

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-6906
judiciary.house.gov

August 1, 2023

Mr. Kevin Cameron
Executive Chairman and Co-Founder
Glass, Lewis & Co.
255 California Street, Suite 1100
San Francisco, CA 94111

Dear Mr. Cameron:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Glass, Lewis & Co. (Glass Lewis) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” corporations and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Glass Lewis to produce relevant documents and information.

Glass Lewis is the world’s second-largest proxy advisory firm, with contractual relationships with mutual funds controlling \$23.6 trillion in assets and at least a 44% market share as of 2021.² Together with Institutional Shareholder Services Inc., Glass Lewis forms half of the duopoly that controls a combined 91% of the market for proxy advisor services.³

Glass Lewis appears to have colluded with institutional investors to force American corporations to “decarbonize” their assets and reduce their emissions to net zero. “Glass Lewis believes it is important for companies to effectively oversee and manage material environmental, social, and governance (ESG) issues,” and that climate change “should be addressed and considered by companies in every industry.”⁴ Accordingly, Glass Lewis recommends voting against incumbent directors at “companies identified by groups including Climate Action 100+” unless the company “provide[s] clear and comprehensive . . . climate-related disclosures,” including of “the impact of a lower carbon future on the company’s operations,” and implements

¹ See generally Rules of the House of Representatives R. X (2023).

² Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced* 10, USC MARSHALL SCHOOL OF BUSINESS RESEARCH PAPER (June 8, 2023).

³ See *id.* at i, 10.

⁴ GLASS LEWIS, ENVIRONMENTAL, SOCIAL & GOVERNANCE (“ESG”) INITIATIVES 1–2 (2020).

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“explicit and clearly defined oversight responsibilities for climate-related issues.”⁵ Climate Action 100+, in turn, “work[s] with the companies in which [its members] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”⁶

Reaching net zero would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁷ 94% for oil, and 86% for fossil fuels overall.⁸ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”⁹ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹⁰ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹¹ Horizontal output restrictions are per se illegal,¹² but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹³ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁴ This holds true whether or not there is “an effect on prices”¹⁵ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁶ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁷

Accordingly, to help the Committee better understand Glass Lewis’s role in entering into agreements to “decarbonize” corporations and reduce emissions to net zero, please produce, for the period from December 1, 2016, to the present:

⁵ GLASS LEWIS, 2023 POLICY GUIDELINES 31 (2022).

⁶ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

⁷ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁸ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 7 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

⁹ INTERNATIONAL ENERGY AGENCY, *supra* note 7.

¹⁰ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹¹ See 15 U.S.C. § 1.

¹² See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹³ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁴ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁵ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁶ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁷ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

1. All documents and communications referring or relating to the need for Glass Lewis to advance decarbonization and net zero emissions goals;
2. All documents and communications referring or relating to how Glass Lewis developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM);
3. All documents and communications referring or relating to how Glass Lewis and other proxy advisors can or should advance decarbonization and net zero emissions goals, including but not limited to through sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
4. All documents and communications referring or relating to how stockholder engagement service providers, including but not limited to As You Sow, Seventh Generation Interfaith, and the Shareholder Associate for Research & Education, can or should advance decarbonization and net zero emissions goals, including but not limited to through direct engagement, sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
5. All documents and communications referring or relating to how asset managers, including but not limited to BlackRock, State Street Global Advisors, Arjuna Capital, and Trillium Asset Management, can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, and sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
6. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Glass Lewis, other proxy advisors, asset managers, stockholder engagement service providers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
7. All documents and communications referring or relating to how Glass Lewis's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Mr. Kevin Cameron
August 1, 2023
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Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.


Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

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August 1, 2023

Mr. Christopher James
Managing Partner and Chief Investment Officer
Engine No. 1 LP
710 Sansome Street
San Francisco, CA 94111

Ms. Jennifer Grancio
Chief Executive Officer
Engine No. 1 LP
710 Sansome Street
San Francisco, CA 94111

Dear Mr. James and Ms. Grancio:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Engine No. 1 LP (Engine No. 1) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” its assets under management and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Engine No. 1 to produce relevant documents and information.

