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PRATT'S

# ENERGY LAW REPORT

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# How Do Oil and Gas Companies Create an ESG Policy That Is Not a Policy of "Transition to Extinction"?

***By Bradley Potts and Michael J. Mazzone****

*The authors provide an overview of the environmental, social, and governance ("ESG") movement's benefits and problems; discuss the true ESG dilemma facing oil and gas companies; and identify a set of six guidelines that these companies can adopt to avoid "transitioning to extinction."*

Representing an issue that transcends generations, industries, and borders, climate change may be at the forefront of economic, social, and political debate for decades to come. The Intergovernmental Panel on Climate Change ("IPCC") predicts that global warming of 1.5°C above pre-industrial levels will have a variety of harmful impacts, with more severe impacts occurring at 2°C.[1] For example, at 2°C compared to 1.5°C, the IPCC has medium to high confidence that warming in select regions will cause precipitation increases, more frequent droughts, greater oceanic species loss, and greater sea-level rise that is more costly to human populations.[2]

In response to these predictions, environmental activism among investors, consumers, and politicians has spurred broad industry action on environmental, social, and governance ("ESG") initiatives, which is supposed to "hold corporations accountable" as global citizens for these adverse impacts (allegedly caused by them) but which also ignores the positive contributions made by them. The issue with ESG policies across many industries, however, lies in the challenge of coping with the policies while also demonstrating the often greater positive effects of business operations.

For oil and gas companies, the environmental criterion of ESG has become a focal point of significant concern and strategic planning. With many activist groups, such as Extinction Rebellion, warning of impending climate catastrophes and apocalyptic events for which they blame fossil fuel consumption, oil and gas companies are being pressured to reduce, or end, fossil fuel production

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[1] *Special Report: Global Warming of 1.5°C, Impacts of 1.5°C global warming on natural and human systems*, International Panel on Climate Change (Oct. 6, 2018), https://www.ipcc.ch/sr15/chapter/chapter-3/.

[2] *Id.*

in the near future.[3] Thus, oil and gas companies are now confronting their own existential dilemma: (1) ignore the demands and face fierce scrutiny from investors and consumers, or (2) acquiesce to the demands and "transition to extinction."[4] Neither of these alternatives ends well for oil and gas companies—or the public, which depends on the cheap, plentiful, and reliable energy which these companies deliver. Companies ought not premise their ESG policies on such incorrect alarmist threats of imminent disaster and misleading demands for radical change.

Rather, to promote global human development, oil and gas companies must confront the reality of the climate situation as understood by the most credible sources: that while burning fossil fuels may have some climate impacts, there is no imminent, catastrophic threat that requires irrational and harmful changes to international energy markets.[5] With a more accurate understanding of climate science, oil and gas companies can properly craft and implement ESG policies that sensibly reduce pollution, promote international human development (which requires cheap, plentiful, and reliable energy), and avoid falling into the "transition to extinction" trap.

Towards providing a set of guidelines that oil and gas companies can adopt to address the ESG dilemma, this article:

- Provides an overview of the ESG movement's benefits and problems;
- Discusses the true ESG dilemma facing oil and gas companies; and
- Identifies a set of six guidelines that companies can adopt to avoid "transitioning to extinction."

## THE GOOD AND BAD OF THE ESG MOVEMENT

The ESG movement has become intertwined with an alarmist narrative that does harm and interferes with oil and gas companies' formulation of beneficial policies. As a result, it is important that companies recognize both the value and pitfalls of the ESG movement.

Looking at the positives of the ESG movement, ESG activism may have spurred action towards greater efficiency and cleaner operations. To be sure,

[3] Michael Shellenberger, *Why Climate Alarmism Hurts Us All*, Forbes (Dec. 4, 2019, 1:08 AM), https://www.forbes.com/sites/michaelshellenberger/2019/12/04/why-climate-alarmism-hurts-us-all/#5a7971736d89.

