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Connecting Climate Change and the Law

Investors Accuse Large Asset Manager of Not Adequately Addressing Climate Risk

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By Sara Bussiere
Special Counsel | Global Litigation

By Carl Hey
Associate | Real Estate

More than 1,400 individual investors have **signed a letter** asserting that a large U.S.-based asset manager is violating its fiduciary duty to mitigate climate-related investment risks.

The Letter asserts that Vanguard is:

- violating its duty of care by falling behind “prudent investors acting in a like capacity.” The investors cite as an example their contention that “Vanguard’s peers, BlackRock and State Street,” are more active in casting proxies consistent with their climate expectations and, unlike Vanguard, have joined industry coalitions like Climate Action, whereas Vanguard recently withdrew from the Net Zero Asset Managers initiative.
- violating its duty of loyalty by withdrawing from NZAM. According to the investors, Vanguard took this action in its own interest in response to political pressure about such industry climate collaborations to the detriment of Vanguard’s clients.

The Letter closes by demanding that Vanguard release “a comprehensive plan outlining concrete steps the company will take to address climate risk,” which should include adopting “investment stewardship guidelines that prioritize decarbonization in line with a 1.5°C pathway,” articulating the “proxy voting consequences for companies that fail to meet” Vanguard’s stewardship guidelines, and applying “rigorous climate risk criteria and analysis across its entire portfolio.”

Taking the Temperature: We have written extensively on the challenges confronting asset managers as a result of issues stemming from climate change. For years industry

participants have led the call for greater transparency on the part of issuers in terms of addressing climate-related risks and opportunities, both to permit asset managers to make informed investment decisions and to report on the sustainability characteristics of their investment portfolios. That, in turn, at least in part has led to a "backlash" on the part of mostly Republican-led U.S. state governments to pass laws aimed at financial institutions that do business with these states, principally by requiring the state treasurer to maintain a list of financial institutions that "boycott" energy companies and mandating that state finance officials divest assets invested with, or exclude from municipal underwriting syndicates, firms that remain on the list. At the same time, financial industry climate collaborations have come under fire as potentially violative of antitrust laws, and we previously reported on Vanguard's decision to withdraw from the NZAM, albeit not on expressed concerns around antitrust liability. In the UK, in contrast, the Competition Markets Authority has issued a proposed rule that would provide guidance on the application of UK competition law to agreements between or among competitors relating to "environmental sustainability agreements," with the goal being to establish an analytical framework that would constitute a "more permissive approach" to competitor agreements aimed at combating or mitigating climate change. Bank shareholders, investors, and climate advocacy groups also are in the mix, with, for example, shareholder proposals having been submitted by New York City Comptroller and pension funds to four global banks seeking certain climate-related disclosure, NGOs writing to the CEOs and board chairs of five major European banks "urging them to stop directly financing new oil and gas fields by the end of this year," and three climate advocacy groups filing a lawsuit alleging that a global financial institution violated the French Duty of Vigilance Act.