

November 1, 2011

Ms. Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, Northeast  
Washington D.C. 20549  
By email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: File No. 4-637, Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities**

Dear Ms. Murphy,

We are writing today representing the undersigned organizations to voice our strong support for the petition referenced above seeking a rulemaking requiring corporate political transparency. We represent a wide range of investment professionals, including mutual fund and other institutional asset managers, foundations, religious investors and financial planners. Our organizations manage more than \$690 billion on behalf of individual and institutional clients in North America and Europe

The rulemaking petition was submitted on August 3, 2011 by the Committee on Disclosure of Corporate Political Spending, a group of prominent law professors specializing in the areas of corporate and securities law. The petition captures the concerns of a substantial number of investors that have, particularly over the past five years, persistently sought transparency in corporate political spending. Many leading corporations have responded to this growing call for disclosure. Currently, 88 major companies already publicly disclose their political spending policies and their direct political payments, including more than half of the S&P 100. These companies include Microsoft, Wells Fargo, Merck and Aetna.

Shareholder proposals requesting corporate political transparency have been among the most frequently filed proposals over the past few years, making up one-quarter of all social and environmental policy resolutions filed in 2011, with 88 proposals, up from only 53 in 2010. Thirty-three disclosure-oriented proposals from the Center for Political Accountability went to a vote and received 34 percent support on average in 2011, up from 30.4 percent at 29 firms in 2010. These proposals have received sustained and growing support from investors.

We strongly believe that corporate political spending transparency is in the best interests of investors, companies and the general public, and that the Securities and Exchange Commission is the most appropriate agency to require such disclosure.

Corporate political spending transparency is necessary for the smooth and efficient functioning of our capital markets, as discussed below, and can serve as a critically needed risk management tool for shareholders, corporate management, and directors.

Finally, we believe the time has come for a clear rule requiring all public companies to disclose this information, and that such a rule would be simple to draft and to implement, as some of the largest U.S. companies have clearly demonstrated.

## **Background**

Corporations use treasury funds<sup>1</sup> for a variety of political purposes, including direct contributions to state-level political candidates, including judges, to fund ballot initiatives, political parties and a range of tax-exempt entities, such as trade associations and 527 organizations that engage in political activity. Corporations may also contribute funds to finance political advertising on public policy issues or to advocate for or against the election of particular candidates. These activities are subject to a variety of state and federal laws, but there are no current rules that require that companies disclose this spending to their shareholders, and there are significant gaps in the type of spending that is required to be disclosed to anyone. As a result, it is virtually impossible for an investor to obtain a complete picture of any individual company's political spending, with the exception of those companies that have elected to voluntarily disclose this information.

Some corporations claim that these activities are important to maintain their competitive business position, and thus they are in shareholders' best interests. Shareholders, however, have no uniform means to monitor these activities, or assess the risks of corporate political spending without an SEC rule requiring full disclosure for all public companies. Information that is already available points to a range of serious risks. Full disclosure would allow investors to manage, and help to mitigate, the full range of risks presented by corporate political spending. For example:

- Political spending disclosure helps prevent corporations (and unaccountable corporate executives) from using corporate treasury funds to obtain competitive advantages through political means, rather than by adding value in the marketplace (in economics, what is commonly known as "private rent seeking"). Secret political giving undermines free enterprise and creates unearned advantages in the marketplace. These activities distort the workings of the market, and result in misallocations of capital. Mandatory corporate political spending disclosure would further a marketplace where companies compete and win based on superior products and services, rather than by superior access to lawmakers. Certainly this is in keeping with the SEC's mandate to "maintain fair, orderly, and efficient markets."
- Political spending disclosure would also help to mitigate the high risk of conflicts of interest and self-dealing by politically active CEOs and other senior executives that may be using corporate treasury funds for their own political purposes. The Commission has consistently favored disclosure as an effective means to address conflicts of interest.
- Trade associations, and a range of other tax-exempt entities such as 501(c)(4) social welfare organizations, have become significant conduits for 'indirect' corporate political spending. Many of these organizations are not required to disclose the source of their funding. We believe that the opacity of these organizations has contributed to an increased radicalization of their politics. In our experience engaging with corporations on these issues, trade associations are frequently taking positions that contradict the policies of many of their

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<sup>1</sup> It should be noted that many companies maintain a Political Action Committee (PAC), which is administered by the company, but is funded by employees. Information on PAC contributions is already publicly available. This letter is focused on the direct and indirect use of corporate treasury funds for political purposes, not employee money.

corporate members. Without full disclosure of the payments corporations make to these groups for political purposes and the corporate policies and procedures that guide such payments, neither shareholders nor corporations have any effective means to hold these increasingly influential and powerful organizations accountable. We have seen instances where this lack of accountability has led corporations to finance both sides of controversial public policy issues, such as healthcare reform and climate change regulation.

