Investor Guidance on Diversity, Equity and Inclusion amidst the Turmoil

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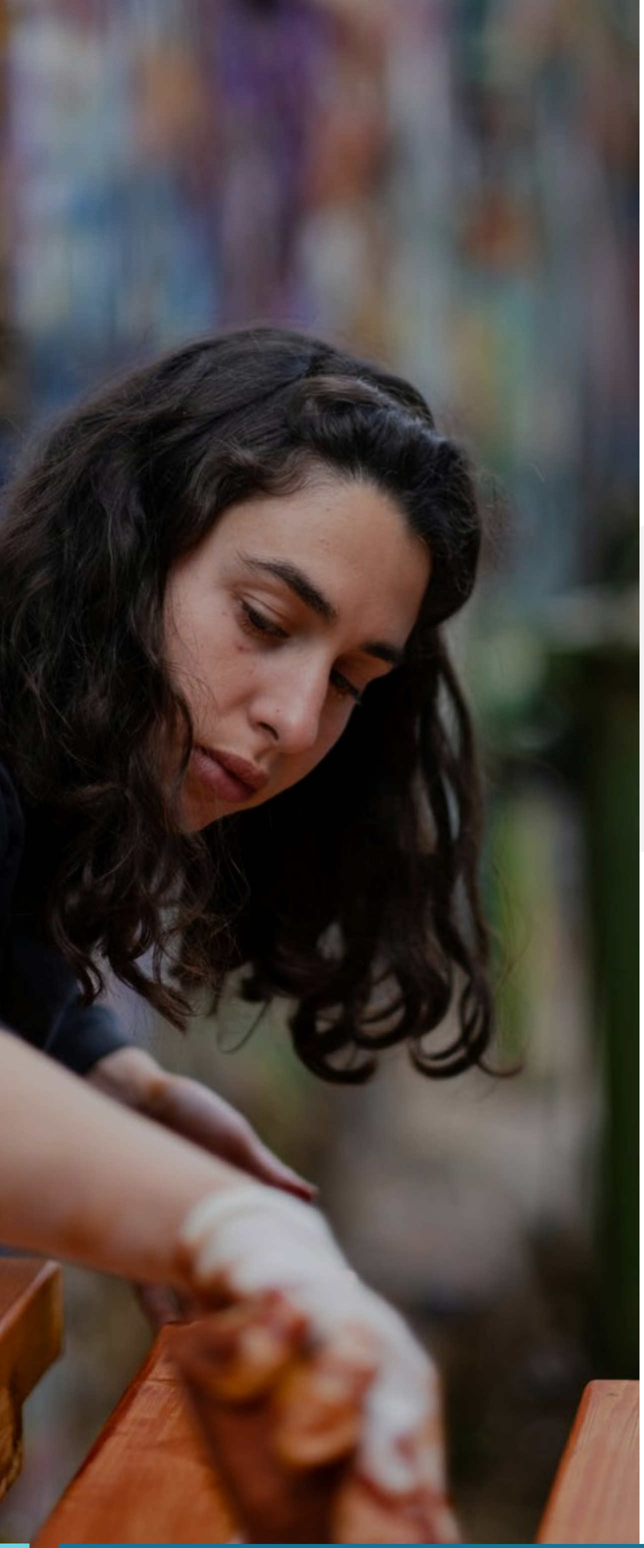

Preface

Merit is the objective; diversity, equity and inclusion are the means

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We've seen dramatic shifts in the discourse surrounding diversity, equity and inclusion (DEI), most recently with the rollback of key policies and initiatives in the U.S. and Canada. Critics question the effectiveness of DEI initiatives, whether there should even be an effort to address hiring practices and workforce representation, and the link to organizational success.

Let's begin by unpacking a common argument: that rolling back DEI policies signals a return to fairness and merit.

Proponents of this perspective argue that the most qualified individuals should secure the top roles. At first glance, this might seem like a reasonable position — after all, shouldn't we want the most capable, skilled and qualified individuals in every position?

However, this viewpoint overlooks one critical reality: our systems have long been biased.

The idea that the best candidates will always rise to the top, absent any intervention or policy, ignores the deep-rooted inequalities based on race, gender and socio-economic status that affect who has access to opportunities in the first place.

Consider the hiring process for a moment. Without DEI policies, it becomes all too easy for privilege to perpetuate itself. In an environment lacking DEI measures, we risk falling back into a cycle where those with access to elite education, influential networks and financial resources — who tend to be white, male and affluent — are disproportionately considered for leadership roles.

This doesn't suggest that all white men are unqualified, just that in the absence of DEI policies, recruitment practices may ignore the thumb on the scale, favouring a narrow group of people based on pre-existing societal privilege.

The reality is that merit is often subjective, shaped by the very biases we might not even realize we have. Studies have shown that unconscious bias influences hiring decisions, with women and people of colour often facing barriers despite possessing equivalent qualifications. For instance, a 2017 study by Harvard University found that applicants with "white-sounding" names were 50% more likely to get a call back than those with "Black-sounding" names, even when qualifications were identical. This is not a flaw in the system, but rather an inherent inequality embedded in it.[1] For centuries, systemic inequalities have denied women, people of colour and other marginalized groups access to equal opportunities. While progress has been made, that progress has been fragile.

DEI policies don't "lower the bar"; they strive to level it, ensuring that everyone has a fair opportunity to succeed based on their true qualifications, not biases or historical inequalities. When DEI initiatives are dismantled, we risk undoing the progress made toward achieving a more equitable representation in the workforce. We risk undoing actual merit-based systems.

