October 24, 2023

Gary Retelny
President and Chief Executive Officer
ISS
1177 Avenue of the Americas, 14th Floor, New York, NY 10036

Dear Gary Retelny,

We, the undersigned state financial officers, have been elected to serve the interests of our constituents and safeguard the well-being of public funds in our states. Those funds may include, among other things, public money affected by your proxy-advisory services—either because you advise state pension or retirement funds directly or because public money is managed by asset-management firms that pay for your proxy advisory services. Because this advice may influence decisions made by those who manage our public money, our fiduciary duties oblige us to examine whether proxy voting advice is prudent, open, honest, and consistent with our public constituents' long-term economic interests.

Summary of Prior Dialogue with ISS

We have written to you on a previous occasion expressing our concerns, (Microsoft Word - ProxyAdvisoryLetter_ISS.docx (utah.gov)). At that time, we expressed a "particular interest" regarding "proxy-voting advice and recommendations related to environmental, social, and political matters, which recently have dominated shareholder proposals," because often "ESG proposals are plainly ancillary to a company's principal business, while others appear flatly contradictory to it." Examples we mentioned at the time included proposals for "social media companies to crack down on 'hate speech,' insurance companies to consider race in underwriting insurance policies, and retailers to take a position on state abortion policy."

In a piece for the Wall Street Journal editorial page, two of us expounded further, explaining that we see ourselves as "the last line of defense against proxies pushing political agendas," and voiced an opposition to asset managers using shareholder dollars to pursue "…nakedly ideological goals". (A Historic Breach of Fiduciary Duty - WSJ)

You responded by reminding us that,

> "ISS does not choose the ballot or agenda items on which it renders advice; ISS does not select the policies and guidelines used in formulating vote recommendations; and ISS does not typically exercise control over clients' voting decisions. It is the client who creates or selects the voting policies and guidelines, consistent with their own fiduciary obligations, and who decides how it votes its proxies, including whether or not to follow a proxy adviser's vote recommendations."

You further concluded by assuring us that you are making decisions without political bias:

> "You might also be interested to know that in 2022, a record year in terms of the number of environmental and social shareholder resolutions on the ballots of S&P500 constituents, ISS' benchmark policy supported just 52 percent of all such shareholder proposals while supporting more than 96 percent of all management resolutions. That is hardly the track record of an advocacy organization "pushing political agendas."
> *06-29-2023-Proxy-Advisory-Firm-Responses-to-May-15-Letters.pdf

We thank you for your response and wish to pursue further dialogue on the matter.

We do acknowledge that "The ISS Benchmark Policy is one voting option our clients can choose." However, the existence of other choices does not erase your obligation to be objective and even-handed politically. In other words, in the quote above you argue against the idea that you are pushing political agendas by citing voting data from your Benchmark Policy. By doing so, you acknowledge that it is proper to use the Benchmark Policy to evaluate whether you are "pushing political agendas". This makes sense because your Benchmark Policy is your recommendation. The fact that clients can go to extra effort and incur extra costs to deviate from it does not change our reasonable expectation that your Benchmark Policy recommendations should be "free of ideological agendas".

Concerns about ISS Objectivity on ESG and Treatment of Proposals by Conservatives

We appreciate that by citing data regarding your percentage support for shareholder proposals, you have made this a data-driven question. However, you did not present adequate data to fully address the issue of political bias. For example, you did not supply the equivalent data for your support for proposals from conservative groups, even though we asked several specific questions about that.

The entirety of Section IV of our questionnaire, "Your Recommendations on Proposals by Specific Proponents" was devoted to questions about support for proposals from conservative groups. There were seven questions in all, and to our knowledge, none of those questions were answered. But to ascertain whether your policy advice was politically even-handed, we need to know not only what your recommendations on predominately pro-ESG shareholder proposals in general were, but also your recommendations on shareholder proposals from conservative ESG skeptics as a basis of comparison.

