



Net-Zero Insurance Alliance  
c/o UNEP Finance Initiative  
Avenue de la Paix 8-14  
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Switzerland

May 15, 2023

Dear Insurers:

We, the undersigned attorneys general, are concerned with the legality of your commitments to collaborate with other insurers and asset owners in order to advance an activist climate agenda. These actions have led to serious detrimental effects on the residents of our states. The push to force insurance companies and their clients to rapidly reduce their emissions has led not only to increased insurance costs, but also to high gas prices and higher costs for products and services across the board, resulting in record-breaking inflation and financial hardships for the residents of our states. These financial effects are well-known and important. This letter, however, will focus on our legal concerns related to your actions.

All of you are members of the Net-Zero Insurance Alliance (NZIA) and some of you also are members of the Net-Zero Asset Owner Alliance (NZAOA), each of which is a UN-convened group working to implement the Paris Agreement's climate change goals through the financial system, including the insurance industry.<sup>1</sup> NZIA brings together "leading insurers and reinsurers representing a significant percentage of the world premium volume globally."<sup>2</sup> NZAOA is a coalition of 85 insurance companies and pension funds with \$11 trillion under management whose intent is to "utilise state-of-the-art tools and align with various initiatives led by asset owners who have demonstrated leadership on the topic of decarbonisation," including through "[j]oint engagement, and monitoring of engagements, based on the most authoritative, credible scientific input, to ensure consistency of messaging and necessary

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<sup>1</sup> *Net-Zero Insurance Alliance*, United Nations Environment Programme, <https://www.unepfi.org/net-zero-insurance/> (last visited Apr. 28, 2023); *Net-Zero Asset Owner Alliance*, United Nations Environment Programme, <https://www.unepfi.org/net-zero-alliance/> (last visited Apr. 28, 2023).

<sup>2</sup> *Net-Zero Asset Insurance Alliance*, *supra*, note 1.

ambition.”<sup>3</sup> NZAOA promises to “build on existing active ownership best practice already under development – such as ClimateAction100+.”<sup>4</sup> By joining one or both of these organizations, you have committed to using your global influence to “transition [your] insurance and reinsurance underwriting portfolios to net-zero greenhouse gas (GHG) emissions by 2050.”<sup>5</sup> Indeed, the “central purpose” of the NZIA is to reduce emissions in the real economy.<sup>6</sup> This means getting your clients to reduce their emissions, “especially in the most GHG-intensive sectors such as energy, transportation, industry and agriculture.”<sup>7</sup>

In January 2023, the NZIA released its first “Target-Setting Protocol,” which explains your responsibilities as a member. While this protocol insists that it is “non-binding” and that you are “free” to meet the protocol’s requirements “independently and unilaterally,”<sup>8</sup> it goes on to instruct that NZIA members must follow its directions on a “comply-or-explain basis.”<sup>9</sup> Likewise, the plain language of the document ultimately requires you to take several, concrete and coordinated actions to alter your business.

Specifically, the NZIA protocol requires you to adopt one of the NZIA’s defined climate targets by this summer, and requires you to commit to three of them by next summer.<sup>10</sup> These targets are anything but aspirational—they require you to take specific courses of actions over the next two decades. For example, meeting NZIA’s “emissions reduction target” means choosing either an overarching insurance-associated emissions reduction target of 34-60% by 2030, or targeting emissions on a sector-by-sector basis in line with a net zero pathway for that sector.<sup>11</sup> Under either target, you are required to pressure clients who work in an environmentally “dirty” industry to progressively decarbonize their business practices.<sup>12</sup> Further, to meet NZIA’s “engagement target,” you must either try to increase the share of your clients who have set their “own science-based [net-zero] targets” to 100% by 2040, or you must actively pressure “selected clients” to adopt and implement their own climate

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<sup>3</sup> *About Net-Zero Asset Owner Alliance*, United Nations Environment Programme, <https://www.unepfi.org/net-zero-alliance/about/> (last visited Apr. 28, 2023).

<sup>4</sup> *Id.*

<sup>5</sup> *Net-Zero Insurance Alliance*, *supra*, note 1; *Net-Zero Asset Owner Alliance*, *supra*, note 1.

<sup>6</sup> *Net-Zero Insurance Alliance Target-Setting Protocol Version 1.0*, United Nations Environment Programme 24 (Jan. 2023), <https://www.unepfi.org/wordpress/wp-content/uploads/2023/01/NZIA-Target-Setting-Protocol-Version-1.0.pdf> [hereinafter, NZIA Protocol].

<sup>7</sup> *Insuring the Net-Zero Transition: Evolving Thinking and Practices*, United Nations Environment Programme 22 (Apr. 2022), <https://www.unepfi.org/wordpress/wp-content/uploads/2022/04/Insuring-the-net-zero-transition.pdf>.

<sup>8</sup> NZIA Protocol, *supra*, note 6, at 3. Such antitrust disclaimers are, of course, meaningless. The relevant facts are agreements entered into by competitors and actions taken under those agreements.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.* at 24, 27.

<sup>12</sup> *Id.* at 24–28.

“transition plans and decarbonisation strategies.”<sup>13</sup> On this second “engagement” option, the protocol includes examples like “supporting [personal motor vehicle insurance clients] in their efforts” to go green “by transitioning to electric vehicles; [using] other forms of low or zero-emission transportation; [and] reduc[ing their] vehicle use.”<sup>14</sup> Finally, to meet NZIA’s “insuring the transition target,” you must progressively increase the proportion of your business that insures “climate solutions,” such as mitigation or adaption activities.<sup>15</sup>

As if these “target” requirements were not enough, the NZIA protocol further proscribes where and to what extent you should expend your environmental efforts. It explains that you must apply these “targets” to a “material and relevant” proportion of your clients and adds that your companies must measure this proportion by an “appropriate metric” like the “insured’s absolute GHG emissions” or “gross written premiums.”<sup>16</sup> The protocol also directs which clients to prioritize—namely, clients who work in environmentally “dirty” industries like oil, gas, power, and transportation.<sup>17</sup> You are also required to regularly report on your progress to the NZIA.<sup>18</sup>

NZIA’s “Target Setting Protocol” followed in the footsteps of similar protocols released by NZAOA.<sup>19</sup> Like the NZIA protocol, the latest NZAOA protocol asserts that parties were free to make their own investment decisions, this time in an expressly-labeled “[a]ntitrust and regulatory disclaimer,”<sup>20</sup> but then proceeds to impose a substantial number of requirements on members, noting in any number of places that NZAOA members “shall” take various actions.<sup>21</sup> Like NZIA, the NZAOA protocol requires its members to set targets for reducing their own Scope 1, Scope 2, and Scope 3 emissions, in addition to setting targets in at least three of four defined categories.<sup>22</sup>

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<sup>13</sup> *Id.* at 28–31.

<sup>14</sup> *Id.* at 31.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *See id.* at 11, 17.

<sup>18</sup> *Id.* at 33.

<sup>19</sup> *UN-convened Net-Zero Asset Owner Alliance Inaugural 2025 Target Setting Protocol*, United Nations Environment Programme (2021), <https://www.unepfi.org/wordpress/wp-content/uploads/2021/01/Alliance-Target-Setting-Protocol-2021.pdf>; *UN-convened Net-Zero Asset Owner Alliance Target Setting Protocol Second Edition*, United Nations Environment Programme, (Jan. 2022), <https://www.unepfi.org/wordpress/wp-content/uploads/2022/01/NZAOA-Target-Setting-Protocol-Second-Edition.pdf>; *UN-convened Net-Zero Asset Owner Alliance Target Setting Protocol Third Edition*, United Nations Environment Programme, (Jan. 2023), <https://www.unepfi.org/wordpress/wp-content/uploads/2023/01/AOA-Target-Setting-Protocol-Third-edition.pdf> [hereinafter, NZAOA Protocol].

