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Shareholder Climate Change Activism in the 2021 AGM Season – and what's coming next

In April, we considered the different pressures driving changes in corporate behaviour towards the transition to a low carbon economy, beyond just disclosures under the Taskforce for Climate-related Financial Disclosures (TCFD) framework. With the COP26 climate conference in November set to crystallise what governments are willing to commit to, private sector initiatives are still highly influential in setting the pace and tone of what can be achieved.

In this article, we take stock on how those pressures have played out and evolved over the 2021 AGM season, how the mood has changed, and where we are likely to go next.

The 2021 AGM Season

The world of climate votes has come a long way since 2019 when The Children's Investment Fund (TCI) pressed Spain's state-owned airport owner Aena to have the world's first vote on its climate transition plan. Since then, there have been around 700 shareholder resolutions on environmental and social issues around the world, of which a little under half focussed on environmental issues.

Globally, average support for environmental votes has gone up from 16% in 2019 to 27% so far in 2021. In the US, it has increased from 36% in 2020 to an impressive 55% in 2021. In the UK, climate-related resolutions have been put to eight FTSE 100 companies. BlackRock, the world's largest asset manager, backed about 75% of environmental proposals in Q1 of 2021, as opposed to 10% in the whole of 2020. Glass Lewis, another of the world's largest advisory firms, opposed 87% of these votes in 2019, but only 75% this year.

Some votes have seen near unanimous approval, others languish in the sub-20% range of support. In part, this mix reflects the diversity of views on how urgently we need to tackle climate change. It is also because these resolutions are not all the same and are presented to a range of different shareholders who all have their own distinct drivers. There are some technical problems as well, like a lack of clarity in some instances, and a wider debate about whether yes/no votes are the right way to go or if climate-competent boards would be a more successful next step.

However, compared to even last year, the direction of travel towards demanding that more businesses have more credible ideas about engaging with climate change is clear. This is only likely to accelerate due to COP26 and what comes after. Where shareholders can understand the financial benefits of climate-related votes, they are likely to be especially successful.

You win some, you lose some

AGM PROPOSAL	OUTCOME
BP saw activists Follow This demand the energy major adopt tougher carbon emission reduction targets as part of its transition to net zero.	Although the vote failed (only a fifth voted in favour), it garnered double the votes won by the previous climate resolution in 2019, suggesting that whilst shareholders are giving boards a chance, they are keeping the spotlight on them to offer credible transition plans.
Barclays' shareholders considered Market Forces' proposal asking the bank to cut back finance for fossil fuels on climate grounds to align with the Paris Agreement.	The vote failed, attracting just 14% of votes in favour. Asset manager BlackRock abstained on the basis the wording was overly ambiguous, arguing that "financial services" was too "broad and includes many activities beyond those highlighted in the resolution". Glass Lewis and ISS both recommended a vote against.
Mitsubishi UFJ Financial Group, Japan's largest bank, and Sumitomo Corp, one of its largest trading houses, have both been targeted.	Whilst both votes failed, they reflect the shift in attitudes that is seeing environmental votes rise up on the agenda in Japan, as it is elsewhere in the world.
HSBC worked with the ShareAction coalition to table a management-backed resolution committing the bank to phasing-out coal financing by 2040.	The vote passed with overwhelming support, suggesting the value of management engaging with activists. The resolution prohibits financing and underwriting of companies highly dependent on coal mining or coal power, as well as those planning new mines, plant or infrastructure for coal. The bank will also need to set clear, measurable short and medium-term targets.
ExxonMobil has seen three of its board members replaced with climate-competent board members. Both Chevron and Exxon have also conceded votes requiring them to report on climate and on lobbying, and to reduce 'scope 3' emissions.	The results follow Engine No.1's campaign to secure wider backing, including from BlackRock and four large pension funds. That is despite the tiny activist hedge fund holding only 0.02% of Exxon's shares. Key to the Engine's victory is that it was able to link its environmental arguments closely to Exxon's bottom line, so something that should benefit people and planet was also about protecting profit.
Rio Tinto's AGM in April saw proposals brought forward relating to lobbying and setting emissions reduction targets.	An extraordinary 99% of votes in support came after the miner recommended earlier in the year that shareholders vote in favour of the proposals.
General Electric encouraged shareholders to support a climate proposal requiring the company to report on progress against the CA100+ Net Zero Company Benchmark.	The proposal went on to win 98% of shareholders' approval, in part demonstrating the value to management of being proactive in suggesting actions, rather than appearing to be reactive to activist pressures.
Glencore announced it would offer investors an advisory vote on the climate transition plans at its annual meeting in April.	The miner saw 94% vote in favour and management pledge to reach net zero by 2050 and cut emissions by 40% by 2030. This follows targeting by Royal London Asset Management under the CA100+ campaign.

