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Increased Investor Pressure for More Ambitious Climate Pledges Ahead of AGMs

April 25, 2023

By Jason Halper
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In early April, the climate activist shareholder group, Follow This, filed **shareholder resolutions** seeking stronger energy transition strategies from several oil "super-majors." The resolutions have been filed in advance of BP, Chevron, and Shell's annual general meetings (AGMs), due to be held in April and May, and call for the companies to set more ambitious targets covering Scope 3 emissions and large-scale reductions in "absolute emissions by 2030" to pursue efforts to limit global temperature increase to 1.5°C. Follow This states that the "strategy for how to achieve this target is entirely up to the board[s]" but emphasized that a Paris-aligned aim for 2030 was necessary to achieve net zero by 2050 goals.

In a related initiative, Follow This and 17 other investors representing assets under management of approximately EUR 1.1. trillion, filed a **climate resolution** in connection with the AGM of TotalEnergies scheduled for May 26, which seeks to require the company to align its 2030 Scope 3 emissions reduction targets with the Paris Climate Agreement.

Follow This is a Dutch NGO activist group of shareholders in oil and gas companies. The group coordinates climate-related shareholder resolutions pushing for big oil companies to take leadership in the energy transition to reach Paris-aligned net-zero goals.

BP's board has criticized the resolution as being "unclear," and "simplistic," and on the ground that it "encroach[es] on the board's responsibility and accountability for the company's strategy." BP also recommended that shareholders vote against the resolution in the **upcoming AGM**. Shell issued a **similar response**.

Taking the Temperature: The Follow This shareholder resolutions initiative, targeting the climate pledges of oil "super majors," are reflective of a broader trend of substantial climate-focused shareholder activity. Typically, their expressed concerns focus on either or both the potential impact of climate change on enterprise value and the companies' impacts on the environment, with a particular emphasis on ending new oil and gas projects and increased investment in renewable sources of energy.

We have reported on investors exerting pressure against European banks financing new oil and gas fields and UK pension schemes threatening to vote against chairs of oil companies failing to meet climate pledges. There is similar activity in the U.S. with, for example, New York City pension funds seeking disclosure from financial institutions of their absolute greenhouse gas emissions targets for 2030. In January, institutional investors and an NGO filed a shareholder resolution seeking details of the "specific plan" for the commodities multinational, Glencore PLC, "to align thermal coal

production with emissions reductions commitments." And in March, climate advocacy groups sued a global bank in France over fossil fuel financing.

UK Government Authorizes Consultation to Spur Investment in Nature Recovery Initiatives

April 25, 2023

By Sukhvir Basran
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On March 23, the British Standards Institution (BSI), the UK National Standards Body, **announced the launch** of a three-year Nature Investment Standards Programme and related consultation, which aims to stimulate private sector investment in nature recovery initiatives and nature-friendly farming. The consultation aims to identify current barriers to investment and address related concerns, such as the absence of "standardized, transparent data." BSI is **partnering with** the UK Department for Environment, Food & Rural Affairs (Defra) on the Nature Investment Standards Programme.

Through the Nature Investment Standards Programme, the BSI and Defra intends to work closely with the Devolved Administrations in Scotland, Wales and Northern Ireland as well as stakeholders in the conservation and agricultural sectors to craft a new consensus-based framework to identify, prioritize and develop standards to address key market gaps and build high integrity nature markets. Programme objectives include 1) enabling the scaling up of high integrity markets that trade in ecosystem services to support the flow of private sector investment into nature; 2) building market participant trust by guarding against greenwashing; 3) accelerating progress on environmental goals including net zero and reversing biodiversity loss; and 4) empowering regulators and other experts to engage with and support the development of nature markets that are robust, transparent and fair.

BSI and Defra are kicking off the Programme with a consultation open until the end of May 2023. Input will be gathered from public body, land management, environmental and financial stakeholders across the UK Those who wish to participate should complete an **online form**.

Taking the Temperature: The Nature Investment Standards Programme is one of several recent undertakings in the UK to encourage more private sector investment in nature. In April, we reported on the publication of the UK's updated 2023 Green Finance Strategy and the publication of a nature markets framework to scale up private investment in nature recovery and sustainable farming.

The UK government's recent efforts are reflective of growing global recognition on the importance of biodiversity and habitat preservation. As we reported in January, the United Nations Biodiversity Conference (COP15) ended in Montreal, Canada, on December 19, 2022 with a landmark agreement to protect at least 30% the planet's lands, inland waters, coastal areas and oceans by 2030 as part of the adopting of the Kunming-Montreal Global Biodiversity Framework.

