



RESEARCH SUMMARY

CORPORATE COLLUSION: LIABILITY RISKS FOR ESG'S AGENDA TO CHARGE HIGHER FEES AND RIG THE MARKET

As values-based investing booms, progressive organizations are adopting more forceful methods for financing environmental and social causes — and de-funding industries deemed politically incorrect. Nowhere has the harmful effects of virtue-signaling by Wall Street investment firms and activists' public shaming campaigns been felt more than in the energy space. Denying capital to responsible American energy businesses simply because of their industry has many negative consequences including increased cost of living, weakened national security, and increasing pollution by foreign energy producers. And new research suggests environmental, social, and governance (ESG) investing may actually violate the law.

- Federal antitrust laws explicitly prohibit collusion and "hub and spoke" conspiracies, in which companies form a cartel to restrain market competition.
- The Employee Retirement Income Security Act requires most employer retirement plans to act "solely in the interest of the participants and beneficiaries." This fiduciary duty means investment managers are expected to prioritize financial returns over political views.
- Meddling with existing contracts or prospective contracts is called tortious interference. Aggressive strategies used by environmentalist organizations to influence banks' lending decisions and de-bank companies based on industry could be challenged on these grounds.

While individual investors should be free to use their money to further their preferred social goals, the increasing collusion by major banks and investment firms to deny financing to fossil fuel producers, as well as other industries, is an affront to the free market — and may be illegal, leaving Wall Street firms vulnerable to legal challenges.

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