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Corporate political disclosure moves firmly into mainstream

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Bruce Freed sees disclosure as an almost routine expectation.

Shareholder proposals on spending, lobbying gain increasing support

BY BRIAN CROCE · JUNE 25, 2018

Shareholders — including institutional investors — are succeeding this year in pushing to get more information from companies on their political contributions and lobbying costs.

As of mid-June, 85 shareholder proposals were filed seeking disclosure on political or lobbying spending, according to ISS Analytics, the data arm of Institutional Shareholder Services, Rockville, Md. Of those 85 proposals, 13 have been challenged by companies, with the Securities and Exchange Commission granting two no-action letters related to procedural grounds. In one case, the proponent failed to meet requirements for ownership of stock; the other case was deemed duplicative because the issue already had been proposed.

The combined political proposals have been the most common proposal sought by shareholders in 2018, according to ISS. And 23 of the 85 proposals year-to-date garnered more than 30% of shareholder support, in line with the past three years. But no proposal has received majority support this year.

Since the financial crisis, the peak year for political issues was 2012, when 116 shareholder proposals were made. Twenty-five were challenged by companies that resulted in 14 no-action letters.

Over the years, more S&P 500 companies have voluntarily disclosed at least some information related to political spending without a proxy vote, according to the Center for Political Accountability. In 2017, the most recent year for available information, the CPA noted that 295 companies disclosed at least some election-related spending, about the same as 2016.

"Political disclosure and accountability is now seen as the norm," said Bruce Freed, president and founder of CPA. "It's something that companies are expected to do."

After a shareholder proposal is introduced, proponents have the option to withdraw it if they come to an agreement with the company. So far in 2018, 12 proposals on this issue have been withdrawn. That compares with 20 in 2017 and 23 in 2016.

When a proposal is withdrawn, it typically signifies the company's willingness to engage with shareholders to resolve issues, explained John Roe, managing director and head of analytics at ISS. "Generally, it's a pretty good sign when we see withdrawals happen," he said. "It means there was productive engagement."

The template

CPA first created a model resolution on political spending disclosure in 2004. Initially, the resolution, when introduced by shareholders at various companies, would garner about 9% support on average. In 2017, support was roughly 30%, according to Mr. Freed — and so far in 2018 it has risen to 35% based on 18 resolutions. Twice this year, the CPA model resolution has been challenged, but was upheld both times, Mr. Freed added. "If they want to challenge it, their challenges will not succeed," he said of companies. "It means that companies have to address the issue."

Mr. Roe said politically charged shareholder proposals have been so scrutinized over the years that most now check all the boxes when challenged. "They know what the text should be, they know what to avoid, they know exactly how to write the proposals," he said. "A lot of time you'll see the same proponent write several different proposals, and the proposal text will almost be identical in every one that they write. They're trying to stick close to the formula."

The $206.9 billion New York State Common Retirement Fund, Albany, issued the most shareholder proposals in this arena in 2018 with 17, according to ISS. Patrick Doherty, director of corporate governance for Comptroller Thomas DiNapoli, the fund's sole trustee, said it's important for investors to know how companies are spending their money. "We believe in risk mitigation and we're concerned that there's a lot of risk entailed in corporate political giving, especially if it's secret or attempted to be kept secret," Mr. Doherty said.

New York State Common uses the CPA template for its political spending disclosure proposals and a separate template for lobbying disclosures. It has never had a company challenge approved by the SEC, Mr. Doherty said. "We're going company by company," he said. "It's like trench warfare. We have thousands of companies in our portfolio."

'Why I came to Washington'

The 85 political shareholder proposals so far this year are in line with 2017 and 2016, when 87 and 91 proposals were filed, respectively. But the 2018 number is expected to increase after more companies hold midyear meetings, according to ISS.

Bartlett Naylor, financial policy advocate for Washington-based watchdog group Public Citizen, said these types of disclosures are good for investors. "These are investor funds and investors deserve to know where they're spent," he said.

"I think it's critical for the public and investors in particular to know where their shareholder dollar is being spent," he added. "In some cases they may agree and support it; in some cases they may disagree."

Groups like Public Citizen and CPA have an influential ally on this issue — SEC Commissioner Robert Jackson Jr. Before taking the SEC post, Mr. Jackson, while a professor at New York's Columbia University, co-authored a letter asking the commission to "develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities."

To date, no such SEC rules exist. In recent years, Republicans in Congress have attached riders to must-pass legislation prohibiting the SEC from finalizing, issuing, or implementing any "rule, regulation, or order regarding the disclosure of political contributions, contributions to tax-exempt organizations, or dues paid to trade associations" as stated most recently in The Consolidated Appropriations Act, 2018, which became law earlier this year. The current rule is in effect until Sept. 30, 2018, the end of the fiscal year.

The SEC declined comment when asked if there was an willingness to pursue a rule on this issue in the future.

Mr. Jackson would like to see a rule in place. "My job is to help investors get the information they need about the companies they own," he told the audience at US SIF: The Forum for Sustainable and Responsible Investment in early June. "That's why I came to Washington."

Political spending disclosure opponents, like the U.S. Chamber of Commerce, say the trend has a negative impact on the business community.

"Disclosure is a tool employed by activist investors to generate information about a company's lobbying and political activities that can then be used by those same activist investors to harass and pressure the company into disengaging from political debates," Chamber spokeswoman Blair Holmes wrote in an email. "We don't think this is good for businesses or, ultimately, the millions of investors who do not share the activists' extreme and narrowly focused political agenda."

Amy Borrus, deputy director for the Council of Institutional Investors, Washington, said if a company spends shareholder money on political activities, "there should be appropriate board oversight and transparency to ensure that the political spending is consistent with long-term shareowner interests."

CII suggests corporate boards develop and disclose guidelines for approving political contributions; monitor and approve all contributions, including those to trade associations and other third parties; and disclose the amounts and recipients annually.

Public Citizen's Mr. Naylor would like to see corporate money removed from politics, but called political and lobbying spending disclosure an "interim step."

"Eventually it's going to happen," he said. "Eventually the weight of its merits will prevail. The only people that oppose this are those that don't want to disclose."

Mr. Jackson, whose SEC term expires next year, told the US SIF audience that the state of corporate disclosure is "much better" than it was 10 years ago, and he hopes an SEC rule will become a reality. "This is a long fight," he said.