[4] Alex Epstein and Don Watkins, *The ESG Dilemma and the "Full Impact Messaging" Solution*, Center for Industrial Progress, 2 (Mar. 5, 2020), https://catallaxyfiles.com/files/2020/03/The-ESG-Dilemma-March-5-2020.pdf.

[5] Michael Shellenberger, *On Behalf of Environmentalists, I Apologize for the Climate Scare*, Environmental Progress (Jun. 29, 2020), https://environmentalprogress.org/big-news/2020/6/29/on-behalf-of-environmentalists-i-apologize-for-the-climate-scare.

reasonable action on issues such as emissions, gas flaring, water waste, and spills needs to be taken, and ESG activism may have prompted discussion and adoption of needed policies.[6] For the companies that wish to stick with the status quo, the ESG movement can be an important agenda-setting mechanism. Additionally, ESG disclosures, required by shareholder resolutions or perhaps government regulations, may provide investors with valuable information on how a company is addressing changing economic conditions as a result of climate-related regulations.[7] Such disclosures can also benefit companies by improving transparency and by appealing to environmentally-conscious investors.

Yet, the ESG movement has also generated a variety of problematic effects that undermine the production of cheap, plentiful, and reliable energy, which raises energy prices for everyone. And by raising the price of energy and misconstruing the role of oil and gas companies' in climate change, many ESG policies have in turn made it more difficult for societies to combat dangerous weather events.

First, climate alarmism, existentialism, and catastrophism have invaded the ESG movement with many incorrect assumptions about the nature of climate change.[8] Consequently, with recent surveys showing that "almost half of humanity believes global warming will likely make humans extinct," the hysteria caused by the movement's predictions of climate doom "skews [] focus and spending."[9] For example, the European Union spends $400 billion annually on climate subsidies and policies, when much of this money could be spent on clean air and water initiatives in developing countries that do not have such basic needs met.[10] Though reasonable climate initiatives may be needed, hyperbolizing climate change risks "distract[s] us from other important issues including ones we might have more near-term control over."[11]

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[6] Robert Johnston, Reed Blakemore, and Randolph Bell, *The Role of Oil and Gas Companies in the Energy Transition*, Atlantic Council, 15–21 (Jan. 2020), https://www.atlanticcouncil.org/wp- content/uploads/2020/01/OGT-final-web-version.pdf.

[7] Epstein and Watkins, *supra* note 4, at 1–2.

[8] Shellenberger, *supra* note 3.

[9] Bjorn Lomborg, *Earth Day at 50: A surprising success story*, The Globe and Mail (Apr. 22, 2020), https://www.theglobeandmail.com/opinion/article-earth-day-at-50-a-surprising-success-story/.

[10] *Id.*

[11] Michael Shellenberger, *Why Apocalyptic Claims about Climate Change are Wrong*, Forbes (Nov. 25, 2019), https://www.forbes.com/sites/michaelshellenberger/2019/11/25/why-everything-they-say-about-climate-change-is-wrong/#700923fc12d6.

Second, the infusion of alarmism into the ESG movement has improperly played on people's fears of climate catastrophe to advance ESG policies. Concerning what the American Psychological Association calls "eco-anxiety," defined as " 'a chronic fear of environmental doom,' " the ESG movement has instilled a general distrust of fossil fuel companies in younger generations, which is counterproductive to the collaboration of industry and society towards achieving any reasonable climate change initiatives.[12] Thus, without recognizing the fundamental role that oil and gas companies currently have in human flourishing generally and will have in addressing the effects of climate change specifically, the ESG movement's alarmist dialogue has ostracized fossil fuel companies in many unproductive ways.

