Bloomberg BNA

SEC Splits Decision on Carbon Risk Proposals From Investors at Chevron, ExxonMobil

Andrea Vittorio | Mar. 18, 2015

The Securities and Exchange Commission has responded to two similar climate change-related proposals from investors at Chevron Corp. and ExxonMobil Corp. in two different ways.

In a pair of shareholder resolutions filed earlier this proxy season, investors asked the companies to return more money to them as dividends or share buybacks, rather than spending money on expensive and carbon-intensive oil projects such as tar sands that they think are risky investments in the face of climate change.

In both cases, the companies challenged the resolutions and asked the SEC to exclude them from consideration at their annual meetings.

The SEC rejected Chevron's request to omit the resolution, according to a March 12 letter. But in a March 17 letter, the SEC agreed with ExxonMobil's request to do the same.

After celebrating a win against Chevron's challenge, the resolutions' filers—nonprofit As You Sow and wealth manager Arjuna Capital—were surprised to hear the SEC's decision on what they thought was a virtually identical ExxonMobil resolution.

Natasha Lamb, director of research and engagement at Arjuna Capital, called it “bizarre.” “It seems the SEC was grasping at straws,” Lamb told Bloomberg BNA March 18.

Already Implemented?

It was the difference in the companies' arguments that led to the difference in the SEC's reaction. There are about a dozen grounds for exclusion that companies can choose from when asking for a shareholder resolution to be omitted.

One of them is that the proposal already has been “substantially implemented.” ExxonMobil had argued it already has a strategy for allocating capital between oil and gas projects and shareholders.

The SEC agreed that “ExxonMobil's policies, practices and procedures compare favorably with the guidelines of the proposal and that ExxonMobil has, therefore, substantially implemented the proposal.”

But the resolution's proponents pointed out that the proposal asks for an increase in dividends or share buybacks, while the opposite has occurred. ExxonMobil's total net capital distributions to shareholders through dividends and share repurchases or issuance have fallen in the last two years, “so in no way has our proposal been substantially implemented,” Lamb said.

As You Sow and Arjuna Capital may ask the SEC for reconsideration. ExxonMobil declined to comment.

Too Vague?

Chevron, meanwhile, argued the request from investors was “impermissibly vague and indefinite so as to be inherently misleading” because it is unclear how the proposed dividend increase should be carried out, and the wording of the proposal may be confusing to investors.

“We are unable [to] conclude that the proposal, or the supporting statement, is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires,” the SEC said.

The proponents of the resolution, which also include Zevin Asset Management as a co-filer, said they intended to allow Chevron flexibility in implementation. The company could increase dividends to shareholders, leaving less capital for “high-cost, high-carbonprojects,” or it could go further by, for example, divesting from high-risk operations entirely, they said in their response to the challenge.

Proposed Policy Called Unnecessary, Flawed.

Chevron spokesman Justin Higgs said, “The proposed policy is unnecessary and based on the flawed premise that stockholders would be best served if Chevron stopped investing in its business.”

“Chevron’s production and resources will be needed to meet projected global energy demand, even in a carbon-constrained future,” Higgs told Bloomberg BNA in an e-mail. “To help meet growing demand, and to compensate for natural production declines over time, Chevron must prudently invest in its business.”

The Chevron resolution now will go to a vote at the company's annual meeting in May. It is unlikely to pass, as most environmental proposals don't, but its proponents say it is more about sending a signal to the company.

“Shareholders are very concerned with business as usual” for fossil fuel companies, Danielle Fugere, As You Sow's president and chief counsel, told Bloomberg BNA March 18.

Companies Not Responding to Market Signals.

Fugere said some companies have opted to “keep doing what we're doing despite all of these fundamental changes in the market,” including historically high capital expenditures, a sharp decline in oil prices and climate change regulations that impose limits on the carbon pollution that fossil fuels emit.

“All of this brought together is raising concern with shareholders,” she said, who are worried that fossil fuel assets could become economically stranded.

The resolutions to Chevron and ExxonMobil were the first to ask fossil fuel companies to act on these potential carbon asset risks instead of just reporting on them, as investors have requested in past years' resolutions (133 DEN B-1, 7/11/14)(133 DER D-1, 7/11/14)(132 ECR, 7/10/14)(45 ER 2063, 7/11/14)(12 CARE 803, 7/18/14).