

Comptroller of Public Accounts
List of Financial Companies that Boycott Energy Companies
Frequently Asked Questions

Updated October 2023

The information below is a list of frequently asked questions and answers relating to the methodology used in the creation and publication of this list and the implications of the list.

FAQ – General

1. Why is the Comptroller publishing this list?

The Comptroller is required by statute (Tex. Gov't Code sec. 809.051) to prepare and maintain a list of financial companies that *boycott* energy companies.

1.5. Why is the Comptroller updating the list at this time?

The Comptroller shall update the list annually or more often as necessary, but not more often than quarterly (Tex. Gov't Code sec. 809.051(c)). The list was initially provided in Q3 2022 and updated in Q1 2023. Upon review of new information, it has been determined an update to the list, and this FAQ, is necessary at this time.

2. What kinds of companies are subject to the Comptroller's review under this law?

Texas law requires the Comptroller to create a list of "financial companies." The law defines "financial company" as a publicly traded financial services, banking, or investment company. Tex. Gov't Code sec. 809.001(4).

3. What does "boycott" mean?

Per Texas statute, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

- a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
- b. does business with a company described by Paragraph (a). Tex. Gov't Code sec. 809.001(1).

4. Can a financial company have investments in a fossil fuel-based energy company and be "boycotting" energy companies?

The foregoing definition of "boycott" is quoted from Texas law. The definition may apply even if a company holds direct or indirect investments in fossil fuel-based energy companies. A financial company may have investments in the Texas oil and gas industry and still be "boycotting" under the law.

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FAQ – List of Companies in Annex 1

5. Can you summarize the process to identify the financial companies in Annex 1? What were the Comptroller’s “initial criteria”?

The Comptroller initially identified financial companies for Annex 1 based upon the following information:

- Global Industrial Classification System (GICS),
- Bloomberg Industrial Classification System (BICS),
- MSCI ESG Ratings Service,
- Climate Action 100, and
- Net Zero Banking Alliance/Net Zero Asset Managers Initiative.

The Comptroller established the “**initial criteria**” based on industry classification, ESG data, and public commitments and pledges. The initial group of entities met the GICS and BICS criteria, scored higher than their peer group with respect to MSCI ESG Ratings Service Data, and made public pledges to Climate Action 100 and one of Net Zero Banking Alliance or Net Zero Asset Managers Initiative.

6. More specifically, how did the Comptroller narrow down the universe of financial companies to those included in Annex 1? What are GICs and BICs?

To identify the appropriate universe of financial companies, the Comptroller’s office used industrial classification systems to conduct an initial screen for publicly traded financial companies. These classification systems are taxonomies developed by data providers to facilitate financial analysis of different types of companies. These systems are broadly used in the financial industry. Below is a description of the systems used.

MSCI Global Industrial Classification System or “**GICS**” is divided into broad “sectors.” The Comptroller’s office limited its initial screening to companies in the following sub-industries within the GICS Financial Sector:

- Asset Management & Custody Banks
- Diversified Banks
- Diversified Capital Markets
- Diversified Financial Services
- Investment Banking & Brokerage
- Multi-Sector Holdings
- Regional Banks
- Specialized Finance

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Bloomberg Industrial Classification Systems or “BICS” includes further classification by Sector, Industry Group, Industry, Sub Industry, and Segments. The Comptroller’s office limited its screening to the following sub-industries within the BICS Financials Sector:

- Banks
- Diversified Banks
- Institutional Brokerage
- Investment Management
- Wealth Management

7. What additional steps did the Comptroller take to identify financial companies that boycott energy companies in Annex 1? What other data did the Comptroller review and analyze?

As permitted by law, the Comptroller also reviewed information provided by the research firm MSCI. The Comptroller also reviews information from MSCI for divestment listings relating to Iran, Sudan, foreign terrorist organizations, and the boycotting of Israel.

The Comptroller used MSCI’s ESG Ratings data service to help identify and narrow down the universe of financial companies for additional scrutiny. The ESG Ratings data detailed how MSCI rated the financial companies relative to their peers (quantitative) and how MSCI described their relevant governance and policies relative to their peers (qualitative).

All third-party research providers the Comptroller utilizes for divestment listings periodically change their ratings over time. We track both quantitative and qualitative changes to research and ratings. Further, we track updates to research methodologies and services used by current and potential third-party research providers. Because third-party research is subject to changes without input from our office or financial companies, we utilize this information as a component, and not determinative factor, in our analysis.

Finally, the select group of financial companies which met the initial criteria received a letter from the Comptroller (a “**verification request**”). The responses to this letter were reviewed to help make the final listing determination. Recipients had 61 days to respond to the Comptroller’s letter.

Financial companies with indicia suggesting they might be boycotting energy companies were subject to further review.