And, third, alarmist exaggeration of climate change's effects discredits climate science.[13] By hyperbolizing the effects of climate change, many proponents of extreme ESG policies are incidentally discrediting legitimate scientific conclusions by "polariz[ing] many people."[14] For instance, Extinction Rebellion's apocalyptic narrative makes practical decision-making more difficult and compliance for businesses near impossible.[15] Moreover, such exaggeration by "ESG as it is currently constituted is misinforming investors" by painting an incorrect future for oil and gas companies.[16] And, in turn, the rhetoric threatens the well-being of billions of people who depend on the cheap, plentiful, reliable energy that only fossil fuels can deliver on an industrial scale.

Altogether, though the ESG movement may have motivated company action on many climate change initiatives, the infiltration of alarmist narratives and policies into the movement has improperly skewed its focus, caused unnecessary social panic, and likely discredited the movement's legitimacy in the eyes of many businesses and policymakers.

In response, it should be oil and gas companies' objective to face the ESG dilemma by confronting the realities of climate change, though they are likely not catastrophic, with prudent, comprehensive policies—rather than concede to the alarmist narrative with self-destructive decisions.

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[12] Shellenberger, *supra* note 3.

[13] Shellenberger, *supra* note 11.

[14] *Id.*

[15] Shellenberger, *supra* note 3.

[16] Alex Epstein and Don Watkins, *The ESG Chess Game (Transcript)*, POWER HOUR, 10 (Mar. 11, 2020), https://cdn2.hubspot.net/hubfs/2972985/ESG%20Chess%20Game-CIP.pdf.

## THE DILEMMA FOR OIL AND GAS COMPANIES

The dual challenge for oil and gas companies—to fight climate change while also ensuring long-term value creation—is an impossible task under the alarmist ESG policy narrative. Namely, the assumption that immediate reduction or elimination of fossil fuels is needed to prevent existential climate catastrophe is irreconcilable with oil and gas company's longevity—and with the needs of billions of people.[17]

In other words, if the alarmist narrative is assumed, oil and gas companies' only option, in order to comply, would be to dissolve themselves over the next 10 to 20 years. Thus, though companies may be inclined to "check boxes" (by adopting a proforma ESG policy) to appease shareholders and consumers, even passive acceptance of the doomsday predictions signals to investors that the oil and gas industry has no future.[18] This is the transition to extinction trap.

As a result, addressing the ESG dilemma for oil and gas companies means confronting the most scientifically justified reality: that climate change (whatever is causing it) may present difficult challenges requiring reasonable change, but it does not present any impending climate catastrophe or extinction event requiring the dissolution of the fossil fuel industry.[19] In fact, oil and gas companies will be instrumental in reaching climate change goals, supporting international economic development, and lifting billions of people out of poverty.[20]

To be sure, there is nothing from the IPCC that suggests there is any sort of catastrophic event on the horizon.[21] In his book *Apocalypse Never: Why Environmental Alarmism Hurts us All* and in many articles, Michael Shellenberger, a lifelong environmentalist and climate change activist, refutes many of the alarmist claims with more reasonable, internationally agreed upon scientific conclusions.

For example, while many activists claim that climate change will, in the near future, cause severe global food shortages, the Food and Agriculture Organization of the United Nations has concluded that "food production will rise 30% by 2050 unless 'sustainable practices' are adopted in which case it would rise

[17] *Id.*, at 4–5.

[18] *Id.*, at 2–3.

[19] Shellenberger, *supra* note 5.

[20] Johnston, Blakemore, and Bell, *supra* note 6, at 5–12.

[21] Shellenberger, *supra* note 3.

just 10% to 20%."[22] This explosion in food production is one of the benefits of cheap, plentiful, and reliable energy.

Another example is climate doomsayers' prediction that sea level increases could cause mass population displacement and economic loss, but the IPCC "estimates sea level could rise two feet (0.6 meters) by 2100," which is not an unmanageable scenario.[23] And energy is needed to power the machines that build the seawalls.