Accordingly, we have researched those questions ourselves and found no support for proposals from conservative groups in 2023. If you also failed to support proposals from conservative groups last year, then your support for shareholder proposals from liberals is actually higher than 52% and your support for proposals from the conservative groups is 0%. This is hardly reassuring to investors who are concerned about "pushing political agendas".

But in the spirit of open dialogue, we will keep an open mind about good-faith alternate explanations about what appears to be a biased outcome.

One might argue that the proposals from conservative groups are driven by a political agenda, but that other shareholder proposals are not. However, this would not be consistent with the approach you have taken. When you argue the fact that you "supported just 52 percent of all such shareholder proposals" is evidence you are not "pushing political agendas", you implicitly acknowledge that a higher rate of shareholder proposal support would be more political. This is because today, shareholder proposals do tend to be political.

This is obvious even to a casual observer. A high proportion of environmental and social shareholder proposals come from repeat proponents with barely concealed ideological goals: greenhouse gas reductions, racial justice initiatives, access to abortion services, and "congruency" proposals calling out companies for supporting various conservative organizations and politicians.

If one group calls for a study of the risks of using fossil fuels, and another group calls for a study of the risk of *not* using fossil fuels, it is hard to believe that a fair observer would think of the first as neutral and the second as political. Similar pairings include calls for audits of racial diversity and calls for audits of viewpoint diversity. For instance, resolutions calling for racial equity audits which ask whether diversity programs have gone *far enough,* while others may question whether such programs have gone too far, potentially leading to illegal "reverse discrimination." Likewise, calls for risk disclosure arising from corporate support for business associations and conservative politicians should not be seen as politically neutral. Simultaneously, calls for disclosure of charitable contributions to abortion advocates are often seen as political.

We acknowledge your point that fiduciary customers are offered off-the-shelf alternatives to the Benchmark Policy. The various Specialty Policies that you publish are not sufficiently detailed for us to confirm with 100 percent accuracy, but a review of the written guidelines does not indicate that the Climate policy, the Faith-Based Catholic policy, the Taft-Hartely policy, the Socially Responsible, the Sustainability, the Public Pension policy, or the Global Board Aligned policy would have a materially different handling of proposals from conservative groups compared to those from left-of-center groups. Therefore, the availability of alternative Specialty Policies does not appear to address our concerns either.

Any attempt to portray the Catholic specialty policy as evidence that there is a readily available option for religiously conservative investors falls short considering the details of that Specialty Policy. For example, the Catholic policy opposes "anti-social proposals":

> "A number of 'anti-social' shareholder proposals have been filed at companies requesting increased disclosure. While these proposals' requests are very similar to those submitted by shareholder advocates within traditional socially responsible investor circles, the underlying motives for filing the proposals appear to be very different. In addition to charitable contribution

proposals, anti-social proposals addressing climate change, sustainability, and conflicts of interest may be seen at shareholder meetings. Despite implicitly different motivations in some of these proposals, the underlying requests for increased disclosure, in some cases, may be worth shareholder support. Catholic Advisory Services Recommendation:

> ▪ Vote against shareholder proposals that do not seek to ultimately advance the goals of the social investment community."

Catholic-US-Voting-Guidelines.pdf (issgovernance.com)

"Anti-social" is a pejorative catch-all category applying to proposals that deal with issues pertaining to ESG which come from conservative sources and are skeptical towards an ESG approach. The label evinces a prejudicial opposition. Examples of such proposals include attempts to get companies to count the cost of pro-abortion political speech or consider the risks of debanking organizations that promote, for example, religious liberty. The language of the Catholic Specialty policy would default to oppose such proposals, including those inspired by the debanking of the Catholic former United States Ambassador-at-Large for International Religious Freedom, Sam Brownback. Without more detailed disclosure, it would be impossible to confirm that the actual voting pattern followed the written defaults in these cases.

