CENTER FOR POLITICAL ACCOUNTABILITY

Spotlight on CPA - December 2015

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Founder's Column: CPA Disclosure Effort Even More Important with Hill Rider

By Bruce Freed

When Congressional leaders wrapped up negotiations this week on an omnibus budget bill, a proposal for a Securities and Exchange Commission rule on corporate political disclosure got the shaft.

A **Los Angeles Times** column by Michael Hiltzik accurately remarked that a provision buried deep in the 2,000-page plus bill "emasculate[s] efforts" to require public disclosure of political donations by corporations. We're disappointed. The idea for the proposal was initiated by CPA; the proposal was drafted and submitted by a bi-partisan committee of eminent law professors.

Regrettably, defenders of secret political spending inserted a rider in the bill that prohibits the SEC from spending any money to "finalize, issue, or implement" a rule requiring disclosure of corporate political contributions.

"They're halting the most-requested rule in SEC history," said Lisa Gilbert, director of Public Citizen's Congress Watch. Since its filing in 2011, the petition has sparked 1.2 million comments to the agency.

At the same time, presuming the $1.1 trillion spending bill wins approval, its turning the lights out on a corporate disclosure rule (at least for now) makes voluntary disclosure more critical than ever.

With gridlock in Congress and inaction in the courts, and now with the SEC's hands likely handcuffed behind its back, voluntary disclosure remains the sole means for bringing sunlight and accountability to corporate political spending.

We wish prospects were better for a disclosure rule, because there's a need for uniformity in what companies are disclosing. A **Fortune article** this week quoted CPA making this point.

Yet we are realists. CPA is making big strides in gaining support for voluntary disclosure. Our **2015 annual benchmarking report** stated in a sub-headline, "S&P 500 Review Shows Political Disclosure Enters the Corporate Mainstream." A report by The Conference Board's Committee on Corporate Political Spending offers further proof of that trend (see separate article in this newsletter).

At CPA we're proud of pioneering an innovative means of political disclosure that's winning over more and more corporate converts. Given the dark-money caucus's success in Congress in preventing an SEC disclosure rule, this voluntary route to corporate political disclosure keeps gaining importance.

THE CONFERENCE BOARD

Conference Board Report Strongly Endorses Disclosure and Accountability

The Conference Board, a business-sponsored think tank, has closed out 2015 with a ringing endorsement of voluntary disclosure of corporate political spending.

“Disclosure of political spending is becoming increasingly important to a range of stakeholders, including investors, regulators, public interest groups, and the media, and can have significant benefits for the company and for business in general,” declares a report by The Conference Board’s Committee on Corporate Political Spending.

“Corporations that disclose information about their political spending are often perceived as being open, transparent, and forthcoming, which often leads people to view them as more trustworthy and accountable than companies that share only the information they are required by law to disclose,” the report says.

The committee that wrote the report includes representatives from these large public companies: Altria, Campbell’s, Microsoft, General Electric, Proctor & Gamble, Coca-Cola, Prudential, Pfizer, Merck and Exelon.

The report offers a sharp departure from the views of some other U.S. business groups, especially the U.S. Chamber of Commerce, as BNA Money and Politics Report noted in an article on Dec. 5:

“[C]ompanies involved in The Conference Board discussions have adopted a different tone from other major business associations, such as the U.S. Chamber of Commerce. The Chamber has vehemently opposed new campaign finance disclosure rules and has criticized efforts to persuade companies to voluntarily adopt disclosure policies for political spending.”

In addition, the report calls on companies “to set internal procedures ensuring that top executives and corporate board members must review and approve political spending decisions,” according to BNA.

The report cites surveys by the Center for Political Accountability as indicating that “a growing number of the S&P 500 companies believe there is great value in disclosing activities.”

Bruce Freed, CPA president, called The Conference Board’s report “a grand slam for corporate political disclosure and accountability. It resoundingly endorses voluntary disclosure, it urges internal corporate procedures for political spending, and it confirms greater acceptance in corporate boardrooms of voluntary disclosure. It also builds on The Conference Board’s Handbook on Corporate Political Activity, which CPA co-authored five years ago.”

THE CLS BLUE SKY BLOG
COLUMBIA LAW SCHOOL'S BLOG ON CORPORATIONS AND THE CAPITAL MARKETS

CPA Director Oversight Article Gets Wide Attention

CPA is exposing further audiences to its recent *Harvard Business Review*article detailing “A Board Member’s Guide to Corporate Political Spending,” and this topic is garnering significant attention.