- Political spending disclosure also protects companies from the growing risks posed by pay to play political fundraising. The SEC recently passed a rule to address the risks of pay to play arrangements between registered investment advisers and state entities, and issuers of municipal securities are also covered by pay to play regulations requiring, *inter alia*, the adoption of compliance policies and procedures and internal monitoring of political spending of certain key executives. Many public corporations, however, are also exposed to these risks and are not subject to similar regulations.
- Corporations face a complex patchwork of legal risks at the state and federal levels when they engage in political spending.<sup>2</sup>

The Rulemaking Petition notes that “Absent disclosure, shareholders are unable to hold directors and executives accountable when they spend corporate funds on politics in a way that departs from shareholder interests.” Based on our experience engaging with corporations, we believe it is *common* for corporate political spending to diverge and undermine shareholder interests. We believe that undisclosed corporate political spending can encourage behavior that poses legal, reputational and operational risks to companies and systemic risks to our economy and to our political and judicial institutions.

All of these concerns were dramatically increased by the Supreme Court’s decision in *Citizens United v. Federal Election Commission*,<sup>3</sup> which legalized unlimited corporate spending to influence the outcome of elections, so long as this spending is not coordinated with a candidate (“independent expenditures”). It is troubling to note that most public companies have no publicly available policies to address this new and risky avenue of political spending.<sup>4</sup>

The Supreme Court said that full, real-time disclosure of corporate political payments allows shareholders to “determine whether their corporation’s political speech advances the corporation’s interest in making

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<sup>2</sup> Lack of compliance with these laws can have significant consequences. For example, eight major companies were indicted by a Texas grand jury in 2004 for giving more than \$500,000 to Rep. Tom DeLay’s Texans for a Republican Majority political action committee in the 2002 elections. Texas law prohibits corporate political contributions at the state and local level. The companies were Alliance Quality Nursing Home Care, Bacardi USA, Cracker Barrel, Diversified Collection Services, Questerra Corporation, Sears Roebuck, Westar Energy, and Williams Companies. The total amount they spent on legal costs is unknown, but likely far exceeded the political contributions that resulted in the indictments.

<sup>3</sup> 130 S.Ct. 876 (2010)

<sup>4</sup> See, e.g., Ryan McConnell, Katharine Southard and Katelyn Richardson, *Corporations and Politics: Blue or Red, Few Companies are Neutral, Corporate Counsel, Oct. 31, 2011*, available at <http://bit.ly/rJsiKs> (“After *Citizens United*, companies are able to draw from their own corporate funds to finance political advertisements, instead of using political action committees funded through voluntary employee contributions. ... Surprisingly, we found the political contribution policies in codes of conduct remained basically unchanged after the Supreme Court’s decision. Only two Fortune 500 codes of conduct specifically reference the *Citizens United* decision.”)

profits.”<sup>5</sup> Corporate political disclosure would provide investors with a previously unavailable window into this important area of corporate strategy, providing shareholders with additional means to discern the true drivers of corporate value, and to more accurately assess management’s view of the political risks and opportunities they face.

Political spending disclosure protects not just shareholders but also protects and strengthens companies. Indeed, disclosure facilitates good corporate governance, because it is not only shareholders that are currently in the dark about corporate political spending—corporate directors are too often not well informed about the purposes or recipients of this spending either. According to a report issued by the Conference Board, a leading non-partisan, non-profit business membership and research organization, “For directors, an understanding of the details and nuances of political spending is becoming essential in order to carry out their oversight responsibilities.”<sup>6</sup> According to a 2008 survey of corporate directors conducted by Mason-Dixon Polling and Research, Inc. a substantial percentage reported that political activity poses risks to their company, industry and corporate America at-large, but 4-in-10 directors reported that they do not even receive reports detailing the political spending of the companies they oversee. Surveyed directors were strongly supportive of disclosure of this information.<sup>7</sup>

