Group Applauds SEC for Movement On Corporate Political Spending Issue

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The Corporate Reform Coalition Jan. 8 commended the Securities and Exchange Commission's indication that its staff is considering whether to move forward on a rule to mandate disclosure of corporate political spending, saying it signals an important step forward.

By placing the potential rulemaking item in its semi-annual regulatory agenda, the SEC “has taken a critical step to protecting investors, helping to disclose material political spending information, and addressing the flow of secret corporate spending that has arisen since Citizens United,” CRC co-chair Lisa Gilbert, who also is director of Public Citizen's Congress Watch, told reporters in a conference call.

The fact that the commission indicated in the agenda that it would issue a notice of proposed rulemaking by April 2013 is “one step further” in the agency's commitment to a rule, Gilbert added. “This is really a momentous moment for protecting investors.”

The CRC is a group of more than 80 pension funds, consumer associations, and socially responsible investors that strive for increased transparency and accountability in corporate political spending.

However, disclosure attorneys who are familiar with the SEC's rulemaking processes told BNA that they would be surprised if the agency undertook the rulemaking.

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 (137 SLD, 7/18/12). In the decision, the high court lifted longstanding limits on corporate political expenditures.

In August 2011, the Committee on Disclosure of Corporate Political Spending--comprising securities and corporate law professors from Harvard, Columbia, Yale, and other law schools--submitted a rulemaking petition to the SEC calling for new regulations to require the disclosures (153 SLD, 8/9/11).

The rulemaking petition since then has resulted in a record 322,000 comment letters, the overwhelming majority from investors in support of mandated disclosures. In November, officials from the SEC's Division of Corporation Finance--the division that would be responsible for writing any new disclosure rules--announced that given the high investor interest, the staff was considering whether to recommend that the SEC proceed with a rulemaking (217 SLD,
11/9/12). However, they stressed at the time that the division had not reached a conclusion as to whether a new rule is necessary.

Subsequently, the SEC, in a Dec. 21 update to its semi-annual regulatory agenda, included for the first time Corp Fin's consideration of the issue. The SEC agenda is part of the 2012 unified agenda of regulatory and deregulatory actions maintained by the Office of Management and Budget's Office of Information and Regulatory Affairs.

**Unusual Move?**

During the CRC press call, coalition members told reporters that it is unusual for the SEC to state in its regulatory agenda that it is considering acting on a rulemaking petition. They said that sends a strong signal that the commission intends to move forward on the matter. “I'm quite optimistic that the SEC consideration will result in the issuance of a proposed rule this year,” said Harvard Law professor Lucian Bebchuk, co-chair of the Committee on Disclosure of Corporate Political Spending.

Rep. John Sarbanes (D-Md.), a member of the new Democratic-led Task Force on Election Reform, also observed that his constituents and others are “outraged” by the “dominance and influence big money” has had on U.S. politics. “As a member of Congress, sometimes we feel like we're walking around in a fog--you can't see clearly exactly what's happening in these campaigns and elections because the money is hidden, and the source of the money is unknown.”

Sarbanes, together with 41 other House Democrats, wrote to the SEC in support of the rulemaking petition in October 2011 (204 SLD, 10/21/11).

Sarbanes added that there also are “legislative responses” to the issue. He noted that Rep. Chris Van Hollen (D-Md.) on the first day of the new Congress introduced a bill--H.R. 148--that would amend the 1971 Federal Election Campaign Act to require additional disclosures from corporations and labor groups. In addition, there are similar efforts in the Senate led by Sens. Ron Wyden (D-Ore.) and Barbara Mikulski (D-Md.), Sarbanes said.

Moreover, Sarbanes said his task force will focus on “various components” of election issues, including transparency in political funding and voter problems.

**Rule Components.**

In other comments, Adam Kanzer, managing director and general counsel at Domini Social Investments LLC, said Domini would like the SEC to include “several key components” in any rule to mandate political spending disclosures. Public companies should be required to disclose their direct and indirect political contributions listed by recipients, he said. Domini also would like to see corporations disclose the policy that guides their political spending decisions and the titles of the executives involved in the decisions, as well as board oversight of the process.

“This does not need to be a very complicated rule,” Kanzer said. He added that today, 100 large companies, including more than half of the S&P 100, disclose their direct political contributions
in a fairly consistent manner. Further, more than 40 companies disclose their indirect spending as well.

Disclosure of political contributions “is now becoming a best practice corporate governance standard,” Kanzer said. “The time is right for a clear rule requiring all public companies to disclose.”

**Staff Consideration.**

When contacted, SEC spokesman John Nester would only say that “staff is considering whether to make a recommendation for a proposed rule.”

Meanwhile, disclosure attorneys told BNA that the issue is not likely to be a high priority for the commission, given its present make-up and heavy rulemaking responsibilities.

Because of the likely controversy over the issue, the SEC's other regulatory and enforcement priorities, as well as the key vacancies at the SEC, “the chances of the SEC tackling this, certainly in the next year, are not particularly high,” said Keir Gumbs, a Washington-based partner at Covington & Burling LLP, and a former counsel to SEC Commissioner Roel Campos.

Gumbs also noted that the inclusion of the notice by the SEC in its semi-annual regulatory agenda is not a firm commitment on the agency's part that it will issue a rulemaking. “I remember there are potential rulemakings included on the notice that the commission has never done anything on, and eventually the items are taken off,” he said. “For the most part, the fact that there's a notice simply means that the agency is reserving for itself the right to pursue rulemakings with respect to the matters included in the notice.”

John Olson, a partner at Gibson Dunn & Crutcher LLP, Washington, told BNA that a rulemaking proposal to mandate political spending disclosures would raise significant cost-benefit issues, and require a lengthy comment period. “The commission already has plenty on its plate to complete its mandated” rulemaking under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act, and to respond to money market mutual fund reform, Olson said. “Why stir up another hornet's nest?”