Proposed Securities and Exchange Commission Rules Would Block Shareholder Proposals Addressing Systemic Racism

CASE STUDIES

PROPOSALS CITING RISKS OF DISCRIMINATION AT TYSON FOODS, FACEBOOK AND GOOGLE, AMONG OTHERS, WOULD BE UNDERMINED BY IMPENDING CHANGES TO 14A-8 RULES

INTERFAITH CENTER ON CORPORATE RESPONSIBILITY

SHAREHOLDER RIGHTS GROUP

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BACKGROUND

As the murder of George Floyd and other documented incidents of police brutality against Black communities catalyzed the unprecedented Black Lives Matter protests, public, company and investor focus on issues of racial justice has increased. These concerns elevated the importance of an array of ongoing shareholder initiatives seeking to address discrimination and harassment, diversity and inclusion, civil and human rights, and social equity. Long-standing shareholder proposals have scrutinized predatory lending, worker health and safety, board and workforce diversity, racial biases in facial recognition software, prison labor, and gender and racial pay gaps.

Now that these issues have garnered increased corporate, investor and public attention, this is no time to curtail proposals addressing elements of systemic racism and the attendant financial risks at public companies. Yet, the SEC's rulemaking proposal, pending for action by the Commission in August, would do just that: the new rules would block investors from continuing to raise these issues at a number of high-profile companies, undermining investor leverage to encourage companies to take action and to measure progress toward eliminating systemic racism. Of particular concern for these proposals are the steep resubmission thresholds under consideration by the commission. They would omit numerous important proposals as demonstrated by the examples below.

CASE STUDY 1: TYSON FOODS FACES CHARGES OF DISCRIMINATORY FAILURE TO PROTECT THE HEALTH AND SAFETY OF ITS WORKFORCE

The meatpacking sector has been a confluence of the racial justice and COVID-19 crises, with the disproportionately Black, Asian and Latino workers in the sector being hardest hit by COVID-19. At Tyson Foods, there are reports that so far 9,937 employees have tested positive for COVID-19, numbers reported to be more than double that of any other meat company.[1]

A coalition of 122 organizations has written to Tyson's largest investors, asserting that "Through its failure to adequately protect its workers, Tyson has sent the message that the lives of its workers — who are mostly people of color and immigrants — do not matter to them."[2]

A Civil Rights complaint has been filed against the company with the USDA alleging discriminatory practices in the management of COVID-19. The complaint alleges that company policies:

> *...violate Title VI of the Civil Rights Act of 1964, which protects individuals from racial discrimination by recipients of federal financial assistance because the Policies (1) cause a disparate impact on Black, Latino, and Asian workers; and (2) represent a pattern or practice of racial discrimination. The Policies reject common-sense protective measures, including a 6-foot minimum of social distancing among workers critical to mitigate the risk of exposure to COVID-19. The Policies discriminate on the basis of race by causing a substantial adverse effect on Black, Latino, and Asian workers. In addition, publicly available facts indicate a pattern or practice of discrimination. Existing social inequities compound this discrimination for Black and Latino workers, including higher death rates and higher hospitalization rates than white people.*

The company has been urged to make policy changes to address employee safety, following OSHA guidance that is currently voluntary, including providing PPE, paid sick leave, offering testing at plant sites, and ensuring social distancing for those working in the factories.

Tyson Foods has a weak human rights record in addressing impacts of its business on workers, the environment, and communities. The Corporate Human Rights Benchmark (CHRB) gave Tyson a score of 10.2% in 2019, while the average score for the agricultural products sector is 24.2%. Tyson received zero points on all five of the CHRB's indicators for human rights due diligence, the subject of a 2020 shareholder proposal. Seven companies in the agricultural products sector scored above 50%, and the top three companies, Unilever, Marks and Spencer Group, and Kellogg, scored above 60%.

