



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

February 29, 2012

Tom McCaney
Sisters of St. Francis of Philadelphia
tmccaney@osfphila.org

Re: CVS Caremark Corporation
Incoming letter dated February 6, 2012

Dear Mr. McCaney:

This is in response to your letter dated February 6, 2012 concerning the shareholder proposal that you submitted to CVS. On February 1, 2012, we issued our response expressing our informal view that CVS could exclude the proposal from its proxy materials for its upcoming annual meeting.

We received your letter after we issued our response. After reviewing the information contained in the letter, we find no basis to reconsider our position.

Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu
Senior Special Counsel

cc: Ning Chiu
Davis Polk & Wardwell LLP
ning.chiu@davispolk.com

February 6, 2012

VIA EMAIL (shareholderproposals@sec.gov)

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: Shareholder proposal of Sisters of St. Francis and co-sponsors; request by CVS Caremark Corporation for no-action determination

Dear Sir/Madam:

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, the Sisters of St. Francis and co-filer Sisters of Charity of the Incarnate Word (together, the "Proponents"), submitted to CVS Caremark Corporation ("CVS") a shareholder proposal (the "Lobbying Disclosure Proposal") asking CVS to provide a semiannual report disclosing its policies and procedures related to lobbying as well as certain information regarding payments used for lobbying.

In a letter dated January 9, 2012 (the "No-Action Request"), CVS stated that it intends to omit the Lobbying Disclosure Proposal from its proxy materials being prepared for the 2012 annual meeting of shareholders. CVS claims that it can exclude the Lobbying Disclosure Proposal pursuant to Rule 14a-8(i)(11), as substantially duplicative of an earlier-submitted proposal on political contributions (the "Political Disclosure Proposal") that will appear in 24CVS's proxy statement.

The Proponents acknowledge that the Staff issued determinations in 2011 allowing exclusion of proposals on lobbying disclosure much like the Lobbying Disclosure Proposal on the ground that they substantially duplicated earlier-received political spending disclosure proposals with language similar to the Political Disclosure Proposal. Three factors favor a different outcome here:

The language of the Lobbying Disclosure Proposal and the Political Disclosure Proposal has been carefully tailored to avoid any possible overlap in the proposals' coverage;

Additional evidence has emerged showing that key players in the discussions around corporate political spending, including the U.S. Chamber of Commerce,

regard corporate lobbying and campaign-related political spending as distinct activities; and

Shareholders and their advisors, including the leading proxy advisory firm, are distinguishing between lobbying and campaign-related political spending as two different proxy voting decisions and do not appear to be confused regarding the scope of each issue.

The Proponents believe that the clear, specific and non-overlapping language of the Lobbying Disclosure Proposal and the Political Disclosure Proposal, considered in the context of the views of important constituencies (especially shareholders), supports a conclusion that the Lobbying Disclosure Proposal does not substantially duplicate the Political Disclosure Proposal. Accordingly, the Proponents respectfully urge the Staff to decline to grant the relief requested by CVS.

The Proposals

The earlier-received Political Disclosure Proposal asks CVS to report semiannually on 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 Lobbying Disclosure Proposal urges CVS to report semiannually on:

"1. Company policy and procedures governing the lobbying of legislators and regulators, including that done on our company's behalf by trade associations. The disclosure should include both direct and indirect lobbying and grassroots lobbying communications.

A listing of payments (both direct and indirect, including payments to trade associations) used for direct lobbying as well as grassroots lobbying communications, including the amount of the payment and the recipient.

Membership in and payments to any tax-exempt organization that writes and endorses model legislation.

Description of the decision making process and oversight by the management and Board for

- a. direct and indirect lobbying contribution or expenditure; and
- b. payment for grassroots lobbying expenditure.

For purposes of this proposal, a 'grassroots lobbying communication' is a communication directed to the general public that (a) refers to specific legislation, (b) reflects a view on

the legislation and (c) encourages the recipient of the communication to take action with respect to the legislation.”

The Lobbying Disclosure Proposal is titled “Lobbying Expenditures Disclosure.”