It's true that the implementation of DEI policies may not have always been flawless or resulted in immediate change. But the notion that we can simply discard these efforts without consequence is both dangerous and misguided. We can — and should — have a conversation about how DEI strategies are structured and assessed for effectiveness, but the idea that bias will magically disappear without intervention is fundamentally flawed.

To create a truly just society where everyone has an equal chance to succeed, we must recognize that DEI is not about tokenism or preferential treatment. It's about dismantling long-standing systemic barriers that prevent the most qualified individuals from accessing opportunities. In a world where DEI thrives, merit can be truly recognized, and those who are the best equipped to lead and innovate are the ones who rise — regardless of where they came from.

The guide that follows is an important effort to identify ways forward for businesses and their investors to continue to put diversity, equity and inclusion at the centre of efforts to arrive at truly merit-based systems and deliver the gains in opportunity and performance that come from embedding these principles in practice.

As we move forward, let's not forget that the path to an inclusive and equitable society is long and challenging, but it's a journey worth taking — and we must walk it together.

Introduction

Institutional investors have long recognized the value that diversity, equity and inclusion bring to businesses and the broader economy and have used a variety of mechanisms to promote these values and practices with investee companies, their own organizations and regulators.

However, as the politically motivated attacks on diversity, equity and inclusion within the United States (and, to a lesser degree, Canada) ramp up following the election of Donald Trump to the U.S. presidency, the potential for new legal, market and even physical risks is undermining progress made in realizing a more inclusive business community.

Some of these new risks are legal — actual decisions and regulatory actions that cannot be ignored. But it is important to separate out the noise from the reality. The extent of those legal risks is more specific than general and should not be seen as a reason to end all programs and initiatives related to realizing the value of a more diverse workforce and leadership.

This investor brief is intended to:

- Document some of the specific legal, regulatory and political attacks on business and investor efforts to build more inclusive institutions
- Unpack the generalities to focus on the specifics
- Identify how and where investors can continue to advocate for better companies, better markets and a better economy even within the current legal and political moment

Starting with an overview of the legal changes in the United States and an assessment of the political environment in the U.S. and Canada, we will then reiterate the economic value of more diverse workforces and leadership and provide clarity on steps that fiduciaries can continue to take to assert their interests in better companies, markets and economies.

SECTION 1

The changing U.S. legal context

While the Trump administration has used recent executive orders (EOs) to attack both public and private efforts to promote diversity, equity and inclusion, legal opinions suggest that the private sector's obligations to prevent discrimination based on a range of protected categories largely remain intact. Issuers (and other private sector institutions) rolling back all diversity initiatives may actually face increased legal risk.

Investors interested in addressing diversity, equity and inclusion as a value driver at investee companies should consider the following key points:

1. Legal anti-discrimination requirements are still in force.

In the U.S., federal and state civil rights laws prohibit discrimination in the workplace based on race, sex, national origin, disability and other protected characteristics.[2] Federal law and most state civil rights laws prohibit intentional discrimination against employees, unintended actions that have an unlawful adverse impact on protected groups and the subjection of employees to harassment creating a hostile work environment. Notably, employers are typically liable for discrimination and harassment by supervisory employees.[3] These laws continue to apply to the private sector, including investment managers and portfolio companies. As discussed below, these ongoing obligations mean private sector employers cannot retreat from all "DEI initiatives" without exposing themselves to additional risk. As the Attorneys General of Massachusetts, Illinois, Arizona, California, Connecticut, Delaware, Hawaii, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island and Vermont wrote in a recent guidance document on the issue:

> *Employment policies incorporating diversity, equity, inclusion, and accessibility best practices are not only compliant with state and federal civil rights laws, but they also help to reduce litigation risk by affirmatively protecting against discriminatory conduct that violates the law. … Companies should be fully confident that they can continue to implement these policies and programs to advance their business objectives and help ensure they remain compliant with state and federal civil rights laws.*[4]

Companies, and their investors, should also note that there are legal risks on the other side of the equation. That is, cancelling diversity, equity and inclusion initiatives may be used as evidence in employee hostile work environment and disparate treatment claims. The U.S. National Institute for Workers' Rights writes that:

> *An employer's decision to distance itself from DEI initiatives may be used as circumstantial evidence of discriminatory animus or that a particular employment action was "because of" race, gender, religion, or national origin. Additionally, anti-DEI sentiment expressed by a senior executive, someone in the employee's chain of command, or the decisionmaker involved in an employment action is relevant evidence, as it is comparable to statements indicating bias or stereotyping. Finally, both these kinds of evidence can be used to support a claim that the company should be held responsible for creating a hostile work environment that violates Title VII of the Civil Rights Act.*[5]

2. Executive Orders are at the forefront of the attack but have imited application to the private sector and are being challenged in the courts.

The most prominent attacks on diversity, equity and inclusion initiatives have been in the form of Executive Orders (EOs) from the president. While the Trump administration is using its interpretation of executive powers to limit any mention of diversity, equity, inclusion, women or gender in federal public institutions, its attempts to use EOs to attack private sector institutions are meeting legal opposition.

On February 21, 2025, for example, the U.S. District Court for the District of Maryland issued a memorandum and a nationwide preliminary injunction stopping the federal government from enforcing the provisions of EOs 14151 and 14173 (see Box 1, "Relevant Executive Orders"). The court issued a preliminary injunction on constitutional grounds, finding these orders likely violate both first amendment rights (the government can't threaten sanctions or coercion to suppress disfavoured speech) and the right to due process established in the fifth amendment (vague laws invite the arbitrary exercise of power).[6] Applied to federal contractors, grantees of federal funds and private sector entities, the injunction specifically prevents the Attorney General from enforcing measures to encourage the private sector to end "DEI", including identifying potential targets for civil compliance investigations. Defendants have appealed to the Fourth Circuit, where judges are evenly split between Democratic and Republican appointees. The issue is likely to come before the Supreme Court.

