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Chad Mizelle, Acting Associate Attorney General
The Honorable Abigail Slater, Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Andrew Ferguson, Chairman
The Honorable Melissa Holyoak, Commissioner
The Honorable Mark Meador, Commissioner
Daniel Guarnera, Director of the Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Enforcement Officials:

I am writing to commend you for filing a *successful* statement of interest ("Statement") in *Texas v. Blackrock*,[1] and to respectfully urge further action to ensure large asset managers comply with the Hart-Scott-Rodino Act ("HSR"). Your Statement persuasively explained that under Section 7 of the Clayton Act,[2] "an investment is not 'solely for investment' if an investor has an intent to use stock 'to influence significantly or control management of the target firm.'"[3] The District Court concurred, recognizing the States had plausibly alleged a Section 7 violation and that the "solely for investment" defense was inapplicable. It cited allegations that large asset managers had joined climate initiatives, committed to goals that would reduce the output of coal, made public statements supporting and furthering the goals, and used their shareholder power—via proxy voting and direct engagement—to advance them.[4]

Having been vindicated in court, the DOJ and FTC (collectively, "Antitrust Agencies") must immediately take a hard look at a closely related issue: whether large asset managers are complying with the notice requirement and waiting period under HSR, codified at Section 7A of the Clayton Act. Firms routinely invoke the "solely for the purpose of investment" exemption to bypass these requirements.[5] Yet that exemption requires that the investor "ha[ve] no intention of participating in the formulation, determination, or direction of the basic business decisions of the

[1] *Texas v. Blackrock*, No. 24-cv-437, 2025 WL 2201071 (E.D. Tex. Aug. 1, 2025);
[2] 15 U.S.C. § 18; *see also United States v. EI du Pont de Nemours & Co.*, 353 U.S. 586, 592 (1957).
[3] Statement at 11, filed May 22, 2025, *Texas v. BlackRock Inc.*, Case No. 6:24-cv-437 (E.D. Tex.), Dkt. 99.
[4] *Texas*, 2025 WL 2201071 at *10.
[5] 15 U.S.C. § 18a(c)(9).

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issuer,"[6] and if a person "decides to participate in the management" of an issuer, "[a]ny subsequent acquisitions … would not be exempt."[7]

Ensuring compliance with HSR is particularly important because even though certain asset managers have publicly made changes to their ESG practices, they have also said they are not changing their underlying behavior.[8] In fact, BlackRock expressed "concern[]" in 2021 that company "contact [on] environmental, social and governance ('ESG') and other topics that promote sustainable business practices … may at some point be viewed as inconsistent with the investment-only exemption" under HSR.[9] Yet this concern was apparently not enough to dissuade it and other large asset managers from continuing to pursue their activist agendas. Large asset managers are not above the law, and they must either comply with HSR or conduct themselves such that they fall within an exemption.

The remainder of this letter outlines 1) why HSR does not exempt acquirors who have made ESG commitments to vote or engage for the purpose of changing company business decisions or management policies and 2) why the commitments and actions of multiple large asset managers are squarely covered by HSR's notice requirement and waiting period.

I. Large Asset Managers Must Make HSR Filings Under Section 7A Unless They Make Acquisitions "Solely for the Purpose of Investment"

The plain language of Section 7A of the Clayton Act and the Antitrust Agencies' regulations are clear that the "solely for the purpose of investment" exemption requires that the *sole* purpose of the acquisition must be investment, and a mixed motive does not qualify. The Statement is consistent with this, and it persuasively explains the scope of the analogous exemption under Section 7. In addition, the Antitrust Agencies aggressively police HSR violations, affirmed the 2023 Merger Guidelines, and did not change the analysis with the new premerger notification form.