Proxy advisory firm bias toward environmental, social and political proposals submitted by left-leaning organizations and against such proposals submitted by right-leaning organizations is a reasonable concern for those of us who are skeptical about the ESG movement. State Financial Officers Foundation, Derek Kreifels, raised concerns about ISS's relationship with its parent company, quoting from press statements from Deutsche Borse in relation to the acquisition:

> "We at Deutsche Börse are not only committed to supporting the sustainable transformation of our economy with the constant development of our ESG offerings. Reaching net zero climate neutrality by 2025 – 25 years ahead of the official target of the European Union – shows that sustainability is also part of our DNA as a company as we ambitiously lead the way."
> ESG cheerleaders are suddenly pivoting and running for cover | Fox News

This raises concerns about "claims of being objective" regarding ESG. Whether ESG is inherently political is a matter of debate. The phrase itself did originate from a political body, the United Nations, not from the financial industry. But what is not debatable is that it is political now. The last Republican president issued rulemaking to weaken it, and the current Democratic president used his first veto to defend it after Congressional Republicans passed legislation against it on a party-line vote. Congressional hearings show almost perfect partisan divides on the issue. Red States are pursuing policies which tilt anti-ESG while Blue States enact policies pursuing more of it. It is clearly part of a partisan divide. If ISS's pro-ESG alignment was a major source of value in its acquisition, it seems as though extra effort would be needed for it to be objective in a political divide over ESG and to avoid any appearance of bias.

But perhaps it's time to turn the page and move on from debates about past practice and focus on the future. Therefore, we respectfully ask that ISS make Specialty Policies available that address the types of concerns we have raised. Such a policy should be as accessible as the current ESG-oriented policies are, not requiring the extensive extra cost and effort required for the creation of a custom policy.
We would be happy to work with you on the development of such a policy.

We have been informed that you have invited a member of State Financial Officers Foundation's Advisory Committee to participate in your Policy Committee to provide input for the formation of your 2024 Benchmark Policy. We consider that a constructive step forward and urge you to continue to seek input from subject matter experts and members.

We also have been informed that you have modified your policies regarding "access to reproductive health care" proposals, which pressure companies to treat doing business in a state with legal protections for the unborn as a business risk. We commend you for that decision.

The current controversies over ESG and proxy voting are of sufficient importance for us to respectfully request that you make a conscious, determined effort to ensure that groups, which are new to the ESG and proxy voting space, are well represented. We commend you for taking steps in that direction, including engaging in this dialogue.

Debanking as an Opportunity for Constructive Dialogue

In the spirit of looking forward rather than backward, a good place to start is the issue of debanking Christian and conservative organizations, which is likely to be a topic addressed by a growing number of proponents for the next annual meeting season. We take you at your word that you have a policy against injecting personal political bias into your recommendations. Bias, as our friends in the DEI movement often remind us, can often be unconscious and a matter of who is invited to sit at the table. The process by which you evaluate proposals on the risks of debanking presents a good opportunity to demonstrate that commitment to avoiding political bias.

For example, a resolution for a Report on Risks of Politicized De-banking, might have language such as the following:

> **Resolved**: Shareholders request the Board of Directors of [Company] conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how it oversees risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights.

We believe the case for such a resolution is strong where there is public controversy over debanking incidents. It appears that opposition to such a proposal would be inconsistent with principles you have elucidated and followed in other recommendations and would raise questions about your commitment to leaving personal political opinions out of your policy recommendations.

The Fiduciary Case for Debanking Risk Disclosure

We raise the specific example of debanking because the choice to debank any customer is one that often courts controversy, particularly when the debanking is related to hot-button issues. Given the prevalent controversy and the risk associated with it, transparency in any given financial institution's debanking policies is essential. 'Politicized debanking,' is defined as "discrimination in the provision of financial services against a client, due to their religious or political viewpoints." As explained in a 2023 Viewpoint Diversity Score memo on the risks of politicized debanking, "many companies in the financial sector are known to have 'reputational risk' policies that afford them unbridled discretion to cancel accounts or other services for arbitrary or biased reasons."

