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STRIVE

The Fiduciary Focus

Investment News From a Pro-Shareholder Perspective

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This Week: Treasury pushes financial institutions to take action to meet climate goals; court tosses lawsuit seeking to overturn Labor Department's ESG rules; states target net zero accounting group with antitrust probe; Strive releases new white paper on China Risk for U.S. businesses; An Eye on Energy explains how global LNG trade is evolving; and more.

Treasury Pushes Financial Institutions To Take Actions To Meet Climate Goals

On Tuesday, the U.S. Department of Treasury announced its "Principles for Net Zero Financing and Investment," urging financial institutions including banks and asset managers to back up their net zero goals "with clear practices, targets, and metrics." According to the accompanying press release, the purpose of the Principles is to encourage the "mobilization of more private sector capital to address the physical and economic impacts of climate change" in the face of "climate crisis."

To do so, the Principles focus on Scope 3 emissions, which are not banks' or asset managers' direct emissions, but the emissions these financial institutions indirectly cause by agreeing to invest in, or lend to, or provide banking services to other companies that emit greenhouse gas into the atmosphere. The principles urge firms like BlackRock, State Street, Morgan Stanley, and JP Morgan Chase to take concrete action to ensure these goals are met.

Specifically, the Principles urge Wall Street firms to use their financial clout to pressure the companies they invest in or provide banking services to cut emissions and set specific, time-bound metrics for progress. If the underlying companies do not agree, or fail to meet these goals, the Principles tell the Wall Street firms to "disengag[e] from a given client or portfolio company that does not sufficiently" comply—i.e., to drop or divest from the client.

The Principles come at a time when Wall Street is already under increasing scrutiny for using American investors' dollars to promote climate goals, rather than maximize their clients' returns.

Notably, the Treasury's report makes no attempt to explain how using client money to advance climate goals (and pressure portfolio companies to do the same) could possibly be reconciled with asset managers' fiduciary duty to make each and every decision—what companies to invest in, and how much, and what strategies those companies should pursue—exclusively to maximize investment returns. Instead, the Principles make only passing reference to these obligations, including disclaimers that the Principles should be adopted "in a manner consistent with their fiduciary, regulatory, and legal requirements." How that might be possible is anybody's guess.

Court Upholds Department of Labor ESG Regulations

On Thursday, a federal court ruled in favor of the Biden Administration, upholding the legality of regulations that allow and encourage retirement fund managers to consider ESG factors when investing retirees' and pensioners' funds.

The lawsuit, brought by a coalition of 26 states and private plaintiffs earlier this year, alleged that the regulations violated the Employee Retirement Income Security Act (ERISA), which requires fund managers to act "solely in the interests of participants and beneficiaries" with the "sole purpose of " providing financial benefits to them, as well as the Administrative Procedure Act.

"While the Court is not unsympathetic to Plaintiffs' concerns over ESG investing trends, it need not condone ESG investing generally or ultimately agree with the Rule to reach this conclusion." Instead, the Court relied on what's called the *Chevron* doctrine to uphold the law. Under *Chevron*, a court must defer to an agency's rule so long as the governing statute, in this case ERISA, is silent on the issue and the agency's interpretation is reasonable. Here, because the Court found ERISA is technically silent on whether or not ESG factors can be used as a tiebreaker, the Court upheld the regulation.

The Supreme Court is set to review the wisdom of the *Chevron* doctrine in an upcoming case later this year, which could impact the lawsuit's chances of success on appeal. Judge Kacsmaryk obliquely referred to this possibility in his order, explaining he was ruling in the Biden Administration's favor only "after affording DOL the deference it is presently due under *Chevron*."

In the interim, stakeholder capitalism investing remains open to attack under state laws protecting retirees with state pension funds, as well as pending legislation that would reverse the Biden Administration's rule. Further, the case did not decide, or even consider, whether any particular investing practice, such as politically-driven proxy voting or integration of ESG criteria into non-ESG funds or asset manager membership in environmental and social organizations, would violate ERISA or an asset managers' related fiduciary duties; the sole issue in the case was whether the Department of Labor regulation, as written, would be permitted to go into effect.

