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Investors Question Mining Giant Over Thermal Coal Plans

January 10, 2023

Investing

By Jason Halper
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A group of institutional investors led by the Australian Centre for Corporate Responsibility (ACCR) and the NGO ShareAction has filed a **shareholder resolution** seeking details of the "specific plan" for Glencore PLC, a multinational commodity trading and mining company, "to align thermal coal production with emissions reductions commitments." The resolution requests "[d]isclosure of how the Company's projected thermal coal production aligns with the Paris agreement's objective . . . to limit the global temperature increase to 1.5°C" and also seeks detail regarding capital expenditure on coal mines. More specifically, while in 2021 Glencore had committed to align its fossil fuel portfolio with the goals of the Paris Agreement—and "[t]his commitment was accompanied with a medium-term 50% reduction of total (Scope 1, 2 and 3) emissions by 2035 on 2019 levels"—the investors state that "it is unclear how our Company's planned thermal coal production aligns with the global demand for thermal coal under a 1.5°C scenario." The resolution further observes that according to the company's 2021 Annual Report, "coal accounted for approximately 90% of its total disclosed scope 1, 2 and 3 emissions."

The **group** of institutional investors—which includes Legal & General Investment Management (LGIM), The Ethos Foundation, HSBC Asset Management, and Vision Super—collectively represent $2.2 trillion in assets under management. The group anticipates a **vote** on the filed resolution at Glencore's annual general meeting in May.

Concern over Glencore's coal production led, at last year's annual general meeting, to almost a quarter of shareholders voting against the company's climate action plan. This resulted in a **report** published in October where the company agreed to "enhance disclosures" in its Climate Progress Report to be published in March 2023. Glencore will also provide shareholders with details of its progress and next steps in the full-year presentation in February. The company stated in its October announcement that "shareholders continue to reinforce that climate strategy will remain an important area of focus. There was broad support for our climate strategy, recognizing the importance of maintaining a strategy that remains resilient to the risks and opportunities of the evolving energy transition, and encouragement to continue our focus on progressing towards our ambition of achieving a net zero total emissions footprint by 2050."

Taking The Temperature: The Glencore resolution is a good example of the convergence of enterprise risk and opportunity assessment, and corporate governance, all arising from climate change. Company shareholders were permitted to require Glencore to circulate the resolution in connection with its Annual Meeting under Article 53.3 of Glencore's Articles of Association (AA). Article 53.3 provides the "Company is required to give notice of a resolution once it has received requests to do so from: (a) members

representing at least 2.5 per cent. of the total voting rights of all the members who have a right to vote on the resolution at the Annual General Meeting to which the requests relate (excluding any voting rights attached to any shares in the Company held as treasury shares); or (b) at least 50 members who have a right to vote on the resolution at the Annual General Meeting to which the requests relate and who hold shares in the Company on which there has been paid up an average sum, per member, of at least US$100." That represents a relatively low bar to requiring the company to circulate shareholder resolutions in advance of annual meetings. We have previously observed that other shareholder rights initiatives likewise may result in relatively more climate and other ESG-related resolutions being submitted for a shareholder vote. Blackrock and Vanguard, for instance, have rolled out "pass through" voting programs that provide investors with greater say over how their shares are voted, with one potential result being that companies are forced to deal with more diverse shareholder constituencies interested in ESG issues.

At the same time, the Glencore resolution highlights that shareholders, unsurprisingly, remain concerned about the potential impact of climate change on enterprise value. While acknowledging the risks to Glencore associated with climate change, the resolution also observes the potential opportunities arising from a transition to a green economy: "Our Company is well positioned to benefit in the new energy economy. It possesses significant potential to increase strategic focus on boosting transition metal production to aid renewable energy development. In contrast, thermal coal production faces declining demand and is misaligned with efforts to stabilize global temperature rise to 1.5°C. There is potential to enhance the Company's valuation by aligning coal production to a 1.5°C pathway and accelerating investment in transition minerals. Our Company will benefit from actively embracing the climate change challenge. By allocating capital to thermal coal expansion, Glencore is exacerbating its Scope 1 and 3 emissions impacts. We believe more value will be created for shareholders by allocating fossil fuel capex to the energy transition instead."