Controversies over politicized debanking have arisen in connection with several of America's prominent financial institutions. This includes JPMorgan Chase, which is known for debanking of both politically conservative and pro-religious liberty clients such as Ambassador Sam Brownback's National Committee for Religious Freedom.[1] Another example is Bank of America, which is reported to have debanked the religious nonprofit Indigenous Advance Ministries (explained in further detail in later paragraphs). Outside the realm of the United States, debanking has remained at the forefront of financial news in the United Kingdom over threats[2] to close the private bank account of former Independence Party leader Nigel Farage.[3]

Such debanking incidents create very real legal exposure for financial institutions—numerous statutes shield clients from discriminatory banking practices, from the Equal Credit Opportunity Act (preventing discrimination based on race, religion, and other protected characteristics in the provision of credit/credit-related services) to the Dodd-Frank Act (preventing, in part, religious discrimination from financial service providers). Given the indispensable role of financial institutions in the public square, it is imperative that decisions regarding financial services are made in the name of sound financial judgment, and the interest of shareholders be prioritized and that social/political factors not supersede said judgment.

The backlash against financial institutional debanking is growing. On the political front, state financial officers like then-Missouri Treasurer Scott Fitzpatrick have warned JPMorgan Chase that a continued lack of transparency could lead to Missouri no longer banking with Chase.[4] Further pushback came in letters from state-level representatives in states such as Nebraska[5], Arizona, and South Carolina,[6] asserting that "while Chase maintains that such decisions are not driven by any underlying political motives, its questionable pattern of de-banking coupled with its lack of transparency is cause for concern." At the national level, lawmakers like former senator Pat Toomey (R-Pennsylvania) warned financial institutions against backlash from political conservatives,[7] which could become an unavoidable turn of the tide, should politicized debanking become the norm: "If banks don't cease and desist from weighing in on social and cultural issues, don't be shocked if Republicans, once back in power nationally, seek to pressure banks to advance their goals."

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[1] https://www.foxbusiness.com/politics/state-financial-officers-call-jpmorgan-chase-address-politically-motivated-de-banking

[2] https://www.wsj.com/articles/coutts-bank-u-k-nigel-farage-alison-rose-peter-flavel-a31c7f31

[3] https://www.bbc.com/news/business-66851909

[4] https://www.foxbusiness.com/politics/state-financial-officers-call-jpmorgan-chase-address-politically-motivated-de-banking

[5] https://www.newsweek.com/why-i-am-standing-politicized-debanking-opinion-1791562

[6] https://treasurer.utah.gov/wp-content/uploads/Proxy-Voting-Letter-to-Proxy-Advisory-Firms.pdf

[7] https://www.banking.senate.gov/newsroom/minority/toomey-warns-against-the-growing-politicization-of-our-nations-banks

Banks, which have been implicated in debanking, have been the subject of negative press attention, including in the pages one of America's most prominent financial newspapers. In a recent article in the Wall Street Journal, portfolio manager and JPMorgan Chase shareholder David Bahnsen addressed the political suspicion that debanking, free of any coherent rationale, poses to financial institutions. "[JPMorgan Chase]'s fiduciary duty is to maximize profit for shareholders. Looking deeper into its religious and political discrimination practices is a shareholder-friendly step," Bahnsen writes.[8] "Diversity of religious beliefs and political views… would make for a more profitable megabank better able to serve customers and shareholders."

Financial institutions are ill-equipped to manage debanking risk due to inadequately robust protocols. As per the 2023 Viewpoint Diversity Score Business Index[9], almost two-thirds[10] of major tech/finance companies feature overly vague language regarding what can trigger the debanking of a client. As matters currently stand, many institutions are making decisions about who to offer services to with nonspecific language: risk (JP Morgan Chase), hate (Visa), bigotry (Truist International), and intolerance (PayPal).

Increased transparency in debanking is not just about smoothing over political tensions from either left or right. It is a critical element of a bank's business practices and risk management, as well as its fiduciary responsibility to provide value for shareholders. This responsibility must take priority over the type of activist demands that ultimately jeopardize a business's profit models and erode shareholder trust.

