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# Exxon Decision Shows Growing Climate Clout Of Investors

By **Keith Goldberg**

*Law360, New York (March 21, 2014, 7:34 PM ET)* -- ExxonMobil Corp.'s agreement to disclose how it evaluates the climate change risks of its energy assets is a rare, significant victory for shareholder activists that experts say will encourage investors to press energy companies harder to address their climate concerns and lead more companies to cooperate.

Arjuna Capital, the sustainable wealth management platform of investment firm Baldwin Brothers Inc., and As You Sow, an environmental corporate responsibility advocacy group, said Thursday that in response to a shareholder resolution it filed, ExxonMobil will post a carbon asset risk report on the company's website describing how it determines the risk of stranded energy assets from climate change, making it the first oil and gas producer to do so in the 2014 proxy season.

Climate-related shareholder resolutions are on the rise, but like most environmentally related resolutions, their success rate is relatively low. However, it's going to be harder for energy companies to brush aside such proposals now that ExxonMobil, the world's largest public international oil and gas company, has climbed aboard the disclosure bandwagon.

"I think it will embolden other investors to propose additional climate change shareholder resolutions and result in other oil and gas operators disclosing the methodology for carbon risk analysis," said Jeff Salinger, who heads Shearman & Sterling LLP's environmental practice. "ExxonMobil is the largest player in the U.S. oil and gas sphere. In some respects, the agreed disclosure will provide some cover to smaller players."

Arjuna and As You Sow say ExxonMobil's report will outline the risks that stranded assets — in the form of unburnable hydrocarbons — pose to ExxonMobil's business model, how the company is planning for a world with tighter restrictions on carbon emissions, and how climate risks affect its capital spending plans, as well as other related issues.

Assessing the risks of carbon assets themselves and recognizing that they may be devalued in a carbon-constrained future represents a new avenue in climate change disclosure, Salinger said. Previous climate-related disclosures tended to be tied to regulatory risks or physical risks to businesses.

"We should now have an opportunity to look behind the curtain, to some extent, to understand the factors that ExxonMobil is considering in valuing its carbon assets," Salinger said. "We're going to get a better sense of how ExxonMobil expects carbon to be constrained over time."

Given ExxonMobil's wealth and global reach, it likely has the resources to produce the climate-related information demanded by investors, but few energy companies are in that position, says Keith Gottfried, who heads Alston & Bird LLP's shareholder activism defense practice.

"Say you're a smaller energy or petroleum company, you might not have the resources to necessarily do this, or it might not be something on your radar," Gottfried said.

Still, Gottfried sees parallels between shareholder pushes for climate-related disclosure and pushes for political spending disclosure by companies, in which activists have pointed to disclosures by corporate giants such as Microsoft Corp. and Allstate Corp. in efforts to convince other companies to reveal where their political dollars are going.

"That's what a lot of environmental activist investors might say this proxy season, or next proxy season: Exxon did it, so why can't you do it?" Gottfried said.

As the 2014 proxy season gets underway, ExxonMobil's agreement certainly boosts an initiative being coordinated by sustainable business advocacy group Ceres and the nonprofit Carbon Tracker Initiative to get energy companies to disclose climate risks to their bottom lines.

Earlier this month, Ceres said that 35 institutional investors have filed more than 140 climate-related shareholder resolutions with nearly 120 companies, including energy giants such as Chevron Corp., ConocoPhillips Co. and Kinder Morgan Inc.

"Moving forward, Ceres and its Investor Network on Climate Risk will be looking for concrete commitments by companies to avoid making riskier investments in the most carbon-intensive assets, which would demonstrate the companies' ability to adapt as the world transitions to a low-carbon economy," Andrew Logan, who directs Ceres' oil and gas program, said in a statement Thursday.

The biggest challenge for ExxonMobil and other energy companies might not be gathering the climate risk information that shareholders demand, but deciding what information to disclose and how to disclose it, experts say.

"There's a risk with such disclosure that you will provide cover to regulators or others by forecasting a potential outcome, particularly if that potential outcome hasn't been previously disclosed," Salinger said.

When a company accepts a shareholder request to disclose additional information on how it conducts its business, Gottfried says they must answer three important questions: what is the precise information the shareholder is looking for, how much of that information is already publicly available, and what information might be too sensitive to disclose?

"From a litigation perspective, is anything going to have an effect on any legal proceedings?" Gottfried said.

The report issued by ExxonMobil could serve as a roadmap for other energy companies facing calls for greater climate-related disclosures, Salinger said.

"It'll be interesting to see how much detail they provide regarding their methodology for valuing carbon over time and how that disclosure is echoed by other, smaller companies," Salinger said. "This will result in a cascade of disclosures by other players in the oil and gas sphere regarding carbon asset risk."

--Editing by John Quinn and Philip Shea.