Engine No. 1 is an asset manager that seeks to “measure the investment made by companies in their employees, communities, customers and the environment, including through the use of financial, operational, and environmental, social and governance (‘ESG’) metrics,” and “intends to seek opportunities to employ its active ownership beliefs.”² As a member of Climate Action 100+, Engine No. 1 appears to have colluded with other institutional investors to “work with the companies in which [they] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”³

¹ See generally Rules of the House of Representatives R. X (2023).

² ENGINE NO. 1, <https://engine1.com/>.

³ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

These collusive agreements to “decarbonize” and reduce emissions to net zero by 2050 would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁴ 94% for oil, and 86% for fossil fuels overall.⁵ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”⁶ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.⁷ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.⁸ Horizontal output restrictions are per se illegal,⁹ but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹⁰ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹¹ This holds true whether or not there is “an effect on prices”¹² because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹³ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁴

Accordingly, to help the Committee better understand Engine No. 1’s role in entering into agreements to “decarbonize” assets under management and reduce emissions to net zero, please produce, for the period from January 1, 2020, to the present:

1. All documents and communications referring or relating to the need for Engine No. 1 to advance decarbonization and net zero emissions goals, including Engine No. 1’s decision to join Climate Action 100+;

⁴ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁵ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 4 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

⁶ INTERNATIONAL ENERGY AGENCY, *supra* note 4.

⁷ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

⁸ See 15 U.S.C. § 1.

⁹ See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹⁰ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹¹ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹² *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹³ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁴ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

2. All documents and communications referring or relating to how Engine No. 1 developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM);
3. All documents and communications referring or relating to how Engine No. 1 and other asset managers can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Engine No. 1, other asset managers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
5. All documents and communications referring or relating to how Engine No. 1's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.


Mr. Christopher James
Ms. Jennifer Grancio
August 1, 2023
Page 4

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

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August 1, 2023

Ms. Natasha Lamb
Managing Partner and Chief Investment Officer
Arjuna Capital, LLC
13 Elm Street
Manchester by the Sea, MA 01944

Mr. Farnum Brown
Managing Partner and Chief Strategist
Arjuna Capital, LLC
353 West Main Street
Durham, NC 27701

Dear Ms. Lamb and Mr. Brown:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Arjuna Capital, LLC (Arjuna) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” its assets under management and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Arjuna to produce relevant documents and information.

Arjuna is an asset manager that “view[s] opportunities through an ESG investing (Environmental, Social, & Governance) lens.”² Specifically, Arjuna “avoid[s]/divest[s] from companies whose products and services are harmful to people and the planet — think tobacco, weapons or fossil fuels”; “invest[s] in companies whose products and services offer solutions to our greatest sustainability challenges — think renewable energy and sustainable agriculture”; and “engage[s] with [its] portfolio companies to improve their ESG performance in service of better investment outcomes.”³

Arjuna is a member of both Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM). Through Climate Action 100+, Arjuna appears to have colluded with other

¹ See generally Rules of the House of Representatives R. X (2023).

² ARJUNA CAPITAL, HOME: OUR APPROACH, <https://arjuna-capital.com/>.

³ *Id.*

institutional investors to “work with the companies in which [they] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”⁴ Similarly, through NZAM, Arjuna appears to collusively have agreed with other asset managers to “[w]ork in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management.”⁵

These collusive agreements to “decarboni[ze]” and reduce emissions to net zero by 2050⁶ would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁷ 94% for oil, and 86% for fossil fuels overall.⁸ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”⁹ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹⁰ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹¹ Horizontal output restrictions are per se illegal,¹² but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹³ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁴ This holds true whether or not there is “an effect on prices”¹⁵ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁶ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁷

⁴ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

⁵ NZAM, COMMITMENT, <https://www.netzeroassetmanagers.org/commitment/>.

⁶ *Id.*

⁷ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁸ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 7 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

⁹ INTERNATIONAL ENERGY AGENCY, *supra* note 7.

¹⁰ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹¹ See 15 U.S.C. § 1.

