

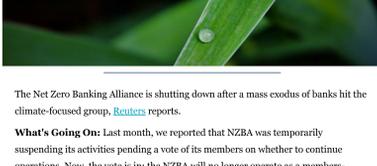
The Fiduciary Focus

Investment News From a Pro-Shareholder Perspective

October 7, 2023

This Week: Net Zero Banking Alliance shuts down; SEC to allow mandatory arbitration for investors; The Bitcoin Brief talks corporate taxes.

Net Zero Banking Alliance To Shut Down



The Net Zero Banking Alliance is shutting down after a mass exodus of banks hit the climate-focused group, [Reuters](#) reports.

What's Going On: Last month, we reported that NZBA was temporarily suspending its activities pending a vote of its members on whether to continue operations. Now, the vote is in: the NZBA will no longer operate as a members-based organization, instead functioning as an advisory body.

What Happened:

- In 2021, the NZBA launched to leverage the power of the banking industry to fight climate change.
- As members, banks pledged to limit or cut off financing for coal, oil, and gas projects, even if those projects were creditworthy and profitable.
- The group soon faced scrutiny both for pressuring banks to act contrary to their own financial interests and the fiduciary duties they owe their shareholders, and for engaging in potential antitrust violations.
- Over the past year, major financial institutions including Goldman Sachs, HSBC, Barclays, and UBS left the alliance, forcing the organization into an existential crisis.

But Wait: While the group's dissolution is good news for those who care about open markets and shareholder primacy, most of NZBA's members have pledged to continue the mission on their own. Given that the NZBA is still planning to publish guidance as an "advisory body," the structural change may ultimately prove to be more form over substance.

New SEC Policy Allows Mandatory Arbitration



Last month, the Securities and Exchange Commission issued new guidance that opens the door for corporations to mandate arbitration of disputes with investors, the [Wall Street Journal](#) reports.

The Guidance: In groundbreaking new [guidance](#), the SEC has determined that mandatory arbitration provisions that require investors to arbitrate securities laws claims will not impact the effectiveness of registration statements. Previously, companies faced significant legal uncertainty as to whether they could force shareholders to arbitrate (rather than litigate) securities claims. Now, the SEC has undertaken a comprehensive analysis of Supreme Court precedent and determined that under the Federal Arbitration Act, companies are permitted to require investors arbitrate their claims.

The Tradeoffs: The policy change could have major [effects](#) on companies and shareholders. Considerations include:

- **Pros:** Companies that implement mandatory arbitration will likely see significant cost savings, as arbitration is typically quicker and cheaper than a jury trial. It also eliminates class action lawsuits, where settlements can reach tens or hundreds of millions of dollars even when questionable on the merits. And arbitration is typically private, meaning there are less concerns about headline-grabbing judicial developments.
- **Cons:** Despite the SEC's clearance, there are still some legal risks to implementing a mandatory arbitration clause, particularly since the development is so new. It may also make it harder for shareholders to seek redress for securities laws violations.

Delaware Says Not So Fast: While the SEC has given the green light, securities regulation is still primarily an area of state law. And Delaware has recently amended its corporate law to prohibit arbitration clauses, although it's unclear whether that law would survive a legal challenge.

ESG Activists Rejoice?: Logically speaking, one might think that ESG activists would welcome the guidance. For years, ESG activists have tried to claim that they are not concerned with helping the environment or minorities as such, but with helping companies mitigate the legal and reputational risks that companies face when they harm these stakeholders. The new guidance substantially lowers, if not eliminates, these risks. If a company promises to hit net zero goals or diversify its ranks and then fails to do so, investors can no longer sue. Reputational risk is slim, and litigation risk is trending down to zero. Yet experts predict that ESG activists will be among those most likely to oppose the new guidance, and that companies that implement mandatory arbitration will likely see their ESG scores drop. Maybe that means ESG wasn't really about helping companies at all?

Red State Attorneys General Push Back on EU Corporate Sustainability Rules



Last week, a coalition of 22 attorneys general wrote to President Trump urging him to push back on EU corporate sustainability directives that will burden U.S. businesses, the [Daily Caller](#) reports.

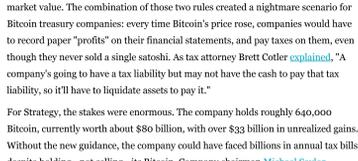
The EU Regulations At Issue:

- The Corporate Sustainability Reporting Directive, which will require large U.S. companies doing business in the EU to "publish regular reports on the social and environmental risks they face," and
- The Corporate Sustainability Due Diligence Directive, which will require companies to address the "adverse human rights and environmental" impacts of their operations and adopt a "transition plan for climate change mitigation."

The Warning: The group argues that these "EU requirements are nothing more than a backdoor attempt to force the radical green agenda on American companies. Without intervention, this will divert resources away from investment, job creation, and wage growth, while putting bureaucrats in Brussels in charge of U.S. business decisions."

A Receptive Audience: The letter may find a receptive audience in the Trump Administration, which issued a statement in August on its trade framework with the EU, which included an assurance that regulations "do not pose undue restrictions on transatlantic trade." Still, the attorneys general believe that "more specific measures" are needed.

The Bottom Line: As U.S. companies become more willing to free themselves from ESG constraints, the EU appears increasingly interested in tightening the shackles. Whether the Trump Administration intervenes or not, the letter makes clear that many states are unwilling to see U.S. companies bound by Europe's climate agenda.