A. Section 7A's Text, Regulations, and the Statement Show that "Solely for the Purpose of Investment" Does Not Permit Mixed Motives

Section 7A states in part, "[e]xcept as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons … file notification pursuant to rules under subsection (d)(1) and the waiting period

[6] 16 C.F.R. § 801.1(i)(1).
[7] *Id.* § 802.9.
[8] https://www.responsible-investor.com/esg-round-up-blackrock-quits-net-zero-asset-managers-initiative/ (BlackRock's departure from NZAM "doesn't change the way we … manage [our clients'] portfolios.").
[9] https://www.regulations.gov/comment/FTC-2020-0086-0012, at p. 4-5.

described in subsection (b)(1) has expired."[10] Subsection (c), in turn, contains the relevant exemption, but importantly the exemption requires that the acquisitions be "solely for the purpose of investment" and that "the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer."[11]

The regulations are consistent with the narrow scope of this exemption. For example, the definition of "solely for the purpose of investment" states:

Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities *has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer*.

Example: If a person holds stock "solely for the purpose of investment" *and thereafter decides to influence or participate in management of the issuer of that stock*, the stock is no longer held "solely for the purpose of investment."[12]

Similarly, the regulation governing acquisition solely for the purpose of investment states:

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) *if made solely for the purpose of investment* … .

Examples: 1. Suppose … person "A" acquires 6 percent of the voting securities of issuer X, valued in excess of $50 million (as adjusted). If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9). …

3. After the acquisition in example 1, acquiring person "A" decides to participate in the management of issuer X. *Any subsequent acquisitions of X stock by "A" would not be exempt under section 7A(c)(9)*.[13]

Example 3 of the regulation is directly on point. Combined with the definition in 16 C.F.R. § 801.1(i)(1), it is clear that a person falls outside of the exemption not just by "decid[ing] to participate in the management of issuer X" but also by "ha[ving an] intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer" or "decid[ing] to influence or participate in management of the issuer of that stock."

The Statement, when discussing the nearly identically worded exemption in Section 7 of

[10] 15 U.S.C. § 18a(a).
[11] *Id.* § 18a(c)(9).
[12] 16 C.F.R. § 801.1(i)(1) (emphasis added).
[13] *Id.* § 802.9 (emphasis added).

the Clayton Act,[14] makes the important points that applying the investment-only exception will not harm or interfere with passive investing, "solely" means solely, and minority ownership interests and influence of businesses can trigger the antitrust laws.

First, the Statement disposes of strawman arguments that faithfully applying the text of the exception would preclude "shareholder advocacy for better corporate governance" or prevent "passive fund investing [from] thriv[ing]."[15] The Statement explains that "Section 7 preserves the important role of asset managers while also permitting courts to protect markets from anticompetitive conduct," and asset managers cannot "mask … anticompetitive behavior behind the veil of passive investing and good governance principles."[16] Section 7 does not "give[] bright-line protection to passive minority investors, without subjecting them to further analysis," and conduct that "go[es] beyond governance to matters of business strategy and management" is not exempt.[17] The District Court in *Texas* agreed with this exact point.[18] The Statement also explains that "social justifications proffered for a restraint of trade do not make it any less unlawful."[19]

Second, the Statement correctly construes "solely" to mean solely, and not to cover mixed motives.[20] It notes the "purpose" of "'seek[ing] to earn a financial return from dividends or appreciation, rather than to control the company's day-to-day affairs' … [when] acquiring stock"[21] "is not sufficient for investors to avoid liability 'where an apparently legitimate investment motive *is accompanied by another motive*.'"[22] The Statement correctly concludes that "investments made to leverage holdings in competitors to harm the competitive process by shaping market-wide behavior are not solely for investment."[23] Another critical insight of the Statement is that "an investment is not 'solely for investment' if an investor has an intent to use stock 'to influence significantly or control management of the target firm.'"[24]

Third, the Statement—consistent with the 2023 Merger Guidelines—makes clear that minority ownership does not exempt a person from the antitrust laws, which apply to influencing business activities. It notes that "*Du Pont* held that the acquisition of a minority stake may violate Section 7. The size of the ownership interest need only be sufficient to exert an anticompetitive