¹² See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹³ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁴ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁵ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁶ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁷ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

Ms. Natasha Lamb
Mr. Farnum Brown
August 1, 2023
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Accordingly, to help the Committee better understand Arjuna's role in entering into agreements to "decarbonize" assets under management and reduce emissions to net zero, please produce, for the period from January 1, 2019, to the present:

1. All documents and communications referring or relating to the need for Arjuna to advance decarbonization and net zero emissions goals, including Arjuna's decisions to join Climate Action 100+ and NZAM;
2. All documents and communications referring or relating to how Arjuna developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM;
3. All documents and communications referring or relating to how Arjuna and other asset managers can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Arjuna, other asset managers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
5. All documents and communications referring or relating to how Arjuna's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this

Ms. Natasha Lamb
Mr. Farnum Brown
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Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

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August 1, 2023

Mr. Gary Retelny
President and Chief Executive Officer
Institutional Shareholder Services Inc.
702 King Farm Boulevard, Suite 400
Rockville, MD 20850

Dear Mr. Retelny:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Institutional Shareholder Services Inc. (ISS) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” corporations and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask ISS to produce relevant documents and information.

ISS is the world’s largest proxy advisory firm, with contractual relationships with mutual funds controlling \$26.8 trillion in assets and at least a 48% market share as of 2021.² Together with Glass, Lewis & Co., ISS forms half of the duopoly that controls a combined 91% of the market for proxy advisor services.³

ISS appears to have colluded with institutional investors to force American corporations to “decarbonize” their assets and reduce their emissions to net zero. ISS believes that “financial institutions have both the power and the responsibility to prompt a global shift away from carbon-intensive activities and . . . must play a central and catalytic role in the global transition to a low-carbon economy.”⁴ Accordingly, ISS recommends voting against incumbent directors at companies “on the current Climate Action 100+ Focus Group list” unless the company is “aligned with a Net Zero by 2050 trajectory.”⁵ Climate Action 100+, in turn, “work[s] with the

¹ See generally Rules of the House of Representatives R. X (2023).

² Chong Shu, *The Proxy Advisory Industry: Influencing and Being Influenced* 10, USC MARSHALL SCHOOL OF BUSINESS RESEARCH PAPER (June 8, 2023).

³ See *id.* at i, 10.

⁴ EMILY FAITHFULL ET AL., ISS, TACKLING FINANCED EMISSIONS: INTRODUCING SCIENCE-BASED TARGETS FOR FINANCIAL INSTITUTIONS 3 (2020).

⁵ ISS, UNITED STATES CLIMATE PROXY VOTING GUIDELINES 16 (Jan. 17, 2023).

companies in which [its members] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”⁶

Reaching net zero would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁷ 94% for oil, and 86% for fossil fuels overall.⁸ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”⁹ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹⁰ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹¹ Horizontal output restrictions are per se illegal,¹² but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹³ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁴ This holds true whether or not there is “an effect on prices”¹⁵ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁶ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁷

Accordingly, to help the Committee better understand ISS’s role in entering into agreements to “decarbonize” corporations and reduce emissions to net zero, please produce, for the period from December 1, 2016, to the present:

1. All documents and communications referring or relating to the need for ISS to advance decarbonization and net zero emissions goals;

⁶ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

⁷ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁸ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 7 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

⁹ INTERNATIONAL ENERGY AGENCY, *supra* note 7.

¹⁰ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹¹ See 15 U.S.C. § 1.

¹² See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹³ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁴ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁵ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁶ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁷ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

Mr. Gary Retelny

August 1, 2023

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2. All documents and communications referring or relating to how ISS developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM);
3. All documents and communications referring or relating to how ISS and other proxy advisors can or should advance decarbonization and net zero emissions goals, including but not limited to through sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
4. All documents and communications referring or relating to how stockholder engagement service providers, including but not limited to As You Sow, Seventh Generation Interfaith, and the Shareholder Associate for Research & Education, can or should advance decarbonization and net zero emissions goals, including but not limited to through direct engagement, sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
5. All documents and communications referring or relating to how asset managers, including but not limited to BlackRock, State Street Global Advisors, Arjuna Capital, and Trillium Asset Management, can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, and sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
6. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among ISS, other proxy advisors, asset managers, stockholder engagement service providers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
7. All documents and communications referring or relating to how ISS's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.

Mr. Gary Retelny
August 1, 2023
Page 4

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906

judiciary.house.gov

August 1, 2023

Mr. Matthew W. Patsky
Chief Executive Officer and Portfolio Manager
Trillium Asset Management, LLC
Two Financial Center
60 South Street, Suite 1100
Boston, MA 02111

Dear Mr. Patsky:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Trillium Asset Management, LLC (Trillium) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” its assets under management and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Trillium to produce relevant documents and information.