Other suits challenging EOs for violating free speech rights and the right to due process are also making their way through the courts.[7]

> **Turning again to the guidance issued by state Attorneys General:**
>
> *Importantly, diversity, equity, inclusion, and accessibility best practices are not illegal, and the federal government does not have the legal authority to issue an executive order that prohibits otherwise lawful activities in the private sector or mandates the wholesale removal of these policies and practices within private organizations, including those that receive federal contracts and grants. The Executive Order states what is already the law—that discrimination is illegal—but then conflates unlawful preferences in hiring and promotion with sound and lawful best practices for promoting diversity, equity, inclusion, and accessibility in the workforce. This conflation is inaccurate and misleading. Policies and practices that promote diversity, equity, inclusion, and accessibility are not the same as preferences in individual hiring and promotion decisions that have been found to be unlawful. The Executive Order cannot and does not prohibit these otherwise lawful practices and policies.*[8]

Some EOs remain in force but have limited application. For example, EO 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," seeks, among other measures, to limit the extension of gender discrimination protections to cover sexual orientation, transgender status and gender identity, protections established in a Supreme Court decision. However, a *National Law Review* submission notes that while federal agencies may be required to follow this order, private entities remain governed by existing laws. These protections, the authors state, can be altered only if the Supreme Court reconsiders its decision or if Congress amends the Civil Rights Act.[9]

BOX 1

Relevant Executive Orders

On January 20 and 21, 2025, the U.S. president issued a number of executive orders targeting diversity efforts:

14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing"

14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"[10]

14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government "

The president also rescinded Lyndon B. Johnson's 1965 EO 11426, which prohibited employment discrimination by federal contractors and required reporting demonstrating affirmative actions taken to prevent it.[11]

3. Legal rulings concerning affirmative action are also limited in application.

In June 2023, the U.S. Supreme Court issued a 6–2 decision ruling that the explicit consideration of race as a factor in making individual admissions decisions by higher education institutions receiving federal funding was unconstitutional.[12] This decision has been cited by some companies like Meta as a reason to forgo diversity, equity and inclusion initiatives.[13]

However, the legal analysis by the Attorneys General cited above notes that the case does not apply to "properly designed and implemented diversity, equity, inclusion, and accessibility initiatives in the workplace," adding that

> *Initiatives promoting diversity, equity, inclusion, accessibility, various skill sets, and different perspectives and experiences in the workplace are not the same as affirmative action and do not involve providing preferences to individuals based on protected characteristics in discrete hiring, promotion, or job retention decisions. …Well-designed diversity, equity, inclusion, and accessibility initiatives also call on employers to pay attention to the (intentional and unintentional) impact their policies and practices have on different groups of current and prospective employees. For decades, both state and federal courts have consistently recognized that this does not amount to impermissible discrimination. In fact, employment discrimination laws generally require employers to pay attention to the impact their practices have on different groups based on protected characteristics in order to avoid and limit liability for unlawful conduct.*[14]

4. Rules limiting action by institutional investors are not clear and are being challenged.

Federal rules allowing pension funds and their investment managers to consider environmental, social and governance (ESG) factors in investment decisions remain in force as of this writing, although legal challenges are underway.

The U.S. Department of Labor regulates pension fund trustees, and the U.S. Employee Retirement Income Security Act establishes a duty of loyalty for these fiduciaries, so they must act solely in the interest of the beneficiaries under their stewardship. The interpretation of this duty has been contested, with opponents of ESG contending that it prohibits fiduciaries of public pension funds from considering environmental and social factors in their investment decisions, as they see these as distinct from "pecuniary" factors.[15] A final rule by the Department of Labor published in 2022 clarified that fiduciaries may consider the economic effects of climate change and other ESG factors if the fiduciary "reasonably determines" they are "relevant to a risk and return analysis."[16] In other words, the fiduciaries of public pension plans may, but are not required to, consider long-term investment risks like companies' ESG practices.[17]

Treasurers from so-called U.S. "red" states have challenged this rule. A coalition of states led by Utah and Texas failed to vacate the Department of Labor's 2022 guidance in 2023;[18] as of December 2024, the states' appeal has been remanded to the district court.[19] The administration may stop defending the 2022 ESG rule in the court of appeal; alternatively, the Department of Labor may bring back an earlier version of the rules proposed during the first Trump administration, expressing skepticism that ESG factors could qualify as pecuniary.[20]

After a coalition of financial officials from 18 Republican states requested that the Acting Securities and Exchange Commission chair and Acting Secretary of Labor prohibit asset managers and retirement plans from considering ESG factors or using diversity, equity and inclusion goals,[21] State Treasurers from 17 Democratic states argued that any attempts to restrict fiduciaries' ability to consider sources of investment risk represented regulatory overreach impeding the operation of a free market and placed U.S. investors, workers and retirees at a comparatively greater risk of suffering lower returns, increased volatility and financial vulnerability compared with global counterparts.[22] The anti-fiduciary impacts of those "red state laws" are huge: pension funds in pro-ESG "blue" states outperformed those in anti-ESG "red" states by about $159 billion, according to a 2024 assessment.[23]

Nevertheless, "red" states such as Florida and Texas have also moved forward with state-level definitions of fiduciary duty that prohibit the consideration of "non-pecuniary" ESG factors in investment decisions by public funds under their jurisdictions.[24] While these measures may have been intended to exclude investment managers who consider ESG factors at all from managing public funds in that state, in practice, this exclusion has proven challenging: neither states nor the Department of Labor have defined ESG investment strategies, and there remains interpretive uncertainty over the definitions of "materiality" and "pecuniary factors."[25]

Despite these attacks, institutional investors continue to have options to promote value-enhancing efforts at improving diversity, equity and inclusion both within the U.S. and externally, in large part because the work to promote diversity, equity and inclusion is both material and pecuniary (see Section 3).