AGM PROPOSAL	OUTCOME
Moody's, S&P Global, and French builder Vinci all saw "Say on Climate" votes offered by management pass with near unanimous approval.	Despite support from investors like BlackRock and Norges Bank for the vote, the Office of New York City Comptroller and CalPERS abstained from the Vinci vote. This was for fear that these kinds of votes allow rubber stamping of weak climate plans instead of pinning responsibility on directors. The concern is that "Say on Climate" might fall prey to the same fate as "Say on Pay" votes a decade ago, which many consider to have failed to achieve change.

Standardising disclosures and building frameworks

Investors are seeking more accountability over the net zero commitments made by corporates in line with their role as stewards of capital. In August, members of the Institutional Investors Group on Climate Change (IIGCC), including Allianz, BNP, the Church Commissioners, JP Morgan Asset Management, Legal & General, and M&G Investments published an 'Investor Position Statement'. Adopting the "Say on Climate" approach, the statement calls for detailed corporate net zero transition plans to be drawn up, disclosed, and put to routine votes, as well as identifying directors responsible for net zero transition planning.

The statement also includes a framework for net zero aligned disclosures based on the TCFD pillars and CA100+ Net Zero Alignment Indicators, offering yet another model for how to manage climate-related disclosures.

Beyond disclosures, there are also a range of investment frameworks. For example, the IIGCC's framework launched earlier this year which saw 53 investors with a combined $14 trillion in assets take steps to define an industry standard in respect of net zero investing. There is even a specific Net Zero Standard for Oil and Gas (see cut-out box below). It seems likely that standards for other sectors might follow.

Such disclosures, standards, and frameworks are often dogged by a lack of standardisation, making comparisons between businesses difficult for shareholders. It can also lead to greenwashing concerns.

This has arisen in part because of a legislative vacuum in this space - which the upcoming EU and UK green taxonomies, the FCA's recent warning to ESG funds that they need to improve, and the CMA's plans, may go some way to addressing. It is also a reflection of the pace with which the sector moves, allowing multiple, competing initiatives to come forward. Until a clear winner emerges, it will be difficult for businesses and everyone else to know which is best and how best to invest and report in a way aligned with the Paris Agreement.

However, it is still important that businesses and others start this process now to avoid finding themselves at a standing start once a winner does come forward and expectations harden, which would likely leave laggards vulnerable to increased activism and rising costs of capital amongst other risks.

Shifting assets

Increased shareholder attention, combined with tightening – but still quite loose - statutory climate change regimes across the world, and the risk of stranded assets, means that holding onto high-carbon and hard-to-abate assets is becoming less and less attractive. This has in part been reflected in disposals from businesses looking to rebalance their holdings into something more climate-positive.

BHP, for example, confirmed in August that it plans to exit oil & gas by merging its petroleum unit with Woodside Petroleum. This follows targeting by the Climate Action 100+ initiative (which is backed by more than 600 investors managing more than $55 trillion in assets focussing on companies covering over 80% of global industrial emissions), and advocacy group Market Forces. The activists filed a

shareholder resolution asking the firm to spell out how it is "managing down" its oil, gas and coal assets at its AGM later in the year.

The legislative patchwork

Legislative changes are also driving changes in corporate behaviour, and reinforcing the potential for shareholder activism. Once a certain level of disclosure is widely mandated, it should allow activist and other shareholders to more accurately and intensively engage.