Trillium is an asset manager that believes “[i]t is fundamental to [its] mission and fiduciary responsibility to engage with the companies that [it] hold[s] on behalf of clients to press for positive change on any material ESG concern or opportunity that we believe will help protect or enhance shareholder value.”² Among other things, Trillium “[e]xclude[s] from consideration companies with material involvement in businesses that have higher risk, such as . . . [h]istoric fossil fuel capacity without a demonstrated commitment to a business model designed to succeed in a low-carbon economy”³ because “continuing to finance fossil fuel expansion is incompatible with a net-zero by 2050 scenario.”⁴

Trillium is a member of both Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM). Through Climate Action 100+, Trillium appears to have colluded with other institutional investors to “work with the companies in which [they] invest to . . . deliver[] net

¹ See generally Rules of the House of Representatives R. X (2023).

² TRILLIUM, OUR APPROACH TO ESG, <https://www.trilliuminvest.com/>.

³ TRILLIUM, ESG CRITERIA 2 (Dec. 2021), <https://www.trilliuminvest.com/documents/positive-negative-screens>.

⁴ TRILLIUM, 2021 IMPACT REPORT 27, <https://www.trilliuminvest.com/sustainability-related-disclosures/firm-impact-report-2021>.

zero [greenhouse gas (GHG)] emissions by 2050.”⁵ Similarly, through NZAM, Trillium appears to collusively have agreed with other asset managers to “[w]ork in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management.”⁶

These collusive agreements to “decarboni[ze]” and reduce emissions to net zero by 2050⁷ would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁸ 94% for oil, and 86% for fossil fuels overall.⁹ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”¹⁰ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹¹ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹² Horizontal output restrictions are per se illegal,¹³ but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹⁴ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁵ This holds true whether or not there is “an effect on prices”¹⁶ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁷ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁸

⁵ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

⁶ NZAM, COMMITMENT, <https://www.netzeroassetmanagers.org/commitment/>.

⁷ *Id.*

⁸ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁹ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 8 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

¹⁰ INTERNATIONAL ENERGY AGENCY, *supra* note 8.

¹¹ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹² See 15 U.S.C. § 1.

¹³ See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹⁴ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁵ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁶ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁷ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁸ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

Accordingly, to help the Committee better understand Trillium's role in entering into agreements to "decarbonize" assets under management and reduce emissions to net zero, please produce, for the period from January 1, 2019, to the present:

1. All documents and communications referring or relating to the need for Trillium to advance decarbonization and net zero emissions goals, including Trillium's decisions to join Climate Action 100+ and NZAM;
2. All documents and communications referring or relating to how Trillium developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM;
3. All documents and communications referring or relating to how Trillium and other asset managers can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Trillium, other asset managers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
5. All documents and communications referring or relating to how Trillium's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official

Mr. Matthew W. Patsky

August 1, 2023

Page 4


and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

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COMMITTEE ON THE JUDICIARY

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August 1, 2023

Mr. Mirza Baig
Global Head of ESG Investments
Aviva Investors Americas, LLC
225 West Wacker Drive, Suite 2250
Chicago, IL 60606

Dear Mr. Baig:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because Aviva Investors Americas, LLC (Aviva Investors) is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” its assets under management and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask Aviva Investors to produce relevant documents and information.

Aviva Investors is an asset manager that views “[c]limate change [a]s the biggest systemic challenge of our time”² and believes that “there is clearly a moral imperative to act.”³ Accordingly, Aviva Investors aims “to become a net-zero carbon emissions company by 2040,” “[e]ngag[es] with investee companies to drive alignment of their strategies with a net-zero trajectory,” and “[d]ivest[s] from companies that derive $\geq 5\%$ of their revenue from thermal coal or $\geq 10\%$ of their revenue from arctic oil and oil sands.”⁴

Aviva Investors is a member of both Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM). Through Climate Action 100+, Aviva Investors appears to have colluded with other institutional investors to “work with the companies in which [they] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”⁵ Similarly, through NZAM, Aviva Investors appears to collusively have agreed with other asset managers to “[w]ork

¹ See generally Rules of the House of Representatives R. X (2023).

² AVIVA INVESTORS, THIS IS WHAT CLIMATE ACTION LOOKS LIKE, <https://www.avivainvestors.com/en-us/responsibility/climate-action/>.