According to a United Nations report issued at the end of last year, by 2050 the total investment needs of nature will total $8.1 trillion, or $536 billion annually, which is over four times the amount currently invested on a yearly basis. The world's governments currently provide 86% of nature-based solutions financing and will be unlikely to significantly increase this funding due to fiscal challenges related to conflict, debt and poverty, according to the United Nations Environment Programme (UNEP)'s December 2022 State of Finance for Nature report. Private capital currently comprises only 14% of global investments in nature; significantly increasing non-governmental nature-focused investment is critical, according to UNEP. Pressure from environmental pressure groups is also growing in this area, and in March we covered, for example, a UK NGO report which claims that asset managers are lagging on climate and biodiversity stewardship.

White House Report Calls For Reevaluation of Federal Government's Climate-Related Spending Priorities

April 25, 2023

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On March 20, 2023, the White House Council of Economic Advisers released the **Economic Report of the President** ("Report"). Chapter 9 of the Report, entitled "Opportunities for Better Managing Weather Risk in the Changing Climate," addresses a range of risks and opportunities presented by climate change, including the federal government's spending priorities in light of anticipated costly extreme weather events, which are projected to pose increasing threats to economic, social, infrastructural and government systems. As the White House's Office of Management and Budget estimated in 2022, the Federal Government could see a 7.1% drop in annual tax revenue by 2100 due to the adverse effect of climate change on macroeconomic growth.

The Report identifies "four primary pathways by which the federal government is exposed to physical climate risk:"

Risk assumption. The Report claims that the federal government is better able to attract private investment and support production across broad sections of the economy by assuming certain types of risk. "One of the most significant examples is the Federal role in housing," as increasing damage to housing from storms and wildfires increases federal loss exposure. Private lenders are shifting climate-exposed loans into government-sponsored enterprises like Fannie Mae and Freddie Mac, which may take on a substantial share of the increasing climate risk in the absence of policies that manage federal government exposure. The Federal Government also assumes risk through a variety of insurance programs, including its underwriting of virtually all flood insurance policies.

Operation and financing of climate-exposed assets. The government owns, maintains and operates important infrastructure throughout the country that is especially vulnerable to climate change-related events. These include dams, irrigation systems and major flood defenses such as river and coastal levees, as well as military installations. Constructed over many decades, this infrastructure is integral to communities and regional economies nationwide.

Provision of national public goods. The government provides a broad range of national public goods, including national defense, which accounted for approximately 45% of federal discretionary spending in 2021, according to the Report. Climate change poses a threat to U.S. national security because the effects of severe weather are expected to exacerbate global tensions as competition escalates for scarcer resources.

Social safety net programs. Federal programs collectively "known as the social safety net provide benefits and assistance to maintain a minimum level of well-being" in the U.S. Studies

estimate that health-related risks, such as those caused by poor air quality and extreme heat conditions, constitute the largest portion of climate change-related damage. Individuals over age 65 tend to be more susceptible to these climate change-related health risks and are much more likely to be treated through government health programs like Medicare and Medicaid.

The Report also identifies four overarching objectives that an effective federal adaptation strategy needs to address:

Production and dissemination of knowledge about climate risk. State and local governments, businesses and homeowners need information that is publicly available, credible, and from trusted sources to understand their climate change exposure. The Report recommends that the government invest in catastrophic climate risk modeling. Managing evolving climate risks will, according to the Report, require new scientific approaches that combine insights from climate models with other tools, such as statistical modeling and detailed engineering data to produce tailored climate information.

Long-term planning for climate transition. While many policies that are central to building long-term resilience to natural disasters are controlled at the state or local level, federal funds to states both directly and indirectly finance climate-exposed infrastructure and development projects. The Report advises the government to use federal funding to incentivize regional and local adaptive reforms. For example, local decisions to convert land subject to wildfires or flooding to developed uses implicates the government via its various risk-absorbing functions, such as mortgage guarantees, flood insurance and disaster management and response.

Accurate pricing of climate risks. Evaluating the cost associated with climate risk requires specialized modeling tools and a skilled analysis of the information produced. "Market failures arising from information asymmetries or misaligned incentives can distort these signals and require a policy response." The Report recommends the development of minimum standards and reporting requirements for the climate data used to inform significant investment decisions.

Protection of vulnerable populations. The Report states that "Low-income and disadvantaged communities are both more exposed to climate effects (e.g., through working in industries exposed to extreme heat, such as agriculture and construction) and lack assets that can be drawn on to smooth the costs of weather-related disasters. In the absence of policies addressing the needs of low-income and marginalized communities, preexisting vulnerabilities —such as inadequate health care, poor-quality or overcrowded housing, and food insecurity— will likely interact with climate change effects to worsen inequalities." The Report advises developing criteria for public adaptation funding that reflect the social benefits of investments. This includes criteria that capture differing vulnerabilities and variations in the extent to which communities are able to recover from damage. The Report also proposes "reenvisioning social insurance under climate change," as the U.S. cannot continue its current approach of "managing catastrophic perils in a piecemeal way with fiscally unstable public insurance programs." Policymakers should consider models from other countries, where governments act as backstop reinsurers, capping catastrophic losses in the private sector, while spreading risk broadly through mandated natural disaster coverage.