Columbia Law School’s **Blue Sky Blog** posted a piece titled “Company Directors Need to Oversee Corporate Political Spending,” by CPA’s Bruce Freed and Constance E. Bagley, a Senior Research Scholar in Law at Yale Law School. The blog addresses corporations and capital markets.

The Hill’s **Congress Blog** posted a different recap by Freed and Bagley, headlined “Company directors should police corporate political spending.” The blog calls itself a forum for lawmakers and policy professionals.

And **TheCorporateCounsel.net** interviewed Freed for a podcast on the topic, and made the podcast available on its site.

These commentaries reach beyond the original HBR article. Two of them reported favorable statements by several leaders in corporate transparency, who were first quoted last month by veteran money-in-politics writer Eliza Newlin Carney in a CQ Weekly article.

“[C]ompanies are increasingly embracing openness and transparency,” said one of those executives, Dan Bross, Microsoft’s senior director of corporate citizenship. “We are encouraged by this ‘race to the top’ and see no evidence that the increased calls for disclosure have discouraged anyone from participating in the political process.”

The Harvard Business Review essay was written by Freed, Bagley, and Karl Sandstrom, CPA Counsel.

More Law Firms Tout Corporate Political Disclosure

Acceptance of corporate political disclosure as an increasingly mainstream business practice keeps gaining momentum. The latest law firms to tout this view, unsolicited by CPA, are North Carolina-based **Parker Poe Adams & Bernstein LLP** and **Cooley LLP**.

Companies would be well advised to consider the issue seriously and be prepared, attorney R. Douglas Harmon of Parker Poe writes. Harmon cites the 2015 CPA-Zicklin Index and says:

“Regardless of one’s views on the need for, or benefits of, political spending disclosure, it appears true that it is, as the subtitle to the *Index* says, entering the corporate mainstream. As a result, it is time for companies that have not yet done so to raise the issue internally with senior management, the disclosure committee or the board of directors, as appropriate, to determine whether there is sentiment to move in that direction.

“While the answer may well be ‘no’ for many companies at this time, it is a question that should be considered within the context of overall governance and disclosure policies. Keep in mind that, because there is no mandating rule, any such disclosure can be tailored to fit each company’s situation, thereby facilitating both activist-desired transparency and the company's broader interests …

"Keep in mind also that political spending policy and disclosure shareholder proposals remain popular. Companies would be wise to be prepared for such a proposal this proxy season."

In a December 16 advisory on the omnibus spending bill blocking the SEC political disclosure rule, Cooley observed that companies are already acting on their own to adopt political disclosure. "Assuming the bill is signed into law, it will then be entirely up to companies to disclose their political spending on a more or less voluntary basis. And incrementally, corporations seem to be moving in that direction on their own," it wrote. The advisory then cited the findings of the 2015 CPA-Zicklin Index.

Report: Mutual Fund Support Steady for CPA Resolution

CPA's annual **survey of mutual fund voting**, released this month, showed steady support for its model political disclosure resolution. This support was a key factor in the record high average shareholder vote for the CPA model resolution in the 2015 proxy season, and for company adoption of political disclosure and accountability policies.

Mutual funds' support for disclosure resolutions held firm in the 2015 proxy season. This year, funds voted for disclosure 42 percent of the time on average, slightly above the 40 percent vote last year. CPA's model shareholder resolution asks companies to disclose and have board oversight of their political spending from corporate funds.

In 2014, CPA's survey of mutual fund voting on corporate political spending was expanded from an original set of 40 large fund families surveyed in previous years, to include 69 large and well-known mutual fund groups. Across their portfolios of funds, all of these groups had cast votes on at least 10 of the model resolutions that were voted upon in both the 2013 and 2014 proxy seasons.

Disclosure in the News: Surveys Show Public Favoring Political Spending Sunlight

In an opinion that Americans of different political stripes agree on, 78 percent of Democrats and Republicans alike say they favor a requirement that political donors' names must be made public, according to an Associated Press-NORC Center for Public Affairs Research poll. An **ABC News article** had other details about the poll.

In a separate poll, large majorities of both Republicans and Democrats say they favor limits on campaign spending and believe that when campaign costs are high, many good candidates are discouraged from tossing their hats in the ring. **Pew Research Center** surveyed respondents and wrote about its findings.
