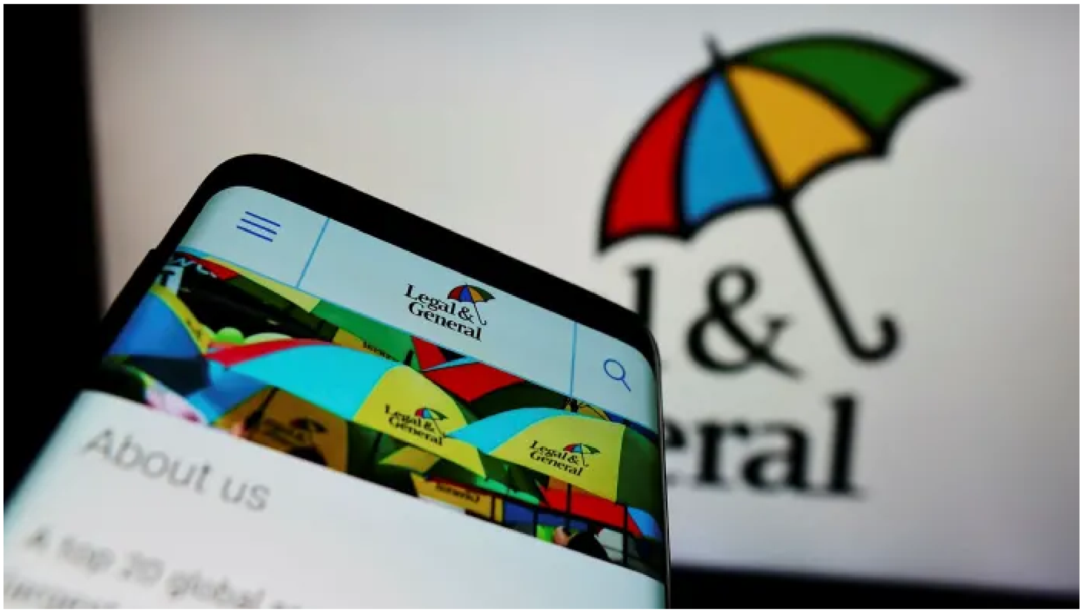
Moral Money **Legal & General Investment Management Ltd**

The growing power of shareholder proposals

Plus, renewed legal action over sustainability claims and a stark reversal of fortunes for European wind groups



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Patrick Temple-West and **Kristen Talman** FEBRUARY 18 2022

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He was the terminator, he was governor of California, and increasingly Arnold Schwarzenegger is one of the few Republicans willing to speak out about climate change.

Schwarzenegger starred in a television commercial during the US Super Bowl game for electric BMW vehicles.

As close as we get in the US to a national religious experience, the Super Bowl spectacle typically features advertisements for beer and trucks. But EVs were surprisingly in vogue this year.

Eager to promote EVs, Schwarzenegger told the Los Angeles Times that too often the climate change conversation missed the mark. With climate change, he said, “no one understands what the hell we’re talking about”.

“Talk about [how] we have to get rid of pollution,” he said. “And here are the things we can do to get rid of pollution, and one of the things that you can do is drive [electric] cars.”

Football is all about scoring points, winning and losing. But for climate- and socially-conscious investors who file shareholder proposals at companies each year, winning also means walking away with a handshake. In today’s newsletter, we have an early look at agreements this proxy season between asset managers and companies to withdraw several shareholder proposals and avoid a vote at annual general meetings.

And Kristen takes us inside the broadening climate change litigation scene.

If you haven’t read it yet, please check out the article Kristen and I wrote about an unloved net-zero ETF and what its saga says broadly about corporate commitments to fund climate change initiatives. *Patrick Temple-West*

ESG activists score early wins in proxy season

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Though the bulk of US company annual meetings are still weeks or months away, activist ESG shareholders have already scored some early wins in 2022.

JPMorgan has agreed to publish later this year new information about its lobbying memberships and how these organisations engage on climate change. These details will include any differences between trade groups climate lobbying and the bank's own climate policy positions.

The disclosures follow a shareholder proposal filed at JPMorgan by Boston Trust Walden. The Boston-based company said it held talks with JPMorgan, and the bank's disclosure agreement was "something that they should be commended for", said Laura Devenney, senior ESG analyst at Walden.

Another shareholder group to register an early win this year is Legal & General Investment Management, which successfully pressured Moderna to publish details about its government fund and vaccine pricing.

LGIM filed a shareholder proposal at Moderna late last year, saying investors deserve to know how US government funding for Covid vaccines affects "access to such products, such as setting prices".

Global asset managers such as LGIM rarely embrace the activist script and file shareholder proposals. The new disclosures Moderna released on Wednesday gave details about vaccine prices in countries around the world and for the Covax vaccine scheme.

"We would like to see Moderna, and the entire pharmaceutical sector, share components of their pricing strategy related to cost, particularly in cases where there is government funding," said LGIM, which withdrew its proposal following Moderna's release.

A slew of other companies have settled shareholder proposals with activists rather than see these issues go to a vote at annual meetings. While it is too early in the proxy season to have useful data on proposals filed and withdrawn, the cases at JPMorgan and Moderna suggest companies are much more afraid of ESG issues on the ballot than in years past.

This suggests that shareholder proposals — once roundly shrugged off in the boardroom — are becoming a greater tool for people aiming to influence change in the absence of government action. *Patrick Temple-West*

Growth of climate change litigation spurs fresh legal action over 'greenwashing'

Lawyers have been eager to jump into the action on climate change by bringing cases against companies that are heavy polluters.