³ AVIVA INVESTORS, TRANSLATING CLIMATE AMBITION INTO ACTION, <https://www.avivainvestors.com/en-us/responsibility/our-climate-approach/>.

⁴ *Id.*

⁵ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

in partnership with asset owner clients on decarbonisation goals, consistent with an ambition to reach net zero emissions by 2050 or sooner across all assets under management.”⁶

These collusive agreements to “decarboni[ze]” and reduce emissions to net zero by 2050⁷ would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁸ 94% for oil, and 86% for fossil fuels overall.⁹ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”¹⁰ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.¹¹ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.¹² Horizontal output restrictions are per se illegal,¹³ but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹⁴ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹⁵ This holds true whether or not there is “an effect on prices”¹⁶ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁷ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁸

Accordingly, to help the Committee better understand Aviva Investors’ role in entering into agreements to “decarbonize” assets under management and reduce emissions to net zero, please produce, for the period from December 1, 2016, to the present:

⁶ NZAM, COMMITMENT, <https://www.netzeroassetmanagers.org/commitment/>.

⁷ *Id.*

⁸ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁹ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 8 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

¹⁰ INTERNATIONAL ENERGY AGENCY, *supra* note 8.

¹¹ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policymakers-and-investors-to-align-with-1-5c-pathways/>.

¹² See 15 U.S.C. § 1.

¹³ See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹⁴ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹⁵ *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹⁶ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁷ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁸ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

1. All documents and communications referring or relating to the need for Aviva Investors to advance decarbonization and net zero emissions goals, including Aviva Investors' decisions to join Climate Action 100+ and NZAM;
2. All documents and communications referring or relating to how Aviva Investors developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM;
3. All documents and communications referring or relating to how Aviva Investors and other asset managers can or should advance decarbonization and net zero emissions goals, including but not limited to through setting investment policies, making investment decisions, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among Aviva Investors, other asset managers, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
5. All documents and communications referring or relating to how Aviva Investors' decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

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Mr. Mirza Baig
August 1, 2023
Page 4

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

ONE HUNDRED EIGHTEENTH CONGRESS

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COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

August 1, 2023

Mr. Andrew Behar
Chief Executive Officer
As You Sow
Main Post Office
P.O. Box 751
Berkeley, CA 94701

Dear Mr. Behar:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws.¹ We write because As You Sow is potentially violating U.S. antitrust law by entering into agreements to “decarbonize” corporate assets and reduce emissions to net zero—with potentially harmful effects on Americans’ freedom and economic well-being. Accordingly, to advance our oversight and inform potential legislative reforms, we write to ask As You Sow to produce relevant documents and information.

Stockholder engagement service providers advance progressive environmental, social, and governance (ESG) goals by helping “investors to influence the companies they own on questions of corporate social responsibility” through “proxy voting in favor of shareholder-sponsored resolutions” and “direct engagement of management in investor dialogues.”² Founded in 1992, As You Sow claims to be “the nation’s non-profit leader in shareholder advocacy,” with a “mission . . . to promote environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies.”³

As You Sow is a member of Climate Action 100+. Through Climate Action 100+, As You Sow appears to have colluded with other institutional investors to “work with the companies in which [they] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”⁴

¹ See generally Rules of the House of Representatives R. X (2023).

² INTERFAITH CENTER ON CORPORATE RESPONSIBILITY, SHAREHOLDER ENGAGEMENT AND THE PROXY PROCESS (2021), <https://www.iccr.org/our-approach/shareholder-engagement-101>.

³ AS YOU SOW, ABOUT US, <https://www.asyousow.org/about-us>.

⁴ CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>.

Reaching net zero would require draconian “declines in the use of coal, oil and gas”: as much as 98% for coal,⁵ 94% for oil, and 86% for fossil fuels overall.⁶ This, in turn, would require radical “steps such as halting sales of new internal combustion engine passenger cars by 2035, and phasing out all unabated coal and oil power plants by 2040.”⁷ It also would mean “that no new oil and gas fields must be developed,” choking off investment in these industries.⁸ Such restrictions limit output and increase prices, and deprive businesses of investments and consumers of choices. The potential consequences for American freedom and economic well-being are far-reaching.