[14] *See* 15 U.S.C. § 18 ("This section shall not apply to persons purchasing such stock solely for investment ….").
[15] Statement at 1, 7-8.
[16] *Id.* at 7-8.
[17] *Id.*
[18] *Texas*, 2025 WL 2201071 at *10.
[19] Statement at 3 (quoting *Superior Court Trial Lawyers Ass'n*, 493 U.S. at 424) (cleaned up).
[20] *See id.* at 10.
[21] *Id.* (quoting Joint Mot. to Dismiss at 25, *Texas v. BlackRock*).
[22] *Id.* (emphasis added) (citing Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law*, ¶ 1204d (4th ed. 2016) (collecting cases); *du Pont*, 353 U.S. at 601-02).
[23] *Id.* at 11.
[24] *Id.* (citing *Crane Co. v. Harsco Corp.*, 509 F. Supp. 115, 122-23 (D. Del. 1981); *In re Golden Grain Macaroni Co.*, 78 F.T.C. 63, 73 (F.T.C. Jan 18, 1971)).

influence on the acquired company's decision-making."[25] "When a partial owner can leverage its holding to control or influence business decisions at competing businesses, the relationship can substantially lessen competition.[26]

The principles articulated in the Statement apply to asset managers' obligations to submit notices for pre-merger review under Section 7A given its nearly-identical language.

B. The Antitrust Agencies Vigorously Enforce Compliance with the HSR Notification Requirements, and the 2024 Amendment to the Premerger Notification Forms Do Not Affect the Analysis

Investigating large asset managers for HSR violations is also consistent with the Antitrust Agencies' actions to ensure that persons who are required to file under HSR comply with their legal duties.[27] This is even more important when the Antitrust Agencies are facing funding and other resource constraints—the entire point of HSR premerger notifications is to give the agencies the tools to review transactions on the front end, rather than have to embark on the costly and difficult path of unwinding anticompetitive acquisitions after the fact.

In September 2024, the FTC voted unanimously to approve a $1 million fine for Ryan Cohen, the managing partner of RC Ventures and Chairman and CEO of GameStop.[28] As the FTC explained, Cohen had acquired 562,000 Wells Fargo voting securities, and the acquisition was not exempt under the investment-only exception.[29] "Cohen intended to influence Wells Fargo's business decisions as evidenced by Cohen's emails when he advocated for a board seat. After acquiring the shares, Cohen proceeded to have periodic communications with Wells Fargo's leadership regarding suggestions to improve Wells Fargo's business and to advocate for a potential board seat, according to the complaint."[30] In contrast to Cohen, BlackRock is beneficial owner of 265 million shares.[31] This shows the immense power that large asset managers have over companies (dwarfing the influence of a person like Cohen) and the importance of HSR enforcement if large asset managers violate the law.

In addition, nothing in the November 2024 amendments to the Premerger Notification

[25] *Id.* at 14 (citing *du Pont*, 353 U.S. at 592).
[26] *Id.* (citing *United States v. Dairy Farmers of Am.*, 426 F.3d 850, 862 (6th Cir. 2005); *2023 Merger Guidelines* § 2.11).
[27] *See generally* https://www.ftc.gov/enforcement/competition-matters/2015/08/investment-only-means-just
[28] https://www.ftc.gov/news-events/news/press-releases/2024/09/gamestop-ceo-ryan-cohen-pay-nearly-1-million-penalty-settle-antitrust-law-violation.
[29] *Id.*
[30] *Id.*
[31] https://www.wellsfargo.com/assets/pdf/about/investor-relations/annual-reports/2025-proxy-statement.pdf at p. 126.