Liberal-leaning governments, too, have gone after oil and gas companies for damages. Boulder, Colorado, is challenging ExxonMobil and Suncor Energy to pay for alleged climate damage. New York state in 2018 brought one of the first big climate-related lawsuits, a suit ExxonMobil ultimately won.

These types of suits have given rise to legal action over companies' sustainability claims, often referred to as "greenwashing". Clothing makers, for example, are becoming a sector increasingly vulnerable to greenwashing litigation, according to Sylvie Gallage-Alwis, a partner at Signature Litigation.

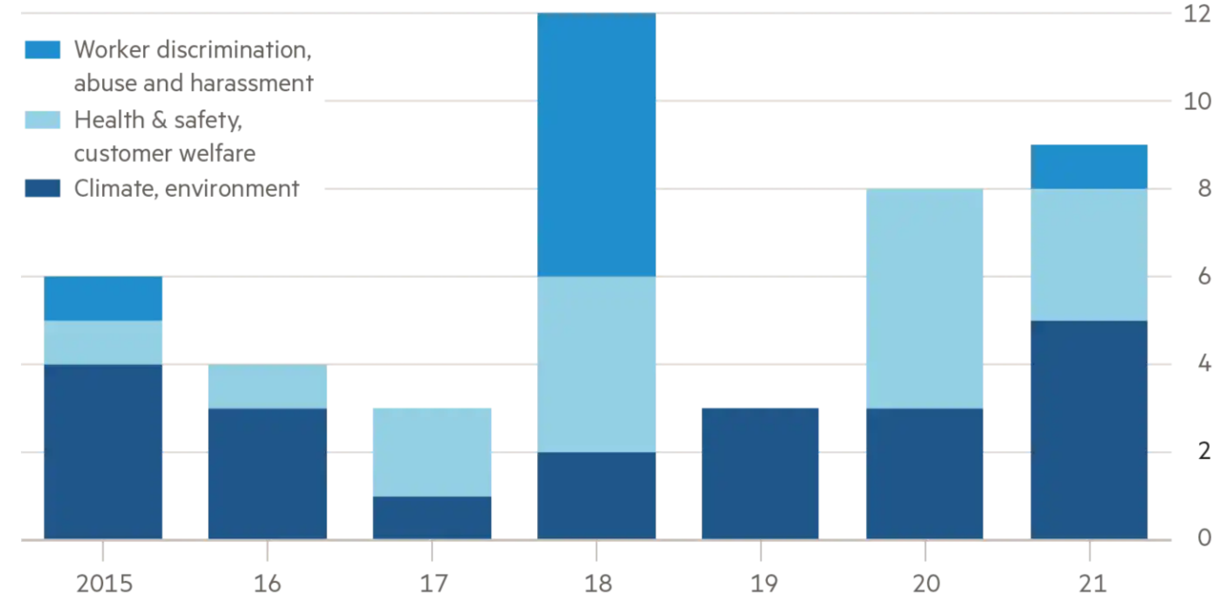
"At some point, brands will need to answer up to their claims," Gallage-Alwis said.

Clothing company Allbirds faces a consumer class action lawsuit after making marketing claims that plaintiffs argued were misleading, Fitch said. While the case has not yet been settled, the company pulled half of its sustainability claims from the filing documents before going public in October.

Greenwashing claims are gaining traction with class action plaintiffs. According to a February 15 report from Sustainable Fitch, the number of climate and environmental class action lawsuits have held steady or grown each year since 2017.

ESG-related securities class actions in the US

Number of cases



Source: Sustainable Fitch
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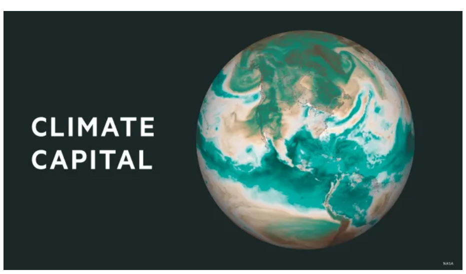
Two investor class actions were filed in 2021 that specifically mention greenwashing: one involving Oatly and another involving Danimer Scientific, which makes biodegradable plastics.

Companies issuing green or sustainable bonds need to be particularly careful, Fitch said. Businesses were liable "for every statement made within a bond prospectus or sustainable financing framework, and these could become the subject of securities litigation", Fitch said.

Climate Capital



Where climate change meets business, markets and politics. Explore the FT's coverage here.

The growing wave of litigation over sustainability claims would probably focus on corporate pledges that were not "backed by credible actions", said Joana Setzer, an assistant professorial research fellow at the London School of Economics, who follows climate change court cases.

Are you curious about the FT's environmental sustainability commitments? Find out more about our science-based targets here

Phrases such as "climate neutrality," "race to zero," "carbon neutrality" and "zero carbon footprint" would begin to face tougher scrutiny, Setzer said, noting that law firms are increasingly urging clients to be wary of claiming environmental achievements that they cannot prove. *(Kristen Talman)*

Smart read/listen

- European wind groups were among the "green rush" darlings of the early pandemic, when global emissions pledges stoked a surge in clean energy stocks just as the crude price crash crushed oil groups. Now, they have been blown badly off-course as supply chain disruption and soaring raw material costs prompt a stark reversal of fortunes, writes our colleague Leslie Hook.

- Chevron, ExxonMobil, BP and Shell, the world's largest oil companies, have vowed to reduce investments in fossil fuel extraction projects publicly while increasing traditional oil and gas exploration in recent years privately. Utilising data from 2009-2020, researchers found that four main oil producers had misled the public or used "greenwashing" tactics.

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