Policy Tip Sheet

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ESG: Financial Discrimination

Environmental, social, and governance (ESG) scores are an insidious mechanism by which a cabal of ideologically aligned influential interests working through unelected supranational organizations are attempting to "reset" the global financial system to their advantage. At its core, this emerging design circumvents national sovereignty, free markets, and individual rights by altering traditional financial methods of assessing risk and allocating capital and credit. This attempted shift from "shareholder capitalism" to a "stakeholder collectivism" model hinges upon assigning companies, and soon individuals, arbitrarily determined ESG social credit scores. These scores mandate subjective and politically motivated commitments to "climate" and "social justice" objectives, which draw heavily from the United Nations-sponsored Sustainable Development Goals.[1]

Essentially, ESG operates by punishing poorly scored companies with reduced or altogether eliminated access to capital and credit, while highly scored companies receive substantial capital in-flows, in addition to tax breaks, grants, access to "special financial vehicles," preferential contracting, and potentially other yet-to-be-defined advantages.[2] Ultimately, these measures are designed to centralize power and wealth in the hands of unelected technocrats, central bankers, regulators, and globalist institutions. The full institutionalization of ESG—internationally and domestically—would represent a major step towards consolidating a unitary global governance model, ultimately causing the dissolution of free markets, national sovereignty, due process under the law, and individual liberty.[3]

The summary below discusses financial institutions' discriminatory practices against consumers, and explains proposed solutions to the problem.

Background

ESG's stated purpose is to promote social justice issues and advance climate-related goals by adhering to a slew of mandated metrics, most of which are subjective and qualitative rather than objective and quantitative.[4] It operates through coercive market control established by a wide range of actors, including asset managers, financial institutions, insurance conglomerates, and large multi-national corporations, while being aided and abetted by international organizations and governmental regulatory authorities.[5]

One of the primary ways in which financial institutions in particular force ESG upon society is through refusing to service certain businesses and individuals based upon their lack of devotion to ESG mandates. These discriminatory practices can and have included refusing to lend to or finance certain industries such as oil and gas, offering loans on a conditional basis, impeding the ability to transfer funds, shutting down savings and checking accounts, eliminating financial advisory services, withholding insurance policy underwriting, and eradicating access to credit, among other dubious practices.[6]

According to official documentation from the Office of the Comptroller of the Currency (OCC), such activities have already been prevalent. Financial institutions have attempted to de-bank and / or deny services to myriad sectors, including health care and social service providers, family planning organizations, independent automated teller machine operators, firearm manufacturers, the agricultural industry, and multiple major energy industries vital to U.S. infrastructure and power generation, such as coal mining, coal-fired electricity generation, and oil exploration.[7]

The OCC's Proposed Solution

To combat the discriminatory practices it uncovered, the OCC proposed a new rule in November 2020. The OCC claimed that this type of subjective category-based discrimination—as opposed to objective individual-based risk assessment—by financial institutions clearly violated the fair access principles of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and other OCC guidance stemming from agency releases, reports, and official testimony. The proposed rule states, "Consistent with the Dodd-Frank Act's mandate of fair access to financial services and since at least 2015, the OCC has repeatedly stated that while banks are not obligated to offer any particular financial service to their customers, they must make the services they do offer available to all customers except to the extent that risk factors particular to an individual customer dictate otherwise."[8]

This rule would have been a strong step towards effectively combating discrimination based on factors such as ESG criteria, as it would have given the OCC full supervisory and enforcement authority to take appropriate action when necessary. Though it was finalized and intended to

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become effective on April 1, 2021,[9] the Fair Access Rule's publication was indefinitely paused by the Biden administration on January 28, 2021.[10] It has not been revived.

Current Legislative Solutions

In the absence of federal legislation or regulatory oversight, states have been taking matters into their own hands to protect their citizens and businesses from discriminatory predation. Some states have opted to pursue legislation intending to bar state pension funds from investing in ESG funds. Other states, however, are pursuing a far more comprehensive approach, modeled heavily after the aforementioned OCC proposed rule scrapped by the Biden administration.

The latter strategy involves passing legislation nearly identical to the language in the aforementioned OCC proposed rule, and protects free markets and individual rights in multiple ways. First, it prevents a monopolistic global cabal of powerful financial interests from implementing a unitary approach that all businesses and individuals must adhere to, even if it directly contradicts financially sound business practices.[11] Second, it establishes a doctrine of fair access to financial services, ensuring individual entities—including any natural person, partnership, corporation, or other business or legal entity—are not denied service based upon subjective categorical groupings. Third, it bars financial institutions from evaluating entities based upon anything other than traditional, quantitative, and impartial risk-based financial standards, which would effectively eliminate ESG criteria. Fourth, it requires financial institutions to comply with strict disclosure rules, informing any entities denied service of the specific reasons behind that decision. Finally, it develops a civil and criminal legal framework for penalties to be assessed against non-compliant financial institutions.

Similar versions of this legislative approach are already being pursued at the federal level, with two Republican-sponsored bills circulating through Congress. However, due to political considerations and the hyper partisan political environment, it is not likely these will succeed in the foreseeable future. As such, it would behoove states to take matters into their own hands, should they wish to protect the integrity of their democratic institutions, economic freedoms, and the interests of their citizens.

References

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1 United Nations, "Sustainable Development," Department of Economic and Social Affairs, accessed July 12, 2022, https://sdgs.un.org/goals

2 Mark Bergman *et al.*, "Introduction to ESG," Harvard Law School Forum on Corporate Governance, August 1, 2020, https://corpgov.law.harvard.edu/2020/08/01/introduction-to-esg

3 For more information on the basics of ESG, see: Justin Haskins and Jack McPherrin, "Understanding Environmental, Social, and Governance (ESG) Metrics: A Basic Primer," The Heartland Institute, January 26, 2022, https://www.heartland.org/publications-resources/publications/understanding-environmental-social-and-governance-esg-metrics-a-basic-primer

4 For a more detailed discussion of these metrics, see: Jack McPherrin, "ESG: A Simple Breakdown of its Components," The Heartland Institute, August 2022, https://www.heartland.org/_template-assets/documents/esg/PolicyTipSheetESG1.pdf

5 For a more detailed discussion of ESG's designers, implementers, and enforcers, see: Jack McPherrin, "ESG: Primary Architects and Implementers," The Heartland Institute, September 2022, https://www.heartland.org/_template-assets/documents/esg/PolicyTipSheetESG4.pdf

6 For a more detailed discussion of ESG and the financial services industry, see: Jack McPherrin, "ESG: The Banking Industry," The Heartland Institute, November 2022 https://www.heartland.org/_template-assets/documents/esg/PolicyTipSheetESG7src.pdf

7 U.S. Department of the Treasury: Office of the Comptroller of the Currency, "Fair Access to Financial Services," *Federal Register,* Vol. 85, No. 228, November 25, 2020, Proposed Rules.

8 *Ibid.*

9 Office of the Comptroller of the Currency, "OCC Finalizes Rule Requiring Large Banks to Provide Fair Access to Bank Services, Capital, and Credit," News Release, January 14, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-8.html

10 Office of the Comptroller of the Currency, "OCC Puts Hold on Fair Access Rule," News Release, January 28, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html

11 For more information on the impact upon free markets, see: Jack McPherrin, "ESG: The Effects Upon Free Markets," The Heartland Institute, September 2022, https://www.heartland.org/_template-assets/documents/esg/PolicyTipSheetESG3.pdf