Boeing to Qualcomm Pressed to Reveal Secret Political Spending

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Investors have pushed more than 120 public companies in the U.S. to reveal previously confidential details of their political spending even as regulators remain deadlocked over whether to mandate such disclosures.

Thirty-one companies -- up from 28 last year -- will hold shareholder votes in 2013 on resolutions calling for disclosure of how much they spend to influence politics, according to the Washington-based Center for Political Accountability, which helps write the resolutions. The first of those votes, at Humana Inc. (HUM)’s annual meeting, is scheduled for today.

Another 16 companies, including Boeing Co. (BA), KeyCorp (KEY), Qualcomm Inc. (QCOM), and Southwest Airlines Co. (LUV), have agreed to provide investors with data on their political spending this year in an effort to avoid shareholder votes mandating the disclosures.

State pension funds and activist investors are increasingly using their sway as shareholders to dislodge details about corporate political funds even if it is not required by law. These disclosures include so-called “dark money” provided to trade groups and third parties that aren’t required to name their donors.

“This private ordering is making good progress,” said Anne Sheehan, director of corporate governance at the California State Teachers’ Retirement System, the U.S.’s second-largest government pension fund by total assets. “Some have done a very good job of disclosure.”

**Top Vote-Getter**

Debate over corporate political spending gained new attention after the Supreme Court ruled in a 2010 case known as Citizens United that companies and unions could spend unlimited money on election ads.

Political-activity resolutions generated more shareholder votes last year than any other topic, including efforts to separate the roles of chief executive and chairman, according to a paper published this month in The Georgetown Law Journal by Lucian A. Bebchuk of Harvard Law School in Cambridge, Massachusetts and Robert J. Jackson Jr. of Columbia Law School in New York.

Those resolutions helped push the Securities and Exchange Commission to announce in January that it would consider requiring public companies to disclose political spending.

The measure divides the SEC, with the five-member commission’s two Republicans opposed. One commissioner whose support is needed to advance it, Democrat Elisse B. Walter, said she
doesn’t consider it a priority for the agency, which is still working to complete regulations required by Congress.

**Parties Split**

The SEC’s announcement also divided Capitol Hill, where many Democrats express support for it. In a letter sent to new SEC Chairman Mary Jo White yesterday, a group of 66 House Republicans sought assurance the agency won’t move forward with a rule.

“If the SEC embarks on this partisan rulemaking path during a time of fiscal tightening, it would raise serious questions about the Commission’s political agenda and stewardship of taxpayer funds,” said Kansas Republican Representative Kevin Yoder, who coordinated the letter.

Current law requires public companies to report donations made through political action committees, but not contributions to third parties, including industry groups such as the U.S. Chamber of Commerce that conduct advocacy campaigns and fund political ads for and against candidates.

Groups that don’t disclose their donors reported spending $308 million to influence elections during the 2012 cycle, according to the Center for Responsive Politics, a Washington-based nonpartisan group that tracks money in politics. For instance, Crossroads GPS, an outside group co-founded by Republican political strategist Karl Rove that doesn’t disclose donors, spent $71 million on ads last year that mostly targeted Democratic candidates.

**Same-Sex Marriage**

Proponents, including public pension funds and labor unions, say investors deserve to know about corporate political activity that could offend customers and, if controversial enough, impact a company’s bottom line. Skeptics, including many business trade groups, say political spending is modest compared to other expenses and won’t affect profits or returns to shareholders.

Companies such as Target Corp., the second-largest U.S. discount retailer, have sparked controversy with donations to political groups that proved unpopular with some customers and shareholders. In 2010, Minneapolis, Minnesota-based Target gave $150,000 to a nonprofit group that supported a Minnesota gubernatorial candidate who opposed same-sex marriage, prompting public protests and an apology by the company’s CEO.

“For many investors, the idea that their money will be spent to support a political message that they abhor has special meaning,” said Jackson, who co-wrote an August 2011 petition asking the SEC to regulate corporate political donations.

**Citizens United**

The Supreme Court’s Citizens United ruling freed corporations and labor unions to spend unlimited money in candidate elections, with the majority of justices deciding that such spending
is equivalent to free speech. The justices also agreed that Congress could pass a law to require companies to disclose their spending on election ads, giving voters context to judge the ads.

Opponents of an SEC rule say most political spending is already disclosed through federal, state and local government websites. Moreover, only 30 percent of shareholders support the political-spending disclosure proposals, according to Institutional Shareholder Services, a Rockville, Maryland-based firm that tracks and makes recommendations on resolutions.