Current Example: Debanking Poor Widows and Orphans is Reputationally Risky

Recent events only serve to further these concerns of religious/political skew from financial institutions. Perhaps the most optically egregious instance is the case of Indigenous Advance Ministries, a Memphis-based religious nonprofit client of the Bank of America, that provides essential supplies and vocational training for marginalized communities in Uganda.[11] In April 2023, Indigenous Advance Ministries was debanked with little explanation other than a claim that the nonprofit no longer aligned with Bank of America's risk tolerance policies, with little by way of specifics. Given Bank of America's stated commitment to diversity and inclusion[12], including that of differing religious backgrounds, this instance of debanking raises unavoidable concerns that the corporation is not living up to its public representations and perhaps being influenced by bias, rather than exclusively focusing on maximizing profit and minimizing risks for its owners.

The unexplained decision to debank Indigenous Advance Ministries has put Bank of America's status as a trustworthy steward in jeopardy and created tremendous reputational risk for the corporation.

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[8]https://www.wsj.com/articles/my-bid-to-make-jpmorgan-less-woke-progressive-discrimination-conservatives-christians-shareholders-sec-banking-finances-583c7999

[9] https://www.viewpointdiversityscore.org/business-index

[10] https://www.viewpointdiversityscore.org/polling

[11]https://drupal-files-delivery.s3.amazonaws.com/public/2023-08/Indigenous-Advance-2023-08-22-Consumer-Complaint.pdf

[12] https://investor.bankofamerica.com/corporate-governance/governance-library/code-of-conduct

Indigenous Advance Ministries is advised by the leading pro-religious-freedom litigation group Alliance Defending Freedom[13], and has recently filed a complaint with the Tennessee attorney general's office, concerned that Bank of America was engaging in targeted financial discrimination due to the nonprofit's religious views. In the absence of any clearly defined debanking procedures, it remains possible that religious discrimination is at play here, a potential violation of both Bank of America's stated commitments to diversity and inclusion and Tennessee consumer protection laws. In ADF's words, "Shareholders have a right to know when portfolio companies prioritize social factors over sound business judgment."[14] Given the necessity of a relationship of trust between the Bank of America and its shareholders, the case of Indigenous Advance represents a critical opportunity to clarify procedural language, put to rest any suspicion of playing politics in financial procedures, and avoid further reputational risk to these financial institutions. This situation raises suspicion about whether the bank is following its fiduciary responsibility. If politicized debanking becomes the norm, banks are trading in their status as apolitical profit-first market actors, opting instead for an unstable hyper-partisan model that leaves financial institutions and their shareholders at the whim of shifting political tides.

Debanking risk disclosure is consistent with your policy of disclosure and social and reputational risk

Although ISS does not publicly disclose all its specific policy recommendations, it does disclose enough to establish that its policies call for careful oversight of legal, regulatory, and reputational risks in general and a culture which encourages corporations towards greater transparency and disclosure.

For example, ISS has taken a fairly favorable approach to risk disclosure in matters of concern to proponents on the left:

> "*Shareholder proposals on transparency regarding alignment between public commitments and political spending*. ISS is introducing a new policy for shareholder proposals requesting company transparency on alignment of its political contributions, lobbying and election spending with its public commitments, stated values and policies, such as the alignment between climate lobbying and expressed climate goals….Under the new policy, ISS will generally vote on a case-by-case basis on these proposals taking into account
>
> - "The company's policies, management, board oversight, governance processes, and level of disclosure related to direct political contributions, lobbying activities, and payments to trade associations, political action committees, or other groups that may be used for political purposes;
> - The company's disclosure regarding: the reasons for its support of candidates for public offices; the reasons for support of and participation in trade associations or other groups that may make political contributions; and other political activities;
> - Any incongruencies identified between a company's direct and indirect political expenditures and its publicly stated values and priorities.
> - Recent significant controversies related to the company's direct and indirect lobbying, political contributions, or political activities. Generally vote case-by-case on proposals