New Brazilian Administration Signals Environmental Policy Despite Public Unrest

January 10, 2023

Regulation

By Duncan Grieve
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Luiz Inácio Lula da Silva assumed office on January 1 after being elected to a third term in a contentious and closely fought race. On his first day in office, Lula signed a package of executive orders, including seven that relate to environmental protection. Lula narrowly won the popular vote, receiving 50.90% over his rival, former president, Jair Bolsonaro. On January 8, large crowds of radicalized Bolsonaro supporters broke into the Brazilian Congress in Brasília and vandalized the legislative chambers, the Supreme Court and the Presidential Palace. The scenes were reminiscent of the January 6, 2021 riots at the U.S. Capitol Building in Washington D.C. These recent events in Brazil underscore some of the challenges Lula faces in implementing his ambitious climate agenda.

As we have **previously reported**, Lula highlighted the restoration of environmental protections as a key priority for the new administration during his election campaign and post-election speech at COP27. During his inaugural speech, he promised to deliver zero deforestation in the Amazon and 100% renewable electricity.

On December 29, 2022, Lula appointed former environment minister and activist Marina Silva to lead his environment ministry. On January 4, 2023, Marina Silva announced significant changes to the structure of the Ministry of the Environment in a signal of future policy direction. The Ministry will now include a revived Secretariat for Climate Change, a newly-created Department for the Protection of Animal Rights, a Secretariat of Bioeconomy and an Extraordinary Secretariat for the Control of Deforestation. Federal agencies, including the Brazilian Forest Service and the National Water and Basic Sanitation Agency, return to being under Ministry control. Silva also announced the creation of a new National Climate Security Authority by March 2023, citing current levels of deforestation and the prior administration's defunding of federal environmental protection agencies. To oversee and support environmental policy, the administration plans to create a Climate Change Council, headed by Lula himself, with the participation of all government ministries. In another important development, President Lula reinstated the governing body of the $1.2 billion Amazon Fund after a three year period of inactivity, with the aim of protecting the world's largest rainforest. During the Bolsonaro administration, donors Germany and Norway suspended their transfers to the fund. The Fund, which was initially created in 2008, during Lula's second presidential term, supports numerous conservation projects in the Amazon.

Taking The Temperature: During her first term in office from 2003 to 2008, Marina Silva succeeded in reducing Amazonian deforestation but clashed with influential figures in

the agribusiness sector and with Lula, which ultimately led to her resignation. She is seen as a deeply-committed environmentalist opposed to deforestation but has been criticized for inflexibility and inefficiency. She also inherits an environmental enforcement apparatus gutted by Bolsonaro's budget cuts. The reforms announced on January 4 are ambitious and, if realized, will position Brazil as a leader of global environmental policy largely aligned with recent agreements at COP27 and COP15. International investors have welcomed these reforms, and these investors will be crucial to the success of these efforts given that Lula's government is operating under severe budgetary constraints and with an unsupportive legislature. As we have previously discussed, there are potentially significant long-term adverse effects on Brazil's economy as a result of Amazonian deforestation, and the protection of the Amazon, in turn, is crucial to efforts to address rising temperatures and deforestation on a global basis. As Lula stated at COP27, there "is no climate security for the world without a protected Amazon."

Global Bank Announces Updated Energy Policy

January 10, 2023

By Sara Bussiere
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A global financial institution recently announced an updated energy policy, supplementing its previously issued 2030 targets. HSBC's 2030 targets aimed, among other things, to reduce financed emissions in two carbon-intensive sectors, oil and gas and power and utilities, by 2030, in conjunction with an organizational 2050 net zero goal. Specifically, the 2030 targets called for a 34% reduction in on-balance sheet financed emissions for oil and gas and 75% reduction in on-balance sheet financed emissions intensity for the power and utilities sector. The bank also set a goal to provide up to $1 trillion in sustainable finance and investment by 2030. In the updated policy, HSBC articulated a goal to reduce absolute on-balance sheet financed emissions from thermal coal mining by 70% by 2030 and 70% for thermal coal-fired power production. While HSBC will provide finance or advisory services to oil and gas clients at the corporate level (assuming the clients' transition plans are consistent with HSBC's targets and commitments), it will "not provide new finance, or new advisory services, to any client" for projects relating to (1) "new [oil and gas] fields where the final investment decision was made after December 31, 2021" or (2) "infrastructure whose primary use is in conjunction with new [oil and gas] fields." It also provides for similar limitations on certain other new oil and gas projects, articulates guidelines around financing certain nuclear projects, and reflects the bank's "appetite" to finance and provide advisory services in connection with renewables. Significantly, HSBC recognized, as other financial institutions have, that "fossil fuels, especially natural gas, have a role to play in the transition, even though that role will continue to diminish." Consistent with that view, the bank "will continue to provide finance to clients keeping oil and gas flowing to meet current and future (declining) global demand, with engagement on the transition vital to ensure companies decarbonize and diversify their energy supply, production and business models."