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Forms and Instructions changes the applicable regulations related to the "solely for the purpose of investment" exemption under HSR or the "solely for investment" exception in Section 7.[32] The only mention of either exception is to note the existence of the Section 7 exception.[33]

II. Large Asset Managers Have Made Acquisitions with the Mixed Motive of Pressuring Issuers to Align with Net Zero by 2050

Under a straightforward application of the text of Section 7A, the applicable regulations, and the principles articulated in the Statement, a person that commits to use assets to influence business decisions of issuers and then continues to acquire shares is acting with a mixed motive that removes the person from the "solely for the purpose of investment" exemption. This conclusion is consistent with the recent ruling in *Texas*.[34]

Here, the evidence is overwhelming that mixed motive acquisitions by large asset managers occur: 1) the asset managers said so expressly by making commitments to various organizations; 2) a House Judiciary investigation uncovered internal documents that show signatories to organizations were expected to change their engagement and voting patterns after joining; 3) consistent with this, there is substantial evidence of votes on shareholder proposals and board of director elections that show a mixed motive; and 4) a federal court in Texas found the presence of mixed motives. This is compelling evidence, and the Antitrust Agencies must investigate HSR violations and then take appropriate enforcement action.

A. Large Asset Managers Made Express Commitments to Pressure Businesses to Adopt Net Zero by 2050, and These Commitments Applied to All Assets Under Management

Large asset managers have been operating with mixed motives since at least the time they joined climate organizations, expressly committed to use all assets under management to align companies with net zero by 2050, and voted and engaged accordingly. Several organizations provide clear evidence of these mixed motives, including Climate Action 100+ ("CA100+"); the Net Zero Asset Managers Initiative ("NZAM"); the United Nations Principles of Responsible Investments ("UNPRI"); and Ceres, Inc.

BlackRock and State Street were both members of CA100+. CA100+ "established a common high-level agenda for [focus] company engagement to achieve clear commitments to cut emissions."[35] CA100+'s commitment required signatories (*e.g.*, asset managers) to push the focus companies in which they own shares to "take action to reduce greenhouse gas [GHG] emissions,"[36]

[32] 89 Fed. Reg. 89216 (Nov. 12, 2024), https://www.govinfo.gov/content/pkg/FR-2024-11-12/pdf/2024-25024.pdf.
[33] *Id.* at 89222 n.39.
[34] *Texas*, 2025 WL 2201071 at *11-*12.
[35] https://web.archive.org/web/20230330063348/https://www.climateaction100.org/approach/the-three-asks/.
[36] *Id.*

and to align their actions with the Paris Agreement and pathways to net zero GHG emissions.[37]

BlackRock and State Street also joined NZAM. NZAM stated that "[o]ur industry's ability to drive the transition to net zero is extremely powerful."[38] NZAM membership requires a commitment to "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."[39] Notably, this NZAM commitment is for "all assets under management."[40] State Street remains a member of the group, and BlackRock was also a member of NZAM for nearly four years. Despite its formal departure from NZAM, BlackRock remains faithful to the organization's policies. BlackRock expressly stated that its "departure [from NZAM] doesn't change the way ... we manage [clients'] portfolios."[41]

BlackRock and State Street also are current members of UNPRI, which requires them to "be active owners and incorporate ESG issues into [their] ownership policies and practices."[42] As UNPRI members, BlackRock and State Street must commit to "incorporat[ing] ESG issues into investment analysis and decision-making processes."[43] Importantly, this mandatory commitment does not contain any exception for passively managed funds. BlackRock and State Street are also members of Ceres, which, as explained in the next section, provides additional compelling evidence of a mixed motive.

All of these memberships expressly include mixed motives. Simply put, "this wolf comes as a wolf." *Morrison v. Olson*, 487 US 654, 699 (1988) (Scalia, J., dissenting).

B. A House Judiciary Investigation Uncovered Internal Documents Showing that Signatories to Organizations Were Expected to Change Their Engagement and Voting Patterns as Part of Joining

A recent investigation by the House Judiciary Committee uncovered documents that show large asset managers *understood* that joining organizations described in Part A, *supra*, involved changing voting and engagement behavior specifically for environmental reasons. This is the very definition of mixed motives.