Many leading companies have now recognized that political transparency and board oversight are prudent and efficient means to mitigate the broad range of risks presented by corporate political spending. As a result, board oversight of political spending, accompanied by full disclosure of both direct and indirect political spending is becoming a best practice corporate governance standard. As noted above, 88 major corporations, including more than half of the S&P 100, have voluntarily established board oversight of corporate political spending, and full disclosure of all direct political payments made by the company. A smaller number of companies have adopted full political transparency, by also disclosing the company's *indirect* political spending, through trade associations and similar entities that engage in political activity and serve as conduits for corporate political spending. Forty-three corporations disclose full or partial information on their trade association payments or memberships.<sup>8</sup>

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<sup>5</sup> *Citizens United* at 916. The court added that “this transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” Eight justices supported full disclosure.

<sup>6</sup> Bruce Freed and Karl Sandstrom, *Political Money: The Need for Director Oversight* (The Conference Board Executive Action Series, No. 263, April 2008), available at [http://www.perkinscoie.com/files/upload/DC\\_10-05\\_Sandstrom.pdf](http://www.perkinscoie.com/files/upload/DC_10-05_Sandstrom.pdf), and see also, *Handbook on Corporate Political Activity: Emerging Corporate Governance Issues* (The Conference Board, November 2010). In light of the importance of corporate political activity to corporate governance, the Conference Board has established a committee on corporate political activity, co-chaired by executives from Microsoft and Merck.

<sup>7</sup> This survey was commissioned by The Center for Political Accountability and the Zicklin Center for Business Ethics Research of the University of Pennsylvania’s Wharton School. Mason-Dixon Polling & Research, Inc. conducted the survey from February 4-15, 2008. A total of 255 members of boards of directors of Russell 2000 companies were interviewed by telephone. *Nationwide Survey of Members of Corporate Boards of Directors* (2008), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/919>. The survey and its findings are attached to this letter for your convenience, in addition to the findings of a Mason-Dixon survey of investors.

<sup>8</sup> According to a new study issued by the Center for Political Accountability and the Zicklin Center for Business Ethics at the Wharton School of the University of Pennsylvania, 43 companies disclose some information about their indirect spending through trade associations or other tax-exempt groups. Of the 43 companies, 26 disclose the portion of their trade association payments, or funds paid to tax-exempt third-party groups, that are used for political or lobbying purposes. Another 17 companies disclose less detailed information about their trade associations, such as listing their memberships but failing to disclose the amounts used for political purposes. See *The CPA-Zicklin Index of Corporate Political Disclosure and Accountability: How Leading U.S. Companies Navigate Political Spending in the Wake of Citizens United* (Center for Political Accountability and Zicklin Center for Business Ethics at the Wharton School of the University of Pennsylvania, Oct. 28, 2011), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/5800>

Perhaps the closest analogy in existing regulation is to the requirement that mutual funds publicly disclose their proxy voting policies and actual votes. In that context, the Commission recognized that mutual funds are fiduciaries, voting proxies on behalf of their investors. The Commission stated that “Investors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf.” The Commission argued:

Yet, despite the enormous influence of mutual funds in the capital markets and their huge impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities. We believe that the time has come to increase the transparency of proxy voting by mutual funds. This increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value.<sup>9</sup>

Similar arguments apply to corporate political spending. Corporations do not speak for themselves. Whether you believe they speak for their shareholders, or their broader base of stakeholders, as some companies claim, they are legal entities using other people's money for political purposes. They have a tremendous influence over our government and the laws and rules that ultimately impact our economy and shareholder value. We believe shareholders should have a right to this information.

### **Specific Guidance: Content and Format of Disclosure**

In its rulemaking petition, the Committee on Disclosure of Corporate Political Spending raised a series of questions regarding the scope and format of the requested disclosure. We believe these questions are easily answered, and that the experience of the 88 major companies that currently disclose their political contributions should be instructive.

Public companies should be required to disclose the following information:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.
2. Monetary and non-monetary contributions and expenditures (direct and indirect) used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, and used in any attempt to influence the general public, or segments thereof, with respect to elections or referenda. The report should include:
  - a. An accounting through an itemized report that includes the identity of the recipient as well as the amount paid to each recipient of the Company's funds that are used for political contributions or expenditures as described above; and

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<sup>9</sup> Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, 17 CFR Parts 239, 249, 270, and 274, available at <http://www.sec.gov/rules/final/33-8188.htm> (Footnote omitted)

- b. The title(s) of the person(s) in the Company responsible for making the decisions to make the political contribution or expenditure.