Collusive agreements harm competition and consumers and are illegal under the Sherman Act.⁹ Horizontal output restrictions are per se illegal,¹⁰ but “the types of conduct banned” are not limited to “regulat[ing] prices . . . or limit[ing] production.”¹¹ Rather, any “[c]oercive activity that prevents its victims from making free choices between market alternatives is inherently destructive of competitive conditions and may be condemned.”¹² This holds true whether or not there is “an effect on prices”¹³ because “all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”¹⁴ Moreover, as the Supreme Court has explained, “[t]he social justifications proffered for [the] restraint of trade” cannot redeem anticompetitive collusion.¹⁵

Accordingly, to help the Committee better understand As You Sow’s role in entering into agreements to “decarbonize” corporate assets and reduce emissions to net zero, please produce, for the period from December 1, 2016, to the present:

1. All documents and communications referring or relating to the need for As You Sow to advance decarbonization and net zero emissions goals, including As You Sow’s decision to join Climate Action 100+;

⁵ See INTERNATIONAL ENERGY AGENCY, NET ZERO BY 2050: A ROADMAP FOR THE GLOBAL ENERGY SECTOR (May 2021), <https://www.iea.org/reports/net-zero-by-2050>.

⁶ See STATE OF CALIFORNIA, CALIFORNIA RELEASES WORLD’S FIRST PLAN TO ACHIEVE NET ZERO CARBON POLLUTION (Nov. 16, 2022), <https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/>; see also INTERNATIONAL ENERGY AGENCY, *supra* note 5 (Fossil fuels must “fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”).

⁷ INTERNATIONAL ENERGY AGENCY, *supra* note 5.

⁸ NET-ZERO ASSET OWNER ALLIANCE, NET-ZERO ASSET OWNER ALLIANCE SETS EXPECTATIONS FOR OIL AND GAS INVESTMENTS AND CALLS ON COMPANIES AND POLICYMAKERS TO ALIGN WITH 1.5C PATHWAYS (Mar. 29, 2023), <https://www.unepfi.org/industries/net-zero-asset-owner-alliance-outlines-new-guidance-for-oil-and-gas-investments-while-calling-on-companies-policy-makers-and-investors-to-align-with-1-5c-pathways/>.

⁹ See 15 U.S.C. § 1.

¹⁰ See *NCAA v. Bd. of Regents*, 468 U.S. 85, 104 (1984).

¹¹ *Fashion Originators’ Guild of Am. v. FTC*, 312 U.S. 457 (1941).

¹² *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 528 (1983).

¹³ *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959).

¹⁴ *Nat’l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 695 (1978).

¹⁵ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).

2. All documents and communications referring or relating to how As You Sow developed its decarbonization and net zero emissions targets and commitments, including those targets and commitments developed by alliances or initiatives such as Climate Action 100+ and the Net Zero Asset Managers initiative (NZAM);
3. All documents and communications referring or relating to how As You Sow and other stockholder engagement service providers can or should advance decarbonization and net zero emissions goals, including but not limited to through direct engagement, sponsoring, supporting, opposing, or voting for directors and stockholder proposals, and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+ and NZAM;
4. All documents and communications referring or relating to how proxy advisors, including but not limited to Institutional Shareholder Services and Glass Lewis, can or should advance decarbonization and net zero emissions goals, including but not limited to through sponsoring, supporting, opposing, or voting for directors and stockholder proposals;
5. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among As You Sow, asset managers such as BlackRock, State Street Global Advisors, Arjuna Capital, and Trillium Asset Management, proxy advisors such as Institutional Shareholder Services and Glass Lewis, and alliances or initiatives such as Climate Action 100+ and NZAM or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices; and
6. All documents and communications referring or relating to how As You Sow's decarbonization and net zero emissions goals, agreements, and commitments, including those goals, agreements, and commitments developed by alliances or initiatives such as Climate Action 100+ and NZAM, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

Please produce the requested information as soon as possible, but no later than 5:00 p.m. EDT on August 15, 2023.

Furthermore, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this

Mr. Andrew Behar

August 1, 2023

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congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman



Thomas Massie
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and
Antitrust



Dan Bishop
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Lou Correa, Ranking Member
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust