



March 26, 2025

The Honorable Mark T. Uyeda
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549 USA

Dear Acting Chairman The Honorable Mark T. Uyeda,

Political activists are filing shareholder proposals attempting to pressure companies into reinstating Diversity, Equity, and Inclusion (DEI) policies that destroy shareholder value—leading to boycotts, lawsuits, reduced productivity, and increased financial risk. Asset managers and proxy advisors should not prioritize a political agenda over financial returns by supporting pro-DEI shareholder proposals and/or voting against directors who do not support such proposals.

Although many asset managers claim to be passive investors and proxy advisors claim to be “pretty centrist,”¹ their immense voting power and recommendations directly influence corporate policies and can reduce the value of company shares for all investors.² As state financial officials, we have a duty to protect taxpayer funds and the retirement savings of state employees. Asset managers and proxy advisors should oppose proposals that compel companies to maintain or reinstate unlawful DEI practices that erode shareholder value.

The need to urge asset managers and proxy advisors to uphold their fiduciary duty underscores the SEC’s failure to enforce applicable regulatory requirements during the previous administration. The SEC’s recent guidance directing asset managers that push DEI and other ESG policies on companies to file on the more rigorous Schedule 13D is a positive first step, but enforcement must follow. Influencing corporate DEI

¹ See <https://www.cnbc.com/video/2024/03/11/theres-less-investor-support-for-esg-proposals-this-year-says-iss-lorraine-kelly.html>.

² Although it is a step in the right direction that certain asset managers and proxy advisors have announced that they are eliminating their board diversity policies, it is not clear that in each case those changes have been incorporated into benchmark policies. This proxy season will demonstrate what the actual policy of each asset manager and proxy advisor is as votes (and voting recommendations) take place.

policies is inconsistent with the role of a passive investor and should trigger Schedule 13D filing requirements.

Companies facing pressure from asset managers and proxy advisors behaving like activists should be aware of the tools available to challenge DEI-related proposals. One such tool is the SEC’s updated guidance on Rule 14a-8 of the Securities Exchange Act, which provides such avenues to push back against these initiatives.

Consumer Backlash and Boycotts

Shareholder proposals aimed at forcing companies to reinstate discontinued DEI programs originate from activist groups like As You Sow, which prioritize a political agenda over the fundamental duty to maximize risk-adjusted financial returns.³ When asset managers and proxy advisors align with these activists—whether by supporting pro-DEI shareholder proposals or opposing directors who reject them—they risk triggering consumer backlash and damaging shareholder value, as recent cases illustrate.

For example, starting in about 2015, Target prioritized an increasingly progressive DEI agenda based on activist “stakeholder” interests rather than shareholder-based corporate governance.⁴ The result was a steep decline in the company’s stock price, leading to billions in shareholder losses.⁵ Likewise, Bud Light’s decision to push a DEI-based political agenda in its internal operations and advertising campaigns alienated its core consumer base, causing sales to plummet and erasing \$27 billion in market value in 2023.⁶ Nearly two years later, Bud Light still has not recovered.⁷

As public scrutiny intensifies around the presence of unlawful DEI programs and consumers recognize the effectiveness of boycotts like those aimed at Target and Bud Light, companies that continue to double down on DEI policies are likely to receive further backlash.

Increased Litigation Costs

Beyond consumer boycotts, DEI activism creates significant legal liability, further eroding companies’ bottom lines and diminishing shareholder value. If asset managers and proxy advisors support shareholder proposals seeking to reinstate DEI programs, they will subject companies to heightened risk of civil rights litigation, enforcement actions, regulatory scrutiny at both federal and state levels, and securities class action lawsuits.

Private lawsuits challenging DEI policies are emerging throughout the country, with plaintiffs alleging civil rights violations. Additionally, states are beginning to leverage their civil rights enforcement authority to counter the effects of DEI initiatives. In 2024, a federal appeals court upheld a jury verdict awarding nearly \$4 million to a white male employee who claimed he was fired as part of the employer’s diversity efforts, which included offering bonuses to managers for increasing the percentages of certain races in its workforce.⁸ The judgment against Novant Health underscores the significant financial and legal risks associated with DEI-driven employment practices. Similarly, the State of Missouri has filed a lawsuit

³ See <https://www.asyousow.org/2024-strategic-plan> (noting a mission to “promote environmental and social corporate responsibility” and create a “world in which environmental health and human rights are central to business’ bottom lines”).