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[13]https://adflegal.org/press-release/bank-america-boots-charity-serving-impoverished-ugandans-under-vague-risk-tolerance

[14] The Fiduciary Case for Supporting Reports on Politicized De-Banking, ADF memo, 2023.

requesting comparison of a company's political spending to objectives that can mitigate material risks for the company, such as limiting global warming." (ISS Issues Benchmark Policy Updates for 2023 (harvard.edu))"

These proposals include "congruency" resolutions which attempted to pressure companies not to support the State Financial Officers Foundation:

Wells Fargo: "Evident conflict for our Company has not gone unnoticed. Congressman Casten and Senator Schatz wrote our CEO, requesting confirmation of Company plans to withdraw its sponsorship of SFOF, emphasizing SFOF's approach misrepresents valid steps banks and asset managers are taking to minimize exposure to climate risks." 2023 Notice of Annual Meeting and Proxy Statement (wellsfargomedia.com)

JPMorgan Chase: "Similarly, while Chase claims that supporting ESG is a core tenet of its political engagement, Chase sponsors the State Financial Officers Foundation ("SFOF"), an organization that works to prevent investor consideration of climate risk and other ESG factors, despite a recent pledge to end its sponsorship of this controversial group. SFOF has, in turn, promoted anti-ESG investigations directly targeting Chase and its ability to conduct business with certain states." proxy-statement2023.pdf (jpmorganchase.com)

MasterCard: "Mastercard…has drawn attention for funding the controversial nonprofit State Financial Officers Foundation, which is attacking so-called woke capitalism." Mastercard 2023 Proxy Statement DEF 14A (mastercardannualmeeting.com)

These are clearly intended to defund State Financial Officers Foundation based on political animus, and ISS appears to have supported all three of them. Yet ISS did not support similar congruency proposals from conservatives which targeted liberal groups.

Furthermore, ISS opposed proposals calling upon companies to disclose their charitable giving. These charitable disclosure proposals generally come from pro-life conservatives as their statements of support make clear. The pattern seems to be that calls for disclosure from the left are treated deferentially in comparison with calls for disclosure from the right.

We hope that ISS would in the future show equal zeal in supporting risk disclosure no matter which side the proposals come from. We believe disclosure regarding policies concerning, and risks arising from, debanking would be a good start.

We have demonstrated above that high profile incidences of debanking have been met with: plausible claims of illegality; negative press coverage; investor objections; adverse Congressional hearings; objections from both legal and financial state officials; a complaint before a regulatory enforcement body; threats from states of illegalization and threats from state governments of boycotts. If debanking does not qualify as a risk factor, it is hard to imagine what would.

We do not see how it would be possible for ISS to oppose risk disclosure in this instance and still be consistent with its stated policies and its claims of being apolitical.

We would be happy to continue this conversation in whatever way is conducive to reaching our mutual goal of proxy voting that evaluates all decisions through the lens of the fiduciary responsibility to put investors interests ahead of all other interest groups and to do so without political or social bias.

Respectfully,

Alabama Auditor Andrew Sorrell

Alaska Commissioner of Revenue Adam Crum

Arizona Treasurer Kimberly Yee

Indiana Treasurer Dan Elliott

Iowa Treasurer Roby Smith

Kansas Treasurer Steven Johnson

Louisiana Treasurer John Schroder

Mississippi Treasurer David McRae

Missouri Auditor Scott Fitzpatrick

Missouri Treasurer Vivek Malek

Nebraska Auditor Mike Foley

North Carolina Treasurer Dale Folwell

North Dakota Treasurer Thomas Beadle

Oklahoma Auditor & Inspector Cindy Byrd

Oklahoma Treasurer Todd Russ

South Carolina Treasurer Curtis Loftis

Utah Treasurer Marlo Oaks

West Virginia Treasurer Riley Moore