Implications for investor stewardship: What kind of corporate and investor actions are still clearly legal?

Within this legal environment, most actions previously undertaken by both corporations and their shareholders to expand diversity, equity and inclusion remain available.

1. Be clear about the intent of programs and proposals.

Observers recommend that both company policies and shareholder proposals adopt clear messaging about the objective and intent of diversity initiatives, such as:

- Avoiding discrimination
- Removing bias
- Identifying and removing barriers limiting opportunities for underrepresented groups
- Ensuring fair and objective decisions in hiring and promotion
- Ensuring equal access to all aspects of professional development

The Meltzer Center's Advancing DEI Initiative additionally recommends organizations avoid language that could be interpreted as establishing a preference for a protected group with palpable benefits and affirm the principle that hiring and promotion activities are to be conducted without regard to race, sex or other protected categories.[26]

2. Shareholder proposals (formal or informal) should address the materiality of diversity, equity and inclusion.

In their supporting statements, shareholder proposals on diversity, equity and inclusion should speak to the materiality of the proposal, either in terms of legal risk or financial performance. If crafted well,[27] shareholders should be able to continue to develop and file proposals on a number of material issues:

- The collection of data on workplace diversity[28 29]
- Retention programs avoiding discriminatory outcomes and reducing turnover, including "emerging manager" programs[30]
- A review of anti-discrimination measures, ensuring compliance with federal and state civil rights laws[31]
- Aspirational board diversity proposals[32 33]

Some examples of shareholder proposals that were not excluded by regulators and received high votes at annual meetings within the last year are set out in the Table below, with links to each in the endnotes.

TABLE

Examples of shareholder proposals

Proxy Season	Company	Topic	Proponent	Vote Result
2023	**Capital One Financial Corporation**	Board diversity matrix	New York City Public Pension Funds	**44.1%** **Outcomes:** (1) Enhanced disclosure to include a detailed director skills matrix, showing each individual nominee's self-identified skills and attributes that are most relevant to fulfill the board's oversight responsibilities in light of the company's business, strategy and risk management and (2) further enhanced disclosure to individually identify diverse directors in the detailed director skills matrix.
2024	**NextEra Energy**	Board diversity matrix	New York City Public Pension Funds	**40.6%**
2024	**American Tower Corporation**	Gender/racial pay gaps	Arjuna Capital	**49.20%**
2024	**The Boeing Company**	Gender/racial pay gaps	James McRitchie	**38.80%**
2024	**Apple**	Gender/racial pay gaps	Arjuna Capital	**31%**
2024	**Jones Lang LaSalle Incorporated**	Workforce diversity data	Trillium Asset Management	Successfully withdrawn following agreement to disclose EEO-1, hiring, retention and promotion data broken out by gender globally and by EEO-1 race/ethnicity categories for U.S. employees.
2024	**Wabtec** (Westinghouse Air Brake Technologies Corporation)	Workforce diversity data	Trillium Asset Management	Successfully withdrawn following agreement to disclose EEO-1, hiring, retention and promotion data.
2024	**Darling Ingredients Inc.**	Workforce diversity data	Trillium Asset Management	Successfully withdrawn following Darling Ingredients' agreement to disclose global retention, promotion and hiring data by gender starting with fiscal year 2024.
2025	**Deere & Company**	Civil rights audit	John Chevedden	**29.1%** Notably, this vote was held after Deere & Company's rollback on diversity and equity programs and after Trump's initial anti-DEI executive orders were passed.

SECTION 2

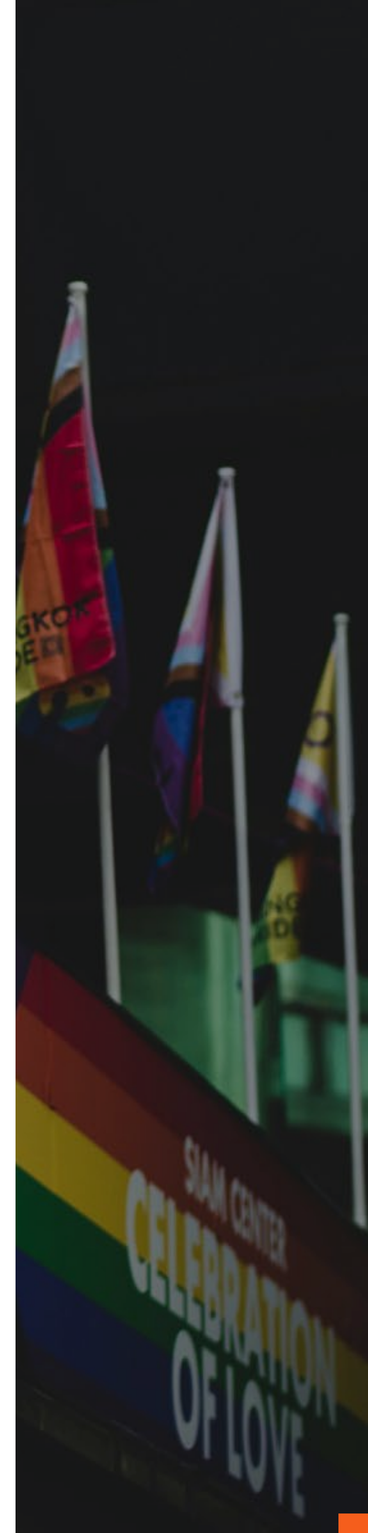
Political and culture-war attacks on diversity, equity and inclusion

Unfortunately, the risks for companies and investors undertaking genuine efforts to remove barriers to inclusion for underrepresented groups in business are not solely legal. Extra-legal action and harassment by some MAGA elements and culture warriors are a risk for businesses and investors that has to be acknowledged.