22 Attorneys General Launch Antitrust Probe Into Net Zero Group For Accountants

A coalition of twenty-two state attorneys general, led by Jonathan Skrmetti of Tennessee, have launched an investigation into signatories of the Net Zero Financial Services Providers Alliance (NZFSPA), as reported by CFO News on Wednesday.

The Big Four accountants—Deloitte, Ernst & Young, PricewaterhouseCoopers, and KPMG—control 75% of the U.S. accounting market and have all joined the alliance. As signatories, the Big Four have pledged to set net zero ambitions and to "[a]lign all relevant services" towards meeting the Paris Agreement's goals. Notably, signatories agree not only to cut their own emissions, but to use their collective financial clout to pressure the customers they serve to cut their emissions as well.

The attorneys general's letter raises several concerns. "Although many of you are direct competitors with one another, you have collectively agreed to coordinate the 'alignment' of your products and services under the guise of a shared ideological vision." The letter also alleges potential consumer protection violations, as it is not clear that these financial services providers disclose their conflicts of interest to their customers. The letter requests the signatories turn over documents regarding their coordination, participation, and net zero efforts for investigators to review.

The antitrust inquiry is not the first investigation into members of net zero groups. Attorneys general from Republican-led states opened investigations into members of the Net Zero Banking Alliance last October, the Net Zero Asset Managers in March, the Net Zero Insurance Alliance in May, and the heads of the Glasgow Alliance for Net Zero in July. While these investigations are still ongoing, no prosecutions or enforcement actions have yet been brought.

The Big Four's response is due October 13.

Disney Will "Quiet the Noise" On Political Issues, CEO Says

Disney's Bob Iger wants to "quiet the noise" on political issues, according to the New York Post on Wednesday. Mr. Iger shared the remarks during an investor presentation in Orlando, Florida last week.

The comment comes following a year of political controversies, including its public feud with Florida Governor Ron DeSantis, as well as criticism from financially-minded investors, including Strive, who want the company to refocus on business, rather than political and social issues.

The remarks are in line with what Mr. Iger told investors during its annual shareholder meeting in April. "[O]ur primary mission needs to be to entertain and then through our attendant entertainment to continue to have a positive impact on the world," Mr. Iger said at the time. "I'm very serious about that," he added. "It should not be agenda driven."

Straight From Strive

Strive White Paper
China Risk As Investment Risk For U.S. Businesses And Shareholders

In recent months, China has been making headlines for all the wrong reasons: its economy is faltering, stocks are plummeting, and geopolitical tensions with the U.S. continue to rise. But even investors who have not invested in Chinese companies are not safe from the fallout; U.S. companies are increasingly reliant on China for manufacturing, raw materials and sales. That means that even U.S. investors who've invested mostly or exclusively in American companies still face significant investment risk—one that is only beginning to become apparent to U.S. investors.

Given the significance of these concerns, Strive's research team has published a new white paper assessing these risks, how businesses and investors might mitigate them, and what Strive is doing to facilitate these efforts. Read more by clicking the image below:

An Eye on Energy

Global LNG Trade Is Evolving

According the United States Energy Information Agency (EIA), the U.S. exported more liquefied natural gas (LNG) than any other country in the first half of 2023 (1H23).

EU countries (Europe) and the United Kingdom remained the main destination for U.S. LNG exports in 1H23, accounting for 67% of total U.S. exports. Since February 2022, Europe's move away from pipeline gas imports from Russia has changed the global LNG market. Between 2021 and 2022, global LNG set a record high, averaging 51.7 billion cubic feet per day (Bcf/d), with the U.S. becoming the world's largest LNG exporter during the first half of 2022.

This matters because the former model of distinct Atlantic and Pacific markets has changed and will continue to evolve. It is expected that Asia will be the main source of demand and imports of LNG by 2030. According to Shell, the U.S. and Qatar are projected to account for about 80% of new supplies to 2030. New entrants will include Canada and East Africa.

