STRIVE

The Fiduciary Focus

Investment News From a Pro-Shareholder Perspective

August 13, 2024

This Week: DEI litigation on the rise; Chips Act promises put to the test; The Silicon Surge discusses ASML's alarming focus on DEI.

DEI Litigation on the Rise

Companies are increasingly facing litigation over DEI policies following the Supreme Court's decision in *Students for Fair Admissions v. Harvard*, per a new piece in the Harvard Law Forum on Corporate Governance.

An anniversary to remember: In June 2023, the Supreme Court outlawed the use of race in college admissions, holding that race-based affirmative action violated the Equal Protection Clause and the Civil Rights Act. When the decision first came out, some questioned whether the case would impact corporate America. It's now clear that it has.

More lawsuits: The piece notes a 10% increase in EEOC complaints in 2023. The uptick in cases includes:

- Discrimination cases brought by members of the racial majority, often arguing that the existence of DEI programs demonstrates discriminatory intent. In a recent lawsuit against CBS, for example, the plaintiff—an older, straight, white male—alleged he was fired to meet diversity goals.
- Lawsuits targeting training, grant, and internship programs that discriminate based on race, such as the recent court order shutting down a venture capital program open only to black female applicants.
- A new series of lawsuits targeting programs that are race-neutral on their face, but nonetheless appear to discriminate. One example is a lawsuit targeting the National Museum of the American Latino's internship program, which appears to hire only Latino interns, despite allowing anyone to apply.

More legislation: Laws restricting DEI are also on the rise, with over one hundred pieces of legislation enacted or pending in over thirty states.

Why it matters: For years, ESG proponents like BlackRock pressured companies to adopt DEI programs, often by claiming that these programs increase profitability and reduce litigation risk. But the most prominent studies claiming that diversity helps profits have now been debunked, and, following the *Harvard* decision, it's clear that DEI programs increase, rather than decrease, litigation risk. Companies seeking to maximize value for shareholders would be wise to take note.

"Chips Act Promises Are Just That—Promises"

Two years after the passage of the Chips Act, the promised funds have been mostly divvied up, but the money is not yet flowing. Now, the real test begins, Bloomberg reports.

The Chips Act: The Chips Act dedicated $39 billion in grants towards bringing semiconductor manufacturing to the United States, both to boost U.S. industry and address concerns that the U.S. relies too heavily on Taiwan to manufacture advanced semiconductor chips.

The Latest: Two years in, and the 175-member Chips Program Office staff has chosen most of the projects it plans to fund. But, as the article states, most "Chips Act promises are just that—promises." That's because the money is contingent on companies' meeting certain construction and production milestones. Few have broken ground.

ESG Issues Weighing the Program Down: The article notes that political uncertainty, and various ESG issues, are causing some delays.

- Micron, for example, has been forced to delay the buildout of its planned facility in upstate New York over concerns that the construction may impact the habitat of a species of endangered bat.
- The Department of Labor is also asking grantees to retroactively apply new wage floors for work performed before the Chips Act award was won, creating financial and logistical challenges for semiconductor companies.
- Union disputes and requirements for on-site childcare have also dampened semiconductor industry enthusiasm for the Chips Act, although Bloomberg claims companies are mostly delayed by negotiations over dollar amounts and milestones.

Read More: To understand how the Chips Act has been bogged down by ESG requirements, and what Congress can do to fix them, read "DEI Killed the Chips Act" by Strive's Matt Cole, CEO, and Chris Nicholson, SVP Research, here.

Goldman Sachs Leaves Climate Action 100+

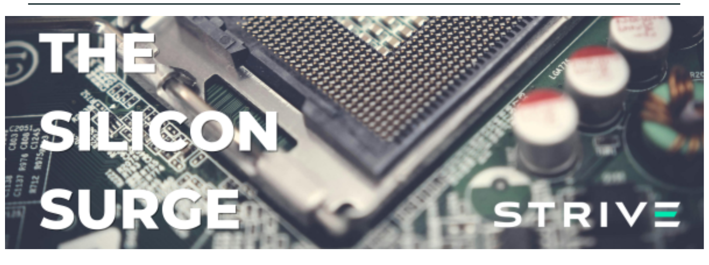
Goldman Sachs became the latest asset manager to leave Climate Action 100+, the New York Post reports.