In addition to the White House and Elon Musk's "Department of Government Efficiency," there are many private actors carrying out campaigns against diversity, equity and inclusion (DEI), such as Robby Starbuck.

Starbuck's rising influence can be partially attributed to his opportunistic exploitation of the current political climate. His 2024 documentary The War on Children exemplified his knack for creating populist clickbait, skillfully merging long-standing parental fears such as child exploitation with growing resentment toward corporations like Big Pharma, placing the blame for widely shared grievances on so-called "DEI" policies — or what other right-wing figures call the "woke mind virus." His efforts are amplified by influencers like Jordan Peterson, Elon Musk and now, politically, the Trump administration. Their collective and mutually reinforcing social media reach influences millions, with legacy media outlets following suit and reporting on Starbuck as corporate America's "most feared" activist.[34]

The Trump administration has also called for pursuing enforcement actions against "all state and local governments, institutions of higher education, corporations, and any other private employers who are engaged in discrimination violation of constitutional and legal requirements."[35] This proposal, outlined in



Project 2025 (a conservative playbook for the new administration created by the Heritage Foundation with input from a wide variety of conservative contributors), suggests using the Department of Justice to prosecute companies that participate in diversity, equity and inclusion initiatives.

Investors and corporate actors should acknowledge these threats, but, like any threat or risk, the reality has to be assessed clearly before acting defensively. Diversity, equity and inclusion programs in the private sector are not illegal, per se; they do not need to be "cancelled" when the MAGA movement asks; and they are generally supported by shareholders.

1. Corporate leaders should question the potency of MAGA threats.

Starbuck's activism has been made to appear more potent than it is by targeting American companies with a distinctly conservative-leaning customer base, such as Harley-Davidson, Tractor Supply Co., Walmart and John Deere, knowing his messaging resonates and spreads easily within these communities, **even though similar proposals have gained little traction elsewhere.** More critical accounts question his actual influence, however, noting that some of the companies he targeted had already initiated changes to their diversity, equity and inclusion policies, supporting the notion that Starbuck's activism is an opportunistic effort to elevate his image as a conservative activist.[36] In addition, public relations firm Jackson Spalding suggests that much of the online activity around Starbuck's posts is generated by bots, not real people.[37] Corporations should be looking more closely at whether an activist's influence is overstated before listening to their demands.

2. Question corporate leaders, but distinguish between wording changes and substantive changes.

Some major U.S. corporations have altered or eliminated diversity, equity and inclusion initiatives, including Walmart, McDonald's, Amazon, Meta and Google, as have some banks and investment firms, such as Bank of America and BlackRock. Warner Bros. has opted to describe its diversity, equity and inclusion programs under the banner of simply "inclusion," in an attempt to avoid confronting the current administration while retaining some commitment to diversity.[38] JPMorganChase has rebranded its programs, eliminating some aspects, but retaining others and clarifying their purpose.[39]

Other companies, such as Costco, Apple and Microsoft, have defended their existing diversity, equity and inclusion programs.[40] Company statements on diversity, equity and inclusion have attempted to strike a balance between supporting long-standing efforts to combat bias and support inclusion while avoiding real or perceived legal risk, and they appear to have near unanimous support from shareholders in doing so.

Investors should distinguish between moves that retain the scope and substance of a program or initiative while altering its language and those that remove or alter its substance entirely. The extent to which a company's changes substantially alter the nature of programs and outcomes is an ideal subject for direct shareholder engagement (see Box 2, "Eight questions investors can ask to defend and advance diversity when meeting with companies," on page 17).

3. Remind companies that shareholders have delivered near unanimous votes in support of diversity equity and inclusion.

On February 25, 2025, shareholders voted 97% against a proposal to abandon diversity, equity and inclusion measures at Apple Inc. brought forward by the National Center for Public Policy Research (NCPPR).[41] Apple CEO Tim Cook defended diversity, equity and inclusion saying that Apple's "strength has always come from hiring the very best people and then providing a culture of collaboration, one where people with diverse backgrounds and perspectives come together to innovate," although he left the door open to future changes by adding that "as the legal landscape around these issues evolves, we may need to make some changes to comply, but our North Star of dignity and respect for everyone and our work to that end will never waver."[42]

On January 23, 2025, shareholders voted down a proposal filed at Costco by the NCPPR, which said that "Diversity, equity and inclusion may sound benign on the surface, but in reality it is weaponized language concealing a radical Marxist agenda." More than 98% of shares were voted against it.[43] The company directors said, "Our commitment to an enterprise rooted in respect and inclusion is appropriate and necessary."[44]

SECTION 3

Diversity, equity and inclusion are not only values, they *add* value

The data are clear: diversity, equity and inclusion improve performance and add value, both for individual corporations and for the economy as a whole. Attempts to eliminate opportunity and limit options for disadvantaged groups are an attack not just on deeply held principles of fairness, but also on the ability of companies and investors to make decisions that improve productivity, innovation and financial returns.

1. **Investors and companies should understand and discuss the threat to financial value of eliminating diversity, equity and inclusion initiatives.**

   The data from broad studies have been very clear on why diversity, equity and inclusion add to company performance and, therefore, shareholder value. For example:

   - A 2024 study looking at 13 measures of equity and inclusion among applicants to the U.S. Great Place to Work survey between 2006 and 2021 found that measures of inclusion were "positively associated with seven out of eight measures of future profitability, such as return on assets, return on sales, profits divided by employees, and sales divided by employees." Measures of equity and inclusion were also "positively associated with one- and three-year sales growth, positively associated with three-year but not one-year stock returns, negatively associated with leverage, and positively associated with dividends."[45]
   - A 2013 study by the Harvard Business Review emphasized that diverse teams are more innovative and perform better at problem-solving tasks.