<sup>20</sup> NZAOA Protocol, *supra*, note 19, at v.

<sup>21</sup> The NZAOA Protocol defines “shall” as denoting where “a process is binding for the purpose of the Alliance but remains subject to the unilateral decision of the member concerned.” *Id.* at x. This is merely another way of saying that the members have agreed to comply with the requirements of NZAOA, but, like all contracting parties, can choose to breach the agreement.

<sup>22</sup> *Id.* at 14–16.

As with the NZIA protocol, these are not mere aspirational targets, but require concrete action. Under the NZAOA protocol, members must set “engagement targets,” which includes requiring asset managers to use their leverage over companies to change company behavior,<sup>23</sup> and pressuring companies in which members invest directly to “immediately put into place strategies and transition plans that commit the company to net-zero GHG emissions across their value chains by no later than 2050 and to be supportive of the transition to a net-zero GHG emissions world by 2050.”<sup>24</sup> The NZAOA protocol also requires members to set targets to reduce emissions either of sectors of the economy in which they invest or subsections of their investment portfolio. This reduction must be between 22% and 32% by 2025, and 40% to 60% by 2030.<sup>25</sup> Sectors targeted by NZAOA for priority emissions reduction include oil and gas, utilities, and transportation.<sup>26</sup>

We, the undersigned attorneys general, have serious concerns about whether these numerous requirements square with federal law, as well as the laws of our states, as they apply to private actors. Under our nation’s antitrust laws and their state equivalents, it is well-established that certain arrangements among business competitors are strictly forbidden because they are unfair or unreasonably harmful to competition. For example, “an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group of competitors working together has market power.”<sup>27</sup> Likewise, collective agreements to fix prices or “restrict production, sales, or output” are illegal.<sup>28</sup> This restriction extends to agreements among competitors to issue uniform pricing policies, conditions of sale, production quotas, or otherwise limit the identity of their customers if those agreements will ultimately raise prices.<sup>29</sup>

The NZIA protocol’s “targets” and requirements appear to violate these well-established laws. To start, several of the “targets” put conditions on the terms of your insurance contracts. For instance, two of the “emissions reduction targets” and “engagement targets” require your customers to meet certain environmental conditions to remain customers. Namely, customers must reduce their GHG emissions in line with net-zero and adopt “science-based [climate] targets.” These conditions are problematic for two reasons. First, NZIA members have a substantial

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<sup>23</sup> *Id.* at 19–20.

<sup>24</sup> *Id.* at 22.

<sup>25</sup> *Id.* at 30, 37.

<sup>26</sup> *Id.* at 30.

<sup>27</sup> *Group Boycotts*, Fed. Trade Comm’n, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/group-boycotts> (last visited Apr. 28, 2023); see *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2156 (2021) (“[S]ome agreements among competitors so obviously threaten to reduce output and raise prices that they might be condemned as unlawful per se or rejected after only a quick look.”).

<sup>28</sup> *Price Fixing*, Fed. Trade Comm’n, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing> (last visited Apr. 28, 2023).

<sup>29</sup> See *id.*

stake in the insurance industry and the ability to wield market power. In other words, the conditions that your companies collectively place on your insurance contracts can radically influence the entire industry. Second, these conditions threaten to dramatically increase prices, as reducing emissions and implementing climate plans typically involve decreasing output and production and/or substantially increasing costs across the value chain and, particularly, in the oil, gas, energy, and transportation sectors. These increased costs result in increased prices for consumers and in inflation.

Moreover, the other three NZIA “targets” are similarly problematic because they limit the identity of your customers and the scope of your overall business. Specifically, the other two “emissions reduction targets” and “engagement targets” single out “selected clients” and place environmental conditions—not actuarial ones—on the continuation of their insurance coverage. Again, because your companies hold substantial market power, these “targets” against certain individuals may be an illegal boycott. Likewise, the “insuring the transition” target may be an illegal restraint of trade because it places limitations on the scope of your business by forcing your companies to increase the proportion of your business that covers certain “climate solutions.” This limitation is especially dangerous because NZIA members are forced to collectively move toward a product when there is not necessarily commensurate market demand for that product and move away from products actually demanded by the market. As a result, insurance prices for those products actually demanded by the market will likely increase.