⁴ See Complaint ¶¶ 8, 60–65, *State Board of Admin. of Fla. v. Target Corp.*, Case No. 2:25-cv-00135 (M.D. Fl. 2025), <https://www.myfloridalegal.com/sites/default/files/2025-02/1-complaint.pdf>.

⁵ <https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/> (noting that Target lost \$10 billion of its market cap in 10 days); <https://www.thestreet.com/retail/target-slammed-with-lawsuit-as-investors-demand-refunds>.

⁶ <https://nypost.com/2023/06/02/bud-light-parent-anheuser-buschs-stock-lost-27b-over-dylan-mulvaney/> (noting that AB InBev lost \$27 billion in market value).

⁷ <https://www.foxbusiness.com/media/bud-light-hasnt-recovered-from-mulvaney-controversy-ex-anheuser-busch-exec-says>.

⁸ See *Duvall v. Novant Health, Inc.*, 95 F.4th 778 (4th Cir. 2024).

against Starbucks for alleged violations of state and federal civil rights laws,⁹ signaling a growing trend of state-level legal challenges.

Additional state and federal enforcement actions are likely on the horizon. State attorneys general have signaled potential legal action under state laws prohibiting unfair and deceptive practices.¹⁰ At the federal level, enforcement actions are expected to intensify against companies that maintain “illegal race- and sex-based preferences under the guise of DEI practices,” particularly in light of President Trump’s executive order directing agencies to crack down on such practices.¹¹ The order instructs the U.S. Attorney General and agency heads to identify up to nine private sector targets per agency for legal action by May 21, 2025.¹² The cost of defending against such enforcement actions will be significant, further straining corporate finances and undermining shareholder value.

Companies that embrace DEI also face potential securities lawsuits for making false statements about the nature, scope, and impact of their DEI programs—or for failing to disclose material risks associated with them. Target is currently facing two private shareholder lawsuits, including a class action, as well as a recently filed class action by the State of Florida alleging securities law violations.¹³ Given the attention directed toward DEI by state attorneys general in recent years,¹⁴ companies should anticipate more lawsuits of this kind in the future.

Decreased Productivity

Along with increased litigation costs, companies that persist in enforcing unlawful DEI practices diminish shareholder value by undermining the productivity and success that come from prioritizing merit and performance. Despite the misconception that DEI programs benefit business, academic research does not support the claim that gender or ethnic diversity, as standalone values, enhance shareholder return.¹⁵

⁹ See Complaint, *Missouri v. Starbucks Corp.*, Case No. 4:25-cv-00165-JSD (E.D. Mo. 2025), <https://ago.mo.gov/wp-content/uploads/Starbucks-Complaint.pdf>.

¹⁰ Letter from Attorneys General to Asset Managers (Mar. 30, 2023), <https://files.constantcontact.com/d3e83e11901/7c32ca1d-a07c-4979-b049-c2369a3df655.pdf?rdr=true>.

¹¹ See <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

¹² <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>.

¹³ See *Craig v. Target Corp.*, No. 2:23-cv-599-JLB-KCD, 2024 WL 4979234 (M.D. Fl. 2024) (denying Target’s motion to dismiss); Complaint, *City of Riviera Beach Police Pension Fund v. Target Corp.*, No. 2:25-cv-00085 (M.D. Fl. 2025); Complaint, *State Board of Admin. of Fla. v. Target Corp.*, Case No. 2:25-cv-00135 (M.D. Fl. 2025) <https://www.myfloridalegal.com/sites/default/files/2025-02/1-complaint.pdf>.