The requirement to make climate-related disclosures based on the TCFD framework continues to spread. In the UK, premium listed companies have been subject to disclosures based on TCFD since January 2021. Large pension schemes will follow from October this year, BEIS is consulting on expanding TCFD reporting to include publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs), and the FCA is consulting on enhancing climate-related disclosures by standard listed companies and asset managers, life insurers and FCA-regulated pensions providers. The rest of the economy is to follow by 2025 according to the government's energy white paper.

In parallel, the UK is looking to develop its own green taxonomy and "Sustainability Disclosure Requirements", based on the EU's green taxonomy and Corporate Sustainability Reporting Directive (CSRD), to provide a legislative underpinning that will help define what activities can be accurately labelled as "green". This is complemented in the meantime by the Competition and Markets Authority's publication of a Green Claims Code to help guide businesses when making green claims. Financial institutions continue to wrestle with what the EU's Sustainable Finance Disclosure Regulation (SFDR) requires, however, with guidance on the scope of the SFDR's obligations still lacking. Corporates should also look out for the EU's supply chain due diligence directive.

In the US, the Biden administration is revisiting - with a view to no longer enforcing - the rules adopted in 2020 that questioned whether pension funds can take ESG factors into account when making investment and voting decisions. We have already seen the effect of this change in a number of pension funds' votes.

The US Securities and Exchange Commission is also looking to draw up new ESG rules relating to mandatory climate disclosures, having launched a Climate and ESG Enforcement Task Force.

Globally, the International Financial Reporting Standards Foundation (IFRS) consulted earlier this year on accommodating an International Sustainability Standards Board (ISSB) to set IFRS sustainability standards. The results are expected to be released in October and are likely to be adopted rapidly as a worldwide baseline, although it is unlikely it will be ambitious enough to satisfy the EU.

Litigation and regulatory enforcement also has a part to play. The activist Australasian Centre for Corporate Responsibility (ACCR) for example has brought a claim based on consumer protection against one of Australia's largest independent oil companies, Santos, for saying that its natural gas provides "clean energy", and that is has a "clear and credible" plan to achieve net zero by 2040. Potentially unsubstantiated claims can also draw the ire of regulators as DWS is finding out in Germany and the US, following allegations that Deutsche Bank's asset management arm misleadingly claimed that more than half of its $900 billion in assets under management have been invested in accordance with ESG criteria.

Taken together, along with the ESG frameworks mentioned above, these initiatives coalesce into a patchwork of what is and isn't "green" or "sustainable" and might help drain the "alphabet soup" of different ESG standards currently on the market. The lack of consistency at present can hinder transparency to the extent they make comparisons across different businesses difficult. Once resolved, in principle, shareholder activists will be better able to assess what action they should be taking and the impact it is having.

In something of an endorsement of TCFD, the Taskforce for Natural-related Financial Disclosures (TNFD) was launched in July 2020, reflecting the need to consider not just carbon emissions, but also the biodiversity and natural capital on which all businesses have some level of reliance.

Similar to Engine No.1, it is worth noting that the resolution was filed by shareholders representing a tiny fraction of BHP's shares (less than 0.006%),

underlining the impact that even very small activist shareholders can have if they can mobilise support from larger institutional investors. This can be seen also in the success Market Forces have had in working with the Friends Provident Foundation to call on Standard Chartered “to match ‘net zero by 2050’ rhetoric with action and end the bank’s misaligned financing of fossil fuels”.

Whilst positive from the perspective of BHP’s climate scorecard, the decision to sell off rather than wind-down high-carbon assets does not improve the overall level of carbon emissions globally. This reflects the concerns many have with a divestment approach that presses companies to dispose of problematic assets rather than take them out of the equation all together. The Church Commissioners, for example, have said that they “believe we can make a much greater impact in the world by staying invested in companies and changing them through direct engagement as a shareholder” and have pledged to divest from all non-Paris aligned fossil fuels companies by 2023. In other words, the Commissioners - like many others - will stay in, but fossil fuels companies need to shape up.

Net Zero Standard for Oil and Gas

Convened by the IIGCC and informed by the Transition Pathway Initiative (TPI), investors representing $10.4 trillion have taken the reins and set out a standard for net zero transition plans in the oil and gas sectors. It marks an important and high-profile recognition of the risk of oil and gas assets becoming stranded and suggests a credible path through.