A Tax Win for Bitcoin Treasury Companies

Last week, the U.S. Treasury Department and Internal Revenue Service issued interim [guidance](#) clarifying that corporations holding Bitcoin won't face taxes on unrealized gains under the Corporate Alternative Minimum Tax (CAMT). The decision removes a major regulatory overhang that threatened to derail corporate Bitcoin adoption, leveling the playing field between digital assets and traditional securities held in corporate treasuries.

The [problem](#) was straightforward but severe. In 2022, the Inflation Reduction Act imposed a 15% CAMT on corporations earning over \$1 billion annually. Then, new accounting standards required companies to mark their digital asset holdings to market value. The combination of those two rules created a nightmare scenario for Bitcoin treasury companies: every time Bitcoin's price rose, companies would have to record paper "profits" on their financial statements, and pay taxes on them, even though they never sold a single satoshi. As tax attorney Brett Cotler [explained](#), "A company's going to have a tax liability but may not have the cash to pay that tax liability, so it'll have to liquidate assets to pay it."

For Strategy, the stakes were enormous. The company holds roughly 640,000 Bitcoin, currently worth about \$80 billion, with over \$33 billion in unrealized gains. Without the new guidance, the company could have faced billions in annual tax bills despite holding—not selling—its Bitcoin. Company chairman [Michael Saylor](#) celebrated the news: "As a result of Treasury and IRS interim guidance issued yesterday, Strategy does not expect to be subject to the CAMT due to unrealized gains on its bitcoin holdings." The market agreed, as Strategy's stock [rose](#) 6% on the news. Fellow Bitcoin treasury company [MARA Holdings](#) similarly praised the move as "a positive development for MARA and our shareholders."

The victory came after sustained industry advocacy. In May, Strategy and Coinbase jointly petitioned the Treasury, arguing that taxing phantom profits was unfair, unconstitutional, and risked driving American firms offshore. Senators Cynthia Lummis and Bernie Moreno backed their position, [warning](#) that the CAMT created an "unintended tax burden" on American competitiveness. The IRS appears to have listened.

But Wednesday's Senate Finance Committee hearing revealed just how much work remains. As Committee Chairman Mike Crapo [explained](#), "our tax code does not provide straightforward answers for many digital asset transactions, whether someone is buying a cup of coffee, donating to a charity, investing, lending, mining or staking. Without clear tax rules, taxpayers are left with many unanswered questions." The digital asset industry continues to push for additional clarity, including a de minimis exception for small transactions, determining whether Bitcoin should be taxed when it is mined or only when sold, and ensuring stablecoins aren't subject to capital gains treatment since they're designed to maintain dollar parity.

Some critics, including Senator Elizabeth Warren, [characterized](#) the industry's advocacy as seeking "special tax rules for crypto that will make crypto billionaires richer." But these requests for clarity are anything but. Take the interim guidance issued last week. That guidance doesn't create a special tax carve-out for Bitcoin—it merely ensures Bitcoin is treated the same way as stocks or bonds held in corporate treasuries. And even if the rule created some kind of preferential treatment, it wouldn't enrich "crypto billionaires" because these tax and accounting rules apply, by their very terms, to large, publicly-traded companies with millions of diversified shareholders. Strategy isn't some billionaire's private piggy bank—it's a Nasdaq-listed company held in retirement accounts, mutual funds, and brokerage portfolios across America. Helping Bitcoin treasury companies means helping teachers, firefighters, and everyday investors building wealth for the future.

The IRS guidance is interim, meaning it's not final yet, but companies can rely on it immediately for their 2023 tax returns. Tax experts widely expect the Treasury will formalize these rules through official regulations, cementing this victory for corporate Bitcoin adoption. By removing the specter of phantom tax liabilities, the guidance clears the path for more companies to add Bitcoin to their balance sheets without fear of regulatory ambush. It's a win for American competitiveness, financial innovation, and common sense tax policy.

That's something all of us should cheer. Because in this life, only three things are certain: death, taxes, and Bitcoin's growing role in corporate treasuries.



Michael Saylor Shares Why He Thinks Strive Could Be Part of the Next Mag Seven

Last week, Strategy CEO Michael Saylor shared his view on the Mag Seven of the future, and why Strive may be among its ranks:

- You're going to have the pure play digital credit issuers that are laser-like focused: Our company, Metaplanet, someone like probably a Strive, I'm gonna guess. Someone with a lot of equity capital that is going to just sell equity and credit, with a laser-like focus... Those are going to be the next Mag Seven stocks.

View the full clip below.

[Watch Here](#)

The Best of The Rest

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

- [California attorney general sues federal government for climate rollbacks](#); has initiated seven lawsuits so far this year over environmental shifts.
- [Shell moves to simplify its business](#); announcement comes after "jet-tioning of its push into low-carbon energy such as wind, solar and electric-vehicle charging and refocus[ing] on fossil fuels earlier in the year."
- [Larry Fink-led World Economic Forum heaps praise on China](#) for leading the green transition: China is "home to about 1,200 of the world's 4,000 new energy start-ups in 2023 [and] produces 70 percent of all electric vehicles," organization gushes in new piece.
- [BlackRock, State Street accused of violating Hart-Scott-Rodino Act](#) in new letter from Consumers Research to the Department of Justice and Federal Trade Commission.
- [FAIR files lawsuit against Colorado State University for DEI-based discrimination](#); alleges that professors "deliberately induced emotional discomfort, shame, and guilt specifically in white and male students through what they termed a 'pedagogy of discomfort,'" thereby creating a hostile educational environment in violation of the Civil Rights Act.
- [NYC pension fund opposes Tesla pay package](#); urges fellow shareholders to reject the proposed \$1 trillion in potential compensation for Elon Musk.

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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 [excellence](#) 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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