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Launch of State Alliance Against "ESG Investing"

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On March 16, 2023 the Republican governors of 19 states **announced an alliance** led by Florida Governor Ron DeSantis, to "push back against President Biden's environmental, social, corporate governance (ESG) agenda that is destabilizing the American economy and the global financial system." In their **joint statement**, the 19 state governors explained their intention to "work together and leverage [their] state pension funds to force change in how major asset managers invest the money of hardworking Americans, ensuring corporations are focused on maximizing shareholder value, rather than the proliferation of woke ideology." The statement references the Department of Labor Rule that permits retirement plan fiduciaries to consider ESG-related factors in their decision-making and **President Biden's intention** to veto a congressional measure to repeal the rule.

The states that make up the alliance are: Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

The governors have agreed to "lead state-level efforts", which include:

1. blocking the use of ESG in all investment decisions at state and local level;
2. eliminating the consideration of ESG factors by state and local governments when issuing bonds;
3. prohibiting state fund managers from considering ESG factors when investing taxpayer funds;
4. banning the financial sector from considering "Social Credit Scores" in banking and lending; and

5. stopping financial institutions from discriminating against customers for religious, political or social beliefs including “owning a firearm, securing the border, or increasing . . . energy independence”.

Taking The Temperature: The Department of Labor Rule permits, but critically does not compel, fund managers to take ESG-related considerations into account in making investment decisions. Asset managers have fiduciary obligations to consider all risk factors and other relevant information, including ESG-related issues, that are material to investment decisions and analysis. As we have previously discussed, it is the view of many in the financial sector that considering ESG factors is consistent with a fund managers’ fiduciary duties to its investors and that environmental impact should be assessed like any other material risk.

However, it could be construed as indicative of the current politicized situation in the U.S. that BlackRock CEO Larry Fink’s annual letter to investors adopts a relatively more restrained stance (relative, for instance, to his prior year’s letter) toward climate and other sustainability issues as a matter of investment risk. In last year’s letter, he now famously stated that “stakeholder capitalism is not about politics. It is not a social or ideological agenda. It is not ‘woke.’ It is capitalism, driven by mutually beneficial relationships between you and the employees, customers, suppliers, and communities your company relies on to prosper. This is the power of capitalism.” This year, he wrote that “it is for governments to make policy ... not for companies ... to be the environmental police.” On the other hand, Blackrock’s consistent publicly stated view over the years that material climate risk had to be taken into account by asset managers, and that issuers needed to provide more thorough and accurate disclosure in order for managers to make investment decisions, elevated the issue to the point where it is now accepted wisdom on the part of large swaths of the global economy. Viewed that way, BlackRock may deem it appropriate to let others now take the lead, including legislatures and regulators.