Each of The Lobbying Disclosure Proposal and the Political Disclosure Proposal Focuses Narrowly on a Specific Activity and the Requests Do Not Overlap

CVS attempts to frame the subject of both the Lobbying Disclosure Proposal and the Political Disclosure Proposal broadly, claiming the “principal thrust and focus is identical” for each proposal with both requesting “reports on policies regarding political contributions and lobbying expenditures.” But examination of the language shows that neither the Political Disclosure Proposal nor the Lobbying Disclosure Proposal has this broad focus. Instead, each proposal focuses narrowly on a separate corporate activity, avoiding any overlap in coverage.

The Political Disclosure Proposal focuses specifically on payments related to political campaigns. It seeks disclosure of contributions and expenditures “used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office” (emphasis added) The political contributions proposal at issue in last season’s Occidental Petroleum Corporation determination (publicly available Feb. 25, 2011), in which the Staff granted no-action relief, was not as narrowly drafted: It asked that a report on “political spending” include certain items related to “supporting or opposing candidates” and “ballot items,” which Occidental argued left open the possibility that lobbying-related items could be encompassed. Unlike the proposal in Occidental, the Political Disclosure Proposal specifies the precise items to be included in the requested report and does not offer a non-exclusive list. The Lobbying Disclosure Proposal is similarly precise, asking for reporting only on policies and payments related to “lobbying of legislators and regulators.”

No reasonable reader of the proposals would conclude that there is any overlap in the requested disclosure. Lobbying is commonly understood as an effort to influence the content of, or decisions regarding, legislation or regulation. Merriam Webster Dictionary says “lobby” means “to conduct activities aimed at influencing public officials and especially members of a legislative body on legislation”; “to promote (as a project) or secure the passage of (as legislation) by influencing public officials” and “to attempt to influence or sway (as a public official) toward a desired action.” (<http://www.merriam-webster.com/dictionary/lobby>) Legislation and regulations are considered and adopted by sitting legislators and regulators and signed or vetoed by sitting executives (the “public officials” referred to by Merriam Webster). By definition, then, lobbying does not involve participation or intervention in a political campaign.

The definitions of lobbying used in applicable laws and regulations reinforce this distinction. A National Conference of State Legislators summary setting forth definitions of lobbying under the laws of all 50 states illustrates that the common

thread is influencing or trying to influence legislation or regulation; a few states define lobbying to include attempts to influence procurement decisions as well. Efforts to influence the outcome of a political campaign are not within the scope of any state's lobbying definition. (See <http://www.ncsl.org/?tabid=15344>) Similarly, the lengthy definitions of "lobbying activities" and "lobbying contacts" contained in the federal Lobbying Disclosure Act, codified at 2 U.S.C. sections 1602(7) and (8), refer to communications regarding legislation, rules, regulations, executive orders, federal programs and nominations that must be confirmed by the Senate. Political campaign-related activity appears nowhere in that definition.

With respect to communications aimed at the public, there is similarly no overlap between the Lobbying Disclosure Proposal and the Political Disclosure Proposal. The Political Disclosure Proposal seeks disclosure of only communications that "attempt to influence the general public, or segments thereof, with respect to elections or referenda" (emphasis added), which is consistent with the Political Disclosure Proposal's focus on campaign-related expenditures. The Lobbying Disclosure Proposal, for its part, asks CVS to report only on those communications to the general public that refer to and urge the recipient to take action on a specific piece of legislation.

CVS claims both proposals seek information regarding "nondeductible expenses," arguing that this captures payments made to a trade association. (See No-Action Request at 4) Discussion of trade associations, however, does not appear in the Political Disclosure Proposal's resolved clause, which, as discussed above, specifically asks for disclosure of expenditures related to campaigns. Instead, it is part of the supporting statement; accordingly, it must be interpreted in light of the resolved clause.