Furthermore, though many alarmists point to prophesized economic turmoil as a result of climate change, "both the IPCC and the Nobel-winning Yale economist, William Nordhaus, predict that warming of 2.5°C and 4°C would reduce gross domestic product ("GDP"), which would be much larger when any reductions occur, by only 2% and 5%."[24] These are just a few examples of scientific predictions disputing the hyperbolized claims that many oil and gas companies must confront to more prudently address ESG activism.

Importantly, these observations should not be misconstrued as climate denialism. Rather, these observations serve as a rebuttal to the environmentally, economically, and politically unproductive doomsday narrative underpinning many ESG policies. Thus, while recognizing the need for oil and gas companies to still implement some important ESG policies, the proper approach to addressing the issue of climate change involves relying on reasonable scientific conclusions to craft prudent ESG policies principled on human development and an understanding of the tremendous benefits of cheap, reliable, and plentiful energy—instead of unproductive exaggerations about climate change.

## GUIDELINES TO ADDRESS ESG ACTIVISM AND AVOID "TRANSITIONING TO EXTINCTION"

Operating under the assumption that oil and gas companies have an important social and economic role to play in human flourishing and that climate change does not present any looming catastrophic event, here are six guidelines that oil and gas companies ought to consider to avoid the "transition to extinction" trap and address the ESG dilemma. These guidelines are intended to outline ways oil and gas companies can prudently address the ESG movement while also maintaining long-term value that is attractive to investors.

### Redefine "Sustainable" Oil and Gas Production and Consumption

To achieve environmental goals while also avoiding unproductive spending, the meaning of "sustainability" for oil and gas companies must change to a

[22] *Id.*

[23] Shellenberger, *supra* note 11.

[24] *Id.*

more comprehensive definition that is not limited to environmental conservation. Instead, when making long-term business decisions, the purpose of "sustainability" considerations for oil and gas companies should be to improve long-term value creation for "human flourishing."[25] Though part of the long-term value calculation will be companies' investor returns, a key component of this "sustainability" definition is the role that oil and gas companies play in promoting human development, which involves environmental protection, economic development, and social issue advancement.

Particularly, under this definition of sustainability, business decision-making is influenced by balancing considerations impacting human development—rather than focusing on any one factor such as environmental concerns. For example, by 2040, the International Energy Agency estimates that $13 to $21 trillion of investment in oil and gas will be needed to meet global energy demand across all two-degree scenarios.[26]

Keeping in mind that the availability of low-cost, efficient energy is critical to addressing poverty and other social issues in developing countries, this social dimension of the oil and gas investment decision must be weighed against the environmental concerns.[27] This means that the costs of implementing environmental policies on the energy supply must be weighed against the costs of limiting production. Regardless of the answer, the important point to understand is that "sustainable" decisions that are ESG-conscious cannot be singularly based on environmental concerns, which may be trumped in some cases by greater economic or social demands.

Examples of this redefinition of "sustainability" include those stated by Callon Petroleum, Marathon Oil, and Hess Corporation.

On its website, Callon's tagline for "sustainable development" reads as follows: "[a]t Callon, our commitment to shareholders is simple: create value in a responsible manner. Our focus on integrating sustainable business practices and achieving long-term results drives our operations."[28]

Marathon Oil, while recognizing the need to reduce emissions and adapt to changing climate change regulations, states that "at the same time, we recognize the need for reliable and affordable energy and petrochemical feedstock to fuel

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[25] Epstein and Watkins, *supra* note 4, at 3.

[26] *2019 Outlook for Energy: A Perspective to 2040*, ExxonMobil, 43 (2019), https://corporate.exxonmobil.com/-/media/Global/Files/outlook-for-energy/2019-Outlook-for-Energy_v4.pdf.

[27] *See* Epstein and Watkins, *supra* note 4, at 3 (discussing how the positives and negatives of oil and gas production must be weighed against one another).

