

2024 Investment Adviser Compliance Conference

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EFFECTIVE STRATEGIES & BEST PRACTICES

DEI in the Investment Management Industry – Developments and Next Steps

Moderator: Lewis Collins / Partner, General Counsel, GW&K Investment Management

Panelists: Sonia Dolores Martos / Partner, Kirkland & Ellis LLP

Ranah Esmaili / Partner, Sidley Austin LLP

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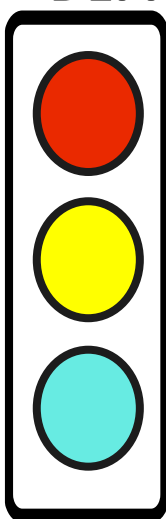


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DEI Risk Framework

NYU Law professors Kenji Yoshino and David Glasgow provide a “red/yellow/green” framework of legal considerations related to corporate DEI programs following the *SFFA* decision.



Programs most directly analogous to affirmative action in higher education context, or that directly and explicitly take account of protected attributes in decisions related to hiring, compensation and promotion

- ▶ **Quotas** or **set-asides** (including exclusionary programs)

Programs or initiatives that are the subject of **recent litigation** and other anti-DEI activity, the outcomes of which remain unclear

- ▶ **Demographic targets** (i.e., numeric targets; potentially including target-based incentives)
- ▶ **Proxies for protected attributes** (e.g., income or geography)

Policies and/or practices that do **not preference anyone** and are **not targeted** at specific groups

- ▶ **De-biasing efforts** (e.g., eliminating bias in hiring practices, offering trainings)
- ▶ **Ambient or universal DEI initiatives** (i.e., programs aimed at inclusivity or programs that benefit all)

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Assessing DEI Risks and Opportunities

| | | |
|----------------|--|-----------------------|
| PHASE 1 | <p>Conduct a Risk Assessment of Existing Practices, Statements, and Commitments</p> <p>Monitor DEI Legal Developments and Stakeholder Activity</p> <p>Benchmark against Peers</p> | ASSESS RISKS |
| PHASE 2 | <p>Create an Action Plan</p> | PLAN |
| PHASE 3 | <p>Establish Risk Management Procedures</p> <p>Ensure DEI Is Part of M&A Due Diligence</p> <p>Establish Regular Internal Briefings and Trainings</p> <p>Develop Investor Engagement Strategies</p> | IMPLEMENT PLAN |

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Examples of State Legislative Actions re DEI

[CA SB54](#)

Passed bill obligating VC firms to report portfolio company diversity metrics (Passed 10/8/23)

[IN HB1008](#)

Passed bill prohibiting investments for purposes of influencing social or environmental policy or attempting to influence corporate governance for nonfinancial purposes (Passed 5/4/23)

[KS HB2100](#)

Passed bill requiring investments solely in the financial interest of participants and beneficiaries and not in furtherance of social, political or ideological interests (Passed 4/25/23)

[NY SB4287](#)

Proposed bill to prohibit state contracts with contractors that do not provide health insurance covering services for transgender people (Introduced 2/7/23; to Committee 1/3/24)

[AZ SB1005](#)

Proposed bill to prohibit public entities from entering into or renewing contracts with companies that participate in DEI programs (Passed Senate 1/31/24; to House Committee 2/19/24)

[LA HR317](#)

Proposed resolution requesting state/statewide retirement systems to invest in companies that practice DEI (Introduced 5/16/22; considered by Committee 5/19/22)

[NY AS85](#)

Proposed bill to require disclosure and consideration of gender wage disparity in state contract awarding (Introduced 1/9/23; to Committee 1/3/24)

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