



# RACIAL JUSTICE AUDITS

With 2022 another record year for environmental, social and governance (ESG) shareholder proposals in the US, the “S” in ESG is getting more attention from shareholders. One area that has emerged as a focus area is social justice concerns and calls for companies to conduct a racial equity and/or civil rights audit.

In this analysis, Thomas Bolger of Minerva Analytics examines trends identified in connection with racial justice audit shareholder requests in the 2021 and 2022 US proxy seasons.

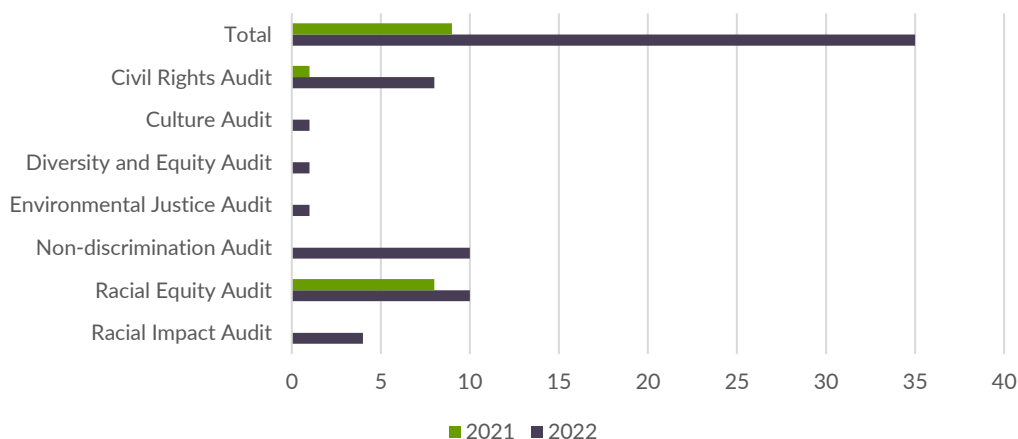
## Shareholders focus on Racial Justice

In June 2020, following the high-profile murder of George Floyd, growing awareness of the Black Lives Matter movement, and a wave of protests and civil unrest, many companies made public statements supporting racial justice and committed billions of dollars in promoting racial equity and economic justice. Within this context, companies have faced pressure from shareholders to undertake independent racial-equity or civil-rights audits to consider how their policies, products and practices affect the civil rights and equality among employees, customers, and stakeholders. This has resulted in an increasing number of resolutions filed by shareholders asking companies to commission independent third-party audits. These resolutions go further than simply asking for enhanced disclosure but call for an examination on the effectiveness of a company’s commitments and progress in meeting social justice goals and identifying areas for improvement in combatting systemic racism. Some companies, including Starbucks, BlackRock and Airbnb, have started to undertaking audits without the need of a vote.

## Types of Proposals

Minerva has identified nine racial justice audit proposals filed by shareholders in 2021 and 35 in the first eight months of 2022: a 289% increase. With the continuing dialogue about race in America, racial justice audits look set to become an established shareholder initiative.

**FIGURE 1: RACIAL JUSTICE AUDIT PROPOSALS FILED**



The increase in the number of proposals filed has been matched by an increase in the range of proposals filed. Whilst the wording of the proposals may vary, there is a common request for an independent audit of companies' practices related to racial equity and/or civil rights to address racial or civil injustice.

Minerva has identified seven categories of racial justice audit requests:

<b>Civil Rights Audit</b>	Requests the board to commission a third-party civil rights audit to review adverse impacts of corporate policies, practices, products, and services on the civil rights of company stakeholders, above and beyond legal and regulatory matters, and to provide recommendations for improving the company's civil rights impact.
<b>Culture Audit</b>	Requests the board to commission a third-party audit analysing whether written policies or unwritten norms reinforce racism in company culture, and report on planned remedies the board intends to take. This proposal is an evolution of the self-assessment requested of boards filed in 2021.
<b>Diversity and Equity Audit</b>	Requests the Board to commission a racial equity audit analysing the Company's impacts on civil rights, diversity, equity and inclusion, and the impacts of those issues on the Company's business.
<b>Environmental Justice Audit</b>	Requests the board to commission a third-party environmental justice audit which assesses the heightened racial impacts of the company's operations and produces recommendations for improving them above and beyond legal and regulatory matters.
<b>Non-discrimination Audit</b>	Requests the board to commission a racial equity audit analysing the company's impacts on civil rights and non-discrimination, and the impacts of those issues on the company's business. Whilst worded similarly to the other audit requests, these proposals raise concern that the adoption of anti-racism programmes may result in discrimination against non-diverse employees. All such proposals were filed by the National Center for Public Policy Research.
<b>Racial Equity Audit</b>	Requests the board to oversee a racial equity audit analysing the company's adverse impacts on non-white stakeholders and communities of colour.
<b>Racial Impact Audit</b>	Requests the board to oversee a third-party audit which assesses and produces recommendations for improving the racial impacts of its policies, practices, products, and services, above and beyond legal and regulatory matters.