The investigation demonstrated that the effort to force the asset managers to join Climate

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[37] https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf.
[38] https://web.archive.org/web/20240101081835/https://www.netzeroassetmanagers.org/faq/.
[39] https://web.archive.org/web/20250104092852/https://www.netzeroassetmanagers.org/commitment/.
[40] *Id.*
[41] https://www.esgtoday.com/blackrock-exits-net-zero-coalition-says-move-wont-change-how-it-manages-investments/.
[42] https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment (emphasis added).
[43] *Id.*

Action 100+ "included the climate cartel threatening BlackRock and State Street Global Advisors to join Climate Action 100+ even after both asset managers expressed concerns that the initiative's 'collusion' and 'collaborative engagement' may violate federal law."[44] In fact, these organizations were designed to use asset-owner influence over asset managers to influence company behavior. Ceres's membership includes many large asset-owners, and a Vice President at Ceres emailed "'that BlackRock [would] be held accountable for [its] votes on shareholder resolutions'—and that if its voting 'record [did] not dramatically change, Ceres [was in] a position to organize asset owner partners to call BlackRock to account.'"[45] And the CA100+ Global Steering Committee meeting minutes from shortly after BlackRock joined document that "BlackRock understands that by joining CA100+, it is expected to shift its voting to support climate resolutions."[46] These threats and understandings indicate a clear basis for a mixed motive—avoiding being penalized by Ceres's members and partners.

Consistent with this, BlackRock shifted its voting patterns and shareholder engagements in line with its CA100+ commitment, despite BlackRock's public promise that it would "independently" determine how to "vote proxies" and "prioritize engagements."[47] In 2019-20, BlackRock supported 6% of environmental proposals.[48] In 2020-21, it supported 64% of such proposals, which represents a *ten-fold increase*.[49] Similarly, in 2019-20, BlackRock voted against 55 directors on climate-related issues, but in 2020-21 it voted against 255 directors, which represents a *five-fold increase*.[50]

The investigation further revealed that State Street also was a primary target of CA100+.[51] And this targeting shows that signatories to these initiatives were acting with mixed motives. State

[44] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-13-Sustainability-Shakedown-Report.pdf (p. ii, citing CERES1561 and BLK-HJC-100207).
[45] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%2C%20Social%2C%20and%20Governance%20(ESG)%20Investing.pdf at p. 6 & n.80.
[46] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Appendix_Full.pdf (CERES0001262, p. 460).
[47] https://www.blackrock.com/corporate/literature/publication/our-participation-in-climate-action-100.pdf.
[48] https://web.archive.org/web/20201102062130/https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf (p. 17).
[49] https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf (p. 15).
[50] *Compare* https://web.archive.org/web/20201102062130/https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf (p. 13) *with* https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf (p. 15).
[51] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-13-Sustainability-Shakedown-Report.pdf.

Street previously had cautioned that activists' objectives may differ from shareholder value,[52] but after joining, fell in line and was conducting hundreds of ESG engagements with companies each quarter.[53]

The findings of this congressional investigation make it even clearer that BlackRock, State Street, and other large asset managers adopted a mixed motive to use their proxy voting power and their shareholder engagements for the mixed motive of achieving the environmental goals of activist asset owners, rather than focusing solely on financial returns. unrelated to financial returns and the best interests of their clients.

C. Votes on Shareholder Proposals and Board of Director Nominees Also Show a Mixed Motive

On top of the express commitments and internal documents that provide clear evidence of a mixed motive, large asset managers also participated in many shareholder votes and engagements that show that they were operating with a mixed motive—often because they expressly provided these rationales when explaining their votes.

Some of the clearest examples of mixed motives involve BlackRock and State Street casting votes on boards of directors to pressure companies to set emissions targets aligned with net zero. In 2021, for example, BlackRock and State Street helped lead the vote to install directors chosen by climate activists onto Exxon's board, helping to kickoff the "Exxon effect," which aimed to pressure directors at other companies to embrace net zero.[54] BlackRock stated that its vote was based on "Exxon's failure to have clear, long-term greenhouse gas reduction targets."[55] The role of BlackRock and State Street in the Exxon effect is consistent with State Street's admission that "[v]oting against company directors is 'the most effective tool we have'" and is "much more powerful" than voting for shareholder proposals.[56]All of these actions are evidence of mixed motives.

