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Spotlight On Shareholder Activism In The Energy Industry

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Law360, New York (January 10, 2014, 7:28 PM ET) -- The North American energy sector experienced a dramatic surge in shareholder activism during 2012 and 2013 as energy companies became a primary target for dissident activity. Prominent companies such as Hess Corporation, Occidental Petroleum, Marathon Petroleum Corporation,Transocean and Chesapeake Energy all became targets, to say nothing of dozens of mid- and small-cap firms in the industry. Although recent campaigns reflect similarities between activism in the energy industry and across all industries, a handful of aspects of energy industry activism have been particularly salient.

Shareholder Activism Replaces the Hostile Takeover

Historically, a hostile takeover was the greatest threat to the ability of the board and management to set a public company's strategy. Today, for a variety of reasons, the hostile takeover is on the wane. There were only a handful of hostile offers for U.S. companies in 2013, the fewest recorded in any year since in 2003. Instead, activist investors, who acquire a small stake and then threaten to launch a proxy fight to push for change, have become the most serious threat to boards of public companies.

The activism strategy has proved remarkably successful in recent years. According to SharkRepellent data, 10 years ago 36 percent of proxy contests initiated by activists resulted in settlements or victories for activists. In 2013, the success rate soared to 60 percent. In light of the gains of activists at the ballot box, target companies often seek to settle proxy contests early by offering board seats to dissidents or meeting them halfway in other respects. In 2013, only 28.9 percent of proxy fights went to a vote. The sheer number of activist campaigns and proxy fights points to the continuing rise of shareholder activism. There were 367 reported activist campaigns in 2013, including 90 proxy fights. Importantly, these are only the known cases. Today, most activist situations emerge, and are resolved, out of the public eye.

Impressive proxy contest success rates have translated into equally impressive results for activist investors. Activist hedge funds returned around 16.6 percent to their investors in 2013 compared with an industrywide average of 9.3 percent.[1] These successes have predictably attracted copycats. By some estimates, there are currently almost 200 hedge funds employing activist strategies.