A shareholder proposal filed for the 2020 proxy season by the American Baptist Home Mission Society stated in its background section that:

> *Industrial meat production exposes workers, farmers, and communities to actual and potential adverse human rights impacts. Inadequate regulatory frameworks do not sufficiently protect against these impacts. Poultry processing workers face serious labor rights violations, including injuries from unsafe line speeds and other hazards, exposure to toxins, wage and hour violations, sexual harassment, and workplace discrimination.*

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[1] https://investigatemidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/

[2] wrongful death lawsuit filed by families of 3 tyson employees:
https://www.vbattorneys.com/hubfs/DOC%2001%20-%2005.15.20%20FS%20Original%20Complaint%20.pdf

The shareholder proposal asked that the Board of Directors to prepare a report on Tyson's human rights due diligence process. The report would go beyond merely diagnosing the problem, to also "prevent and mitigate… human rights impacts". The proposal was written prior to the pandemic, but had highlighted a vulnerability of Tyson, as the pandemic brought to light failures to have effective risk management systems in place that resulted in worker health and safety breaches, and discriminatory impacts of company practices.

A similar proposal was voted upon in the 2019 proxy season, so whether this proposal will be allowed to be resubmitted may be evaluated according to the proposed resubmission rule which would require a 15% vote in its second year of consideration to be submitted a third year.

The proposal received a 14.65% vote in favor, which would allow it to go for a vote for a third year under the SEC's current 6% resubmission threshold, but not under the proposed 15% second-year threshold outlined in the SEC's rulemaking proposal.

Because of the dual class structure of the company's stock, Tyson family interests have an 89% voting stake via Class B stock.[3] Each Class B vote counts for ten times the voting power of a Class A share. Excluding Class B stock, the 2020 voting outcome would have been approximately 56.98% support by independent share owners. Not only would the proposal be eligible for resubmission for a third year – it actually would have passed with majority support.

[3] Tyson Foods Holders Defeat Plan To End Dual-Class Stock Structure, James P. Miller, The Wall Street Journal, Jan. 17, 2000.

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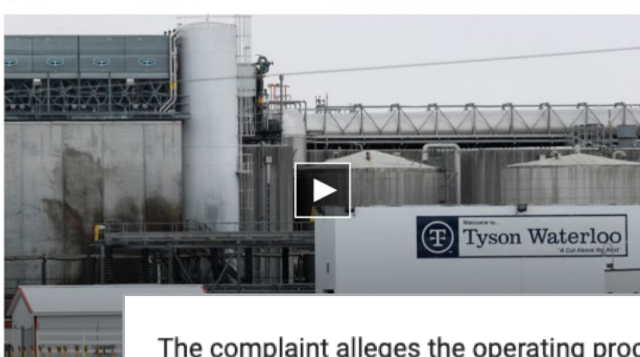
Tyson employees' coronavirus cases draw advocates' criticism

An estimated 8,500 Tyson employees reportedly have tested positive for the virus

Workers are separated by sheeting at a Tyson Foods plant in Camilla, Georgia. *Provided By Tyson Foods*

Racial discrimination complaint filed against Iowa meat packing plants

by Karen Fuller | Thursday, July 9th 2020



The complaint alleges the operating procedures have a disparate impact on Black, Latino and Asian workers, who make up a large share of production workers at the companies' plants, representing a pattern or practice of racial discrimination.

CASE STUDY 2: FACEBOOK, HATE SPEECH AND PRECURSORS TO A VALUE-DESTROYING BOYCOTT

For the last few years, Facebook has been seen as a haven for hate speech, even as other social media companies have excluded users and posts conveying racial animus, encouraging violence, and hateful memes. Although shareholders have been raising concerns about hate speech and fake news on the platform for the last three years, the economic impact of the issue landed at the company in 2020 when the Black Lives Matter movement catalyzed closer examination by advertisers. An escalating boycott by advertisers conditioned on the company's improvement on hate speech policing preceded a loss of market confidence. The boycott has led to a drop in the stock price, at one point wiping $60 billion in value off of the company's market capitalization this spring.[4] The boycott has been embraced by major Facebook advertisers like Starbucks and PepsiCo. Underlying the boycott is the request of civil rights groups for Facebook to do more to stop hate speech as well as harassment of black users on Facebook.