Other director votes provide further confirmation of mixed motives. For example, BlackRock voted against the re-election of the chair of the board of directors at Transdigm, a producer of aircraft components, because of a failure "to adopt quantitative greenhouse gas

[52] https://corpgov.law.harvard.edu/2016/10/17/protecting-the-interests-of-long-term-shareholders-in-activist-engagements/.
[53] https://corpgov.law.harvard.edu/2022/05/19/stewardship-activity-report.
[54] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-13-Sustainability-Shakedown-Report.pdf (p. ii, v).
[55] https://perma.cc/F4T5-7Z4A at 11.
[56] https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2024-12/2024-12-13-Sustainability-Shakedown-Report.pdf (p. 23 (citing SSGA-HJC.424879)).

emissions goals."[57] BlackRock also voted against all directors up for election at Whitehaven Coal because the company's disclosures did not "include GHG reductions targets or alignment with a global aspiration of net zero GHG emissions by 2050."[58] Voting against company directors at a coal company to force alignment with net zero is another clear example of a mixed motive.

These types of votes by large asset mangers continue to the present. BlackRock recently reported that in 2024 it did not support "127 proposals at 97 companies globally" based on BlackRock's desire to require "board oversight of climate-related risks," which in plain language means forcing companies to comply with BlackRock's net-zero agenda.[59]

BlackRock also cast shareholder votes at energy companies to pressure the companies to set emissions targets aligned with net zero. In 2024, a shareholder proposal sought to force Berkshire Hathway Energy (BHE), a natural gas plant operator, to disclose greenhouse gas emissions and net-zero progress.[60] In opposition to the recommendation of BHE management, BlackRock and State Street voted to force BHE to report on its progress even without any government-imposed reporting requirements.[61] BlackRock also supported a shareholder proposal in 2023 regarding emission targets for NewMarket Corporation "request[ing that] the company … publish their GHG emissions, and set short-, medium- and long-term emission reduction targets to align business activities with net zero emissions by 2050 in line with the Paris Climate Agreement."[62] BlackRock also repeatedly voted to pressure large U.S. Companies including Chevron Corporation to align their lobbying with the carbon-reduction goals of the Paris Agreement.[63]

In 2024, BlackRock and State Street also voted to force companies to self-impose emissions-reduction targets that would harm critical American industries such as agriculture and energy production. For example, BlackRock and State Street voted in favor of a proposal to require Jack in the Box to set "short-, medium and long-term goals for reducing its emissions."[64] Likewise, BlackRock and State Street voted to require Wingstop to set "short-, medium- and long-term targets for measurably reducing" GHG emissions and to "report annually on its progress toward

[57] https://perma.cc/F4T5-7Z4A.
[58] https://perma.cc/JBC8-C9RB.
[59] *See* page 77, https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf.
[60] https://www.sec.gov/ix?doc=/Archives/edgar/data/1067983/000119312524069107/d512828ddef14a.htm (Proposal 3).
[61] *See* https://web.archive.org/web/20241227165751/https://www.blackrock.com/corporate/literature/publication/2024-investment-stewardship-voting-spotlight.pdf (p. 57).
[62] This information, which relates to proposal 6 for NewMarket's 4/27/2023 annual meeting, is no longer easily accessible, but this allegation is also contained in paragraph 205 of the Complaint in *Texas v. BlackRock*.
[63] *See* Complaint, *Texas v. BlackRock* at ¶ 212.
[64] https://www.sec.gov/ix?doc=/Archives/edgar/data/807882/000114036124004276/ny20010224x1_def14a.htm (Proposal 4).

those targets."[65] BlackRock and State Street also voted to force Denny's to "disclose its current greenhouse gas ('GHG') emissions" and set "targets for further reducing its emissions."[66] BlackRock also voted in favor of a 2024 shareholder proposal to require Cracker Barrel to establish and disclose greenhouse gas (GHG) emissions targets and regularly disclose its progress against such targets.[67] Specifically, this proposal sought to require Cracker Barrel to "disclose any targets it has for reducing its greenhouse gas emissions that are measurable and timebound — or, if no such targets exist, to establish (and publish) them" and to thereafter "regularly disclose[]" progress against such targets.[68] There is no indication that requiring such targets is in the financial interest of Cracker Barrel shareholders.