The Organization: Climate Action 100+ is a coalition of investors who all agree to pressure the companies they invest in to curb emissions. Per the organization's website, investor members agree to push "companies [to] move beyond disclosure to action, developing and implementing credible, Paris-aligned transition plans backed by sufficient investment, enabling an orderly transition from a financial and social point of view."

The Backdrop: Late last month, Goldman Sachs received a demand letter from the House Judiciary Committee, citing concerns over its potential "collu[sion] with climate activists through initiatives like Climate Action 100+ to adopt left-wing environmental, social, and governance (ESG)-related goals, potentially in violation of U.S. antitrust law."

The Departure: Like many other asset managers who have left Climate Action 100+, Goldman Sachs released a statement promising that it would continue to press companies to meet climate goals, but would now do so independently.

The Result: While asset managers are now reluctant to openly coordinate their activities via Climate Action 100+, they're still pushing climate goals on corporate America. And that pressure is being felt. Per one Nasdaq survey, 88% of companies still feel internal and external pressure to set net zero goals. Whether the pressure comes from Climate Action 100+ as a collective, or BlackRock, Vanguard and Goldman Sachs acting individually, probably doesn't matter much.



Amid risks, ASML prioritizes DEI

ASML may now be safe from further export restrictions to China. This comes after the Biden Administration announced that approximately a fifth of its allies, including the Netherlands, are exempt from tighter export bans.

ASML is the only company that makes the most cutting-edge versions of lithography technology, using lasers to etch microscopic circuits onto silicon wafers to turn them into chips. Due to national security concerns, the U.S. and the Netherlands agreed to ban the sale of its extreme ultraviolet and advanced last-gen deep ultraviolet lithography machinery to China.

Luckily for ASML, it will continue to sell its older DUV machinery to China without punishment. China attempted to reverse engineer ASML's extreme ultraviolet lithography tech but failed miserably. This is one of the biggest hurdles Chinese firms face towards domestic semiconductor dominance.

Chinese semiconductor companies rely on ASML, which means it relies on them. In Q1 2024, China accounted for nearly half of ASML's revenue, so if draconian China restrictions were to arise, it'd be out of business. It's positive news for ASML that the U.S. is holding off on putting it on an even tighter watchlist.

Besides the ongoing tech trade war, ASML is facing other obstacles. Earlier this year, the Dutch government tightened immigration laws, making it difficult for ASML to hire skilled workers since many of its employees are immigrants. It's considering moving its headquarters to another country to hire the needed talent.

ASML is scrambling to find qualified employees but is fine finding DEI hires. For 2025, its executive performance indicators reward having an inflow of 24% female hires and hitting similar executive female leadership targets. Why is it prioritizing DEI quotas if it's concerned about the lack of skilled workers? Aren't any qualified workers desperately needed? Why not promote and reward whichever leaders can best navigate the company's China risk instead of focusing on gender?

If ASML wants to continue to power the AI revolution, it needs to focus on what matters. With half of its revenue on the line due to the U.S.-China trade war and the Dutch government's endangerment of its workforce, ASML cannot afford to waste time on DEI quotas. Strive will engage with it to make sure it focuses on business.

Strive CEO Matt Cole Joins Woke Mitigation Podcast

Last month, Strive CEO Matt Cole joined the Woke Mitigation Podcast to set the record straight on ESG and how it affects businesses, portfolios, and communities across the nation.

Listen to the full podcast here.

The Best of the Rest

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

- FDIC moving forward with new rules that may apply to BlackRock, Vanguard; their current exemption from banking regulations as "passive" asset managers may become much more difficult to obtain.
- Mining company Glencore CEO says "ESG pendulum has swung back" in statement discussing why the company has reversed its decision to spin off its lucrative coal business.
- 71% of the largest American companies link executive pay to ESG goals, despite mounting criticism of the practice.
- Is the ESG bubble like the subprime mortgage bubble? A new op-ed in the Wall Street Journal draws out the parallels.
- SEC may initiate new enforcement action against WisdomTree over three ESG-focused ETFs it closed earlier this year.
- House Committee on Financial Services releases report critical of ESG; the working group found a "troubling increase in efforts to force progressive policies on the private sector."
- Weak demand in China affecting multinational companies; companies from AB Inbev to L'Oréal to Volkswagen are concerned about "a slowing [Chinese] economy exacerbated by shrinking appetite for foreign brands and intensifying domestic competition," the Financial Times reports.

Know someone who might enjoy this newsletter? Be sure to share it with them. Not signed up and want to receive your own weekly copy of The Fiduciary Focus? Click here to sign up.

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.