The plan sets minimum expectations about what a transition plan for oil and gas must include. This should help create a level playing field and allow for cross-company comparisons by investors. Significant focus is placed on the need for “comprehensive absolute and intensity emissions reduction targets, which cover all material emissions, as well as alignment of capital expenditure and production plans with a net zero target.” It goes on to acknowledge “‘winding-down’ as a legitimate strategy, as well as diversifying energy offerings or working through a company’s value chain to re-shape demand”.

BHP’s recently unveiled Climate Transition Action Plan has also been met with mixed responses. The influential investor ISS has given its “qualified support” to the plan on the basis that it is “reasonable, given the state of technological innovation”. Glass Lewis has in contrast advised shareholders to reject this plan, citing a “lack of science-based targets and its scope 3 emissions reduction initiatives” notwithstanding that the plan has “both strengths and weaknesses”. It shows that simply offering a Say on Climate vote won’t always be enough to ward off shareholder concerns - although for the most part such votes have been very successful in this AGM season.

Pressure is also coming from an insurance angle. The Swiss Re Institute reported that global insured catastrophe losses topped $42 billion in the first of 2021, driven by increased bad weather events due to climate change. This has led Société Générale to conclude that insurers could increase shareholder value by stopping offering cover for oil and gas quicker - as 23 have already done for coal - although to date, only Suncorp has done so.

Interestingly, Prudential is working with the Asian Development Bank to address this kind of issue by developing a scheme to buy Asian coal-powered power plants on favourable terms in order to shut them down early. In theory, this could allow for reductions in carbon harms as plants are taken offline within 15 years rather than in many decades, whilst also allowing time for workers to find new jobs, achieving a more just transition. Ceres has also launched an initiative focussing on lowering the carbon output of six of the US’ highest emission sectors. BlackRock recently announced it is working with Citi and Allianz to discuss how industrial companies handle their ‘dirty’ assets, including coal, which is expected to be discussed further at COP26 in November, and may see more pressure come to bear in this area.

What remains to be seen however is how to ensure that otherwise viable assets are truly left in the ground at the end of their run-down period, and how amenable shareholders will be to this kind of innovative approach now and in the future.

The Net Zero Alliances

Many businesses have voluntarily signed up to public commitments to align themselves with net zero, which have gathered steam in the last year in advance of COP26. The UN’s Race to Zero, for example, has “mobilized a coalition of leading net zero initiatives, representing 733 cities, 31 regions,

3,067 businesses, 173 of the biggest investors, and 622 Higher Education Institutions… forming the largest ever alliance committed to achieving net zero carbon emissions by 2050 at the latest. Collectively these actors now cover nearly 25% of global CO2 emissions and over 50% of GDP".

The Race to Zero has in turn formed a foundation for a series of sector-specific Net Zero Alliances. One of the most recent is the Net Zero Investment Consultants Initiative (NZICI) although there are many others, including the Net Zero Asset Owners Alliance, Net Zero Bankers Alliance, Net Zero Insurance Alliance and umbrella 'alliance of alliances' the Glasgow Financial Alliance for Net Zero (GFANZ).

Taking NZICI as an example, it has brought together 12 global investment consulting firms, setting them nine actions to undertake in order to support reaching net zero. Membership commits them to integrating into their advice to clients ways to reduce carbon in their portfolios by 2050 if not before, within two years.

So too for law firms, with the founding of the Net Zero Lawyers Alliance by Slaughter and May and others earlier this year, which commits its members to be greener but also to work with clients to offer legal services where possible that will help their clients become greener and decarbonise their businesses fully by 2050.

Financial institutions also continue to press companies to be greener. In September, a coalition of 220 financial institutions whose assets amount to more than $29.4 trillion sent a letter to over 1,600 companies saying only science-based targets for reducing emissions will be acceptable, and that a failure to align with the climate science threatens a "safe and prosperous economy". Put another way, the whole value chain from financial institutions, to their borrowers, to their borrowers' customers, needs to move to decarbonise.

What's next?

