Corporations and Political Spending: A New Lobbying Focus in the 2012 Proxy Season

Posted by Scott Hirst, co-editor, HLS Forum on Corporate Governance and Financial Regulation, on Saturday March 10, 2012 at 10:17 am

Editor's Note: The following post comes to us from Heidi Welsh, Executive Director of the Sustainable Investments Institute (Si2), and Julie Fox Gorte, Senior Vice President for Sustainable Investing at Pax World Funds. This post discusses a Si2/IRRC Institute report, "Corporate Governance of Political Expenditures: 2011 Benchmark Report on S&P 500 Companies," available here. Work from the Program on Corporate Governance about corporate political spending includes Corporate Political Speech: Who Decides? by Lucian Bebchuk and Robert Jackson, discussed on the Forum here. A committee of law professors co-chaired by Bebchuk and Jackson submitted a rulemaking petition to the SEC concerning corporate political spending; that petition is discussed here.

We are on the cusp of the 2012 spring corporate annual meeting season, where the headline issue is political spending in this election year. The primary focus for investor activists until now has been campaign spending, but this year investor activists also want more transparency about lobbying, in a big new development. This speaks to the allegations of undue corporate influence on politics and the economy raised by the Occupy Wall Street movement. Companies are providing more oversight and disclosure of their political spending, as we discuss below, but the investor appetite for more is huge, evidenced by both high votes on shareholder resolutions and the sheer number of proposals. Nine votes last year earned more than 40 percent support from investors, a highwater mark. And these resolutions now make up one-third of the approximately 350 social policy shareholder resolutions that have been filed for 2012, up from 23 percent of the total in 2011 and only 15 percent in 2010.

The Center for Political Accountability is in the ninth year of its campaign to reform the corporate governance of political spending, and it continues to coordinate a big group of proponents that have filed about 50 proposals. But another 40 resolutions coordinated by the socially responsible investing firm Walden Asset Management and AFSCME are asking companies to provide investors with more information about what they spend on lobbying. There were just six votes on this subject last year and they earned about 24 percent, on average. The proponents see the lobbying disclosure push as a natural progression of their campaign for more accountability in corporate contributions to intermediaries, who spend on both campaigns and lobbying and are playing a key role funding the Super PACs.

A few more shareholder proposals in 2012 also are asking companies to stop their political spending altogether, from Trillium Asset Management, another socially responsible investment group. Finally, a small set of proposals from the firm Northstar Asset Management suggests shareholders should be able to vote on their companies' political spending practices. Longtime proponent Evelyn Davis continues to file her own brand of spending disclosure resolutions, as well.

The investor concern about corporate involvement in politics reflects a widespread worry by many Americans that the needs and voices of ordinary citizens are being drowned out by big companies that have megaphones sized to match their deep pockets. A 2011 Hart Research Associates poll showed that more than 8 in 10 voters support

Congressional limits on the amount of money corporations can spend on elections, and almost the same number believed that corporate power to influence politics exceeds that of average citizens. A January 2012 Pew Research Center poll reaffirmed that the majority of people who are aware of the Supreme Court's *Citizens United* decision, overturning restrictions on corporate political spending believe that super PAC spending—for which *Citizens United* paved the way—is having a negative effect.

Corporations are hearing these opinions, but only partially. Investors and other stakeholders want more information about corporate political spending: how much, where it goes, and how it is governed. A recent report by the Sustainable Investments Institute (Si2), which collected publicly available information that companies report on federal lobbying, national "527" political committees, state ballot initiatives, individual candidates and political parties for every company in the S&P 500, found that only five in the top 100 companies of the S&P 500 say nothing about political spending. The Si2 report, funded by the IRRC Institute, also found that 57 companies in the S&P 500 have formal policies stating that they will not make political expenditures at all. As recently as last year, that number was only 40. Considering that the vast majority of companies said nothing about such activity even half a decade ago, this is significant progress.

However, like most things, this good news has a giant loophole, through which most of the money companies spend on politics manages to escape. Most corporations with policies regarding political spending, according to the Si2 report, seem to define "political spending" narrowly, meaning contributions to campaigns and in some cases contributions to parties, PACs, and ballot issues. While corporate spending on these things is significant, it is dwarfed by lobbying expenditures. Most of the money companies spend in the political arena comes *after* candidates are elected. Si2 cites data from the Center for Responsible Politics and the National Institute on Money and State Politics showing that 87 percent of the money corporations allocated to political spending from their treasuries went to lobbying—a total of $979 million dollars in 2010. This kind of money buys an enormous megaphone, and one that millions of individual voices don't overcome. There is no reasonable possibility of a ban on lobbying, and indeed corporate voices should be heard in the process of governing the country and all the jurisdictions within it. But corporations are accountable to their owners—for publicly traded corporations, this means shareholders—and those owners are understandably concerned about major expenditures of corporate profits, especially when that spending does not necessarily serve the needs of those shareholders. Most companies view lobbying as a critical part of their strategic business positioning, and many investors may agree with this view. But sunlight is a powerful disinfectant, and the major political spending that corporations do exists primarily in shade right now, despite federal laws that require disclosure. Companies just don't talk about it when they do discuss "political" spending.

Even more striking is how few companies provide information about their indirect political spending that goes into campaigns. Si2's report found that just 39 companies who voluntarily report on their support for trade associations gave $41.2 million that these groups used for political purposes in 2010 alone. In the whole S&P 500, just 14 percent reveal how much they give, although trade associations spend generously both in campaigns and on lobbying. No law currently requires these groups or companies to publicly disclose who gives how much to whom.

Investors have been vigorously urging the corporations they own to be completely transparent about all the political spending they do. This call will again feature in this spring's corporate annual meetings, and voluntary company reporting is likely to increase. Far more broad-reaching disclosure could result from Securities and Exchange Commission action, however. A petition for an SEC rulemaking from leading law school professors has attracted nearly 30,000 comment letters (as of February 15), and could make all publicly traded companies tell their investors (and the public) how they spend on politics. It awaits action by the commission, just in time for the 2012 elections, although since the commission remains mired in implementation of the Dodd-Frank financial reforms, movement before the fall is probably not likely.

1 Comment