

March 5, 2014

Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC Strategic Plan

Dear Chair White:

We welcome the opportunity to comment on the draft strategic plan as issued by your agency in accordance with the Government Performance and Results Act Modernization Act of 2010. The opportunity to weigh in on the proposed mission, values, goals, and objectives is an important one for investors and the public.

Public Citizen is a national, nonprofit public interest organization with 350,000 members and supporters that advocates for financial health and the public interest before Congress, the executive branch agencies and the courts.

We agree with a number of key points in the Strategic Plan (hereinafter, the plan), chief amongst them the focus on providing critical information concerning public companies to investors via required disclosures, and the request for additional funding for the agency. The resources of the entity required to write numerous rules, police the markets, and react to changes in company structure should be robust. Only if fully funded can the agency enact their mandate, to protect American investors.

SPECIFIC COMMENTS:

Political Spending at Public Companies

The plan begins by outlining the strategic goals of the agency. The first goal of the strategic plan is to maintain an effective regulatory environment and within that lies a first objective of maintaining an environment that promotes high-quality disclosure. The plan makes reference to this objective throughout, and we are happy to see it given such a prominent position as the first objective within the first stated goal. We couldn't agree more that providing information to investors is a benchmark component of the agency's mandate, and would add only that the agency should be flexible to react to a changing environment and to new demands by investors.

Reflecting investors' interest in enhanced political spending disclosure, a rulemaking petition at the Securities and Exchange Commission (SEC) requiring public companies to disclose their political spending to shareholders attracted a record level of support for SEC rulemaking, with more than 750,000 comment letters submitted – the vast majority in support and inputted by retail investors, institutional investors, and the public.^[1]

¹ File No. 4-637, *Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities*. <https://www.sec.gov/rules/petitions/2011/petn4-637.pdf>. 2011.

As the plan goes into more detail on the meaning behind strategic goal one, one stated purpose is to “identify gaps and redundancies in regulation.” Information about corporate political spending is a clear gap that investors are looking to their regulator to fill. Requests by shareholders provide important insight into this demand; a 2014 report by Glass Lewis found that in 2013 resolutions relating to political spending of a company were the most common shareholder proposal put forth during the proxy season for the third consecutive year.^[2]

At the end of the objective 1.1 section, the plan references an indicator by which the agency will attempt to understand the demands of investors in the arena of disclosure, a metric tracking the number of research initiatives used to gather feedback from investors on the usefulness of disclosures. We agree wholeheartedly with this concept, and hope that the agency is sincere in trusting to the feedback they receive. In particular, this once again makes the argument for pursuing the political spending rulemaking, as the feedback from investors on this topic has been a full-throated and consistent cry for reform.

In strategic objective 1.3, the plan references that the agency intends to consistently reevaluate their regulatory framework to “provide sufficient protections as new products and services enter the market,” and further that they plan to “highlight issues that may be of particular interest to investors.” This implied nimbleness and receptivity to investor needs and concerns is an admirable goal, and again makes the case for reacting to the increased amount of corporate political spending and the huge number of shareholder resolutions filed on the topic--by far the highest number of any SRI issue.

Strategic goal 3 of the plan also makes a case for working on this rule. The agency stipulates that a key goal is to “facilitate access to the information that investors need to make informed investment decisions.” Again, we couldn’t agree more, and ask the agency to be diligent in updating their understanding of what it is investors need, and to react to those needs with rulemaking.

Political Spending in More Detail

To go into further detail on the need for this rule: the initial rulemaking petition to the agency notes that “Absent disclosure, shareholders are unable to hold directors and executives accountable when they spend corporate funds on politics in a way that departs from shareholder interests.”

Undisclosed corporate political spending can encourage behavior that poses legal, reputational and operational risks to companies and systemic risks to the economy. The Supreme Court stated that complete real-time disclosure of public company political spending allows shareholders to “determine whether their corporation’s political speech advances the corporation’s interest in making profits.” Corporations use treasury funds to make a variety of political expenditures, including direct contributions to state-level political candidates, including judges, to fund ballot initiatives, political parties and a range of tax-exempt entities, such as trade associations and 527 organizations that engage in political activity. Corporations may also contribute funds to finance political advertising on public policy issues or to advocate for or against the election of particular candidates.

