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MEMORANDUM

TO:	MARY JO WHITE, CHAIR, SECURITIES & EXCHANGE COMMISSION
FROM:	ADAM KANZER, MANAGING DIRECTOR & GENERAL COUNSEL, DOMINI SOCIAL INVESTMENTS LLC
SUBJECT:	CORPORATE POLITICAL ACCOUNTABILITY – 2013 PROXY SEASON REVIEW
DATE:	SEPTEMBER 9, 2013

In August 2011, a group of ten prominent law professors whose teaching and research focuses on corporate and securities law submitted a rulemaking petition to the SEC, seeking a rule that would require public companies to disclose the use of corporate resources for political activities.[1]

The rulemaking petition followed a multi-year shareholder campaign seeking greater corporate political spending transparency and accountability. This memorandum summarizes the results of this proxy season and seeks to place this season in context by describing the basic components of corporate political spending disclosure, an overview of political disclosure among S&P 500 companies, and the rationale for a rulemaking in this area.

Each year, a variety of shareholder proposals are submitted that focus on corporate political activity, ranging from electoral spending transparency to lobbying disclosures. This memo focuses on the core proposal sponsored by investors working with the Center for Political Accountability (CPA)[2], the organization that has been coordinating the bulk of the shareholder actions on this issue since 2004. The CPA proposal is focused on the same types of spending targeted by the rulemaking petition, and may serve as a template for the Commission.

The CPA proposal seeks the following:[3]

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

[2] www.politicalaccountability.net

[3] The standard CPA "resolved" clause is as follows: Resolved, that the shareholders of XX ("Company") hereby request that the Company provide a report, updated semiannually, disclosing the Company's:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.

2. Monetary and non-monetary contributions and expenditures (direct and indirect) used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, and used in any attempt to influence the general public, or segments thereof, with respect to elections or referenda. The report shall include:

    a. An accounting through an itemized report that includes the identity of the recipient as well as the amount paid to each recipient of the Company's funds that are used for political contributions or expenditures as described above; and

- Board oversight of corporate political spending;
- Disclosure of policies and procedures for political spending; and
- Semi-annual disclosure of ***direct and indirect*** political spending. This request is directed to:
    - The expenditure of **corporate treasury funds**, not corporate Political Action Committee (PAC) spending, which represents employee money.
    - "Indirect" spending refers to payments to third party organizations that engage in political spending, including trade associations, 501(c)(4) social welfare organizations, 527 organizations, Super PACs, etc.
    - Spending to influence the outcome of elections or to influence the general public with respect to elections or public referenda.

2013 Proxy Season Update[4]

In 2013, 46 CPA-coordinated proposals were filed:

- 15 proposals were withdrawn by the shareholder, after reaching a form of agreement (33%)
- 31 proposals went to a vote (67%):
    - Average shareholder support: 32.1% (23 companies voted to date). If abstentions are counted, an average of 41.1% did not agree with management's recommendation.
    - Highest vote: 66% at CF Industries (counting abstentions, the vote rises to 70.4%)
    - 12 proposals exceeded 30% support; 3 exceeded 40% support.
    - The CPA proposal received an average of 30% or greater support for the 2010, 2011 and 2012 proxy seasons.

This season also marked a new tactic, when the New York State Comptroller's Office filed suit to review the books and records of **Qualcomm** relating to political expenditures.[5] The company ultimately agreed to disclose its political contributions.[6]

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b. The title(s) of the person(s) in the Company responsible for the decision(s) to make the political contributions or expenditures.

The report shall be presented to the board of directors or relevant board oversight committee and posted on the Company's website.

[4] Data source: Center for Political Accountability.

[5] http://www.nytimes.com/2013/01/04/nyregion/new-york-comptroller-sues-qualcomm-for-data-on-political-giving.html?_r=0

[6] http://www.qualcomm.com/media/releases/2013/02/22/qualcomm-implements-industry-leading-political-spending-disclosure-policy

Survey of Political Spending Disclosure: S&P 500

Since 2004, investors working with the CPA have engaged 217 companies through the submission of shareholder proposals, and reached withdrawal agreements with 118 (See *Shareholder Resolutions on Corporate Political Spending Disclosure & Accountability, Summary Analysis of Vote Results and Agreements, 2004-2013*, enclosed). Despite this level of success, however, corporate political spending disclosure based on agreements with a wide range of investors has produced inconsistent disclosures, as detailed in the table below. In addition, it is difficult for investors to ensure that companies are living up to their agreements.