[28] *Sustainable Development*, Callon Petroleum (last visited Jul. 8, 2010), https://www.callon.com/.

global economic progress, and the important role oil and natural gas are projected to play in meeting long-term global demand."[29]

Similarly, Hess states that "[w]e believe climate risks can and should be addressed while also providing safe, affordable and reliable energy necessary to ensure human welfare and global economic development."[30] Each of these statements reflect a redefinition of "sustainable" business practices to a more comprehensive definition that recognizes long-term value creation for human development.

This definition of sustainability also involves the integration of accurate climate and energy predictions into business decision-making. In this way, companies can avoid the fatalism of alarmist ESG narratives by using proper energy outlooks, instead of exaggerated "tipping points" as baselines for decision-making.[31] For instance, when crafting its strategic plan, ExxonMobil uses International Energy Agency energy market forecasts.[32] This allows Exxon to integrate sustainability efforts into its long-term plans without conceding the extinction narrative.

Redefining "sustainability" as a comprehensive initiative to promote human flourishing, rather than a narrow goal of environmental conservation, is an important step for oil and gas companies when facing demands for ESG policies. Using a narrow definition of "sustainability" to grade oil and gas companies' societal impacts without crediting them for any of their overwhelmingly positive contributions skews decision-making and sacrifices operations that would otherwise be socially beneficial, such as low-cost energy production for developing countries.

Therefore, in crafting long-term business plans, policies, and marketing materials, a broader definition of "sustainability" that considers the social, economic, and environmental impact of oil and gas production—positive impacts as wells as any negative ones—should be used.

**Comply with Reasonable ESG Policies**

While some ESG policies that rely on the alarmist narrative are unreasonable, there are many ways that companies can greatly improve their environmental impacts without conceding to the "transition to extinction" narrative. Mainly,

[29] *Climate Change*, Marathon Oil (last visited Jul. 8, 2020), https://www.marathonoil.com/sustainability/environment/climate-change/.

[30] *Climate Change and Energy*, Hess (last visited Jul. 8, 2020), https://www.hess.com/sustainability/climate-change-energy.

[31] *See* Shellenberger, *supra* note 3 (refuting the notion of climate change "tipping points").

[32] *2019 Outlook for Energy: A Perspective to 2040*, *supra* note 26, at 3.

reasonable compliance usually comes in the form of reducing, or reaching zero, carbon emissions in the acquisition, transportation, and production of oil and gas.[33]

However, oil and gas companies must be skeptical of conceding that burning carbon is, on the whole, something that must be eradicated. As global energy demand continues to increase with international economic development, fossil fuels, as cheap, reliable, and abundant fuels, will continue to coexist with fledgling alternative energy.[34] But, it will be important for oil and gas companies to continue to work toward being as efficient as possible in their own production and consumption of energy. This will not be new or difficult for the industry: striving for efficiency has been a hallmark of the oil and gas industry since the 1890s.

**Use Full Impact Messaging**

In most sustainability reports and ESG scores, only the negative effects of the oil and gas business are highlighted. Of course, from the discussion above, companies can address these negatives through compliance with reasonable ESG policies, but companies should also strive to highlight the positive effects of oil and gas on global human development using Full Impact Messaging. As discussed by Alex Epstein, Full Impact Messaging "shows investors the negatives and the (far greater) positive impacts of [the oil and gas] business on human flourishing, now and in the future."[35] By articulating the benefits of oil and gas production, while also addressing the drawbacks, oil and gas companies can improve their perceived long-term viability to investors and consumers. Moreover, Full Impact Messaging can be an effective recruiting tool that can dissuade younger generations' fears of entering a dying field.[36] To demonstrate, here are four positive effects of oil and gas concerning global human development.

First, a high-energy civilization is superior to a low-energy civilization for purposes of economic development.[37] As previously discussed, global energy demand is expected to increase significantly over the next 50 years as currently

[33] Johnston, Blakemore, and Bell, *supra* note 6, at 17-8.

[34] Richard G. Newell et al., *Global Energy Outlook 2020: Energy Transition or Energy Addition?*, Resources for the Future, 6 (May 2020), https://media.rff.org/documents/GEO_2020_Report.pdf.