A company authorized independent assessment examining these issues has also not allayed investor concerns. While acknowledging that Facebook had made progress in some areas, a new report[5] finds that Facebook's "approach to civil rights remains too reactive and piecemeal". It laments that Facebook's "vexing and heartbreaking decisions...represent significant setbacks for civil rights".

According to the activists promoting the boycott, current communications with the company have not demonstrated that its behavior will actually change. Instead, they report that the management is engaging in pleasant conversations with shareholders and other concerned stakeholders, but not changing its ways sufficiently to justify halting the boycott.[6]

This issue is illustrated by numerous proposals filed at the company in the last few years. To cite one example, investors have sought to improve board oversight of the civil rights controversies that the company finds itself embroiled in by asking the Board of Directors to nominate for the next Board election at least one candidate who has a high level of human and/or civil rights expertise and experience and is widely recognized as such.

The proposal, filed by Arjuna Capital, received voting support of 3.6% of investors in its 2020 proxy vote, qualifying for resubmission in 2021 under existing SEC rules that require a 3% vote, but which would be blocked in 2021 if the Commission adopts a rule requiring a first-year vote of 5%. Notably, the dual class ownership structure of Facebook affects eligibility of the resubmission. If Mark Zuckerberg's Class B stocks were discounted from the vote, voting support would have amounted to 9%.

[4] https://markets.businessinsider.com/news/stocks/facebook-stock-price-reaction-advertisers-halt-social-media-spending-2020-6-1029350644

[5] https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf

[6] "Facebook Fails to Appease Organizers of Ad Boycott Mark Zuckerberg and Sheryl Sandberg, Facebook's top executives, engaged in 'spin' during a meeting over hate speech, civil rights groups said." New York Times, July 7, 2020.

Facebook sees $60 billion in market value erased in just 2 days as advertisers like Starbucks and PepsiCo halt social-media spending

Theron Mohamed
Jun. 29, 2020, 04:21 PM

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- Facebook shares fell roughly 1% on Monday morning as more advertisers announced boycotts of its platform. The drop followed an 8.3% slide on Friday amid the first round of pulled advertising.

What civil rights groups want from Facebook boycott: Stop hate speech and harassment of Black users

Jessica Guynn USA TODAY

Published 3:01 a.m. ET Jul. 7, 2020 | Updated 6:07 p.m. ET Jul. 8, 2020

CASE STUDY 3: ALPHABET/GOOGLE AND ANTIDISCRIMINATION WHISTLEBLOWERS

For the last few years, concerns have surfaced at Google regarding the treatment of internal critics and whistleblowers, including statements by former and current Google employees claiming that they have been fired or reprimanded for speaking out against racism, sexism, and other forms of discrimination in internal messaging boards.

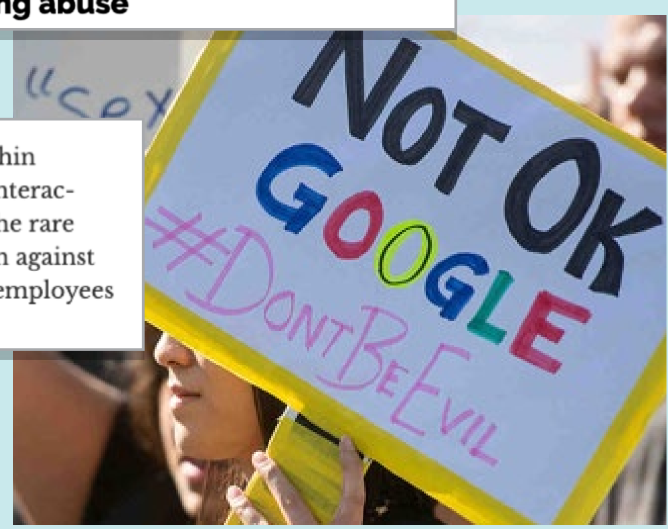
A leaked document from Google in 2019 circulated widely within the company and recounted problems within the company of retaliation against certain kinds of employee action, including against people of color who speak out over racism. Also retaliated against according to the document are women who rise to senior technical and leadership roles, and employees who raise ethical objections to business plans. The burgeoning crisis over how the company treats employees that speak up led to the January 2020 Newsweek headline, Google Used To Tell Workers 'Don't Be Evil' Now It Just Wants Them to Be Quiet Former Top Exec Says.[7]

