Policy Tip Sheet

Policy analysis from The Heartland Institute

ESG: The Role of the U.S. Securities and Exchange Commission

Environmental, social, and governance (ESG) scores are an insidiously envisioned mechanism by which ideologically aligned influential interests represented by unelected supranational organizations are attempting to "reset" the global financial system to their advantage. This emerging design would circumvent national and individual sovereignty by altering traditional financial methods of assessing risk and debt / capital allocation. This attempted shift from "shareholder capitalism" to a "stakeholder collectivism" model hinges upon assigning companies, and soon individuals, arbitrarily determined ESG scores. These scores would mandate subjective and difficult-to-define and evaluate metrics assessing one's commitment to "climate" and "social justice" issues.[1] Essentially, poorly scored companies suffer reduced or altogether eliminated access to capital and credit, while highly scored companies receive "preferred status" capital in-flows via traditional capital and debt markets, in addition to tax credits, grants, access to "special financial vehicles," preferential contracting, and potentially other yet-to-be-defined advantages through future legislation, executive action, or international treaty.[2]

ESG's metrics have ostensibly been designed to combat systemic global problems such as climate change, racial inequality, and world hunger—in alignment with the United Nations' Sustainable Development Goals.[3] In reality, these measures will simply centralize power and control in the hands of unelected technocrats and private global institutions influenced solely by the wealthy elite that control monetary policy, capital, and credit through global central banks, where "baskets of currencies" make up the current global system. ESG is a major step toward consolidating a unitary global governance model utilizing digital identification and central bank digital currencies (CBDCs) as micromanagement tools that can be isolated upon individual transactions. ESG would therefore be a major step towards the dissolution of free markets, national sovereignty, due process under the law, and individual liberty.

Below is a brief description of the role of the U.S. Securities and Exchange Commission (SEC) in coercing companies into ESG compliance.

SEC's Mandate and Historical Role as Regulatory Authority

The SEC was established by Congress in 1934 as the first federal regulator of securities markets, as a response to the 1929 stock market crash that led to the Great Depression.[4] Though its original authority was more limited in scope, subsequent rulings by the U.S. Supreme Court have drastically expanded the agency's mandate to regulate the economy. For instance, the SEC has the authority to "investigate corporate abuses, create administrative rulings, and make legislative recommendations," among other expansions in regulatory oversight.[5]

According to the SEC, its mission is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[6] The agency is led by a five-member commission, with members appointed by the president and confirmed by the Senate, and one commissioner designated as chairman. No more than three commissioners may belong to the same political party.[7] The SEC's current chairman is Gary Gensler, who was sworn into office in April 2021 after being appointed by President Biden and confirmed by the Senate.[8]

SEC's Proposed Rule Change Related to ESG Disclosures

As the U.S. financial system and regulatory agencies under the Biden administration have become increasingly infused with ESG practices, the SEC has followed suit. On May 25, 2022, the SEC Commission, in a party-line vote led by Chairman Gary Gensler and his two colleagues from the Democratic Party,[9] approved two proposed rules related to mandatory ESG disclosures.[10] The new mandates have far-reaching implications.[11]

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The first rule, "ESG Disclosures for Investment Advisers and Investment Companies,"[12] requires ESG disclosures for all registered investment companies, business development companies, and investment advisers in their fund prospectuses, annual reports, and adviser brochures. It also requires environmentally focused funds to disclose greenhouse gas emissions related to portfolio investments.

The second rule, "Amendments to the Fund 'Names Rule,'"[13] reinforces the first. It expands the requirements for certain funds to adopt policies to invest at least 80 percent of their assets in accordance with the investment focus the fund promotes, while enhancing reporting and recordkeeping requirements.[14]

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Or you can visit our website at Heartland.org/ESG/esg.

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Impact of Proposed Rule Change on U.S. Financial Community

There is substantial debate over whether the SEC operated within its legal authority, specifically related to if the SEC can only rule on material financial impacts, or if the SEC's scope is broader.[15] Whatever the case, the SEC's new rules directly subvert the mission it promotes, in terms of both "protecting investors" and maintaining "fair, orderly, and efficient markets."

The driving goal of ESG is to promote investment in companies that adhere to subjective metrics that have not been established by any popular democratic process. Instead, these metrics have been determined by a powerful conglomerate of asset management firms such as BlackRock, Vanguard, and State Street; financial institutions such as JP Morgan Chase and Bank of America; insurance titans such as AXA, Allianz, and Zurich; international organizations such as the United Nations and the World Economic Forum; and governmental regulatory authorities such as the SEC.[16]

Rather than protecting investors and free markets, the SEC's new rules erode both principles by forcing companies to make decisions based upon subjective social goals that inherently run counter to the natural law of supply and demand. The SEC is one of the chief regulatory agencies attempting to undermine traditional free-market capitalism in favor of stakeholder capitalism. Any attempts to frame these new mandates as anything other than an attempt to centralize market control in the hands of a powerful few are intentionally misleading, and should be approached with extreme skepticism.

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