ESG

Racial Equity Audits: The New ESG Frontier

By Valecia M. McDowell and Elena F. Mitchell

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Investors and shareholders are more frequently requesting racial equity audits of large companies to demonstrate their attention to ESG and DEI goals. Moore & Van Allen PLLC attorneys Valecia M. McDowell and Elena F. Mitchell recently conducted a racial equity audit for a publicly traded company and offer insights on how companies should approach conducting such an audit.

Investors and stakeholders are paying greater attention to environmental, social, and governance (ESG) impacts of public companies. Increasingly, they also are requesting, if not demanding, that companies consider civil rights and social justice issues, often through racial equity audits.

Not only do such audits inform shareholders about their investments, but they can help companies measure performance in terms of achieving civil rights, social justice, or other diversity, equity, and inclusion (DEI)-related goals. Significantly, studies have found that that promoting such goals can increase profit and competitive advantage. Conducting racial equity audits also can have positive reputational impacts for companies.

As racial equity audit requests increase, companies will be required to critically examine the impacts of their current activities, policies, and practices on communities of color. We encourage companies to seriously consider performing comprehensive, privileged, or confidential internal assessments sooner rather than later to identify areas of opportunity and ensure processes are functioning as designed.

Then, if a request or demand to conduct a racial equity audit is later lodged by a shareholder group or other external stakeholder, the results of which likely will be made public, the company has visibility as to key issues and data gaps, as well as a promising head start on the path to a successful outcome.

Recent History of Racial Equity Audit Demands

Since 2016, several public companies have undertaken civil rights audits including, for example, Airbnb (following allegations by guests who felt discriminated against by hosts), Facebook (at the bequest of civil rights leaders and politicians), and Starbucks (after an incident at a Philadelphia Starbucks raised questions about implicit bias in retail).

In 2020 and 2021, at least 12 public companies received shareholder proposals to conduct a racial equity audit from pension funds and other shareholder proponents.

Citigroup Inc. (Citi), sought “no action” relief from the Securities and Exchange Commission to exclude the requests from its 2021 proxy statements, which request was denied. Citi then asked shareholders to reject the resolution calling for such an audit. A significant number of shareholders, but not a majority (38%), voted in favor of conducting the audit. In October of 2021, Citi then committed to conducting the audit.

As far as we know, CoreCivic Inc., the nation’s largest private owner of correctional, detention, and residential reentry facilities, was the only company to receive a racial equity audit request in 2020 and to agree without seeking regulatory intervention, attempting to mount a vote against the proposal, or engaging in lengthy negotiations with the shareholder proponent.

Our firm conducted CoreCivic’s audit, and the full report was posted to CoreCivic’s website in March.

Also just last month, shareholders at Apple Inc. approved a civil rights audit proposal to review the company’s impacts on female and minority employees after Apple’s board pushed against the proposal. The measure is nonbinding, so it remains to be seen whether the company will adopt the recommendation. And Amazon on April 14 said in a proxy statement that it would undergo an independent racial equity audit.

The Racial Equity Audit Process

As published reports make clear, these audits are time and labor-intensive endeavors. No two companies or audits will be exactly the same. As such, from the outset, companies should consider the purpose and determine the scope of the audit.

For example, is the company analyzing the implications of a particular practice, addressing a specific incident or series of incidents, or conducting a comprehensive review of policies and practices across the enterprise? Then, which operations and stakeholders will auditors consider? Will policies and practices be reviewed for compliance with applicable local, state, and federal laws and regulations? Companies also should think about what internal and external information is available and should be considered?

How much an audit will cost and how long an audit will take will depend on company size, the current state of its data management systems, and the answers to these and other scoping questions.

Taking Action on Recommendations

At the conclusion of an audit, a company may find gaps in data collection or retention processes, that DEI or other values or commitments may not be intentionally or consistently incorporated into leadership priorities enterprise-wide, or that external processes or procedures (e.g., contractual or governmental requirements) hamper initiatives or outcomes. Such findings have the potential to negatively impact shareholder value.

Alternatively, a company may find that it is meeting or exceeding certain metrics and goals, and this may positively impact shareholder value. Management will have to grapple with the operational implications of the work and auditors' recommendations which could include, for example, conducting a comprehensive culture survey on a periodic basis, rolling out conscious inclusion training across all employee levels; modifying complaint or issue resolution processes, conducting pay equity analyses, etc.

While adopting and operationalizing some recommendations may not be onerous, implementing others may be costly and time-consuming. Some recommendations may exceed current industry practice. Management will need to weigh relevant considerations to determine the best ways to move forward.

Final Takeaways

Now more than ever, as investors and other stakeholders pay greater attention to ESG and DEI issues, companies should consider reassessing their current policies, practices, and impacts on communities of color.

While companies dismissing equity concerns may find themselves targeted by investors and proxy advisory firms, external advocacy groups, or even federal or state governmental entities, those taking a proactive approach or otherwise agreeing to conduct such audits may help progress civil rights, social justice, and DEI issues and see improved financial performance, increased shareholder value, and positive reputational impacts.

Author Information

Valecia M. McDowell is the co-chair of the White Collar, Regulatory Defense & Investigations practice at Moore & Van Allen in Charlotte, N.C.

Elena F. Mitchell is a senior associate at Moore & Van Allen.

Both were part of the team that conducted CoreCivic's racial equity audit.

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