Despite the proliferation of Say on Climate-type votes and their apparent success, some activists as well as more traditional investors are moving away from this approach for fears it reduces a complex issue to a too-simple yes/no vote and might result in rubber stamping of transition plans instead of engagement with the changes that will be needed in the real world.

One solution is to push for a climate competent board, give it a mandate to address the climate transition, and hold directors accountable, with the threat of being replaced if the progress they make is not seen as being ambitious enough. Engine No.1's success with Exxon's board comes to mind, and proxy advisors like ISS Governance have recently introduced new guidance saying that under extraordinary circumstances, they "will consider recommending a vote against individual directors for material failures of governance, stewardship, or risk oversight, including demonstrably poor risk oversight of environmental and social issues, including climate change".

CalPERS' Anne Simpson, Managing Director for Board Governance & Sustainability, summed it up like this: "If you start peeling off particular issues which shareholders vote on separately, then why aren't we simply sitting on the board? [Shareholders should] delegate to the board and then hold the board accountable".

The Children's Investment Fund Foundation has already abandoned Say on Climate votes in the US in favour of pressing corporates to file resolutions for disclosure of climate transition plans only (rather than a yes or no vote on them).

Some, like the Climate Action 100+, are also broadening their horizons, to include scrutiny of how well companies are managing the "Just Transition" i.e. the extent to which businesses protect those that might lose out from the transition to net zero.

Executive pay has also been in the crosshairs. Reflecting wider trends, including an 18% rise in shareholder dissent over executive remuneration across Europe. California's Climate Risk Disclosure Advisory Group recently advised, amongst 45 other recommendations, that the state's public asset owners, including CalSTRS and CalPERS, should link executive remuneration to climate targets, and engage with others to do the same. However, to be effective, the whole package of incentives needs to be consistent with carbon reduction and not just one small bit of it. Otherwise, the climate-positive work of the one hand might be unpicked by the business-as-usual acts of the other.

In the same vein, Cevian Capital, Europe's largest activist investor, announced in March that it intended to punish companies that fail to set environmental, social and governance (ESG) targets

when deciding executive pay, although it's unclear to what extent this threat has been made good.

What businesses can do

The combination of incoming and yet-to-be revealed ESG-related legal obligations, restive shareholders holding companies increasingly to account, and physical impacts from climate change on, for example, global supply chains, will all combine to see a likely increase in climate-related impacts, litigation and disruption. Businesses will need to incorporate these factors into their underlying risk assessments when considering strategy, governance and operations, and in turn should also ask the question of what risk they, as businesses, pose to the climate.

To a large extent, the scale of change that will be required remains underestimated by many. Those that fall behind will look increasingly vulnerable to both the investor engagement talked about above, as well as the shareholder campaigns of 'activist' and more 'traditional' shareholders. Businesses that take steps now to be on the front foot and get ahead of the changes that will be needed to address the climate emergency will be especially well placed to engage with shareholders and to thrive, not just survive.

Increasingly, especially with the expansion of TCFD and other standards and frameworks, solid sustainability credentials will be seen by investors and shareholders as a necessity, not just a nice-to-have.

Businesses may look to take practical steps to prepare. These can be wide ranging and might include: creating a response team made up of key board members, general counsel, external counsel, the bank and PR advisors; clearly articulating and updating the company's corporate purpose; engaging proactively with shareholders to ensure a full understanding of ESG aspects; ensuring ESG considerations are fully integrated into strategy; that actions keep pace with claims and keeping the board sighted on key strategic issues for when needed; and moving quickly to get ahead of changing expectations to limit the risk of targeting.

This AGM season has seen a rapid proliferation of climate votes in various forms, with talk already of refining how activist investors can best engage. The success of these kinds of votes continues to be hit-and-miss. However, as thinking about bottom-lines increasingly aligns with concern for the planet, we are likely to see more - and more successful - shareholder activism directed towards businesses that are slow to change.

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Click here for more details or to receive updates as part of this series. Themes include Beyond Borders, Governance, Sustainability & Society, Digital, Navigating the Storm and Focus on Financial Institutions. Navigating the Storm explores whilst a vaccine appears to be on course to help solve the health emergency that the pandemic presents, economic and other challenges remain. Navigating these challenges over the coming months will be key areas of focus for many businesses.