To the extent that these targets are implemented in reinsurance business, they also have a direct, harmful effect on the American insurance market. Because, as discussed below, many state laws prohibit insurers from altering insurance terms for reasons not reasonably related to the risk or expense of providing the insurance, refusal to provide reinsurance for certain activities merely increases the costs for United States insurers and makes the market distribution of risk less efficient, while doing nothing to lower the emissions about which you express concern.

Your conduct may also directly or indirectly violate other laws. To the extent that you directly insure activities in the United States, or exercise control over an entity that does so, refusal to insure based only on the insured’s carbon emissions or compliance with the Paris Agreement’s environmental aspirations could violate state laws that expressly limit reasons for refusal to provide insurance. For example, under Utah law, “[a]n insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.”<sup>30</sup> Likewise, under Louisiana law,

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<sup>30</sup> Utah Stat. 31A-23a-402(3)(a); *see also* Utah Stat. 31A-23a-402(8)(a)(iii) (prohibiting a person from “engag[ing] in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule”).

[n]o insurer shall make or permit any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring risk, and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder.<sup>31</sup>

Louisiana courts interpret this provision to forbid insurers from engaging in “any discrimination that is not based on underwriting risk.”<sup>32</sup> So, insurers may only discriminate between customers in the policy terms and premiums they offer when that discrimination is “based on the risk assumed by the insurer[,]” not any other considerations.<sup>33</sup>

Therefore, to the extent that you intend targets in the reinsurance market to incentivize United States-based insurers to not provide insurance to companies you disfavor, you may be incentivizing those insurers to break the law. Lloyd’s of London perhaps best epitomizes these concerns. Most companies engaged in anticompetitive conduct tend to actively conceal their intentions, but Lloyd’s brags about it, noting that the commitments it has made, including those made as part of NZIA, bring it “in closer alignment with . . . the insurance industry,” and that Lloyd’s meets its goals through “strong collaboration” with “the wider insurance industry.”<sup>34</sup>

Further, Lloyd’s appears to be intent on using its market position to force insurers to refuse to do business with disfavored industries. Lloyd’s oversees and regulates a gigantic insurance market, which, in theory, is supposed to match those seeking insurance with those wishing to provide it while efficiently spreading the risk between all participants. But now, as part of its membership in NZIA, Lloyd’s has “committed . . . to work towards a net zero underwriting position for the Lloyd’s market by 2050, in collaboration with market participants.”<sup>35</sup> To achieve this, Lloyd’s now requires insurers in its marketplace “to submit their own ESG strategy,” which “must evidence a credible pathway to net zero underwriting by 2050.”<sup>36</sup> Put differently, Lloyd’s is using its “central position in the insurance industry”<sup>37</sup> to force insurers to adopt net zero, whether they want to or not. As noted above, this has the practical effect of increasing costs and decreasing productivity for real companies,

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<sup>31</sup> La. Rev. Stat. § 22:34 (2009).

<sup>32</sup> La. Att’y Gen. Op. No. 12-0171 (Nov. 2, 2012).

<sup>33</sup> *Id.*

<sup>34</sup> *Environmental, Social and Governance Report 2021*, Lloyd’s 16, 17 (2022), [https://assets.loydys.com/media/8c362b67-e4a5-4876-927f-397c10491d72/Lloyds\\_ESG%202021\\_report\\_final.pdf](https://assets.loydys.com/media/8c362b67-e4a5-4876-927f-397c10491d72/Lloyds_ESG%202021_report_final.pdf).

<sup>35</sup> *Id.* at 21.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 5.

most notably those in the oil, gas, and energy industries, and causing inflation and higher prices for consumers.