Taking the Temperature: As we have discussed, many global financial institutions have announced energy policies or updates to pre-existing policies that target reductions in emissions financing and investment in renewable projects. Many of these institutions also are members of industry climate coalitions, some of which have come under attack in the U.S. by state and federal officials critical of banks' approach to climate and other ESG issues.

While we have expressed our skepticism of the basis for such attacks, we want to highlight two other aspects of HSBC's policy that are significant but perhaps underappreciated. One is the significant internal corporate governance structure reflected in HSBC's policy, where many potential engagements are subject to review and pre-approval by a "relevant governance committee," which is defined as a "formal, internal, risk governance committee that exists at either global, regional or country level across HSBC's global businesses to provide recommendations and advice on

customers, transactions and wider reputational risks. These committees form part of HSBC's risk framework." The second is what HSBC characterizes as its "engagement with clients around their transition plans" as a means for HSBC to "influence the decarbonization of the energy sector." That engagement includes the bank conducting "appropriate due diligence" of client transition plans, which will be reviewed by a "relevant governance committee," and HSBC's expectation that clients provide it regular detailed disclosures regarding implementation of their transition plans. HSBC "will not provide new financing or new advisory services" to clients that do not work cooperatively with HSBC in these ways. Taken together, we think HSBC's governance and engagement approaches in an area as complex as climate transition are appropriate risk and opportunity (i.e., corporate governance) assessment mechanisms that public companies should consider, obviously modified as appropriate for each institution.

Australian Securities and Investments Commission Levies Another Greenwashing Fine

January 10, 2023

By Chad Lee
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The Australian Securities and Investments Commission (ASIC) appears to be making up for lost time as it imposed another greenwashing-related **penalty**, this time against Black Mountain Energy, an upstream oil and gas company, in the amount of AU$39,960. This follows closely on the heels of greenwashing violations found against **Tlou Energy Limited** and the **Australian unit of a U.S. headquartered asset manager**. The infringement notices related to statements contained in three announcements by Black Mountain claiming that it "was creating a natural gas development project with 'net-zero carbon emissions'," and that "the greenhouse gas emissions associated with Project Valhalla would be net zero." ASIC was "concerned that BME either did not have a reasonable basis to make the representations, or that the representations were factually incorrect."

As set forth in its **infringement notices**, ASIC based this view on, among other things, its conclusion that at the time it made the statements in question Black Mountain: (i) "had not progressed any specific works related to its net zero aim and had not allocated funding for such works"; (ii) "had not progressed any specific works regarding how it would design Project Valhalla to minimise or eliminate carbon dioxide emissions or attain net zero carbon emissions and had not developed a detailed plan for how it would achieve its aim"; (iii) "had not undertaken any specific modelling of carbon dioxide emissions that were likely to be generated by, or might be expected to arise from, the production of gas from Project Valhalla, which would be required to be offset in order to achieve carbon neutrality"; (iv) "had not undertaken any substantive modelling of the likely cost involved in offsetting any carbon dioxide emissions from Project Valhalla"; (v) "its net zero emissions target would only apply if BME was able to progress to production and was not intended to apply in relation to any exploratory or development activities"; (vi) "it did not have a credible or feasible plan for an 'unconventional drilling' approach or any other approach that would produce carbon neutral natural gas"; and (vii) "it had no credible basis for asserting that the natural gas it produced would be carbon neutral."

Taking the Temperature: Australian regulators have been quite active over the past few months in connection with alleged greenwashing and also in assessing climate change impacts on financial stability. The Australian Treasury recently launched a consultation on climate related financial disclosure and the Australian Prudential Regulatory Authority conducted a climate vulnerability assessment with the country's five largest banks. The basis for ASIC's greenwashing allegations against Black Mountain provide a good illustration of the types of issues public companies should consider when making sustainability claims. The absence of funding dedicated to the project in question, the

state of progress on technical work to bring the project to fruition, the completion of cost assessment or "substantive modelling," or lack of a "plan B" all could call into question the adequacy of the basis for sustainability related statements related to green initiatives.