Even assuming both proposals could be read as seeking disclosure of nondeductible expenditures, it does not necessarily follow that overlap is created. A member of a trade association could request that the association disaggregate lobbying expenditures from campaign-related spending, despite the fact that both are nondeductible. Indeed, such disaggregation would be necessary to fully comply with the requests made in the proposals, each of which requests disclosure on very specific types of spending (lobbying and campaign-related). Finally, any arguable overlap relating to nondeductible expenditures made by trade associations is very minor given the much broader scope of both proposals.

The Larger Context in Which the Lobbying Disclosure Proposal and the Political Disclosure Proposal Are Submitted and Will Be Considered Supports the Conclusion That The Proposals Do Not Share the Same Principal Thrust or Focus

The Proponents believe that the language of the Lobbying Disclosure Proposal and the Political Disclosure Proposal clearly shows that they do not share a principal thrust or focus. To the extent the language of the proposals is not viewed as dispositive, however, the Proponents urge that the context in which the

proposals have been submitted and will be considered bolsters the conclusion that lobbying and campaign-related political spending are discrete subjects.

The distinction drawn by the proposals between lobbying and campaign-related political expenditures tracks the differing treatments of these activities under federal, state and local law. Campaign finance laws—federal, state and local—govern campaign-related political expenditures. Campaign finance law prohibits certain kinds of expenditures by corporations, though the 2010 Supreme Court decision in Citizens United v. FEC struck down federal prohibitions on independent expenditures by corporations. (See The Conference Board, Handbook on Corporate Political Activity 7-10 (2010) (available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/id/4084>))

Lobbying is regulated at the state level by numerous state statutes and regulations (see the NCSL table cited above) and at the federal level by the Lobbying Disclosure Act of 1995 (“LDA”). The LDA requires registration of lobbyists, who must file semiannual reports. (See lobbyingdisclosure.house.gov/ldaguidance.pdf) Although the LDA requires disclosure of certain contributions (including political contributions) by lobbyists (see *id.* at 19-20), coverage of the statute is triggered by engaging in lobbying activities, not making contributions.

Over the past year, following the introduction of shareholder proposals dealing with lobbying disclosure, shareholders and their advisors have begun distinguishing between lobbying and campaign-related political spending when formulating corporate governance policies and voting proxies. Contrary to CVS’s assertion, there is no evidence that shareholders are confused about the difference between these two kinds of corporate activities.

Shareholders’ policies and proxy voting guidelines show that they view lobbying and campaign-related political spending as separate. The International Corporate Governance Network (“ICGN”), a global organization whose members have \$18 trillion in assets under management (see <http://www.icgn.org>), recently published a Statement and Guidance on Political Lobbying and Donations. (ICGN Statement and Guidance on Political Lobbying and Donations (June 2011) The ICGN Statement included separate definitions of “Corporate political lobbying” and “Corporate political donations” reflecting an understanding of the difference between those activities consistent with the coverage of the Lobbying Disclosure Proposal and the Political Disclosure Proposal. (See *id.* at 5-6) The Statement describes the two types of activities as implicating different corporate governance concerns. (*Id.* at 9)

In addition, the proxy voting guidelines of a number of institutional investors reflect the existence of lobbying disclosure as a separate corporate governance issue. For example:

Ohio Police & Fire Pension Fund, Proxy Voting Policy, at 17 (<http://www.op-f.org/Files/Proxy%20Voting%20Policy%203-30-11.pdf>): “Shareholder-Miscellaneous: . . . [G]iven the diverse and rather vague nature of this

category, many of these proposals, including proposals requesting information on a company's lobbying initiatives, will be decided on a case-by-case basis."

Goldman Sachs Asset Management, Policy on Proxy Voting for Investment Advisory Clients (Mar. 2011), at 11

(http://www2.goldmansachs.com/gsam/pdfs/voting_proxy_policy.pdf): Separate sections and vote recommendations on "Lobbying Expenditures/Initiatives" ("proposals requesting information on a company's lobbying initiatives") and "Political Contributions and Trade Association Spending (varying proposal formulations addressing political non-partisanship and political contributions disclosure).

