

# The Fiduciary Focus

Investment News From a Pro-Shareholder Perspective

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**This Week:** SEC gives companies carte blanche to exclude shareholder proposals; Paramount hit with DEI lawsuit; The Bitcoin Brief looks at the Bitcoin for America Act.

## SEC Gives Companies Carte Blanche to Exclude Shareholder Proposals



Following an [announcement](#) last week, the Securities and Exchange Commission will defer to companies' discretion on whether to exclude shareholder proposals from their proxy statements, [Reuters](#) reports.

### What's Going On:

- Per SEC rules, shareholders are allowed to submit non-binding proposals, which companies are then required to put to a shareholder vote. In recent years, many proposals have been ESG focused, asking companies to reduce carbon emissions or diversify their ranks.
- There are rules about what types of resolutions can be made. For example, the resolution can't be a personal grievance, it can't be too trivial (it must relate to at least 5% of the company's assets or sales), it can't relate to the company's ordinary business operations, it can't duplicate another proposal, and it can't ask the company to do something it's already substantially done.
- Companies often try to exclude proposals on these grounds. Historically, companies have gone to the SEC to ask for permission to do so. The proponent responds, and then the SEC decides whether the proposal is fair game or not.
- Last week, the SEC announced it will no longer make a case-by-case determination on whether a proposal can be excluded. Instead, the SEC will "respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials."

**What's Next:** While the SEC's decision almost certainly reflects its belief that shareholder proposals are largely a nuisance, it may have the unintended effect of *increasing* the number of proposals appearing on corporate ballots. Without the SEC's explicit blessing, companies may be more hesitant to exclude proposals—even those that are clearly out of bounds—because doing so could expose them to litigation risk from the proponents themselves.

**Why It Matters:** There's little doubt that the shareholder proposal process is broken. In recent years, it's been taken over by social activists who purchase a few shares to goad a publicly-traded company into diverting resources to their preferred social causes, rather than provide a venue for shareholders to weigh in on how to maximize shareholder value. But in our view, the solution is tighter enforcement of the shareholder proposal process, not a hands-off approach, as well-intentioned as it might be.

## Paramount Hit With DEI Lawsuit



A former Paramount executive has sued the production studio for DEI-based racial discrimination, alleging that he was fired for not being a member of a favored minority group, the [HR Dive](#) reports.

### The Allegations: Per the [complaint](#):

- The plaintiff was a 58-year-old production counsel who was replaced by a 25-year-old minority candidate with no prior legal or production experience.
- "Paramount emphasized that its DEI policy was embedded into every aspect of the employee experience, with company-wide DEI initiatives and executive compensation linked to meeting DEI goals."
- "For example, out of only four stated goals for the entire Paramount Legal Department to focus on in 2023, one was to continue 'prioritizing our commitment to DE&I by [m]aintaining or increasing SVP+ female representation and increasing VP+ Ethnically Diverse representation.'"
- The plaintiff wasn't alone. 100% of the attorneys who were fired were non-minorities (despite the department already being 50% diverse), allowing leadership to earn race-based financial bonuses for upping the percentage of minorities within the department.

**A Growing Trend:** Last month, Walmart was hit by a similar DEI suit, after a manager was allegedly fired on account of race. Per the [complaint](#), Walmart "implicitly promoted racism and explicitly encouraged the hire, retention, and promotions of individuals based on illegal qualifications of race." Other companies that have faced similar DEI-based suits include:

- [Amazon](#), which allegedly gave \$10,000 driver stipends to drivers of specific races.
- [Expedia](#), which allegedly revoked an offer of employment in favor of a "more diverse" candidate.
- [Southwest](#), which offered free flights only to students of Hispanic descent.
- [Progressive Insurance](#), which offered \$25,000 grants to purchase commercial vehicles, but only to black-owned businesses.

**Rollbacks in Motion:** Many companies—including Paramount and Walmart—announced they were rolling back some of their most egregious DEI policies earlier this year. That's a good move going forward, but it's unlikely to protect them against discrimination claims that arose in the past.

## Florida AG Launches Probe Into Plastics Groups



Florida Attorney General James Uthmeier—joined by the attorneys general of Iowa, Montana, Nebraska and Texas—have launched an investigation into three plastics groups, the [Daily Wire](#) reports.

**The Concern:** The attorneys general are concerned that the groups, including U.S. Plastics Pact, may be coordinating business behavior to reduce virgin plastics use (and thereby drive up consumer prices) in violation of state antitrust laws.