A shareholder proposal filed for the 2020 annual meeting by Trillium Asset Management asked the Board of Directors to evaluate "the company's whistleblower policies and practices and assessing the feasibility of expanding those policies." The proposal received 4.9% vote in favor, which surpasses the existing resubmission threshold of 3%, but which is below the SEC's proposed 5% first year threshold, meaning that the proposal would not be allowed to be resubmitted if the proposed rule were to apply. However, Alphabet has a dual class share structure and if over-weighted class B stock and insider shares were discounted in assessing the vote, the level of voting support would be approximately 16.7%.

[7] In one example, a lawsuit filed by former employee Tim Chevalier claims that Google terminated him in November 2017 because of "his political statements in opposition to the discrimination, harassment, and white supremacy he saw being expressed on Google's internal messaging systems".

Alphabet
Google

45 Google whistleblowers tell tales of workplace retaliation after reporting abuse



The leaked document, dated May 8, 2019, has circulated widely within Google. Though the retaliation stories detail a variety of different interactions, three themes that run through them are: retaliation against the rare women who rise to senior technical and leadership roles; retaliation against people of color who speak out over racism, and retaliation against employees who raise ethical objections to business and technical plans.

Google Used to Tell Workers 'Don't Be Evil.' Now It Just Wants Them to Be Quiet, Former Top Exec Says

CASE STUDY 4: THE RACIAL AND GENDER PAY GAP

Discriminatory pay gaps in employee compensation can be thought of as comprising two different elements:

- Equal pay for equal work. This is measured by identifying pay levels for specific job roles and comparing only the salaries of peers in those jobs.
- "Equal opportunity" to high-paying jobs. This is measured by "median pay" gaps across the workforce, which can be understood to reflect a lack of equal opportunity by measuring the extent to which minorities and women are holding as many high-paying jobs within the company.

When we discuss the amount that people are paid "on the dollar" compared to a group such as white men, this is a reflection of this latter, "equal opportunity" metric. For instance, women in the US make 82 cents on the dollar, African American women make 62 cents, and Latina women make 54 cents. Median pay gaps are considered the valid way of measuring pay inequity by the U.S. Census Bureau, the Department of Labor, the Organization for Economic Cooperation and Development (OECD, and the International Labor Organization (ILO.

Companies like Citigroup, Mastercard, and Starbucks are already showing leadership by publishing their median pay gap data globally. These disclosures can improve performance and provide a baseline for measuring progress moving forward. A 2019 study in the Harvard Business Review found that wage transparency, in countries that mandate it, narrowed the median wage gap.

Proposals filed at numerous companies in the 2018 - 2020 proxy seasons have asked for reports on each company's global median gender/racial pay gap, including risks related to recruiting and retaining diverse talent. Proposals at Intel, Bank of America, Bank of New York Mellon, and Adobe would be eligible for resubmission in 2021 under the existing resubmission thresholds, but would not be eligible under the newly proposed second year thresholds.

About the Interfaith Center on Corporate Responsibility (ICCR)
Celebrating its 49th year, ICCR is the pioneer coalition of shareholder advocates who view the management of their investments as a catalyst for social change. Its 300 member organizations comprise faith communities, socially responsible asset managers, unions, pensions, NGOs and other socially responsible investors with combined assets of over $500 billion. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website www.iccr.org and follow us on Twitter, LinkedIn and Facebook.

About the Shareholder Rights Group
The Shareholder Rights Group is an association of investors formed in 2016 to defend share owners' rights to engage with public companies on governance and long-term value creation. Visit our website.