	NA*	No	Partial**	Yes***	Y%	P%	NA%	Y+P+NA%
Detailed policy?	0	103	226	169	33.9	45.4	0.0	79.3
Board oversight?	25	289	17	167	33.5	3.4	5.0	42.0
Disclosure of $ to candidates, parties, and committees?	73	284	49	92	18.5	9.8	14.7	43.0
Disclosure of $ to 527 organizations?	54	329	38	77	15.5	7.6	10.8	33.9
Disclosure of $ for independent expenditures?	80	352	33	33	6.6	6.6	16.1	29.3
Disclose $ to trade associations for political purposes?	14	348	77	59	11.8	15.5	2.8	30.1
Disclosure of $ to 501c4 organizations?	32	408	28	30	6.0	5.6	6.4	18.1
Disclose $ to ballot measures?	32	351	40	75	15.1	8.0	6.4	29.5

Source: Center for Political Accountability, June 2013. Total of 498 companies, excluding Coventry (merger) and Phillip Morris International (no operations in the US).

* Not applicable. This covers companies that do not engage in these categories of political spending.
** Category includes no amounts listed, aggregate numbers given, ambiguous information, etc.
*** Complete, detailed disclosure.

The Rationale for a Rule Mandating Corporate Political Spending Disclosure

The following is excerpted from a comment letter I drafted in support of the rulemaking petition on behalf of a coalition of investment professionals, including mutual fund and other institutional asset managers, foundations, religious investors and financial planners managing more than $690 billion on behalf of individual and institutional clients in North America and Europe.[7]

The Rulemaking Petition 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

[7] The full letter is available at https://www.sec.gov/comments/4-637/4637-11.pdf.

our economy and to our political and judicial institutions. The Supreme Court said that full, real-time disclosure of corporate political payments 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 payments, 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 ("independent expenditures").[8] 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, and there are significant gaps in the type of spending that is required to be disclosed to anyone. As a result, it is virtually impossible for an investor to obtain a complete picture of any individual company's political spending, with the exception of those companies that have elected to voluntarily disclose this information.

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

- Political spending disclosure helps prevent corporations (and unaccountable corporate executives) from using corporate treasury funds to obtain competitive advantages through political means, rather than by adding value in the marketplace (in economics, what is commonly known as "private rent seeking"). Secret political giving undermines free enterprise and creates unearned advantages in the marketplace. These activities distort the workings of the market, and result in misallocations of capital. Mandatory corporate political spending disclosure would further a marketplace where companies compete and win based on superior products and services, rather than by superior access to lawmakers, in keeping with the SEC's mandate to "maintain fair, orderly, and efficient markets."

- Political spending disclosure would help to mitigate the high risk of conflicts of interest and self-dealing by politically active CEOs and other senior executives that may be using corporate treasury funds for their own political purposes. The Commission has consistently favored disclosure as an effective means to address conflicts of interest.

- Trade associations, and a range of other tax-exempt entities such as 501(c)(4) social welfare organizations, have become significant conduits for 'indirect' corporate political spending. Many of these organizations are not required to disclose the source of their funding. Without full disclosure of the payments corporations make to these groups for political purposes and the corporate policies and procedures that guide such payments, neither shareholders nor corporations have any effective means to hold these increasingly influential and powerful organizations accountable. This lack of

[8] Corporations are prohibited from making direct contributions from the corporate treasury to federal campaigns or national party committees.

accountability can lead corporations to finance both sides of controversial public policy issues or to finance policies (or candidates) that run contrary to the company's interests.

- Political spending disclosure can protect companies from the risks posed by pay to play political fundraising. The SEC recently passed a rule to address the risks of pay to play arrangements between registered investment advisers and state entities, and issuers of municipal securities are also covered by pay to play regulations requiring, *inter alia*, the adoption of compliance policies and procedures and internal monitoring of political spending of certain key executives. Many public corporations, however, are also exposed to these risks and are not subject to similar regulations.

- Corporations face a complex patchwork of legal risks at the state and federal levels when they engage in political spending.

All of these concerns were dramatically increased by the Supreme Court's decision in *Citizens United v. Federal Election Commission* which legalized unlimited corporate spending to influence the outcome of elections, so long as this spending is not coordinated with a candidate ("independent expenditures"). Most public companies have no publicly available policies to address this new and risky avenue of political spending.