This innovation led to increased market share and growth.[46] Companies that reported above-average diversity on their management teams also reported innovation revenue 19 percentage points higher than that of companies with below-average leadership diversity — 45% of total revenue versus just 26%.[47]

- A 2019 study published in the Harvard Business Review noted that when workers felt like they belonged, companies reaped substantial bottom-line benefits. A high feeling of belonging was linked to a whopping 56% increase in job performance, a 50% drop in turnover risk and a 75% reduction in sick days. For a 10,000-person company, this would result in annual savings of more than $52 million.[48]

- Recent data from the Society for Human Resource Management found that recent rollbacks in diversity, equity and inclusion have an adverse impact on attracting and retaining talent, with 82% of employees saying that rolling back diversity, equity and engagement initiatives makes them less engaged in their work, 80% reporting an intention to seek a new job within the year and 70% stating that they would not apply to a company they believed was pulling back on diversity commitments.[49]

When companies consider altering or abandoning diversity, equity and inclusion initiatives, they and their investors should assess and discuss the potential risk to performance that may result. This analysis should include consideration of their customer base, relevant markets, brand reputation, employee base, recruitment opportunities, internal culture and access to quality suppliers.

2. Investors with broad portfolios should be reminded that economic inclusion has economy-wide value that enhances beta.

- In its study "Closing the Racial Inequality Gaps," Citi (one of the world's largest financial institutions) showed that if four key racial gaps for Black people — wages, education, housing and investment — had been closed 20 years ago, $16 trillion could have been added to the U.S. economy. If the gaps are closed today, $5 trillion could be added to the U.S. GDP over the next five years, and 0.1% could be added to annual global GDP growth.[50]

- RBC Economics found that a lack of accumulated household wealth is "a key obstacle for business development, particularly in the start-up phase, when financing is hard to secure and owners rely more heavily on personal and/or family savings." It noted that "if visible minorities owned businesses at a rate comparable to the overall population, more than 100,000 new businesses would be created, each with the potential to hire between 8 and 10 workers."[51]

- A Statistics Canada survey using data from 2015 to 2017 found a higher level of innovation in small and medium-sized enterprises (SMEs) with visible minority businesses owners compared with SMEs in general, a factor in enhancing Canada's global competitiveness.[52]

- The Investment Integration Project found that the wage gap between Black and white Americans accounts for as much as 0.2% in lost GDP each year.[53] By addressing the gender wage gap globally, countries would add 0.6% to their GDP annually.[54]

- In its 2023 study "Close the Gender Gap to Unlock Productivity Gains," Moody's Analytics found that closing the gender gap in labour force participation and management in OECD countries could raise global economic activity by approximately 7%, or about $7 trillion in today's dollars.[55]

3. Investors should remind companies of any instances where they previously disclosed statements on the value of diversity, equity and inclusion initiatives.

Many of the companies that have been eliminating programs previously disclosed that the efforts they undertook to improve diversity, equity and inclusion at their companies were important for the company's access to talent, innovation and financial success. This raises the question of whether corporate directors are failing in their fiduciary duty when eliminating programs they previously declared were value enhancing.

- There are few starker examples of this dramatic shift than Elon Musk's own company, **Tesla**, which published a DEI impact report in 2020.[56] This report showed demographic statistics, highlighted employees from diverse backgrounds (including Tesla's then-CFO), showcased diversity-related employee resource groups, promoted hiring from historically Black colleges and universities, and described Tesla's mission to "integrate diversity, equity and inclusion principles and practices into the DNA of our company."[57] The company's stated reasons for doing so included hiring the best people to serve as experts and drive innovation. Similar content can be found in Tesla's corporate reporting, up to its 2023 annual report, which scrubbed all such references.[58]

- As recently as its 2023 annual report, **Goldman Sachs** made pronouncements about its commitment to diversity, equity and inclusion, stating that "to be successful, our people must reflect the diversity of the communities in which we operate"[59] and that "diversity … in addition to being a social imperative, is vital to our commercial success through the creativity it fosters" [emphasis added].[60] Goldman Sachs declared that changes in the diversity of its customer base could pose an operational risk if the company was not responsive to it.[61] In its 2024 report, however, the section on diversity equity and inclusion was removed.[62]

- In **Meta's** 2023 annual report, it stated its goal to "build a diverse and inclusive workplace where we can leverage our collective cognitive diversity to build the best products and make the best decisions for the global community we serve."[63] Meta has included a brief summary of company diversity statistics in its annual reporting since 2021 and published a Responsible Business Practices Report with detailed diversity statistics in both 2023 and 2024.[64] Moreover, it has been implementing a "Diverse Slate Approach" in hiring since 2015 and has seen steady increases in recruitment of qualified people from underrepresented groups, which was previously disclosed as positive.[65] More recently, however, Meta has removed language referring to diversity, equity and inclusion from its policies and reporting,[66] cancelled its Diverse Slate Approach in hiring as well as its supplier diversity program, shut down its diversity, equity and inclusion department and changed the role of its Chief Diversity Officer, Maxine Williams, to VP Accessibility and Engagement.[67]

- After discussing recent damage to its brand reputation, including an assault by Robby Starbuck on the company's diversity, equity and inclusion policy, **John Deere's** most recent annual report contains new references to issues with talent acquisition and retention,[68] stating that its "culture and values" (which had previously included diversity) had been crucial to its success and that "failure to preserve our culture or focus on our values could negatively affect our ability to retain and recruit talent."[69]

BOX 2

Eight questions investors can ask to defend and advance diversity when meeting with companies

1. What specific legal risks, if any, does the company face for maintaining its initiatives on diversity, equity and inclusion? Is it a U.S. federal contractor, for example? Has it evaluated the potential legal liabilities associated with eliminating those initiatives, including any equal employment and equal contract opportunity obligations under civil rights law?