In 2022 the Securities Exchange Commission (SEC) had a significant impact on the number of shareholder proposals coming to a vote in the market. Following the SEC's release of [Staff Legal Bulletin No. 14L](#) in November 2021, US-listed companies are faced with a significantly lower likelihood of obtaining approval to exclude shareholder proposals from the voting agenda meaning a greater number of proposals came to a vote in the 2022 AGM season. Additionally, in July 2022, the SEC proposed [further amendments to the substantive bases for the exclusion of shareholder proposals](#) which narrows company ability to exclude shareholder proposals from meeting agendas. This has resulted in a record number of shareholder proposals being voted on in 2022.

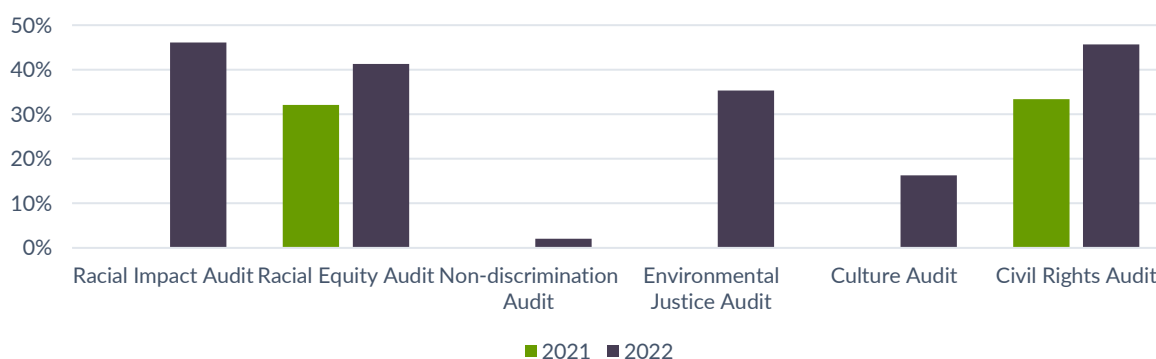
Interestingly, there were two instances where shareholders voted on two different racial justice audit proposals at an AGM. At Johnson & Johnson's AGM shareholders voted on a request for a racial justice audit and a request for a non-discrimination audit; whilst at Republic Services Inc's AGM shareholders voted on a request for a civil rights audit and a request for an environmental justice audit.

## Shareholder Support

Whilst proposals requesting racial justice audits did not receive majority votes in 2021, they did receive high shareholder support for a first-time resolution; with over 40% votes in favour recorded at both Amazon.com and JPMorgan, and average support of 32.27%. 2022 has maintained the high level of shareholder support, with one exception; non-discrimination audits have averaged very low levels of votes in favour from shareholders.

The non-discrimination audit proposals use similar terminology to the other proposal types but are differentiated via the supporting statement in which concerns are raised that anti-racism training at companies is itself “deeply racist” and that employees deemed “non-diverse” could be discriminated against. Some commentators have categorised the proposals as “[anti-ESG](#)”.

**FIGURE 2: VOTES IN FAVOUR ON RACIAL JUSTICE AUDIT PROPOSALS**



The sole proposal requesting a diversity and equity audit was withdrawn. The resolution was filed at Amazon.com and withdrawn by proponent New York State Common Retirement Fund after the firm announced it had commissioned an audit, led by former US attorney-general Loretta Lynch, to look into “disparate racial impacts” from its employment practices on its US frontline workforce.

In 2022 there were eight successful proposals, or 22.86% of all proposals voted on. This is a high level of success rate for a new type of resolution.



## Conclusions

Institutional investors are paying more attention to how companies are advancing racial justice goals and expect companies to demonstrate and evaluate the effectiveness of policies and practices in combating systemic racism. A new approach taken by investors seeking to advance racial justice is the filing of shareholder resolutions requesting companies to commission a third-party racial-equity or civil-rights audit. Resolutions were filed on this issue for the first time in 2021 and the number of resolutions has significantly increased in 2022. The resolutions tend to receive high levels of support and over a fifth of proposals in 2022 have been successful.

At the same time, there has been an increase in the range of racial justice audits filed in 2022, including on racial impact, culture, and environmental justice. In 2022 there have been non-discrimination audit proposals filed for the first time by conservative shareholder activists which take a different approach, these proposals argue that anti-racist programmes are themselves racist. When evaluating racial justice audit resolutions, shareholders need to be careful in examining the proposal type and identifying the different type of audit requests. The voting results suggest shareholders are unsupportive of the non-discrimination audit requests.

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