These activities are subject to a variety of state and federal laws, but there are no current rules that require that companies disclose this spending to their shareholders, due to this it is essentially impossible for an investor to obtain a full picture of any individual company’s political spending, with the exception of those companies that have chosen to voluntarily disclose this information.

² “Political Contributions – A Glass Lewis Issue Report,” [Glass Lewis](#), 2014.

Without an SEC rule requiring full disclosure for all public companies, shareholders have no uniform means to monitor these activities, or assess the risks of corporate political spending. Full disclosure would allow investors to manage, and potentially mitigate, the full range of risks presented by corporate political spending.

In strategic goal 3, Chairwoman Mary Jo White is quoted saying, “We have to provide information in ways that investors want to receive it. Investor outreach is crucial to success. Finding out what is on investors’ minds will improve the overall quality of the information we provide.” We couldn’t agree more that the agency must listen to investors to provide them with information they demand to make informed investment decisions. This is yet another opportunity in the plan to highlight the most demanded rulemaking by investors in the agency’s history—the political spending rule—and make clear that the agency will not be ignoring the constituency it states clearly in its plan it wants to listen to. We urge the agency to include in strategic objective 3.1 a mention of this rule, and to live up to the stated goals of outreaching to investors to determine what they need in objective 3.2.

Executive Compensation

We were happy to see executive compensation mentioned by name in the strategic plan’s objective 1.1. Reigning in out of control CEO pay is an obvious investor priority that has been mandated by Congress and that the SEC must promulgate rules on. Investors look forward to the agency finalizing rules on the decoupling of systemically risky behavior from compensation packages and on clawbacks of executive compensation. In the disclosure arena, the agency has proposed a rule on the ratio of CEO-to-median worker pay. We look forward to the implementation and enforcement of that rule.

Forced Arbitration Clauses

Also within objective 1.1, the agency references the need to “enhance the regulation of broker dealers, clearing agents, and other major market participants.” This priority provides an excellent opportunity to take a hard look at what we consider to be an abusive investor practice ubiquitous in broker-dealer contracts and increasingly present in financial advisor contracts: predispute binding mandatory (or forced) arbitration clauses. Under section 921 of Dodd-Frank, the SEC was granted authority to stop brokers and investment advisors from forcing investors to give up the right to go to court. We encourage the agency to take this authority seriously and to ban forced arbitration clauses in contracts that investors enter into with brokerage firms and investment advisors. Action of this nature by the agency would help reverse a larger trend by the securities industry of using contractual fine print to force investors out of the courts and into private arbitration forums that often favor the investment firms.

In addition, at least one brokerage firm is seeking to add a waiver of class actions with the forced arbitration clause in the fine print of its investor contract. Class action bans would shield firms from being held accountable for practices that harm large numbers of investors but where each financial injury is too small for most individuals to seek redress on their own.

Brokerage firms were responsible for many fraudulent actions that led to or arose from the financial crisis. Ensuring that investors can choose the forum in which to resolve disputes with broker-dealers and investment advisors is critical both to remedying those past abuses and deterring future misconduct. We hope to see this issue referenced by name in the final plan.

Office of the Whistleblower

Under strategic objective 2.2 the agency references the work they have done with the Office of the Whistleblower. We agree that this is an incredibly important function of the agency and a public

and employee portal to help the agency with enforcement. We support a fully resourced Office of the Whistleblower and a robust enforcement division generally at the agency to protect Main Street investors.

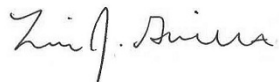
Resources

In strategic goal 4, the plan mentions that achieving the “objectives outlined in this Plan is highly dependent upon whether it is adequately funded.” We couldn’t agree more, and appreciate the need for the SEC’s funding to be robust to effectively accomplish its mandate.

Conclusion

We appreciate that the agency has opened the first draft of its strategic plan for comment. We have highlighted areas of concern and approval in the document. First and foremost (as is evident throughout this comment) we call on the agency to live up to the responsibility it reiterates consistently throughout the plan-- that it intends to listen whole heartedly to investors. If that is the case, then we have complete confidence that the rulemaking to provide the so-demanded information on corporate political spending to investors will be included by name in the final version of this plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Gilbert".

Lisa Gilbert
Congress Watch Director
Public Citizen