8. Did the Comptroller review public pledges and commitments to third-party organizations such as Net Zero and Climate Action organizations to identify financial companies that boycott energy companies in Annex 1?

Yes, the Comptroller may review and rely, as appropriate in the comptroller’s judgment, on publicly available information regarding financial companies. Signatories to these third-party organizations agree to impose “net zero” obligations or requirements in their financial, banking, and investment decisions.

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The Comptroller reviewed three such public pledges to further screen financial companies:

- Climate Action 100,
- Net Zero Banking Alliance, and
- Net Zero Asset Managers Initiative.

The Comptroller sent a verification request to financial companies that met the initial criteria, including those that made public commitments to Climate Action 100 and one of Net Zero Banking Alliance or Net Zero Asset Managers Initiative.

9. Isn't a company's commitment to Climate Action 100 or Net Zero sufficient for a listing?

No, the review of verification responses indicated the financial companies consider the level of commitment to being a signatory to these lists differently. The responses show a varying level and timeline of adherence to the public principles of these organizations. As such, the Comptroller's office sought additional data to help inform the final listing.

10. What exactly is a "verification request" and how did the Comptroller review it?

Financial companies identified by the Comptroller's "**initial criteria**" of industry classification, ESG data, and public commitments and pledges received a verification request from the Comptroller.

The methodology applied in the listing process, including verification requests, was structured to identify financial companies who are boycotting energy companies as defined in the statute.

In determining the financial companies to be listed in Annex 1, the following inquiries were applied:

- Does the financial company adhere to a broad prohibition on financing fossil fuel-based energies?

A broad prohibition is encompassed by the statutory definition of "boycott".

- Does the financial company commit to an aggressive reduction in fossil fuel emissions with goals of aligning lending and investment portfolios with "net zero" prior to 2050?

A significant number of entities in the financial industry have made public pledges to achieve a net zero approach to carbon emissions by 2050. However, some financial companies are making public pledges or commitments with earlier time horizons in mind, demonstrating that, in conjunction with the initial criteria, those companies are, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking actions intended to penalize, inflict economic harm on, or limit commercial relations with energy companies (i.e., boycotting as defined in the statute).

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- Does the company or its affiliates offer for sale to the public more than 10 U.S.-based funds (e.g., mutual funds, ETFs, other investment company or public security) that include a prohibition, limitation, restriction, or negative screen on oil and gas investments?

Based on our review of the information that was provided by Financial Companies in conjunction with both Annex 1 and Annex 2 and otherwise available for review, we determined the vast majority of firms offer fewer than 10 such funds for sale to U.S. investors. As such, firms that offered for sale more than 10 such funds to U.S. investors (inconsistent with ordinary business purposes in the industry) and that met the initial criteria were listed in Annex 1.

The Comptroller also considered the following questions:

- Did the financial company fail to respond to the Comptroller verification request?
Under applicable law, failure to respond to the verification process resulted in a presumption of boycott.
- Did the financial company fail to assert an ordinary business purpose exception as referenced in the statute?
The existence of an ordinary business purpose qualifies the statutory definition of “boycott energy company.”
- Did the financial company have a proxy voting record that demonstrated antagonism towards fossil fuel-based energy industry?

The Comptroller reviewed financial companies’ proxy voting since 2021. Although recent pro-fiduciary trends were observed, votes against exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy were reported by financial companies, as well as the imposition of environmental standards beyond applicable federal and state law.

Future verification requests will explore whether proxy voting records demonstrate merely a focus on corporate disclosures or support the imposition of non-fiduciary prescriptive requirements upon the fossil fuel-energy industry.

The Comptroller reviewed the responses to all of these questions in detail. After determining whether the initial financial companies continued to meet the “initial criteria,” a “yes” answer to any of these questions would qualify the entity for the Annex 1 list.

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11. What steps can a financial company take to be added to, or removed from, Annex 1?

As described in these FAQs, a variety of information was reviewed in the listing process. Because no single factor caused a financial company to be listed, we cannot identify a specific factor that would need to change for a company to be added to, or removed from, the list.

We continue to review new information pertaining to financial companies that previously received a verification request as to whether any new corporate actions now constitute, or no longer constitute, a “boycott” under Texas law. We will review new information that is publicly available, including information that may be received directly from the financial companies themselves (Tex. Gov’t Code sec. 809.051). We are particularly interested in updates pertaining to the information addressed in FAQ #8 and FAQ #10.

A financial company wanting to be removed from the list should change its practices so that it does not refuse to deal with, terminate business activities with, or otherwise take actions intended to penalize, inflict economic harm on, or limit commercial relations with energy companies because they are energy companies. Consistent with the process described above, an entity that is no longer included on the Climate Action 100 and Net Zero Banking Alliance/Net Zero Asset Managers Initiative, would no longer meet the initial criteria for listing.