Trillium Asset Management, Proxy Voting Guidelines, at 19 (2011)

(<http://trilliuminvest.com/our-approach-to-sri/proxy-voting/>): Separate sections and vote recommendations on "Lobbying Efforts"(proposals asking for reports on lobbying efforts) and "Non-Partisanship/Political Contributions" (various proposal formulations addressing political non-partisanship, political contributions disclosure and prohibition on political contributions).

Institutional Shareholder Services ("ISS") is the leading U.S. proxy advisory firm. ISS provides its 1,700 clients with proxy research and recommendations regarding how to vote on a wide variety of ballot items appearing on the proxy statements of U.S. and international companies. (See <http://www.issgovernance.com/about>) ISS maintains Corporate Governance Policies that it uses to generate those recommendations; the policies are updated once a year to reflect the emergence of new issues and changes in approach to existing issues. (See <http://www.issgovernance.com/policy>)

In late 2011, ISS adopted changes to its U.S. Corporate Governance Policies addressing shareholder proposals on lobbying and political contributions disclosure. (See U.S. Corporate Governance Policy: 2012 Updates (Nov. 17, 2011) (available at http://www.issgovernance.com/files/ISS_2012US_Updates20111117.pdf)) ISS's policies clearly distinguish between proposals seeking lobbying disclosure and those asking for disclosure of campaign-related political spending.

Each type of proposal is denominated as a separate "Corporate Governance Issue." Campaign-related political spending disclosure proposals are covered under "Political Spending," while proposals addressing lobbying disclosure are discussed under "Lobbying Activities."

ISS's vote recommendations on the two types of proposals differ: ISS will generally recommend a vote "for" political spending proposals, but it follows a "case-by-case" approach to proposals on lobbying disclosure.

The factors ISS will consider in making a vote recommendation on each type of proposal vary and are tailored to the activity—lobbying or campaign-related political spending—addressed in the proposal.

(See 2012 ISS Updates, at 16-17)

Likewise, the 2011 Proxy Season Preview published by proxy advisor Proxy Impact, together with As You Sow and Sustainable Investments Institute, included a

separate section on “Lobbying” proposals, focusing on proposals at six companies and discussing IBM’s unsuccessful request for no-action relief. Other sections of the review addressed “standard” campaign-related political spending disclosure proposals and proposals focused on trade associations. (Heidi Welsh and Michael Passoff, “Proxy Preview: 2011,” at 42-43 (available at www.asyousow.org/publications/ProxyPreview_2011.pdf))

Beyond shareholders and their advisors, other participants in the debate over corporate political spending recognize important differences between lobbying and campaign-related spending. Especially following the Citizens United decision, academics and public policy organizations have focused significant attention on corporate political spending.

Prominent participants in these discussions have drawn a distinction between lobbying and campaign-related political contributions. At an April 2011 conference on post-Citizens United corporate political spending, the difference was emphasized by two panel members (see “Accountability After Citizens United—Panel One Transcript” (“Can Shareholders Save Democracy?”), Apr. 29, 2011 (available at brennancenter.org/content/pages/accountability_after_citizens_united_transcript_section_iii)):

Former Delaware Chancellor William Allen stated: “If the rule goes to making expenditures directly or indirectly in favor of a particular campaign, then I don’t have a problem with it. My problem with changing the law is and John’s going to have a study that gets to lobbying, lobbying Congress to change the law or lobbying a legislature could be regarded as political by somebody and lobbying is actually a very important, I mean it doesn’t cost a huge amount for most firms to lobby” . . . I mean I think it’s essential that there be reasonable disclosure of direct or indirect political spending. And I also think it’s essential that we don’t trample on lobbying in the process of regulating.”

Harvard Professor John Coates IV, who has studied corporate political spending as it relates to corporate governance and firm value, remarked: “And so lobbying on its own while it has pluses and minuses. When it’s coupled with other kinds of political activity, it becomes much more dangerous. And that’s why I think it’s more important to think about responses to the other more direct kinds of political activity than it would be in some other universe.”

