

# THE RISE OF ENVIRONMENTAL ACTIVISM IN THE ENERGY SECTOR

FTI Consulting | Strategic Communications Practice  
2013



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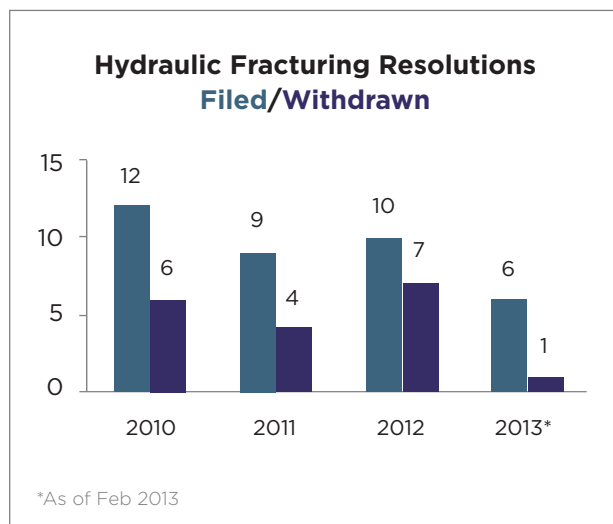
# INTRODUCTION

ENVIRONMENTAL SHAREHOLDER ACTIVISM IN THE ENERGY SPACE CONTINUES TO BE A GROWING CONCERN. THESE ACTIVISTS, UNDER THE GUISE OF TRANSPARENCY AND RISK MITIGATION, CONTINUE TO PUSH FOR SIGNIFICANT CHANGES THAT WOULD HAVE FAR-REACHING EFFECTS ON CORPORATE STRATEGIES AND OPERATIONS. DURING THE 2012 PROXY SEASON, ENVIRO-ACTIVISTS SUCCESSFULLY USED SHAREHOLDER RESOLUTIONS TO SPUR ACTION ON SUSTAINABILITY HOT-BUTTON ISSUES SUCH AS HYDRAULIC FRACTURING, WATER AND AIR RISKS, AND CLIMATE CHANGE. EXPECT MORE OF THE SAME IN 2013.

# OVERVIEW

The proxy season is upon us once again. Investors will be voting on a variety of important issues, including executive compensation, corporate board participation, capital usage policies, and — particularly for oil and gas companies — proposals related to environmental policy, programs and commitments. The increasing media and public policy attention given to hydraulic fracturing in the wake of films such as “Gasland” and “Promised Land” will ensure that green activism remains front and center as we head into the 2013 proxy season. Unlike traditional environmental activist organizations that protest development, entities such as Ceres, As You Sow, Green Century and many others — with their significant financial and legal resources — also are striving to undermine the oil and gas sector. The difference? This new generation of activists attacks through the corporate governance route, forcing companies to spend significant time and resources to defeat (or meet the requirements contained in) shareholder proposals.

## WHAT WE LEARNED IN 2012

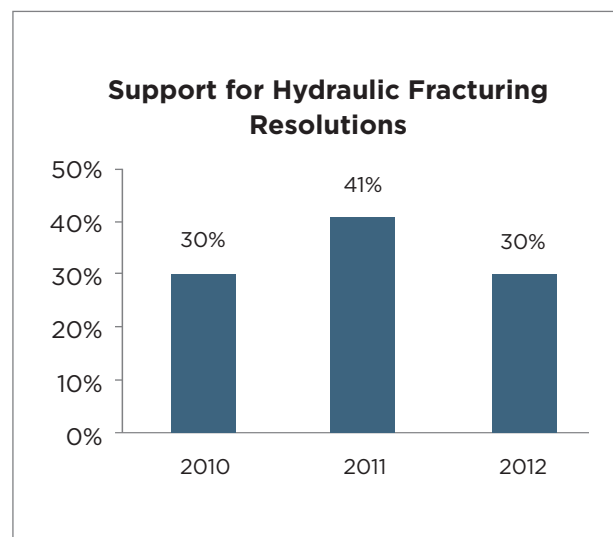


2012 marked the third consecutive year of green shareholders launching high-profile campaigns to raise concerns about hydraulic fracturing. However, a new trend has emerged, as many boards of directors at top oil and gas companies opted to take the discussion offline when faced with such resolutions in an effort to appease the groups and, with some luck, convince them to withdraw their proposals.

In total, there were 10 shareholder resolutions specific to the fracturing issue filed in 2012, which

was in line with the 2011 level. However, of the 10 resolutions, seven were withdrawn in response to corporate commitments — the promise of additional dialogue — representing a significant shift from 2011, when only four resolutions of this nature were withdrawn.