[35] Epstein and Watkins, *supra* note 4, at 3.

[36] Johnston, Blakemore, and Bell, *supra* note 6, at 23.

[37] Shellenberger, *supra* note 5.

low-energy countries continue to develop.[38] As a widely available and low-cost energy, oil and gas will continue to be instrumental in meeting global development and energy demands.[39] According to moderate climate policy scenarios across a number of institutional projections, both oil and gas demand are expected to experience growth through the year 2040.[40] As a result, oil and gas companies will play a key role in maintaining global economic productivity for years to come.

Second, specifically pertaining to natural gas, "dirtier" electrification fuels such as coal will be replaced by natural gas over the next few decades, causing a significant spike in demand for gas. Particularly, until 2050, gas will displace coal in the power generation mix, with the most notable displacement likely occurring in east Asia.[41] Additionally, with "[a]lmost three billion of the world's poorest people still cook[ing] and keep[ing] warm with dirty fuels such as dung, cardboard, and wood," oil and gas have a significant opportunity to displace these fuel sources.[42]

Third, in addressing energy demand, oil and gas companies can play a significant role in reducing global poverty. Compared to renewables in their current state, oil and gas are low-cost fuels, and companies should emphasize the benefits of the "affordable, abundant, reliable energy they produce."[43] Concerning energy needs, "[c]ost is an important consideration as it is estimated that currently nearly 2 billion people . . . live on less than $1,200 per year."[44] As a result, the cost-efficiency of fossil fuels promotes economic development that can "lift people out of poverty and make them more resilient."[45] Additionally, if more costly forms of energy are emphasized by, and result from, ESG policies, this may have the effect of causing the finance industry to move capital away from cheaper forms of energy such as fossil fuels and towards currently more expensive, less reliable, and inefficient energy forms such as renewables.[46] The result of this investment shift would be higher energy prices for consumers, which is antithetical to economic development, human

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[38] Newell et al., *supra* note 37, at 6, 9–11.

[39] *Id.*, at 6.

[40] *Id.*, at 6.

[41] *Id.*, at 9–10; Johnston, Blakemore, and Bell, *supra* note 6, at 15–17.

[42] Lomborg, *supra* note 9.

[43] *Two Speeches on ESG Activism*, CENTER FOR INDUSTRIAL PROGRESS (last visited Jul. 8, 2020), https://industrialprogress.com/speeches-on-esg-activism/.

[44] *2019 Outlook for Energy: A Perspective to 2040*, *supra* note 26, at 44.

[45] Shellenberger, *supra* note 11.

[46] Epstein and Watkins, *supra* note 16, at 10.

flourishing, and reducing poverty.[47] Thus, oil and gas companies have an important role to play in providing cheap, reliable, and plentiful energy.

Fourth, oil and gas companies have the institutional resources and capabilities to contribute most meaningfully to the development of cheaper and more productive energy sources. Primarily, oil and gas revenues can go towards underwriting energy research and production. In addition, oil and gas companies have the institutional knowledge and capabilities to possess a competitive advantage in many areas of the energy industry. "The [oil and gas] industry's expertise with supply chains, scalability, and technological deployment is a greater currency than its capital in certain cases," which means oil and gas companies can, perhaps, most effectively and profitably develop different forms of cheap, plentiful, and reliable energy.[48]

In total, though many more examples exist, these four instances of positive effects of oil and gas on human development can be highlighted in a Full Impact Messaging strategy, in addition to the negatives of oil and gas production.[49] Some of these negative effects of oil and gas include possible future regulations on oil and gas consumption, potential low demand growth, and technological limitations on making oil and gas production cleaner.[50] But altogether, Full Impact Messaging is an effective means of addressing the ESG dilemma by providing investors and the public a full picture of the effects of oil and gas on human development, which is indicative of the industry's future prospects.[51]

**Diversify**

Though it is unlikely that oil and gas will be fully displaced by other fuels or resources within this century, the longer-term future of energy is a cooperative of fossil fuels, nuclear energy, renewable energies, and electricity.[52] Companies can start preparing for this more diversified energy mix in the near-term. As previously mentioned, oil and gas companies possess unique institutional knowledge that gives them a competitive advantage over other entrants into the renewables, nuclear, and electrification spaces.[53] Companies ought to explore

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[47] *Id.*

[48] Johnston, Blakemore, and Bell, *supra* note 6, at 19.