Corporate political spending disclosure must be provided in a disaggregated fashion, broken down by recipient. This is consistent with how most companies currently disclose this information.

We would recommend that companies be required to report on how trade associations are using their payments. This would include providing a report on the recipients or beneficiaries of trade association political spending underwritten by company funds. Avon is one company that currently provides this level of disclosure.<sup>10</sup>

Links to current corporate disclosures are available at:

<http://www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869>

***DE MINIMUS EXCEPTION:*** The Committee on Disclosure of Corporate Political Spending recommended that the Commission adopt a *de minimus* exception for corporate political spending disclosure, with a low threshold. We do not believe that such an exception is warranted or necessary for direct political payments to candidates and most third parties. Companies have not had any problem disclosing small contributions, and it is important to understand that the amount of the payment is not necessarily proportional to the risk. Target, for example, has faced a persistent consumer boycott and public relations debacle after a single \$150,000 contribution, certainly not a ‘material’ figure when compared to the company’s annual revenues.<sup>11</sup> In 2004, Merck made a \$1,000 contribution to a Mississippi Supreme Court candidate’s campaign. This small contribution resulted in controversy for the company when the candidate was accused of running a racist campaign.<sup>12</sup>

With respect to trade association payments, some corporations have established a threshold for disclosure due to the significant number of memberships they may maintain. We believe that a \$25,000 threshold for disclosure would be acceptable where corporations can demonstrate that full disclosure of all of these memberships would be impractical.

***EXEMPTION:*** The rulemaking petition suggests that companies that restrict how their money can be used politically should be exempted from the disclosure requirements. We are aware of a number of major companies that have placed formal restrictions on the use of their funds by trade associations. Companies that include such restrictions in their formal policies should be exempt from the requirement to disclose these payments. This exemption would provide companies with the means to minimize the cost of compliance with this rule by placing meaningful restrictions on the use of their money.

***FREQUENCY:*** The Supreme Court speculated about the advantages of “real time” disclosure of corporate political expenditures. Most corporations that currently disclose their political spending do so on an annual basis. We would recommend that disclosure be required to be produced on a semi-annual basis to ensure that disclosure is reasonably well aligned with the political cycle. In order to allow shareholders to make accurate comparisons between companies, all companies should be directed to

<sup>10</sup> <http://avoncompany.com/aboutavon/corporategovernance/docs/2010.Poli.Contribute.report.pdf> (visited 9/22/11)

<sup>11</sup> See, e.g., Brian Montopoli, *Target Boycott Movement Grows Following Donation to Support "Antigay" Candidate*, CBS News, July 28, 2010, available at [http://www.cbsnews.com/8301-503544\\_162-20011983-503544.html](http://www.cbsnews.com/8301-503544_162-20011983-503544.html)

<sup>12</sup> *Handbook on Corporate Political Activity*, at 29.

publish these reports by a set date. To achieve alignment with both the proxy voting and electoral seasons, we would recommend that these reports be provided at the end of the first and third quarters.

**LOCATION OF DISCLOSURE:** Currently, companies that voluntarily disclose their political contributions provide this information on their websites. We would support a requirement to notify shareholders in the proxy statement where this information can be found on the corporate website. The creation of a new form, similar to Form N-PX for mutual fund proxy voting disclosure, would improve investors' ability to analyze and compare corporate disclosures.

### **Conclusion**

Political disclosure is necessary for the smooth functioning of markets, and fits comfortably within the securities laws and the SEC's framework. It is an important tool that helps shareholders, management and directors deal with significant risks that can threaten companies and shareholder value. We respectfully urge the Commission to move forward with the Committee's rulemaking petition, and would be pleased to provide additional information on any of the points raised in this letter. If you need any further information, Adam Kanzer of Domini Social Investments will serve as primary point of contact for the undersigned group of investors.

Sincerely,

Iain Richards  
Regional Head of Corporate Governance  
Aviva Investors

Judy Seid  
Branch Manager  
Blue Summit Wealth Management, Inc.

B. Scott Sadler, CFA  
President, Chief Investment Officer  
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Zevin Asset Management, LLC

*Enclosures:*

- Mason-Dixon Polling & Research, Nationwide Survey of Members of Corporate Boards of Directors (2008)
- Mason-Dixon Polling & Research, Corporate Political Spending: A Survey of American Shareholders (2006)