**The U.S. Plastics Pact:** The U.S. Plastics Pact requires signatories to commit to eliminating single-use plastics and making 30% of its plastics out of recycled materials by the end of this year, despite the fact that recycled plastics cost nearly [twice](#) as much. [Members](#) include:

- Target
- Kraft Heinz
- Coca-Cola
- Kimberly Clark
- Colgate Palmolive
- Unilever
- Aldi

Other major companies, including Walmart, PepsiCo, Nestle, Mondelez and Mars, [left](#) the organization earlier this year.

**Why It Matters:** As former FTC Chair Lisa Khan [explained](#), there is no ESG exception to the antitrust laws. When businesses get together and agree to reduce consumer choice, particularly in a way that increases prices, antitrust regulators take note. Whether these investigations turns into full fledged enforcement actions remains to be seen, but companies are surely watching.



### Bitcoin for America

Last week, Representative Warren Davison (R-OH) introduced the [Bitcoin for America Act](#), legislation that would allow Americans to pay their federal taxes in Bitcoin—without triggering capital gains liability—with all payments flowing directly into the U.S. Strategic Bitcoin Reserve. It's the first truly democratic model for national Bitcoin accumulation, one that could transform America's balance sheet while giving taxpayers an alternative to selling their Bitcoin on the open market.

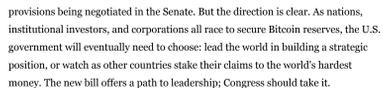
The bill follows President Trump's March executive order establishing a Strategic Bitcoin Reserve and solves its central challenge: funding. When Trump authorized the reserve, he initially limited the Treasury to holding seized assets and exploring other potentially budget-neutral ways of acquiring Bitcoin. The proposed legislation opens a new path—in-kind contributions to pay federal taxes.

The impact could be substantial. According to a [model](#) developed by the Bitcoin Policy Institute in partnership with BitcoinQuant, if just 1% of federal taxes were paid in Bitcoin over the next twenty years, the Treasury would accumulate approximately 4.3 million BTC at an average cost basis of \$322,700. Assuming Bitcoin continues its historical price appreciation of approximately 20% annually, that reserve would be worth an estimated \$14.2 trillion by 2045, creating a net advantage over cash of nearly \$13 trillion. Even with more conservative assumptions, the numbers remain compelling.

The new bill arrives as governments worldwide wake up to Bitcoin's strategic importance. Earlier this month, [Luxembourg](#) allocated 1% of its silver holdings (roughly \$7 million) exclusively to Bitcoin ETFs, making it the first to do so in the Eurozone. Finance Minister Gilles Roth declared the nation "in it for the long haul" and explicitly rejected diversification into other cryptocurrencies, saying "there is no second best." Meanwhile, the [Czech Republic](#) is dipping its toe into Bitcoin as well, with its central bank purchasing \$1 million in Bitcoin and other digital assets to gain "practical experience," which could eventually lead to formal reserve inclusion.

The Bitcoin for America Act positions the United States to lead that global competition rather than follow it. Davidson notes that China and Russia are already accumulating Bitcoin, and in a recent interview with [CoinDesk](#), he expressed regret that Congress didn't listen when he advocated for Bitcoin purchases back in 2016 at \$500 to \$600. "Think about the upside in terms of what it could do for a country that's \$38 trillion in debt," he said. But while the best time to plant a Bitcoin tree was a decade or two ago, the second best time is now.

The bill faces legislative hurdles, to be sure. Introduced late in the congressional session, it may serve initially as a discussion point for broader digital asset provisions being negotiated in the Senate. But the direction is clear. As nations, institutional investors, and corporations all race to secure Bitcoin reserves, the U.S. government will eventually need to choose: lead the world in building a strategic position, or watch as other countries stake their claims to the world's hardest money. The new bill offers a path to leadership; Congress should take it.



### The Best of The Rest

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

- [Florida sues proxy advisors over ESG and DEI push](#): last week, we talked about the FTC's new investigation; now Florida has sued, alleging that ISS and Glass Lewis "used th[eir] enormous influence to push their own dogmatic agenda."
- [SEC Commissioner Paul Atkins gives update on Project Crypto](#): Commission's work is focused on "basic fairness and common sense as it relates to the application of the federal securities laws to crypto assets and related transactions."
- [Tyson to drop "climate-smart" beef](#) and net zero targets as part of legal settlement brought by climate activists.
- [GM to eliminate Chinese parts by 2027](#): "GM executives have said it is part of a broader strategy to improve the company's supply chain 'resiliency,'" [Reuters](#) reports.
- [Ninth Circuit halts California's climate disclosure law](#) just weeks before it set to take effect.

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