2. How specifically did the company's previous initiatives on diversity, equity and inclusion run afoul of current laws and on what basis?

3. Has the company evaluated the potential operational risks of modifying or scaling back diversity, equity, and inclusion initiatives, particularly considering long-term human capital and supply chain priorities?

4. How did the company evaluate the effectiveness of its diversity, equity, and inclusion policies, practices and commitments? Was this analysis considered when the company shifted its diversity, equity, and inclusion efforts?

5. Has the company evaluated the views of its existing and prospective customers and potential brand effects before abandoning or adjusting its previously celebrated initiatives on diversity, equity and inclusion? Were threats from external anti-diversity activists investigated and fully assessed for their validity?

6. What is the company's new strategy for accessing the widest talent pool for its business and ensuring that unconscious biases do not impede recruitment of the best employees, leaders and board members? Is this articulated in a clear policy and standard operating procedures? How is accountability assigned?

7. Has the company evaluated whether its workforce may have different experiences based on racial, gender or other factors that might impede employee participation, contributions and innovation? How will the company continue to work to overcome those barriers? Who is accountable for ensuring that the barriers are eliminated?

8. How are the company's trade associations lobbying or advocating for the industry's right to promote value-enhancing diversity, equity and inclusion programs? As industry representatives can advocate without subjecting individual companies to retribution, are you asking them to play that role?

SECTION 4

Investors continue to have options for pursuing diversity, equity and inclusion

Investor options to reinforce value-enhancing measures include proxy voting, investor engagement, policy advocacy, hiring diverse managers and setting expectations for external managers. These are explored further below.

Proxy voting

Institutional investors can and should continue to use their votes for or against (or abstain) to elect directors that add skills, experience and value to the boards of investee companies.

If an investor has determined that increased diversity is a factor that improves results at a particular company or companies in general, they can and should vote for qualified and diverse candidates.

If a board committee has done little to ensure that it has better access to a wider pool of qualified candidates and shows little diversity in its current makeup, investors may vote against the chair of the nominating and governance committee or the chair of the board for their failure to address a material governance concern.

CalPERS, for example, the largest pension fund in the U.S., recently announced it had strengthened its proxy voting guidelines on diversity, equity and inclusion, potentially withholding votes from director nominees "who demonstrate failed oversight or lack of commitment to labor issues, including DEI initiatives." It is now engaging 16 companies on their rollback of DEI initiatives.[70]

That said, investors will have to obtain sufficient data on candidates and board diversity and, if they use an external proxy advisory service, access voting recommendations that reflect their analysis and voting policies.

- This became somewhat more difficult on February 11, 2025, when the dominant proxy advisory firm **Institutional Shareholder Services** (ISS) issued a statement that it would no longer consider the gender, racial or ethnic diversity of a company's board when making voting recommendations on directors of U.S. companies.[71] The move drew criticism from a number of prominent investors, including the New York City Comptroller, Canada's University Pension Plan, Boston Common Asset Management and Danske Bank Asset Management.[72]
- Proxy advisory firm **Glass Lewis** has charted a different course after consulting with clients and stakeholders and will maintain existing guidance for U.S. companies concerning board elections and DEI proposals. However, when the firm recommends voting against some or all board members due to poor representation of women or members of underrepresented groups, it will provide clients who do not wish to consider board diversity with an alternative voting recommendation.[73] The firm will continue to support "well-crafted" shareholder resolutions on diversity, equity and inclusion, suggesting that proposals should clearly lay out the risks of the board failing to act as suggested.[74]
- **Canadian proxy advisory service** Groupe Investissement Responsable (GIR) has been clear that its guidelines are not changing and that clients can expect voting recommendations, vote execution and/or second opinion recommendations that address diversity at the board level and support resolutions that value diversity, equity and inclusion at the staff level.[75]

Investors that rely on an external manager to vote their shares can request an explanation from the manager for any changes to voting policies or practices. BlackRock and Vanguard, for example, recently rolled back board diversity provisions in their formal proxy voting policies. Where the asset owner has control over voting (i.e., where shares are held in segregated accounts), investors can instruct managers to vote according to their own policies. Further, if they are unsure about how their manager is voting on key diversity questions, SHARE can assist with a proxy vote audit that analyzes every vote cast and benchmarks the manager's votes against corporate governance norms and practice.

In addition to director votes, institutional investors can and should vote to support proposals that, in their view, enhance the company's performance by improving diversity, equity and inclusion at the board, management, staff and supplier level. An April 2025 shareholder proposal asking the Bank of Nova Scotia to conduct a racial equity audit, for example, received more than 37% support from shareholders, more than double the average level of support for Canadian shareholder proposals in 2024.[76]

They may also vote against proposals filed by organizations seeking to roll back value-enhancing programs, as noted earlier. Anti-DEI proposals filed increased from 23 in 2021 to 112 in 2024,[77] but shareholder support for these proposals remained negligible, averaging 1.7% of votes cast in 2024[78] (see Section 2).

Corporate engagement

Investors may continue to engage the boards and management of investee firms directly on a full range of topics related to diversity, equity and inclusion. This does not need to include shareholder proposals but may do so where they are admissible under current rules.