¹⁴ See Letter from State Attorneys General to Fortune 100 CEOs (July 13, 2023), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-27-letter.pdf> (noting discriminatory DEI practices at Goldman Sachs, JPMorgan, Airbnb, Apple, Cisco, Facebook, Google, Intel, Lyft, Microsoft, Netflix, Paypal, Snapchat, TikTok, Uber, and others); Letter from State Attorneys General to Managing Partners of Am Law 100 Firms (Aug. 29, 2023), <https://www.ag.ky.gov/Press%20Release%20Attachments/Letter%20to%20AM%20Law%20Firms%20re%20Race%20Discrimination.pdf> (noting similar concerns in the employment and contracting practices at Am Law 100 firms); Letter from State Attorneys General to Institutional Shareholder Services, Inc. and Glass Lewis & Co. (Jan. 17, 2023) at 7–8, <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Utah%20%26%20Texas%20Letter%20to%20Glass%20Lewis%20%26%20ISS%20FINAL.pdf> (citing proxy voting guidelines of ISS and Glass Lewis in favor of DEI quotas); Letter from Attorneys General to Asset Managers (Mar. 30, 2023) at 6, 17, <https://files.constantcontact.com/d3e83e11901/7c32ca1d-a07c-4979-b049-c2369a3df655.pdf?rdr=true> (citing guidance documents from State Street and BlackRock pressuring companies to impose racial and gender-based quotas).

¹⁵ See, e.g., Fried, Jesse M., Will Nasdaq’s Diversity Rules Harm Investors? (Mar. 31, 2021), <https://ssrn.com/abstract=3812642> or <http://dx.doi.org/10.2139/ssrn.3812642> (“[E]mpirical evidence provides

Notably, the widely cited McKinsey & Company study purportedly linking diversity to higher profitability has been exposed as deeply flawed and irreproducible.¹⁶ Similarly, BlackRock's claims about the benefits of gender diversity have been debunked.¹⁷ The most reliable path to long-term shareholder value remains a focus on excellence and merit-based achievement.

Proactive Companies and the SEC Are Taking Action

To protect shareholder value, proactive companies facing activist shareholder proposals are seeking SEC no-action letters or pursuing relief in the courts to exclude these proposals from proxy statements and shareholder votes. For example, Tractor Supply and Lowe's have already sought SEC no-action relief to prevent proposals targeting them over their DEI rollbacks.¹⁸ New SEC guidance has further strengthened companies' ability to secure such relief. Rule 14a-8(i)(5)'s economic relevance exclusion removes exceptions for "issues of broad social or ethical concern."¹⁹ Rule 14a-8(i)(7)'s "ordinary business" exclusion limits a prior exception for proposals with "broad societal impact" and excludes proposals that "supplant[] the judgment of management and the board."²⁰ This updated guidance will improve companies' ability to leverage no-action relief to reject activist-driven proposals that harm shareholder value.

For a more permanent and legally binding solution, companies can follow ExxonMobil's successful strategy from the 2024 proxy season seeking a court ruling to exclude activist proposals. ExxonMobil pursued a declaratory judgment to block an environmental activist proposal under Rule 14a-8, arguing that it "interfere[d] with management's business judgment," ran "counter to the interests of ExxonMobil and its shareholders," was similar to other proposals that were "overwhelmingly rejected," and aimed to "usurp the role of management and the board to impose [the activists'] personal policy preferences."²¹ Rather than defend the legitimacy of its proposal in court, the activist group withdrew its proposal and committed "unconditionally and irrevocably" not to submit a similar proposal in the future.²² Subsequent efforts by activists to retaliate against ExxonMobil's directors failed.²³ ExxonMobil's success highlights activists' reluctance to have their proposals legally scrutinized. By adopting this approach, companies can call the bluff of activists who may not want the courts evaluating whether their proposals comply with SEC rules. Asset managers and proxy advisors should also take proactive steps to oppose any efforts to reinstate discontinued DEI programs.

In today's regulatory environment, shareholders advocating for unlawful DEI practices face heightened scrutiny and increased regulatory risk from the SEC. The recent update to the SEC's Compliance and

little support for the claim that gender or ethnic diversity in the boardroom increases shareholder value [S]cholarship . . . suggests that "[it] can actually lead to lower share prices."