Trade associations, which serve as important intermediaries for both campaign-related corporate political spending and corporate lobbying, treat the activities differently. We understand from dialogues other proponents have engaged in with companies that the U.S. Chamber of Commerce, the largest business trade association in the country, follows different procedures for these two activities. Lobbying is paid for using members’ dues money, and members are informed that a certain proportion of dues are used for this purpose. Campaign-related political spending, by contrast, is not funded through dues but instead is funded through special initiatives.

The U.S. Chamber of Commerce's comment on ISS's recent proxy voting policy change confirms that the Chamber sees lobbying and campaign-related spending as distinct activities. The Chamber attacked an academic study cited by California Treasurer Bill Lockyer in urging CalPERS' and CalSTRS' support of political disclosure proposals because the study aggregated campaign-related and lobbying expenditures. The Chamber stated, "Given the many very significant differences between political expenditures and lobbying, there is no basis for combining the two." (Comment Letter dated Nov. 7, 2011 by Andrew J Pincus, on behalf of the U.S. Chamber of Commerce (available at http://www.issgovernance.com/files/Comment-35_0.pdf))

Finally, companies themselves do not treat lobbying and campaign-related political spending as a unitary concept to be administered under the same policies, procedures and oversight. Some companies that have policies restricting or prohibiting all or some kinds of campaign-related political spending engage in substantial lobbying. For example, Colgate-Palmolive and IBM have policies prohibiting spending on candidates or committees, independent expenditures, political expenditures through trade associations and spending on ballot measures. (The CPA-Zicklin Index of Corporate Political Accountability and Disclosure at 17-18 (2011) (available at <http://politicalaccountability.net/index.php?ht=d/sp/i/5848/pid/5848>)) But both companies spend freely on lobbying. (See <http://www.opensecrets.org/lobby/clientsum.php?id=D000000720>; <http://www.opensecrets.org/lobby/clientsum.php?id=D000032736&year=2011>)

Similarly, U.S. Bancorp's policy has separate sections on "Corporate Political Contributions" and "Legislative Lobbying." The policy describes limitations on contributions—the company does not make contributions to candidates, political parties, committees or 527 organizations—but not on lobbying activities. (See <http://phx.corporate-ir.net/phoenix.zhtml?c=117565&p=irol-PoliticalContribution>) Federal filings indicate that U.S. Bancorp engages in lobbying. (See <http://www.opensecrets.org/lobby/clientsum.php?id=D000000487&year=2011>)

A recent report commissioned by the IRRC Institute confirms the disparate treatment of lobbying and political contributions by companies. In that report, authors Heidi Welsh and Robin Young found that "[t]wo-thirds of companies in the S&P 500 do not mention lobbying when they talk about political spending, confining their statements to campaign spending issues." (Heidi Welsh and Robin Young, Corporate Governance of Political Expenditures: 2011 Benchmark 6 (2011)) The report found that companies claiming they do not spend treasury funds on politics do not refrain from spending on lobbying. (See id. at 7 ("But the nature and specificity of these prohibitions varies widely and when companies say they do not spend, it does not necessarily mean shareholder money does not make its way into political campaigns, It certainly does not indicate that companies do not lobby."))

That The Conference Board's 2010 Handbook on Corporate Political Activity is silent on lobbying is additional evidence that companies treat lobbying differently from campaign-related political spending. (See Conference Board Handbook, supra) The

Handbook describes director responsibilities, provides guidance on the establishment of an effective program to manage and oversee spending and includes several case studies, all focused exclusively on campaign-related spending.

* * * *

In sum, CVS has not met its burden of establishing that the Lobbying Disclosure Proposal substantially duplicates the Political Disclosure Proposal. The language of each proposal is narrowly tailored to seek disclosure on a separate corporate activity, and CVS has not explained (except by reference to a few words appearing only in the supporting statement) how the proposals overlap or why shareholders would be confused. Moreover, shareholders and others involved in the active debate over corporate lobbying and campaign-related political spending recognize the difference between these activities. Accordingly, the Proponents respectfully ask that the Staff decline to grant CVS's request for no-action relief.

Sincerely,

Tom McCaney
Associate Director, Corporate Responsibility

cc: Tom Moffatt, CVS