Investor engagement can focus not only on defending existing programs but also on extending a company's policies, practices and disclosures where they have previously been insufficient. These engagements should prioritize companies where diversity, equity and inclusion are most material to the company's success, either because of the importance of decent work measures to its success (e.g., highly labour-intensive industries, industries that require a highly skilled workforce, or where the brand is sensitive to consumer sentiment). They may also focus on companies whose boards lack diversity, especially in relation to their customer base or the markets for their products and services.

See page 17 for some of the questions investors may ask in conversations with investee company management.

Policy advocacy

On December 11, 2024, the U.S. Court of Appeals for the Fifth Circuit, a Republican-majority body, overturned the NASDAQ's board diversity rule (approved by the U.S. Securities and Exchange Commission), which would have required the boards of listed companies to have at least one female director and one director from an underrepresented group or to explain their non-compliance.[79]

While the policy landscape at the federal level in the U.S. may limit investor options, global investors can and should encourage other jurisdictions to proceed with diversity disclosure and target-setting regulations in both corporate and securities laws, as well as within stock exchange listing requirements.

For example, in Canada, securities regulators were considering adopting new board and executive diversity disclosure rules that would include disclosure of a variety of relevant groups. In a 2023 consultation carried out by the Canadian Securities Administrators, 100% of investor respondent letters supported enhanced disclosures. However, despite the overwhelming support for a new rule, in April 2025 the CSA announced it is "pausing" its efforts to develop a new rule due to "rising competitiveness concerns".[80] Investor engagement with securities regulators asking them to complete that process is warranted.

Hiring diverse managers

Asset owners can still actively prioritize hiring diverse investment managers by identifying, investing with and developing relationships with newer, smaller and diverse investment management firms to help grow their portfolio. Despite executive orders and the U.S. Supreme Court's 2023 decision overturning race-based affirmative action in college admissions, organizations continue to advance diversity initiatives in asset management, citing compelling business and strategic advantages that remain relevant as the regulatory environment evolves.[81]

For example, the Office of the New York City Comptroller's Emerging Manager Program is dedicated to identifying and investing with top-performing fund managers that demonstrate exceptional potential and are committed to diversity in their investment decision-making process, ownership structure, compensation and profit-sharing policies. On February 12, 2025, at the Annual Diverse and Emerging Managers Investment Conference in New York City, Brad Lander, the city comptroller and custodian of the five pension funds in the city pension system, said, "Expanding the pool of asset managers who are responsible for investing the assets of our pension funds is an essential part of our investing strategy and integral to delivering robust long-term returns for current and retired municipal employees."[82]

Legal analysis by U.S. law firm Jackson Lewis notes that "although critics of corporate diversity, equity, and inclusion initiatives are increasingly challenging supplier diversity programs as unlawful under 42 U.S.C. §1981 (which prohibits race discrimination in the making and enforcing of contracts), supplier diversity programs remain not only legal, but often statutorily required for government contractors,"[83] adding that:

> *No statute prohibits a private company from cultivating a diverse group of suppliers. Companies with diverse supplier initiatives are not establishing quotas or making contracting decisions on the basis of protected characteristics. Rather, they are diversifying the pool of qualified business partners from which they select the best candidate to perform a contract. Basically, supplier diversity programs provide a framework through which companies identify barriers in the contracting process and work to eliminate those barriers for all potential business partners.*[84]

Setting expectations for external managers

As noted above, some asset management firms have rolled back board diversity provisions in their formal proxy voting policies and are adjusting their investment stewardship processes around diversity and equity.

Asset owners can address these changes with their external managers in much the same way that managers and owners might address changes at the investee company level. For example, where a manager previously cited the importance of diversity, equity and inclusion as a driver of shareholder value but is not making current efforts to foster that value in the asset owners' portfolio, boards or staff should ask whether the analysis has changed and, if not, why the manager is no longer working to unlock that value and/or address those risks in their portfolio.

For firms that have adopted the CFA Institute's Diversity, Equity, and Inclusion Code,[85] investors should inquire as to whether and how the manager continues to uphold and implement the six principles set out in the code, including principle 4: "We commit to using our position and voice to promote DEI and improve DEI outcomes in the investment industry."

Conclusion

Kevin Thomas | CEO, SHARE

Investors and companies should not be dissuaded from pursuing legal programs and initiatives that enhance fairness, improve productivity, accelerate innovation and deliver financial returns. However, in an era where basic legal, political and social norms are being attacked by people in the highest offices, caution is warranted.

The purpose of this brief is to identify the many ways we can, and should, act to defend what are both basic human rights and critical value drivers for our business sector. Despite the attacks by special interests, investors and business leaders should take heart that most of the means to deliver on the value of diversity, equity and inclusion remain in place.

Corporate leaders should interrogate the many ways that programs enhance value for the company, its customers and its shareholders, and reinforce practices that help deliver on that value. They should also question the source of attacks on diversity, equity and inclusion as well as their actual — not threatened — ability to inflict legal, reputational or financial damage on the company before agreeing to limit value-enhancing programs.

Investors should likewise question corporate leaders that agree to abandon previously celebrated programs or initiatives and, for their own part, use their votes and stewardship efforts to promote the kind of initiatives that deliver better outcomes for investee companies and their shareholders. Investors that use external managers can hold them accountable for changes in stewardship and voting practices that unduly limit the application of diversity, equity and inclusion principles based on perceived legal liabilities rather than realities.

At the end of the day, if corporate leadership is willing to abandon value-enhancing initiatives based on flawed or limited analysis, external pressure or simply a lack of fortitude, that signals a much bigger problem for the corporation and its employees, and its shareholders should seriously consider whether the management team is truly capable of leading in these turbulent times.

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