¹⁶ See, e.g., Green, Jeremiah and Hand, John R. M., Diversity Matters/Delivers/Wins Revisited in S&P 500® Firms (August 6, 2021), <https://ssrn.com/abstract=3849562> or <http://dx.doi.org/10.2139/ssrn.3849562>; see also Edmans, Alex, Discernment Matters Even More (Mar. 12, 2024), <https://maycontainlies.com/discernment-matters-even-more/>.

¹⁷ <https://maycontainlies.com/does-gender-diversity-really-boost-financial-performance/>.

¹⁸ <https://www.sec.gov/files/corpfin/no-action/14a-8/longviewtractor1325-14a8inc.pdf>.
<https://www.sec.gov/files/corpfin/no-action/14a-8/cheveddenlowes012725-14a8inc.pdf>.

¹⁹ See <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf?> (Staff Legal Bulletin 14M, issued Feb. 12, 2025, rescinding prior Staff Bulletin 14L); see also <https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf?> (Staff Legal Bulletin 14L, issued Nov. 2021).

²⁰ <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf?>.

²¹ Complaint at ¶¶ 56, 73, 3, 74, *Exxon Mobil Corp. v. Arjuna Capital, LLC and Follow This*, No. 4:24-cv-00069-O (N.D. Tex. 2024), https://climatecasechart.com/wp-content/uploads/case-documents/2024/20240121_docket-424-cv-00069_complaint.pdf.

²² Order at 1, *Exxon Mobil Corp. v. Arjuna Capital, LLC and Follow This*, No. 4:24-cv-00069-O (N.D. Tex. 2024), https://climatecasechart.com/wp-content/uploads/case-documents/2024/20240617_docket-424-cv-00069_order.pdf.

²³ <https://www.reuters.com/markets/commodities/exxon-shareholders-re-elect-two-directors-targeted-by-activists-2024-05-29/>.

Disclosure Interpretation related to Schedules 13D and 13G signals that the agency’s new leadership is focusing on activist shareholders and potential enforcement actions.²⁴ Specifically, shareholder or asset manager engagement on social issues—such as pressuring management to adopt specific policies—may now qualify as “influencing” control over the company. This reclassification could trigger more detailed Schedule 13D disclosure requirements, replacing the previously relied-upon streamlined Schedule 13G disclosure filings. This shift suggests further regulatory protections under Schedule 13D could be forthcoming, providing companies with additional defenses against activist interference.²⁵

In conclusion, activist shareholder proposals pushing companies to adopt, retain, or reimplement unlawful DEI practices could erode shareholder value in multiple ways. As the upcoming proxy season approaches, asset managers and proxy advisors must prioritize investor interests, focusing on financial returns rather than an unpopular and legally questionable DEI agenda.

Sincerely,



Alabama Auditor Andrew Sorrell



Alaska Commissioner of Revenue Adam Crum



Arizona Treasurer Kimberly Yee



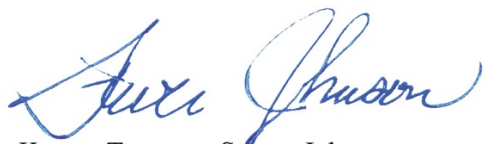
Indiana Comptroller Elise Nieshalla



Indiana Treasurer Daniel Elliott



Iowa Treasurer Roby Smith



Kansas Treasurer Steven Johnson




Kentucky Treasurer Mark Metcalf

²⁴ <https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting>.

²⁵ The SEC could do more to protect investors by imposing additional 13D disclosure requirements and making permanent changes rather than just an updated interpretation.


Louisiana Treasurer John Fleming


Mississippi State Auditor Shad White


Mississippi Treasurer David McRae

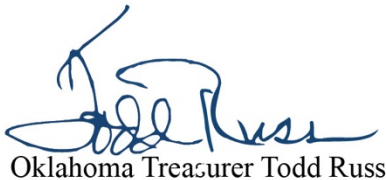

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