Additional Resources

- Professors Lucian Bebchuk, Harvard Law School, and Robert J. Jackson, Jr., Columbia Law School, the lead authors of the rulemaking petition, have written a law review article responding to critics of their rulemaking petition, *Shining a Light on Corporate Political Spending*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142115

- Professors Bebchuk and Jackson also responded to objections to their petition in a series of posts on the *Harvard Law School Forum on Corporate Governance and Financial Regulation* blog. The full series of posts, based on their *Shining a Light* article, is available at: http://blogs.law.harvard.edu/corpgov/tag/shining-light-on-corporate-political-spending/

- Center for Political Accountability Fact Sheet: *Meaningful Disclosure of Corporate Political Spending (Enclosed)*

- *The Conference Board:* Handbook on Corporate Political Activity: Emerging Corporate Governance Issues, available at *http://www.conference-board.org/publications/publicationdetail.cfm?publicationid=1867 (members only)*

Encl.

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Shareholder Resolutions on Corporate Political Spending Disclosure & Accountability

Summary Analysis of Vote Results and Agreements, 2004-2013

The Center for Political Accountability and its shareholder partners started engaging public U.S. companies on their political spending disclosure and accountability in 2004. To date, a total of 217 companies have formally been engaged through a shareholder resolution on the issue, resulting in a total of 118[1] agreements that lead to a withdrawal. The following information provides a more detailed look on how these companies came to an agreement with shareholders, as well as patterns in support for the resolution by the broader shareholder communities.

Table 1: Number of Agreements and Average Shareholder Support

Year	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
# Agreements	16*	14	12	12	12	17	24	8	2	0
Average Shareholder Support on Resolutions	NA	30%	33%	30%	29%	26%	25%	19%	11%	10%

Table 2: Number of Companies Coming to Agreement after Different Vote Results

	No Vote	Vote<10%	Vote>10%	Vote>20%	Vote>30%	Vote>40%	Vote>50%
Total # of Agreements	78	7	7	6	11	4	4

Table 3: Companies that Received Majority Shareholders Support

Company	Year	Percentage
Plum Creek Timber	2005	56%
Amgen[2]	2006	76%
Unysis	2007	51%
Sprint Nextel[3]	2011	53%
WellCare	2012	53%
CF Industries	2013	66%

[1],* This number includes Qualcomm, which came to a disclosure agreement through a "books and records" request by the New York State Common Retirement Funds in 2013.
[2] Amgen's board of directors *supported* the resolution, leading to the extremely high vote. See Amgen's 2006 Proxy Statement here: http://www.sec.gov/Archives/edgar/data/318154/000110465906018306/a06-5806_2def14a.htm
[3] Sprint Nextel has not come to an agreement to date.

CENTER FOR POLITICAL ACCOUNTABILITY

What Makes Meaningful Disclosure of Corporate Political Spending?

Key Elements of Corporate Political Disclosure & Accountability

I. Policies
   a. Ways in which we participate in the political process;
   b. Who makes spending decisions; and
   c. Our commitment to publicly disclose all of our expenditures, direct and indirect.

By setting out objective criteria for political spending, a company provides a context for decision-making. An articulated policy provides a means for evaluating benefits and risks of political spending; measuring whether such spending is consistent, and is aligned with a company's overall goals and values; determining a rationale for the expenditure; and judging whether the spending achieves its goals.

II. Disclosure
   a. Itemized Direct Expenditures
      i. State-level candidates and committee contributions;
      ii. Ballot measure spending; and
      iii. Independent expenditures.
   b. Itemized Indirect Expenditures
      i. Trade association dues *and* other payments, including special assessments used for political purposes; and
      ii. Payments to other tax-exempt organizations [527 groups, super PACs, and 501(c)(4) "social welfare" organizations] used for political purposes.

Disclosure of political spending from corporate treasury funds gives shareholders the information they need to judge whether corporate spending is in their best interest. It identifies possible sources of risk. It also helps ensure that board oversight is meaningful and effective.

III. Oversight
   a. Board of directors regularly reviews our spending, direct and indirect, and existing policies.

Board oversight of corporate political spending assures internal accountability to shareholders and to other stakeholders. It is becoming a corporate governance standard.

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