LNG exports in 2024 will continue to grow as two new LNG liquefaction projects come on line: Golden Pass in Texas and Plaquemines in Louisiana. In the future, the number of projects approved and completed in the U.S. to increase our export capacity will depend on the regulatory approval process, global business climate, and willingness of buyers for our product.

We anticipate that the growing demand for reliable natural gas will require the U.S. LNG industry to seek new markets outside Europe and East Asia. This event will continue to evolve the global LNG market's trade, logistical, and geopolitical dynamics.

The Best of the Rest

Additional stories about ESG investing, company happenings, and more.

- SEC cracks down on greenwashing with expanded "Names Rule" requiring 80% of a funds' assets match its stated purpose
- BlackRock dissolves ESG funds as it backs away from label, following similar move by State Street earlier this year
- Government shutdown may slow SEC ESG efforts, Commissioner Gensler warns; shutdown would force pause in all non-essential work.
- Indiana Public Retirement System "ahead of schedule" in divesting from China; working through new ban on ESG investments
- EU's new ESG disclosure regulations may spur U.S. securities litigation; risk of inconsistent requirements for U.S. companies is high
- More businesses diversifying supply chain, but not decoupling from China
- JP Morgan predicts energy supercycle; oil could reach $100 per barrel or more amid supply cuts

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Strive News

A new analysis by Morningstar titled "Strive Asset Management vs. Engine No. 1: How Did the Activists Vote?" compares Strive's proxy voting to the activist fund Engine No. 1, BlackRock, State Street, and Vanguard.

Definite trends emerged. Of the five, Strive was the only asset manager with a perfect pro-fiduciary record on ESG proposals, voting for 0% of ESG proposals in 2023. Engine No. 1, by contrast, supported nearly all of them. The Big Three fell in between.

Strive was also the only asset manager who voted in favor of any proposal made by what Morningstar termed "anti-ESG proponents," including proposals to roll back value-destroying ESG-measures like racial equity audits supported by the Big Three in recent years. On this front, Strive took a more nuanced, case-by-case approach to determine whether the proposal was likely to enhance long-term financial value, ultimately supporting approximately 64% of such proposals.

Strive also stood out for its more critical stance of company CEOs. While both Engine No. 1 and the Big Three voted in favor of every CEO in the S&P 100, Strive supported just a third. As explained in Strive's voting guidelines, Strive will vote against a CEO who is up for reelection to the board where (1) there is evidence that the CEO holds views that are antithetical to American capitalism, such as supporting stakeholder capitalism or joining organization devoted to ESG causes, and (2) those views are impacting how the company is run. Unfortunately, this policy precludes Strive from supporting many of the CEOs of America's largest companies. We are optimistic, however, that as American businesses refocus their efforts on business goals, our support for CEOs will increase.

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Who Are We?
Strive is one of the fastest growing asset management firms. Our mission is to maximize value for our clients by leading companies to focus on excellence. **Click here** to learn more.

What Makes Strive Different?
While many asset managers push companies to focus on other stakeholders such as employees, suppliers, the environment and society at large, we live by a strict commitment to shareholder primacy — the belief that **the purpose of a for-profit corporation is to maximize long-run value for investors. Click here** to learn why shareholder primacy is so important.

How Does Strive Maximize Value?
Our corporate governance team engages with the companies in which our clients are invested to advocate for the pursuit of excellence in corporate America. We are aggressively apolitical when it comes to utilizing our corporate governance tools and demand that companies focus exclusively on delivering long-term financial value for investors. The corporate governance team also determines how to cast our shareholder votes at annual meetings and special elections, evaluating each proposal through the lens of maximizing financial return.

Our research team conducts deep analysis of macro economic trends, market developments, and industry- and company-specific metrics to identify potential risks and opportunities for our clients. We then incorporate the results of this research into our engagement and voting strategy, and share it with our clients in the form of white papers and market research reports so they can make the most educated investment decisions possible.

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