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Investing: Financial Institutions Continue to Navigate State ESG Views

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Investing

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Banks continue to navigate rough waters in dealing with certain state finance officials over positions on climate. As we have **reported**, in August approximately nine financial institutions were included on a list, mandated under state law to be complied with by the Texas comptroller, of "Financial Companies that boycott energy companies." Last week, at least some of these firms petitioned to be removed from the list, and thereby relieved of the prohibitions on transacting business with the state that result from being included. The financial firms contend, among other things, that they should never have been on the list in the first place because they never stopped doing, and continue to do, business with energy companies. Just days later, Florida's Chief Financial Officer Jimmy Patronis **announced** that the state was withdrawing approximately $2 billion from funds managed by BlackRock, $1.43 billion in long-term securities and $600 million in overnight investments, by 2023. Patronis cited concerns over BlackRock's "ESG standards" and wanting "to get the best returns possible for taxpayers" as reasons for the withdrawal. A BlackRock spokesperson said that the asset manager was "surprised" by the announcement because Patronis and his staff had not previously raised any performance concerns with BlackRock. This week, BlackRock was also subpoenaed by the Texas Senate Committee on State Affairs seeking documents regarding its ESG practices and requesting testimony at a December 15 hearing (following August letters from the Committee to BlackRock and three other asset managers requesting documents and testimony relating to their investment practices). BlackRock has recently appointed Mark McCombe as Vice Chairman to focus on "BlackRock's story to more stakeholders across the US, specifically at the state level."

Taking the Temperature: There is no shortage of discussion regarding how climate change and other ESG considerations increasingly have become politicized. On the other side of the ledger, Attorneys General from sixteen states and the District of Columbia recently wrote to the chairs and ranking members of certain Senate and House Committees expressing concern over "efforts to interfere with financial institutions'

ability to make sound investment decisions on behalf of hardworking Americans," and observing that investment managers' fiduciary duties required appropriate consideration of ESG factors. On November 22, the Department of Labor finalized a rule clarifying that retirement plan fiduciaries may consider ESG factors when selecting investments and exercising shareholder rights. As this debate continues, asset managers are left to tread between these two camps and at the same time discharge their fiduciary duties to clients both in terms of investment selection and monitoring and disclosure.