Cadwalader Climate

February 28, 2024

By Duncan Grieve
Special Counsel | White Collar Defense and Investigations

By Sharon Takhar
Associate | White Collar Defense and Investigations

Key Members Leave Climate Alliance

On February 15, 2024, two of the world's largest asset managers announced that they are leaving Climate Action 100+ (CA100+), an investor engagement group which aims to encourage companies to scale up their transition plans. JP Morgan Asset Management (JPMAM) and State Street Global Advisers (SSGA) announced their departure from CA100+, and BlackRock confirmed that it was pulling out as a corporate member. Although BlackRock's international arm will remain a member of the alliance, the high-profile departures have sparked concerns about the asset owners' commitments to tackling climate change. In response, JPMAM stated that it has now developed its own stewardship capabilities sufficiently, while SSGA and BlackRock raised concerns about CA100+'s Phase 2 commitment, which involve a change to the group's aim from pressuring companies to actively encouraging them to reduce their GHG emissions. **We have previously discussed** the pressure that asset owners are under globally to ensure adequate consideration is given to climate risks in line with their fiduciary duties. Some commentators have linked the departures to anti-ESG sentiment in the U.S. and elsewhere but it is notable that JPMorgan Chase remains part of the Net Zero Banking Alliance, and all three firms remain members of the Net Zero Asset Managers initiative.

Oat Milk Company Greenwashing Settlement

On February 15, 2024, investors suing Oatly, an oat milk producer, proposed a figure of $9.25 million to settle its greenwashing lawsuit. The suit was originally filed in 2021, and alleged that Oatly's shares were "artificially pumped" as a result of misleading environmental statements made by the company. But Oatly's share price dropped by nearly 9% after a short seller accused the group of greenwashing shortly after its $1.4 billion initial public offering. The settlement figure awaits approval from the court. The company has previously been sanctioned for potentially misleading environmental statements. In 2022, the UK's Advertising Standards Authority (ASA) found that several of its television advertisements made unsubstantiated environmental claims. The ads in question compared the carbon footprint of Oatly's milk with that of dairy milk. This is one of several recent greenwashing-related actions launched by the ASA, **as we discussed previously, including in our February 15 edition**.

Oil Major's Continued Litigation Against Activist Shareholder

In our February 9 edition, we reported that a global energy company had filed a suit against “Follow This,” a climate activist shareholder, to try to stop a shareholder climate resolution going to a vote at its annual investor meeting. Shortly afterward, Follow This withdrew the proposed resolution, commenting that Exxon wished to challenge the SEC’s rules on shareholder resolutions without directly involving the regulator. In its motion to dismiss, Follow This’s position was that Exxon preferred to litigate against investors with fewer resources rather than seeking relief from the SEC. The now-withdrawn resolution would have required Exxon to accelerate the pace of its Scope 1, 2 and 3 emissions reductions. Exxon pointed to a similar resolution proposed by Follow This in 2023 which was rejected by 89.5% of votes cast and backed by just 10.5%. Somewhat surprisingly to some commentators, while Exxon has withdrawn its request to expedite the hearing, it has chosen not to withdraw the suit. In a statement, a spokesperson said “[W]e believe there are still important issues for the court to resolve. There is no change to our plans, the suit is continuing, and we’re evaluating our options.”

AI, Algorithms and Satellites to Measure Methane

According to the National Oceanic and Atmospheric Administration, **2023 was the hottest year on record by far**, contributing to wildfires, drought and other extreme weather events. Reducing global warming is thus a key objective of the climate transition, and it is this which has motivated Google, in partnership with the Environmental Defense Fund (EDF) to launch a satellite that will map, measure and track methane leakage in the top oil and gas regions in the world for regular analysis. Methane from human sources, including the extraction of fossil fuels, **reportedly accounts for 30% of global warming today**. EDF’s satellite, MethaneSAT will orbit the Earth 15 times a day. Using algorithms developed by the agency, it will calculate the amount of methane in specific places and track those emissions over time. Google plans to use similar artificial intelligence used in Google Maps to detect sidewalks and street names in satellite imagery to identify oil and gas infrastructure, combine it with EDF’s information and together, locate where the emissions are coming from, providing companies – and states – with important actionable information.

COP28 Renewables Promise

During COP28, held between November 30 and December 12, 2023 in Dubai, **participants pledged to triple renewable energy by 2030**. Now, a report published by Climate Analytics shows that in order to achieve that objectives, $2 trillion of investment is needed each year from 2024. Climate Analytics estimates that around two-thirds would be invested in the installation of renewables, while a third would be for grid and storage infrastructures needed to support renewables. Last year, global investment in renewables reached $1 trillion, just half of the amount needed.

EUROSIF Methodology

The European Sustainable Investment Forum (EUROSIF) released a methodology to better illustrate the evolving nature of sustainable finance and track sustainability-related investments across Europe. The new approach is distinct from existing models in which EUROSIF grouped diverse initiatives under the single term of “sustainable investments.” Instead, EUROSIF proposes four distinct categories of sustainability-related investments: Basic ESG Investments, Advanced ESG Investments, Impact-aligned Investments, and Impactgenerating Investments. Investment may only be categories as such if they have binding ESG characteristics.