly or acting in concert through one or more other persons, controls, or has the power to

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[5] *Id*.
[6] *Climate Action 100+ Signatory Handbook*, CLIMATE ACTION 100+ (June, 2023).
[7] *Id*.
[8] *Id*.
[9] *A Blueprint for Responsible Investment*, PRINCIPLES FOR RESPONSIBLE INVESTMENT, *available at* https://www.unpri.org/about-us/a-blueprint-for-responsible-investment (last accessed Feb. 16, 2024).
[10] *Id*.
[11] *Id*.

vote 25 percent or more of any class of voting securities of the second company." These pledges also raise questions about whether other asset managers, who have not sought relief from the Federal Reserve Board, could be subject to the BHC Act, HOLA, and CIBC Act due to their concerted action with other asset managers.

Indeed, in a January 5, 2024, speech, Federal Deposit Insurance Corporation (FDIC) Board Member Jonathan McKernan raised questions about the control exerted by three of the world's largest asset managers. Mr. McKernan stated "[i]f a company acquires direct or indirect control of a bank, that change in control generally is subject to regulatory review under the Bank Holding Company Act or the Change in Bank Control Act."[12] He went on to note that "[t]he Big Three [BlackRock, State Street, and Vanguard] have shown a willingness to use this voting power to drive change. This influence also raises the question whether any of the Big Three has control over any banking organization for purposes of the banking laws."[13]

It is critical we understand whether asset managers are abiding by the conditions the Federal Reserve has set for them and whether the Federal Reserve and other Federal banking regulators are monitoring the asset management industry's activities. To allow an asset manager to acquire up to 25 percent of any class of voting securities in a bank holding company without being deemed to have acquire control, the Federal Reserve set specific ownership and control conditions on asset manager investments in "Regulated Companies," which they may technically be meeting when viewed only in terms of their individual investments.[14] However, public pledges they have made to work in concert with other market players to bring about policy changes (which could impact underwriting and investing among other activities) at their portfolio companies raises questions of whether conditions of your determination letter are being violated. It also raises the question of whether other asset managers who are signatories to these cooperative agreements should be subject to BHC Act, HOLA, or CIBC Act.

To assist the Committee's investigation of this matter, please respond to the following questions in writing as soon as possible, but no later than March 11, 2024:

1. Were you made aware of the aforementioned pledges and the accompanying actions the companies are taking to fulfill them when granting the determination letter?

2. Has either company made you aware after receiving your determination letter that they entered into these agreements and the associated actions required of signatories?

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[12] Jonathan McKernan, Director, Federal Deposit Insurance Corporation, Remarks at the Session on Financial Regulation at the Association of American Law Schools (Jan. 5, 2024).
[13] *Id*.
[14] Letter from Mark Van Der Weide, General Counsel, Board of Governors of the Federal Reserve System to William Sweet, Jr., Skadden Arps, Slate, Meagher, and Flom LLP (Dec. 3,2020) ("Neither BlackRock nor any BlackRock-Advised Entities will directly or indirectly, individually or in the aggregate form…exercise or attempt to exercise controlling influence over the management or policies or any Bank or any of its subsidiaries, attempt to influence…investment decisions or policies…or any similar activities or decisions of and Bank or any of its subsidiaries…or solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of a Bank or any of its subsidiaries…").

3. Does Board staff rely on self-certification by the companies to determine if the passivity requirements stipulated in your determination letter are being met?

4. Does the Federal Reserve Board and/or its staff have an ongoing monitoring process to verify if the companies meet the passivity requirements of the determination letter?

5. Are the above mentioned pledges taken into consideration when determining control for these and other asset managers, notably when they have pledged to work in concert? If not, why?

6. Does the Federal Reserve Board and/or its staff monitor the ongoing activities of the asset management industry to determine if their stewardship engagement triggers requirements under the BHC Act, HOLA, the CIBA Act or any other statute?

7. If there is not an ongoing monitoring program, why not?

8. Does the Federal Reserve Board and/or its staff monitor the ongoing activities of the asset management industry to determine if their proxy voting triggers requirements under the BHC Act, HOLA, the CIBA Act or any other statute?

9. If there is not an ongoing monitoring program, why not?

10. Would taking action, including "implementing stewardship and engagement strategies with a clear escalation and voting policy…for all assets under management" as called for under the NZAM pledge raise questions of control under BHC Act, HOLA or CIBC Act and change your opinion on the determinations you made in your 2019 and 2020 letters? If they do not, why not?

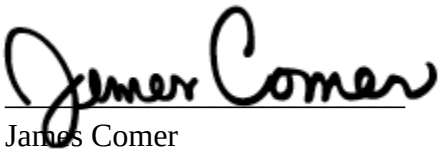
11. Would coordination among asset managers working in concert to be "active owners" as called for by PRI raise control issues under BHC Act, HOLA, or CIBC Act and change the opinion you articulated in your determination letter? And if not, why?

12. Is working in concert to achieve the goals of these agreements inseverable across entities, warrant an aggregation test counting the ownership across signatories whereby a party would meet the ownership threshold by virtue of entering into the agreement, thus exposing all signatories to potentially being subject to the Federal banking laws?

If you have any questions, contact the Committee on Oversight and Accountability Majority staff at 202-225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate, "any matter" at "any time" under House Rule X. Thank you for your attention to this important matter.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability