

Socially Responsible Investors Publicly Question Companies' Decisions to Litigate Shareholder Proposals

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The SEC staff's Rule 14a-8 process is being supported by perhaps an unlikely group. Twenty socially responsible investors, led by NorthStar Asset Management, Inc., have begun a [campaign](#) focusing attention on the recent lawsuits by Express Scripts, EMC, Omnicom and Chipotle against John Chevedden and others to exclude their shareholder proposals from proxy statements, which we previously discussed [here](#). Chipotle is the latest company with the district court in Colorado ruling against the plaintiffs, ending the record this season on these types of lawsuits with three out of four losses for companies.

The investor group represents a "who's who" list of shareholders known by companies for submitting a variety ESG proposals, including Walden Asset Management and Trillium Asset Management. They sent [letters](#) to the CEOs of the four companies arguing that bypassing "well-established, functional and mutually-agreed upon processes" that skips the role of the SEC staff in its role adjudicating whether proposals can be put forward for shareholder vote "diminishes the authority of the SEC and are unnecessary." The letters criticize the expense of litigation to all parties when the SEC procedures are available, quoting in part from the EMC court decision.

The letters also expressed a belief that companies are targeting Chevedden because many of his resolutions have historically received majority support from shareholders, and ends by seeking a "formal conversation" with each company regarding questions of the rationale and costs and benefits for the litigation, the "potentially negative public reaction" for using the "court system and taxpayer dollars" and whether the "high risk plan" of litigating was approved by their boards.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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