Voted-upon resolutions in 2012 received roughly 30 percent of shareholder approval, a percentage that — while not a winning figure — should be significant enough to send boards and management teams a loud-and-clear message. Indeed, environmental shareholder activists continued to live up to their name last year, demanding more time from investor relations and corporate communications professionals, as well as senior management and legal departments, throughout the U.S. oil and gas sector.



## LOOKING AHEAD

Looking to the 2013 proxy season, it is a certainty that shareholders will continue to press for greater accountability and disclosure measures at the company and board levels. While many prominent 2012 shareholder proposals centered on board matters and hot-button environmental and social topics, we expect 2013 to focus on hydraulic fracturing with a deeper underpinning to the peripheral issues of natural gas exportation, water usage, fugitive methane, linking of executive compensation to sustainability metrics and board-level environmental expertise. Investors at Chevron and ExxonMobil will face their fourth consecutive proxy season of shareholder resolutions on the subject, with resolutions calling on both to release quantitative data demonstrating that hydraulic fracturing causes no harm to the public or to the environment. Also required in this reporting, should activists prevail, would be data related to air emissions, sources and amounts of water used during development operations, and more.

Be on the lookout for the number of proposed resolutions to rise in 2013. Environmental activist investors will continue to engage companies on hydraulic fracturing under the guise of transparency and risk mitigation (“good cop”). However, these groups are pushing for change through an ongoing process that lets shareholders propose how the company should be run (“bad cop”). Regardless of whether a proposal goes to vote or is taken offline for further dialogue and action, one result is certain: The necessary next steps are cumbersome, expensive and redundant to what a large majority of oil and gas companies already are doing in disclosing their day-to-day business and conducting it in a manner compliant with all applicable environmental laws and regulations.

# THE BEST DEFENSE IS A GOOD OFFENSE

A successful approach to dealing with activist situations encompasses a complete understanding of your investor/environmental story (and the way it is heard by different audiences), detailed planning, fast reflexes and seamless execution. A comprehensive defense strategy focuses on clearly articulating a company's environmental policies and effectively communicating them to the influencers in the investment community and the shareholder base.

**Here are some best practices to consider as you prepare:**

- 1 Maintain year-round dialogue with major holders.** The need for year-round dialogue with investors has never been greater, as activists are increasingly taking their demands to new levels outside proxy battles, which may include requiring company commitments in the form of ongoing dialogue, additional reporting and higher company costs.
- 2 Develop a communications strategy.** In order to successfully fend off an environmental activist threat, a company must convince the investment community, and potentially the business media, that the resolution advocated by any activist is not in the best interest of the company and its stakeholders. Accordingly, the organization will need to formulate a communications strategy to ensure that all of its primary stakeholders clearly recognize the long-term implications related to the activist demands before the situation escalates publicly. Included in this strategy is the development of necessary collateral materials that contain compelling facts and figures that serve to debunk activist claims and also assist in further educating shareholders and the media.
- 3 Establish an annual meeting strategy.** With the annual meeting season rapidly approaching, now is the critical time to begin developing an engagement strategy in order to make sure that your company is prepared to achieve a majority “no” vote and ensure that all of your key stakeholders fully understand the long-term implications of the activist demands before agreeing to any ongoing dialogue with potential activist investors.

# CONCLUSION

While a prototypical proxy battle usually can be avoided, the proxy landscape is changing, and public companies — particularly those in the oil and gas sector — need to change with it in order to successfully navigate the challenges being posed by activists whose primary intentions are not in the best interest of shareholders. The situation should be handled with a swift and direct communications strategy focused on highlighting the strength of the company's environmental policy disclosure and detail, which will help ensure that malicious shareholder proposals are defeated and will set the stage for enhanced defense strategies in the future. It is equally important to consider broader market sentiments regarding corporate governance matters, including proxy access, executive compensation and financial disclosure, among others. Through primary and secondary research targeting governance thought leaders and shareholders, companies must seek partners to help identify and implement best practice corporate governance policies that are aligned with key stakeholder sentiment. To the extent that activists take their case to the media, an organization also is well-advised to prepare for an on-the-record fight and have a media outreach strategy in place in conjunction with strong corporate governance.

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## About FTI Consulting

FTI Consulting (NYSE: FCN) is a global business advisory firm that provides multidisciplinary solutions that help clients address complex business opportunities and challenges. With over 20 years of experience, FTI Consulting provides a broad range of professional expertise to protect and enhance enterprise value from every angle. More information can be found at [www.fticonsulting.com](http://www.fticonsulting.com).

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