[49] Epstein and Watkins, *supra* note 4, at 3–4.

[50] Johnston, Blakemore, and Bell, *supra* note 6, at 5–12.

[51] Epstein and Watkins, *supra* note 4, at 3–4.

[52] *World Energy Outlook 2019*, INTERNATIONAL ENERGY AGENCY (Nov. 2019), https://www.iea.org/reports/world-energy-outlook-2019.

[53] Johnston, Blakemore, and Bell, *supra* note 6, at 18–19.

opportunities for diversification—but without diminishing their core oil and gas operations.

**Be Prepared for Shareholder, Lender, and Consumer Pressure**

Pressure to comply with both reasonable and misguided ESG policies can come from many sources for oil and gas companies. While compliance with reasonable ESG initiatives is encouraged, companies should be aware of misleading ESG activism on the part of shareholders, lenders, and consumers.

Most notably, shareholder activism on ESG policies endorsing the alarmist narrative can be especially problematic, as the practice of using shareholder resolutions and proxy votes for ESG-related policy changes is becoming more common. For example, in the 2019 proxy season, 386 shareholder resolutions were filed on ESG issues, with 60 being specifically tailored towards climate change.[54]

But apart from active shareholder influence through resolutions, passive decisions by ESG-conscious investors to not invest in a company because of its ESG policies can be equally as influential. In a survey by UBS Wealth Management, "40% of respondents identified sustainable investments in their portfolios, and approximately 80% opined that sustainable companies were good investments."[55] An example of this sort of activism is Blackrock recently announcing that " 'it will avoid investments in companies that have a high sustainability-related risk" using Blackrock's definition of sustainability.[56]

As a result of these investment preferences, oil and gas companies that are obstinate in addressing ESG policies may be at risk of losing investment. But considering this sort of investor activism, oil and gas companies must be receptive of reasonable policies requested by resolutions and prospective investors, while also being critical of ESG policies that jeopardize future operations and affordable, plentiful, and reliable energy. Instead of checking boxes to appease investors, companies should scrutinize shareholder ESG action that directly or indirectly concedes to the "transition to extinction" narrative. Though investors may be frustrated by the opposition to change, companies must communicate their reasons for resistance—that radical ESG policies will harm company value in the near-term, damaging investors' returns and the

[54] *Chapter D: Environmental Disclosure, 2019*, ABA ENV'T ENERGY, & RESOURCES L.: YEAR IN REV. D-1, 7 (2019).

[55] *Id.*, at 8.

[56] Wayne Winegarden, *The Unintended Consequences of ESG Activism*, FORBES (May 18, 2020, 10:52 AM), https://www.forbes.com/sites/waynewinegarden/2020/05/18/the-unintended-consequences-of-esg-activism/#7f530db515c4.

company's longevity. Thus, by standing up to misguided investor activism, companies can help ensure long-term value for investors.

Other than investors, pressure to comply with unproductive ESG policies may also come from lenders and consumers.

From lenders, ESG-linked loans are those where the loan's pricing is linked to the borrower's achievement of certain "sustainability" goals.[57] Oil and gas companies need to be aware of this sort of tactic and that such ESG-linked lending practices may continue to increase as banks feel the pressure to comply with ESG policies.