Moreover, requiring America's farmers and ranchers to adopt net zero would be nothing short of disastrous. For example, reaching net zero in agriculture would require cutting U.S. beef consumption in half,[69] which is clearly an activist goal not motivated by maximizing the financial returns of shareholders. These votes to impose emissions targets are all clear evidence of mixed motives.

Large asset managers similarly used the power of engagements to pursue non-financial objectives. A prime example is BlackRock's engagement with Total Energies. BlackRock in 2021 intensified engagement "to encourage the company to pursue more ambitious greenhouse gas (GHG) emissions reduction targets." Total Energies eventually issued a joint statement with CA100+ members announcing "more aggressive 2020 targets." Similarly, beginning in 2021, State Street announced a "targeted engagement campaign with the most significant emitters in our portfolio to encourage disclosures aligned with our expectations for climate transition plans" and that "[i]n 2023, [it] will hold companies and directors accountable for failing to meet these expectations."[70]

D. Consistent with All of the Foregoing, the Federal Court in *Spence v. American Airlines* Found that BlackRock Openly Acted with Mixed Motives

Finally, a federal court ruled in *Spence v. American Airlines, Inc.* after a bench trial that BlackRock acted with mixed motives. It found that American Airlines and key employees

[65] https://www.sec.gov/ix?doc=/Archives/edgar/data/1636222/000119312524086632/d642378ddef14a.htm (Proposal 6).
[66] https://s29.q4cdn.com/169433746/files/doc_financials/2023/ar/DENN-2024-Notice-of-Annual-Meeting-Proxy-Statement.pdf (emphasis omitted) (Proposal 4).
[67] Page 78, https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf; Page 85, https://www.sec.gov/Archives/edgar/data/1067294/000110465924107236/tm2423783d8_defc14a.htm#tP5SP.
[68] Page 85, https://www.sec.gov/Archives/edgar/data/1067294/000110465924107236/tm2423783d8_defc14a.htm#tP5SP.
[69] https://www.wri.org/insights/6-pressing-questions-about-beef-and-climate-change-answered.
[70] Page 46, https://web.archive.org/web/20220917192703/https://www.statestreet.com/content/dam/statestreet/documents/esg/SSC-ESG-2021-Final-Full.pdf.

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breached their duty of loyalty by offering BlackRock funds while "doing nothing to ensure BlackRock acted in the best financial interests of the Plan," despite public evidence that BlackRock was pursuing ESG investment strategies instead.[71] Notably, the court highlighted BlackRock's published proxy voting and stewardship policies that require companies to disclose a plan for aligning their business model with net zero.[72] And the court rejected BlackRock's claims that ESG investing was based on financial considerations, finding that although "BlackRock couched its ESG investing in language that superficially pledged allegiance to an economic interest[,] BlackRock never gave more than lip service to show *how* its actions were actually economically advantageous to its clients."[73]

The court's reasoning, which applies with equal force to State Street and other large asset managers that are members in the same climate organizations, is compelling evidence that asset managers have been acting with mixed motives and do not qualify for the "solely for the purpose of investment" exception.

Conclusion

Your Statement provided a well-reasoned interpretation of Section 7 of the Clayton Act, and it was adopted by the Court in *Texas*. We respectfully urge you to apply that very same analysis to the closely related context of Section 7A of the Clayton Act and to take appropriate investigative and enforcement action.

Sincerely,

Will Hild

Will Hild
Executive Director

DEFENDING CONSUMERS

[71] *Spence v. Am. Airlines, Inc.*, No. 4:23-CV-00552-O, 2025 WL 225127, at *29 (N.D. Tex. Jan. 10, 2025).
[72] *Id.* at *15.
[73] *Id.* at *17 (emphasis in original).