Taking the Temperature: The Report is consistent with the Biden Administration's announcement that "climate considerations [are] an essential element" of the President's policies, and consistent with other actions the Administration has taken,

including the adoption of various regulatory proposals, blueprints, and other measures, in furtherance of, according to the Administration, the "extensive body of evidence that environmental . . . factors can have material impacts on certain markets, industries, and companies."

The Report coincides with a new report by the United Nations that more ambitious action to reduce greenhouse gas emissions and adapt to human-caused climate change is urgently needed and that multiple feasible options exist. The Intergovernmental Panel on Climate Change (IPCC), the UN body for assessing the science related to climate change, released its "Climate Change 2023" report in March, calling for "climate resilient development."

The IPCC said in a statement that climate resilient development involves "integrating measures to adapt to climate change with actions to reduce or avoid greenhouse gas emissions in ways that provide wider benefits." For example, access to clean energy such as low-carbon electrification and promotion of walking, cycling and public transport improves air quality, health and equitable opportunities, the IPCC said. Yet, climate resilient development will become progressively more challenging as global warming continues. Decisions made by governments, investors, central banks and financial regulators in the next few years will play a critical role in achieving global climate goals, the IPCC warned.

FCA Delays Introduction of Sustainability Disclosure Requirements

April 25, 2023

By Duncan Grieve
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The UK Financial Conduct Authority (FCA) has **announced** that its widely-anticipated Policy Statement in response to the Sustainable Disclosure Requirements (SDRs) and investment labels consultation will now be published in Q3 2023 instead of H1 2023, and that the proposed effective dates will be adjusted accordingly. The consultation was **motivated by a concern** on the part of the FCA that "firms are making exaggerated or misleading sustainability-related claims about their investment products; claims that don't stand up to scrutiny (greenwashing)." The FCA's proposals subject to the consultation were intended "to build transparency and trust by introducing labels to help consumers navigate the market for sustainable investment products, and ensuring that sustainability-related terms in the naming and marketing products are proportionate to the sustainability profile of the product."

The delay, the FCA explained, will enable it to consider the significant response to its consultation on the new rules. The FCA reports that there is broad support for the proposed sustainable disclosure regime and broader policy outcomes that it is looking to achieve, while specifically pointing out the "rich, constructive feedback on some of the detail" of its proposal.

The FCA added that: "A strengthened regulatory framework for these products will increase opportunities and competition in the market and help foster growth and the demand and supply of products that better suit consumers' needs and preferences."

More specifically, the FCA has highlighted that it wants to take account of practical challenges faced by firms in implementing the SDRs as currently proposed. It highlights two areas of specific concern that it will review and consider further:

- refinement of specific criteria for the proposed labels; and
- how different products, asset classes and strategies can qualify for a UK sustainability label.

The FCA has also noted that its Policy Statement will clarify that for the SDR labels:

- it will not prescribe primary and secondary channels for achieving sustainability outcomes; and
- firms will not be required to obtain independent verification of product categorization to qualify for a label.

The delay to the publication of the Policy Statement is also likely to mean that the new anti-greenwashing rule (which was proposed to take effect from the publication of the Policy Statement) will be delayed. As noted above, the application of the regime will also be pushed back from the current provisional date of June 30, 2024 (12 months after publication of the Policy Statement), although the FCA is yet to confirm a new date for this.

Taking the Temperature: As we have commented on, the FCA has made it clear that it is focused on ESG-related disclosure, and just recently expressed concerns regarding the "overall quality" of ESG disclosures by benchmark administrators. However, the FCA's proposed rules for SDR and investment labels have been a source of debate, receiving praise and criticism from various groups. In January, the UK Sustainable Investment and Finance Association commended the rules for creating a "higher bar" for funds seeking to make sustainability claims. In contrast, in February, the Treasury Committee's Financial Service Regulation Sub-Committee urged the FCA to research the potential administrative and financial burdens of compliance with the proposed rule.

The delays will give in scope asset managers somewhat of a respite to prepare and consider the SDR's implications, including how it fits into other applicable regulatory regimes that asset managers may be subject to, such as the European Union's Taxonomy Regulation and Sustainable Finance Disclosure Regulation. We have reported on these issues on numerous occasions, such as here, here and here.