

Fund Files Novel Suit in Delaware to Inspect Qualcomm Records on Political Expenditures

The Bureau of National Affairs, Inc.

By [Yin Wilczek](#)

January 7, 2013

The New York State Common Retirement Fund Jan. 2 filed a novel [lawsuit](#) in the Delaware Chancery Court for the right to inspect Qualcomm Inc.'s (QCOM) books and records to determine how it spends its resources on political activities (*New York State Common Retirement Fund v. Qualcomm Inc.*, Del. Ch., No. 8170-CS, 1/2/13).

The complaint, brought under Section 220 of the Delaware General Corporation Law, alleged that Qualcomm has declined publicly to disclose its political and lobbying dollars, despite a request from the plaintiff and other institutional investors. More importantly, the company declined to “honor its obligation” to make the relevant records available to the plaintiff, the complaint said.

“Plaintiff brings this action under Section 220 to exercise its statutory right to obtain information about how Qualcomm is spending corporate funds in the political arena,” the complaint continued. “Plaintiff seeks to determine whether Qualcomm's political expenditures have been consistent with the objective of enhancing stockholder value, rather than simply furthering the particular political beliefs and causes of Qualcomm's board members or senior management.”

Section 220 allows a shareholder to inspect a company's books and records for “any proper purpose.”

Shareholder Right.

In a related release, New York State Comptroller Thomas DiNapoli said the fund--as a Qualcomm shareholder--“has a right to be properly informed about the use of corporate funds to influence the political process.”

DiNapoli spokesman Eric Sumberg Jan. 3 told BNA that the Comptroller's office believes this is the first time that a lawsuit has been brought under Section 220 with regard to the use of political funds. Sumberg also suggested that the lawsuit, if successful, could pave the way for similar actions against other companies. “I believe that we will proceed with this lawsuit and make a determination about other lawsuits following the resolution,” he said.

Meanwhile, Qualcomm Executive Vice President and General Counsel Don Rosenberg said in a statement that the company was “surprised” by the action. He also described the suit as “without merit.”

“Qualcomm is well regarded for its open and transparent culture and fully complies with all local, state and federal laws governing political activity and the disclosure of that activity--and the lawsuit does not suggest otherwise,” Rosenberg said. “As the plaintiff knows from

conversations we have had in the past, Qualcomm was already in the process of enhancing our shareholders' ability to access Qualcomm's political contributions on our website.”

High Court Ruling.

Shareholders--through shareholder resolutions and other methods--have pressed for more transparency in how companies spend their lobbying dollars in the wake of the U.S. Supreme Court's January 2010 ruling in *Citizens United v. Federal Elections Commission*, 558 U.S. 50 (44 SRLR 1400, 7/23/12). In the decision, the high court lifted longstanding limits on corporate political expenditures.

DiNapoli's release noted that while corporate political spending has risen dramatically after *Citizens United*, the level of disclosure of the expenditures has not kept pace. The New York State Common Retirement Fund has joined with other institutional shareholders in urging public companies to disclose their political dollars, the release said. It added that DiNapoli has written to the Securities and Exchange Commission in support of an August 2011 rulemaking petition by the Committee on Disclosure of Corporate Political Spending--comprising securities and corporate law professors from Harvard, Columbia, Yale, and other law schools--calling for new regulations to require the disclosures (43 SRLR 1680, 8/15/11).

Huge Response.

The rulemaking petition thus far has resulted in more than 320,000 comments, the overwhelming majority by shareholders voicing support for mandated disclosures. In response to the large number of comments, the SEC's Division of Corporation Finance currently is considering whether to recommend that the commission move forward with the rulemaking (44 SRLR 2072, 11/12/12).

Harvard Law professor Lucian Bebchuk, co-chair of the Committee on Disclosure of Corporate Political Spending, Jan. 4 told BNA that the New York state fund's lawsuit is “yet another manifestation” of investors' strong interest in how companies spend their resources on political activities.

“I hope and expect that the SEC consideration of the petition for rulemaking in this area would lead to the adoption of an SEC rule that would address, on a system-wide basis, the lack of disclosure that led to this lawsuit,” he said.