The NZAOA targets pose similar problems for its private members. NZAOA members appear to have bound together with others who engage the services of asset managers and otherwise supply capital to companies to place severe restrictions on how those asset managers and companies can operate, in what political activity they can engage, and, in the case of asset managers, how they can manage the assets of *others*. This is the type of concerted refusal to deal that has been found illegal in the past.<sup>38</sup>

Other insurance companies appear to be realizing just how problematic membership in these groups can be. According to recent media reports, both Zurich Insurance Group and Munich Re have withdrawn from NZIA despite being two of the eight founding members of the organization.<sup>39</sup> Notably, Munich Re's official statement announced its determination that any opportunities to collaborate without "exposing" the company to "material antitrust risks" were so limited that it was more advisable to work individually.<sup>40</sup>

Given these potential problems that the various "targets" and requirements to which you have agreed may create under the laws of our states and nation, we now request the following documents and information:

- Please describe in detail all communications between you and members of NZIA related to commitments you made to NZIA, including communications related to how you would meet those commitments.
- If you have joined NZAOA, please describe in detail all communications between you and members of NZAOA related to commitments you made to NZAOA, including communications related to how you would meet those commitments.

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<sup>38</sup> *Fed. Mar. Comm'n v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238, 250 (1968) ("Under the Sherman Act, any agreement by a group of competitors to boycott a particular buyer or group of buyers is illegal per se." (citing *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212 (1959))); see also, e.g., *Jacobs v. Bd. of Regents of Div. of Universities of Dep't of Ed. of State of Fla.*, 473 F. Supp. 663, 670 (S.D. Fla. 1979) ("It is also unlawful for two or more competitors to refuse to deal with a particular business entity on a different level of distribution, i.e., a group boycott.").

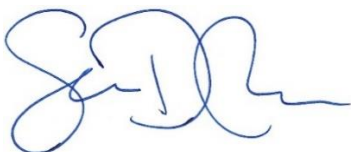
<sup>39</sup> Aisling Finn, *Zurich Becomes Second Insurer to Withdraw from NZIA*, Insurance Insider (Apr. 5, 2023), <https://www.insuranceinsider.com/article/2bhtvv65j7zdba3xja58g/global-insurers-section/zurich-becomes-second-insurer-to-withdraw-from-nzia>.

<sup>40</sup> *Munich Re Discontinues NZIA Membership*, Munich Re (Mar. 31, 2023), <https://www.munichre.com/en/company/media-relations/media-information-and-corporate-news/media-information/2023/media-release-2023-03-31.html>.

- Please explain the corporate relationship between you and any American affiliate. Please include in your response documents that show this relationship.
- Please describe in detail all communications and correspondence between you and any American-based company, including affiliates, customers, and suppliers, about any commitment you have made to NZIA or NZAOA, including any changes you asked or demanded be made in order to comply with the commitments.
- To the extent that you provide reinsurance for United States insurance activity, please describe in detail any limitations that your commitments have placed on your ability to provide reinsurance.
- Are you actively working to reduce the emissions associated with your insurance portfolio? If yes,
  - How has your membership in NZIA or NZAOA, or any similar organization with similar goals, influenced your decision to do so?
  - Describe in detail the steps you are taking, including whether you refuse to insure or reinsure certain individuals or activities only because of their greenhouse gas emissions.
- What, if any, steps have you taken to support personal motor vehicle insurance clients in their efforts to go green by transitioning to electric vehicles; using other forms of low or zero-emission transportation; and reducing their vehicle use?
- Do any United States-based affiliates or United States-based third-party asset managers manage the investment of assets on your behalf? If yes, are they bound by any targets set by you, or any commitments made by you to NZIA or NZAOA?

We look forward to receiving your responses no later than June 15, 2023.

Sincerely,



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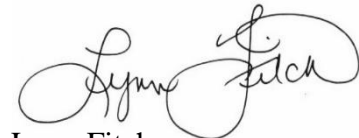
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