Note that publicly available information for the financial services industry relevant to the energy company sector is dynamic and will be subject to potential statutory, regulatory, and industry changes. New information may be reviewed, or included in a verification request, for future updates to the list.

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FAQ – List of Funds in Annex 2

12. What about the funds listed in Annex 2? How did the Comptroller derive that list?

The Comptroller’s office reviewed publicly available information, including information licensed from Bloomberg, LSEG Workspace, and MSCI, to identify those U.S.-based funds that appeared to adopt a prohibition or limitation on investment in the energy companies.

The Comptroller sent a **verification request** to the fund managers for these screened funds seeking information about the investment policies of funds associated with these managers, without identifying the screened funds.

If a fund manager chose to respond to the Comptroller’s request, the manager’s response was reviewed and compared with the Comptroller’s screened list. When reasonable, the Comptroller relied upon a manager’s response in preparing Annex 2. We may rely on a financial company’s response to a notice or communication without conducting further investigation, research, or inquiry. (Tex. Gov’t Code sec. 809.006). However, the Comptroller considered and reconciled *prima facie* inconsistencies between the manager’s response and publicly available information, including a fund’s prospectus and holdings. A failure to provide responsive information resulted in primary reliance on the initial screened fund list.

13. Are all “ESG” or “Sustainable” Funds included in Annex 2?

No, all “ESG” funds are not included in Annex 2. We examined a subset of the funds within the environmental category referenced below. More specifically the goal was to identify the subset of funds that include a specific prohibition or limitation on fossil fuel-based energy investments.

The term “ESG” covers several concepts, including:

- “environmental”, or how a company addresses concepts such as climate change, energy emissions, waste management, or the use of natural resources;
- “social”, which covers a variety of issues such as customers, safety, and health; and
- “governance”, which also covers a variety of concepts such as shareholder rights, board composition and performance, and executive compensation.

A fund designed to address any of these issues could be referred to as an “ESG” fund.

13.5 Some publicly available funds are limited by law or regulation from investing in the fossil fuel-based energy industry. Further, some publicly available funds are limited by investment strategy from investing in the fossil fuel-based energy industry. Are such funds boycotting?

Whether a fund is, or could be, invested directly in the fossil fuel-based energy industry is not solely determinative of listing on Annex 2. As noted in FAQ #4 above, the statutory definition of “boycott” encompasses information beyond existing or potential investment. For instance, during

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the verification process related to Annex 2 funds, we explicitly asked fund managers to identify their funds that have a policy, procedure, or investment guideline restricting or prohibiting investing in the fossil fuel-based energy industry.

Further, a fund which is limited by law or regulation from investing in the fossil fuel-based energy industry, but nonetheless includes ESG or other considerations concerning oil and gas in its investment assessments or decisions, may still be subject to listing. (Tex. Gov't Code sec. 809.001(1)(B)).

14. I know of a specific company or fund that I believe should be on the list but isn't. Why not?

The Comptroller examined many data points and factors in preparing the list. A quick glance at many financial companies in the investment industry and considering only one factor (such as public pronouncements, or number of "ESG" funds) will easily give the mistaken impression that the entity should have been on the list. Additionally, as demonstrated in the variation of responses reviewed by the Comptroller's office, financial companies have different and non-uniform understanding of ESG principles and fossil-fuel negative screens. The fund names can be misleading. The Comptroller does, however, recognize that the list may have omitted an entity or fund. Nonetheless, we encourage all users and observers of the list to examine all the factors we reviewed before concluding that an entity should have been on the list.

15. Could the methodology to prepare this list change in the future?

Yes, the publicly available information for the financial services industry relevant to the energy company sector is dynamic and will be subject to potential statutory, regulatory, and industry changes and innovations. New information may be incorporated into the process to identify financial companies to receive a verification request and to evaluate responses to a verification request.

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FAQ – Implications for State Governmental Entities, Agencies, and Political Subdivisions

16. Which governmental entities are subject to the list and what does it mean for them?

Specific state governmental entities (Employee Retirement System of Texas, Teacher Retirement System of Texas, Texas Municipal Retirement System, Texas County and District Retirement System, Texas Emergency Services Retirement System, and Permanent School Fund) are subject to the investment prohibitions and divestment requirements in the statute.

In addition, not later than the 30th day after receiving the list, state governmental entities must notify the Comptroller of the listed financial companies in which the entity owns direct or indirect holdings.

