CQ ESG Briefing

By Laura Weiss

CQ NEWS
Oct. 28, 2020

More companies disclose political spending amid pressure

As the costliest race for the White House in U.S. history draws to a close, more companies are publicly reporting on, and setting governance controls for, their political spending.

A study by the Center for Political Accountability and the Wharton School of the University of Pennsylvania's business ethics research center analyzed political disclosure and oversight policies at S&P 500 companies based on 24 public criteria. It found that the number of companies scoring a 90 percent or higher rating more than doubled to 79 this year from 35 in 2016. Five companies achieved perfect scores.

The increased transparency came because of the rise of social media, millennial activism, hyperpolarization in politics, and rising shareholder activism on environmental, social and governance (ESG) considerations, said CPA President Bruce Freed. The 2020 election is expected to cost more than $10 billion by the time voting ends on Nov. 3, and companies may be spending more to support candidates than shareholders realize.

The impact on a company's business "is a reality, and the costs are much higher" than in the past if disclosure of a company's political spending causes backlash, Freed said in an interview with CQ Roll Call.

Freed noted that more than ever, companies are seeing proof during the presidency of Donald Trump that blowback for campaign spending impacts the bottom line. He cited the growing realization that companies must match their rhetoric to spending on issues such as climate change and racial justice, adding that spending through trade associations or other tax-exempt organizations can undermine a company's messaging.

CPA, which advocates for greater transparency and oversight, released a model code of conduct for companies alongside its recent report. The organization authored a shareholder proposal for political spending disclosure that investors use as a model for submission at shareholder meetings. Average support for these requests climbed in recent years and was 42 percent during the 2020 proxy season, according to Freed.

Voluntary reporting

While some reporting on election spending is mandatory under campaign finance laws, the Securities and Exchange Commission does not require publicly traded companies to inform shareholders about expenditures.

Since winning control of the House two years ago, Democrats proposed legislation that would direct the SEC to mandate disclosure or controls on corporate political spending, such as requirements that shareholders or board members pre-approve contributions. Republicans have largely opposed the measures and did not take up the issue in the Senate. The SEC's funding has for years come with a prohibition from Congress barring the agency from working on a political spending disclosure rule.

If Democrats win the White House or the Senate in next week's elections, the issue could become a priority. That companies are disclosing more about their political activities in the absence of a government requirement only adds to the need for a mandate, said former SEC Commissioner Robert J. Jackson Jr., a law professor at New York University who left the commission in February.

"If you're a company that discloses this to shareholders, you're competing with companies that don't have to because the SEC has fallen down on the job," Jackson said in an interview. "And I think the case for a mandatory rule here is to make sure that the people who are doing the right thing for themselves and for their shareholders aren't punished by the inability of the securities regulators in this country to do the right thing for investors."

Jackson, a Democrat, led a petition to the SEC in favor of a political spending disclosure rule before his appointment at the agency. He said many corporate boards now realize oversight of political spending is important to avoid business risk, representing a shift over the last decade.

He said he hopes that the issue would be among top priorities if Democrat Joe Biden wins the presidential election. He called for companies that disclose political spending to urge the government to create a mandate.

Election impact

While corporations are releasing more information on political spending, advocates of decreasing the influence of corporate money in politics view that as a separate, persisting concern.

Jackson said corporate management making contributions without shareholders' knowledge is a traditional securities law issue, while corporate influence in U.S. politics is a separate concern that other regulators could address. He noted that a political spending disclosure requirement would not necessarily decrease corporate contributions, pointing to the rise in executive pay levels in the years since U.S. public companies have had to report top managers' compensation to shareholders.

While transparency among companies is rising, the information they voluntarily report is difficult to compile and that disclosure doesn't necessarily mean companies will only donate to transparent organizations, said Ian Vandewalker, senior counsel in the democracy program at the Brennan Center, a left-leaning think tank hosted by NYU's law school.

"That's not really sufficient transparency," Vandewalker said in an interview. "What would be a better system, would be there is no such thing as dark money and anyone who is giving to influence politics would have to report that into a single disclosure system."

In the absence of government action, shareholders are persisting in seeking changes from companies. As more corporations agree to transparency measures, Freed said investors and advocates will turn greater attention to board and management oversight of corporate spending on elections.