Furthermore, consumers can also be a source of pressure to pursue harmful ESG policies through boycotts and protests. Examples of consumer protests are the Extinction Rebellion and Greenpeace movements, which have both staged protests of fossil fuel companies and financiers of fossil fuel operations.[58] Though oil and gas companies should comply with reasonable policies, companies must remain resilient in the face of consumer activism that promotes misleading and ultimately harmful policies.

**Monitor ESG-Related Regulatory and Legislative Action**

Separate from activism on the part of investors, lenders, and consumers, government-issued ESG policies also threaten oil and gas companies' business operations. As a result, companies must monitor government action on ESG issues, work with government actors to craft prudent ESG policies, and seek legal counsel to understand the effects of implemented ESG policies. Particularly, regulatory action on ESG-related issues can come from many different agencies in unique forms, with some more favorable to oil and gas companies than others. For example, the U.S. Department of Labor has recently proposed a rule on investment duties that would prohibit ERISA plan fiduciaries from investing in vehicles that would alter risk for the purpose of non-financial, ESG-related objectives.[59]

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[57] *What is ESG-Linked Lending and Why Do We Care?*, LOAN SYNDICATION AND TRADING ASSOCIATION (Sep. 19, 2019), https://www.lsta.org/news-resources/what-is-esg-linked-lending-and-why-do-we-care/.

[58] Nosheen Iqbal, *How Extinction Rebellion put the world on red alert*, THE GUARDIAN (Oct. 6, 2019, 4:13 PM), https://www.theguardian.com/environment/2019/oct/06/how-extinction-rebellion-put-world-on-red-alert-year-since-it-was-founded; Severin Carrell, *Judge fines Greenpeace £80,000 over North Sea oil rig occupation*, THE GUARDIAN (Jul. 3, 2020), https://www.theguardian.com/environment/2020/jul/03/judge-fines-greenpeace-80000-over-north-sea-oil-rig-occupation.

[59] Tim Stewart, *Proposed Rule Regarding Shareholder Activism*, US OIL & GAS ASSOCIATION (Jun. 26, 2020).

Differently, the SEC has recently issued guidance on disclosures and shareholder proposals that would impact ESG-related shareholder votes.[60]

Legislative action on ESG policies is also becoming more frequent. For instance, there has been a variety of Congressional proposals advocating for greater ESG-related disclosures by companies, pertaining to issues such as environmental practices, emissions levels, and non-sustainable business operations.[61]

Particularly, in the Senate, the Climate Risk Disclosure Act of 2019 was introduced to require disclosure of items like GHG emissions, fossil fuel reserves, and business practices under below 1.5 degrees scenarios.[62]

Similarly, in the House of Representatives, the ESG Disclosure and Simplification Act of 2019 was proposed to require all issuers of securities to provide certain disclosures of "ESG metrics" and long-term business plans considering the effects of climate change.[63]

Though companies should disclose ESG-related information in many cases, some of these disclosure policies are aimed at pressuring companies to concede their long-term viability to fight climate change. But as corporate citizens, oil and gas companies can engage with government actors to help craft and implement ESG policies that are beneficial for human development and not based on alarmist narratives of catastrophic climate change.

## CONCLUSION

To address the ESG dilemma, oil and gas companies must avoid both climate denialism and alarmism, as neither narrative ensures a future for the oil and gas business. Instead, ESG initiatives principled around a comprehensive definition of sustainability—focused on global human development—is needed.

Supporting these initiatives, companies should also implement Full Impact Messaging and consider diversifying into other energy sectors where possible. Additionally, oil and gas companies must remain aware of investor, lender, consumer, legislative, and regulatory ESG activism by complying with reasonable ESG policies yet scrutinizing those that concede to the 'transition to extinction' narrative. With these guidelines in mind, oil and gas companies will remain profitable in the long-term, while also playing an important role in minimizing climate impacts and promoting global human development.

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[60] *Chapter D: Environmental Disclosure, 2019*, *supra* note 54, at 4.

[61] *Id.*, at 1–3.

[62] *Id.*, at 3.

[63] *Id.*, at 3.