Group Tells White to Make Issuer Disclosure Of Political Spending Her First Priority at SEC

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New Securities and Exchange Commission Chairman Mary Jo White should make rulemaking to mandate corporate political spending disclosures one of her top priorities at the commission, Corporate Reform Coalition members and others said April 16.

In a telephone conference with reporters, Liz Kennedy, counsel at CRC member Demos, noted that American investors and the public have submitted more than 500,000 comments in support of a rulemaking petition calling on the SEC to require the disclosures.

“There is unprecedented investor engagement on this issue,” Kennedy said. “This milestone comes right at the start of” White's term, and is a “pivotal moment for her.”

CRC advocates transparency in how companies spend funds on political activities.

Kennedy added that the SEC cannot “ignore the recordbreaking outpouring of investor concern and support for the disclosure rule, from such diverse sources as the former [chief executive officer] of the Vanguard Group John Bogle, five state treasurers managing trillions of dollars in public pension funds, a large group of investment firms managing more than $690 billion in assets, 70 congressional representatives, 13 senators, and many, many more.”

'Ongoing Workload.'

When contacted, SEC spokesman John Nester told BNA that the staff is considering whether to make a recommendation to the commission on the issue. However, he added that “the timing of any recommendation will be influenced by the [SEC's] ongoing workload” under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act.

In the wake of the U.S. Supreme Court's 2010 ruling in Citizens United v. Federal Elections Commission, 558 U.S. 50 (137 SLD, 7/18/12), investors have pressed--through shareholder resolutions and other methods--for more transparency in how companies spend their lobbying dollars. In the decision, the high court lifted longstanding limits on corporate political expenditures.

The rulemaking petition in question was submitted to the SEC in August 2011 by the Committee on Disclosure of Corporate Political Spending, a group comprising securities and corporate law professors co-chaired by Harvard Law professor Lucian Bebchuk and Columbia Law School professor Robert J. Jackson Jr. (153 SLD, 8/9/11).
Staff Consideration.

In November 2012, 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 in the petition, 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 decided whether a new rule is necessary. Subsequently, in a Dec. 21 update to its semi-annual regulatory agenda, the SEC included for the first time Corp Fin's consideration of the issue (06 SLD, 1/9/13).

On the other hand, other commenters have suggested that it would be inappropriate for the SEC to wade into the issue, given that disclosures of political expenditures already are mandated by federal law and Federal Election Commission regulations (61 SLD, 3/30/12).

Shareholders as 'Owners.'

During the conference call, Rep. Michael Capuano (D-Mass.) told reporters that the issue boils down to a simple proposition: shareholders are the owners of corporations. “I'm shocked” that some business groups appear to disagree with this, he said. “I think the SEC” should reaffirm that shareholders are the true owners of corporations and require executives to tell them how they are spending their money.

Meanwhile, New York State Comptroller Thomas DiNapoli said he was concerned about the ways shareholder funds “could end up in the political process and not be fully accounted for.”

DiNapoli noted that the New York State Common Retirement Fund is heavily invested in public equities, so corporate performance is an issue in which the fund has a “big stake.” DiNapoli added that further down the road, it might become important to discuss what level of shareholder approval corporations would need with respect to their political activities. “But at minimum, at this juncture, we think there needs to be full disclosure so that at least there can be an assessment as to where the money is going,” he said.

Earlier this year, the New York State Common Retirement Fund filed a novel lawsuit in the Delaware Chancery Court for the right to inspect Qualcomm Inc.’s (QCOM) books and records to determine how the company spends its resources on political activities (04 SLD, 1/7/13). The pension fund dropped the case after Qualcomm agreed to post its political expenditures on its website (38 SLD, 2/26/13).

For his part, Tim Christiansen, a small business owner who also leads the Montana Small Business Alliance Steering Committee, contended that transparency in corporate political activities is “critical to free market competition.” Small businesses can compete with their larger counterparts “as long as there is a level playing field” and no secrecy on political spending, he said.
Continued Push.

Kennedy added that the CRC and its members will continue to push the SEC on the disclosures through meetings and discussions with White and the staff. “We look forward to engaging directly with Chairman White and continuing to demonstrate the importance to investors of this protection,” she said.

Kennedy also noted that Bebchuk and Jackson have written a paper that suggests a framework for a potential SEC proposal.

Capuano told reporters that although he has not yet approached White on the matter, “I do plan on doing it.”

Bebchuk, contacted after the telephone conference, said his article with Jackson will be published later this month in the *Georgetown Law Journal*. “Our article considers and responds to all the ten objections that have been raised to an SEC disclosure rule either in the SEC file or elsewhere,” Bebchuk told BNA. “We show that all of the considered objections, both individually and collectively, provide no basis for opposing rules that would require public companies to disclose their spending on politics.”