Activist investors seize on economic uncertainty to press for change

Sunny Freeman, The Canadian Press, On Sunday November 6, 2011, 6:00 am EST

By Sunny Freeman, The Canadian Press

TORONTO - They may not be waving placards or chanting in the streets, but disgruntled shareholders are increasingly flexing their muscles when it comes to underperforming corporations.

In recent days, activist investors have taken aim at Canada's No. 2 railway, Canadian Pacific Railway Ltd. (TSX:CP), not to mention the country's biggest grain handler, Viterra Inc. (TSX:VT), and one of Western Canada's highest-profile resort owners, Victoria-based Aviawest Resorts Inc.

In the past year, shareholders have also gone after some of Canada's highest profile companies, including Research in Motion Ltd. (TSX:RIM), Magna International Inc. (TSX:MG) and Maple Leaf Foods Inc. (TSX:MFI).

Experts say shareholder activism is on the rise as investors, still reeling from the 2008 market collapse, see stock values continue to take a hit and seize the opportunity for change.

In this climate, more large shareholders — mainly institutional investors and hedge funds — are demanding aggressive action by companies they view as underperforming.

"Things did not turn around as people had expected," said Michael Schafler, a lawyer who specializes in corporate governance at Fraser Milner Casgrain.

"I think uncertainty creates opportunity and depressed prices are seen as an opportunity where the fundamentals of the company, or the business of the company, are otherwise seen as a good product."

Depressed share prices allow investors like hedge funds to scoop up and turn around undervalued companies, while they also compel long-term institutional investors to press for better returns.

Debt problems in Europe and the U.S. have emerged just as the global economy recovers from recession, creating an environment of persistent uncertainty that has wreaked havoc on stock markets and made businesses afraid to invest or take risks.

"As long as the uncertainty continues, I think it's certain that you're going to continue to see shareholder activism," Schafler said.

The rise in shareholder activism comes amid a broader culture of corporate discontent that has spawned the "Occupy" movement that began on Wall Street and now has people in cities around the world protesting what they see as corporate greed.

But Schafler said there's no connection between the two types of activism, as shareholders are concerned with maximizing their profits rather than effecting a broader change in corporate culture.

"The phenomenon of investors seizing upon perceived opportunities is simply investors doing what they do naturally as capitalists, which is to try to make money," he said.

Depressed markets may incite investors to act, but institutional investors and "catalyst" investors, like hedge funds, have very different motivations, added Stephen Erlichman, executive director of the Canadian Coalition for Good Governance.

"Catalyst investors are going to continue to look at this market as a market that's ripe for them to go in and effect changes and to create value for their investments," he said.

"They look at undervalued companies; they try to do something on a very short-term basis to try and turn the company around to try and create a profit."

That's what Pershing Square Capital Management recently set out to do at Canadian Pacific.

In a regulatory filing last week, the U.S. activist hedge fund disclosed that it spent US$1.1 billion over the past month to accumulate a 12.2 per cent stake in the railway.

It said it believes CP's shares are undervalued and wants to discuss with the company various ways to bolster its operational and financial performance.

Meanwhile, institutional investors — like Alberta Investment Management Corp., which went public Tuesday with its nearly two-year-old dispute with Viterra — have seen the value of their funds erode and cannot afford to sell their big stakes at a loss.

"Because they can't dispose of their investments, in practical terms they are forced in some way to try to turn around portfolio investments," said Erlichman, whose organization represents Canadian pension funds and money managers.

"They're quite frustrated with trying to get changes to occur and those changes haven't occurred."

Recent economic volatility has accentuated an already steady rise in shareholder activism, said Andrew MacDougall, a corporate partner at Osler, Hoskin & Harcourt.

"The recession did have an impact because people are disappointed with their returns and are not willing to wait for a turnaround to occur."

The more adversarial nature of investor-management relations in the U.S. has been making its way north as investors start to recognize that they may have more influence in Canada.

That's because the "nice guy" Canadian culture has permeated board rooms and securities laws that give shareholders more rights, MacDougall added.

Among other things, investors have the power to convene shareholder meetings and to put forward shareholder proposals to pressure management into change.

Canadian shareholders have also become more confrontational and are increasingly using the courts against management.

And while there is a newfound willingness to face off with management, MacDougall said, public disputes are usually an avenue of last resort with many more battles taking place behind closed doors.