“This is probably one of the hottest topics right now in corporate governance and disclosure, but the fact is that rank- and-file investors don’t really care about these issues,” said Keir D. Gumbs, a partner at Covington & Burling LLP’s Washington office who advises companies on shareholder resolutions.

Preemptive Disclosure

Companies have agreed to enhance transparency of political spending even without a resolution getting majority support, said Bruce Freed, president of the Center for Political Accountability. The CPA, which describes itself as non-partisan, has received funding from George Soros’ Open Society Institute and the Rockefeller Brothers Fund, according to its website.

In some cases, public companies have agreed to share more information when votes in favor of the resolution exceed 30 percent, Freed said. Shareholders of Louisville, Kentucky-based Humana and AT&T Inc. (T) in Dallas are scheduled to vote this week on resolutions calling for reporting of any political donations or expenditures made with company funds.

In response to such pressure, some companies have put more restrictions on donations to trade groups and other nonprofits, Freed said. Boeing, for instance, tells trade groups and nonprofits that its contributions can’t be used for political expenditures. Last year, Boeing asked outside groups to attest to compliance with the policy.

‘More Walls’

“Companies are placing more and more walls on their political spending,” Freed said. “Disclosure in many cases means companies are limiting what they are spending.”

Gumbs, the Covington & Burling lawyer, disagreed, saying it’s not clear companies have reduced contributions as a result of disclosure campaigns. However, businesses are asking their trade groups more questions about whether their funding will used for political ends, Gumbs said.

Pension funds active in such efforts include the New York State Common Retirement Fund, which sued Qualcomm in January seeking to inspect the telecommunications company’s records of donations to outside political groups. The New York fund withdrew the suit in February after San Diego-based Qualcomm agreed to disclose all contributions.
Qualcomm’s disclosure showed that it contributed $1.84 million to trade associations, including $385,000 to the U.S. Chamber, and $90,000 to advocacy groups such as Immigration Voice, which pushes to end green-card backlogs.

U.S. Chamber

Reports by other companies, including Aflac Inc. (AFL) and 3M Co., also show donations to the Chamber. St. Paul, Minnesota-based 3M reported giving $515,500 to the Chamber last year, according to a report posted on the company’s website.

Freed said the reports are meaningful because investors can connect them to the Chamber’s independent expenditures. The Chamber spent $32.2 million during the 2012 election cycle on ads advocating for or against candidates, according to the Center for Responsive Politics.

“With company money going into a pot, that means some of that money is being used for” political purposes, unless the corporation restricts it, Freed said.

Proponents of an SEC rule say voluntary disclosure isn’t a substitute for regulation, because the agreements can’t be enforced and don’t yield the same information for all participants. A review last year of 75 companies’ compliance with their disclosure agreements found that 10 were in “significant non-compliance” with the terms, according to CPA.

‘All Over’

“One of the strongest reasons it’s so clear the SEC needs to step in is that the disclosures we are getting are all over the place,” said Jackson, the Columbia law professor.

David Hirschmann, director of the Chamber’s Center for Capital Markets Competitiveness, said the SEC could hurt its relationships with lawmakers by trying to advance the petition.

“Given what the SEC has on its plate, to insert it into the politics game would be a mistake,” Hirschmann said. “It would weaken the SEC’s position in terms of attracting additional resources” from Congress.

The SEC announced in January that it could propose a rule as soon as this month. Groups supporting the petition, including the Council of Institutional Investors and the American Federation of State, County and Municipal Employees, note that more than 500,000 comments have been filed in response to the request and called on White, who took over as SEC chairman on April 10, to make it a top priority. White, 65, hasn’t expressed a view on the issue, spokesman John Nester said.

Non-Material Information

SEC Commissioner Daniel M. Gallagher, 40, a Republican, said political spending isn’t “material,” meaning it doesn’t influence an investor’s willingness to own a company’s stock. In an interview, Gallagher equated a political-spending rule with regulations requiring companies to report their use of so-called conflict minerals mined in the Democratic Republic of Congo.
“We should be done with mandating non-material disclosures,” Gallagher said. “The more we adulterate it, the less important that disclosure is to investors.”

Democratic appointee Luis A. Aguilar, 59, has publicly advocated for the rule, while fellow Democrat Walter, 63, hasn’t publicly stated her position.

“It’s not high on our agenda,” Walter said in an interview. “I do think it’s an important question and I would like to talk to more investors about their opinion.”