Energy Intelligence

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Issue Vol. 42, No. 24, June 12, 2019

ENERGY INTELLIGENCE **FINANCE**®

Vol. 42, No. 24 www.energyintel.com June 12, 2019

With Few Options, Icahn Targets Oxy Board

Legendary activist investor Carl Icahn hates Occidental Petroleum's plan to buy rival Anadarko in a $57 billion deal but there is little — if anything — he can do to stop it. So, what is the strategy behind his increasingly vocal criticism of the decisions of Oxy's management? Icahn spent around $1.6 billion to acquire 4% of Oxy's shares in the weeks since the company revealed its pursuit of Anadarko. Shortly after Anadarko accepted Oxy's offer Icahn sued Oxy, asking for an array of information about how the deal came together and threatening to call a special meeting to unseat the board of directors.

Oxy's financial gyrations to win its bid, including negotiating a $10 billion preferred stock investment from Warren Buffett's Berkshire Hathaway and lining up the sale of Anadarko's Africa portfolio to Total, helped allay real worries the Anadarko board had expressed about the ability of Oxy to close the deal (EIF May1'19).

But the setup also made it more difficult for Icahn to scuttle the deal — and profit from it — because it does not require a vote of Oxy shareholders and cannot be brought up for a binding vote in a special meeting. Icahn could try to file a suit to enjoin the transaction arguing that the board breached its fiduciary duty to shareholders. However, such a scenario is unlikely to prevail and does not fit with Icahn's previous strategies, said legal sources familiar with Icahn and his proxy battles. What seems more likely is that Icahn will push for a special meeting to either remove current board members, replacing them with ones more favorable to him, or to add members to the board who share his views. In this regard, Icahn's strategy looks more like conventional shareholder activism, said Christopher Hewitt, co-head of corporate governance at Tucker Ellis. "I think this was a situation that helped precipitate his investment and gave him talking points but ultimately it's just an activist shareholder play," Hewitt said. "He's used this playbook before."

This is not Icahn's first foray into energy, and, if he follows his previous plans, Oxy CEO Vicki Hollub is likely in his crosshairs. In the past decade, Icahn has deposed a pair of iconic shale-era CEOs. Beginning in 2010, he pushed for changes at shale giant Chesapeake Energy, which had a series of embarrassing corporate governance gaffes relating to free-spending founder Aubrey McClendon. By early 2013, McClendon was fired. In 2015, Cheniere Energy handed Icahn a pair of seats on its expanded board weeks after he announced an activist stake, this time aiming to rein in the ambitious expansion plans of founder Charif Souki. By the end of the year, Souki had left the firm. Most recently, Icahn helped to scuttle the proposed merger of two shale stragglers, Bonanza Creek Energy and Sandridge Energy, after amassing more than 13% of Sandridge shares. While Icahn has targeted executives, even more frequently he has pushed for companies toward more generous dividends and share buybacks. This was the case at former industry giants including Phillips Petroleum and Kerr-McGee.

Oxy-Anadarko Takeover Timeline

July 2017	Occidental's first offer to acquire Anadarko rebuffed. Negotiations continue for next two years.
Apr 12 '19	Chevron unveils agreement to buy Anadarko for $65 per share (split $16.25 in cash and 0.3869 shares) for a total value of $50 billion including debt.
Apr 24 '19	Oxy makes bid for Anadarko public, offering $76 per share (split $38 cash and 0.6094 shares) for a total purchase price of $57 billion.
Apr 29 '19	Anadarko reopens negotiations with Oxy.
Apr 30 '19	Oxy agrees on $10 billion financing package with Warren Buffett's Berkshire Hathaway, comprising 100,000 shares of preferred stock carrying an 8% dividend and a warrant to purchase 80 million shares of common stock at $62.50.
May 5 '19	Oxy signs agreement to sell Anadarko's Africa portfolio, including assets in Algeria, Ghana, Mozambique and South Africa to Total for $8.8 billion.
May 5 '19	Occidental revises offer for Anadarko to $76.00 per share split between $59.00 cash and 0.2934 shares common stock. The lower component of stock allows Oxy to avoid a shareholder vote.
May 6 '19	Anadarko's board unanimously votes to accept Oxy's offer, calling it a "superior proposal."
May 9 '19	Chevron announces it will not make a counterproposal. Anadarko accepts Oxy's proposal.
May 10 '19	More than 60% of Oxy shares used to vote in favor of a resolution to lower threshold to call a special meeting from 25% of share holders to 15%.
May 30 '19	Activist investor Carl Icahn files lawsuit seeking more information about the lead-up to the merger, threatens to push for a special shareholder meeting to challenge the deal.

While Icahn owns just 4% of shares, he could find a common cause among other Oxy shareholders. Some, including giant T. Rowe Price, were publicly dismayed by the deal, as well as other activists that tend to follow larger players like Icahn, financial sources said. At its latest annual meeting, 60% of shareholders supported a measure to lower the threshold for calling an annual meeting from 25% to 15% of shares outstanding — although the vote was advisory and it is not clear that Oxy will follow it. But assuming Icahn can get other shareholders on board and has some measure of success

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in changing the makeup of the board, what is left for him to do? Oxy's dividend is among the highest in its peer group; Icahn himself called it "one of the prime reasons" to own the stock. In his suit, Icahn pushed for much more aggressive asset sales in order to cut Oxy's debt, which ballooned to more than $40 billion, leaving no room for a share repurchase program or a dividend hike. He also pitched a plan for Oxy to focus on a pure-play Permian Basin model to exploit its operational expertise there (EIF May8'19).

What Icahn says he most wants is for Oxy to sell itself. "Occidental's biggest mistake, however, has to be the board's and management's failure to understand (or willful rejection of the fact) that at present market prices Occidental should have been a seller — not a buyer," Icahn said in his court filing. Such a scenario was at least rumored to be one possible endgame for Chevron. The supermajor pocketed a $1 billion breakup fee and could use it to buy a weakened Oxy while getting Anadarko in the process. With Oxy shares trading at their lowest point since the depths of the 2008-09 financial crisis, such a scenario is looking more plausible, although only a handful of companies would have the financial clout to pull off such a deal. But first Icahn will need to shift the makeup or the mindset of the current board, either through a special meeting or a more drawn-out effort. ■