Not later than January 5 of each year, such entities are also required to submit a report to the presiding officer of each house of the legislature and the attorney general that identifies all securities, sold, redeemed, divested or withdrawn in compliance with the Texas Government Code, section 809.054 (Divestment of Assets), identifies all prohibited investments under 809.057 (Prohibited Investments); and summarizes any changes made under 809.055 (Exempt Investments) Tex. Gov't Code sec. 809.001(7); Tex. Gov't Code sec. 809.052; Tex. Gov't Code 809.101.

17. Are state governmental entities required to divest from the companies and funds listed?

Yes, generally the state governmental entities listed in Chapter 809 are prohibited from investing in and must divest from companies listed in accordance with the statutory requirements. However, certain exceptions may apply.

18. What are the exceptions a state governmental entity may claim to the requirement to divest its funds invested in a listed company?

A state governmental entity is not subject to the divestment requirements if the state governmental entity determines divesting would be inconsistent with its fiduciary responsibilities with respect to the assets under its management or other duties imposed by law relating to the investment of the entity's assets. Such determinations are to be made in accordance with the entity's processes and procedures. Tex. Gov't Code sec. 809.005.

In addition, state governmental entities are not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. Tex. Gov't Code sec. 809.055.

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19. Are state governmental entities required to divest from companies or funds that are not on the Comptroller’s list, such as affiliates of listed companies?

No, the divestment and reporting requirements described in Chapter 809 of the Government Code apply only to listed financial companies (i.e., companies that are specifically named in the list).

Note that contract requirements regarding boycotting certain energy companies are described in Texas Government Code Chapter 2276.

Each state governmental entity should review the list alongside its own portfolios and make its own determination regarding which of its assets are impacted. Such determinations can include review of Chapters 809 and 2276 as well as the entity’s own fiduciary duties. Given the importance of the underlying policies to the Texas oil and gas industry, the Comptroller recommends governmental entities carefully examine all available options and consider alternative approaches where possible to meet their investment goals within appropriate fiduciary standards.

Annex 1 is a list of parent companies. Annex 2 is a list of individual funds. Because the entities listed in Annex 1 have taken actions at the corporate level that have been determined to be “boycotting” under Texas law, the Comptroller will be taking additional actions with respect to affiliated entities with assets under his direct control. As the agency tasked with preparing and maintaining the list, when applicable, the Comptroller’s office analyzes the most prudent way to divest from direct holdings in the financial companies listed in Annex 1, as well as investment funds managed by financial companies listed in Annex 1.

Annex 2 is a list of individual funds that constitute only a part, perhaps a small part, of a larger corporate entity. Therefore, the Comptroller may contract with companies related to funds listed in Annex 2 if they make the written verification required by chapter 809 of the Texas Government Code.

20. How often can the Comptroller update the list of financial companies boycotting energy companies?

This list must be updated at least annually, and is subject to change on a quarterly basis. The Comptroller’s office continues to review information on an ongoing basis.

As noted above, the Comptroller’s office has done a thorough review of financial companies and has received information about affiliates and public offerings and believes the list to be complete at this time. Note the Comptroller is permitted to send “verification requests” to financial companies for information about potential boycotting under Texas law. To process responses within applicable time constraints, verification requests will be delivered in advance of a full update to the list.

The Comptroller encourages state governmental entities to review the Comptroller’s listing criteria to determine whether prospective investments could be subject to listing at a later date.

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21. How would the list affect contract requirements for state agencies and political subdivisions of the state ('governmental entities')? Is there an exception to this requirement? Can state agencies and local governments contract with an entity that is affiliated with a company that appears on the list?

- a. Generally, a governmental entity (as defined in Tex. Gov't Code sec. 2251.001) may not enter into a contract of more than \$100,000 with a company with 10 or more employees for goods and services unless the contract contains a written verification that the company does not boycott energy companies and will not do so during the term of the contract. Tex. Gov't Code sec. 2276.002(a)-(b).
- b. This does not apply to a governmental entity that determines this requirement is inconsistent with its constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. Tex. Gov't Code sec. 2276.002(c)
- c. So long as the contractor provides the statutory verifications as required by law, the statute does not prohibit a state agency or political subdivision from contracting with an entity that is affiliated with an entity that is listed in Annex 2. Tex. Gov't Code Chapter 2276.
- d. Irrespective of whether an Annex 1 company makes the verification required in Chapter 2276, the Comptroller's office will generally seek to avoid new contracts with Annex 1 companies unless there is a need to apply or use a statutory exception provided by Chapter 2276.

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22. I am a private citizen in Texas, am I required to take any action with respect to this list?

No, this list only applies to state governmental entities and to their investments and contracts.

FAQ – Contact Information

For questions or comments about this list or investment-related issues please contact the Texas Treasury Safekeeping Trust Company at divestment@ttstc.texas.gov.

For questions or comments about contracts or procurement please contact the Comptroller's statewide procurement division at spd.outreach@cpa.texas.gov.