



Agenda Item 7b

November 16, 2015

ITEM NAME: Proposed Update to the Legislative and Policy Engagement Guidelines: Disclosure of Charitable and Political Contributions

PROGRAM: Global Governance

ITEM TYPE: Action

RECOMMENDATION

Staff seeks Board approval to update the legislative and policy guidelines to include support for Securities and Exchange Commission (SEC) rulemaking on disclosure of the use of corporate resources for charitable and political activities. The current SEC consultation on disclosure effectiveness provides a timely opportunity to make this request.

EXECUTIVE SUMMARY

The SEC received a petition in 2011 to require U.S. public company disclosure of charitable and political expenditures. CalPERS Global Governance Principles were amended to encourage board oversight and full disclosure of these expenditures, but are silent on rulemaking. Disclosure is improving through company voluntary adoptions and shareowner engagement. However, a disclosure rule would improve clarity and consistency and be a cost effective alternative to private ordering. SEC rulemaking would be consistent with the CalPERS Global Governance Principles that call for Board oversight and full disclosure on the charitable and political activities of the public companies in which CalPERS invests.

STRATEGIC PLAN

This agenda item supports the CalPERS Strategic Plan goal to improve long-term pension and health benefit sustainability.

INVESTMENT BELIEFS

This agenda item supports the following CalPERS Investment Beliefs:

1. Investment Belief 2 – A long time investment horizon is a responsibility and an advantage. A long time horizon requires that CalPERS advocate for public policies that promote fair, orderly and effectively regulated capital markets.
2. Investment Belief 3 – CalPERS' investment decisions may reflect wider stakeholder views, provided they are consistent with its fiduciary duty to members and beneficiaries.
3. Investment Belief 4 – Long-term value creation requires effective management of three forms of capital: financial, physical and human. CalPERS may engage

investee companies and external managers on their governance and sustainability issues, including governance practices, risk management practices, human capital practices, and environmental practices.

BACKGROUND

The issue of corporate donations from shareowner funds for charitable and political purposes has been the focus of attention in recent years and is expected to continue.

The Supreme Court in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 916 (2010)¹ allowed corporations a First Amendment right to spend unlimited sums. *Citizen's United* also acknowledged the important role public company boards play in overseeing political campaign contributions made from company treasuries. Justice Anthony Kennedy wrote that, shareholders could address disclosure of charitable and political contributions "through the procedures of corporate democracy." He commented that "With the advent of the internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."⁵⁵

Following *Citizen's United*, Lucian Bebchuk of Harvard Law School and Robert J. Jackson, Jr. of Columbia Law School, petitioned² the SEC in 2011 to craft rules that would require public companies to disclose their political spending. The SEC has since received over one million public comments in support of the 2011 petition to adopt a mandatory disclosure rule for issuers regarding political spending. This has been coordinated by a committee of ten corporate and securities law experts through the Committee on Disclosure of Corporate Political Spending.

In October 2011 the Council of Institutional Investors (CII) argued that new rules were needed in order to provide shareowners with effective disclosure. In a letter³ to the SEC, CII argued that "Shareowners have a right to know whether and how their company uses its resources for political purposes. Yet the existing regulatory framework creates barriers to this information. Disclosure is either dispersed among several regulatory authorities or entirely absent in cases where political spending is channeled through independent organizations exempt from naming donors."

At the November 2011 CalPERS Investment Committee (IC) meeting, CalPERS updated its Global Governance Principles to include a new Principle (6.5) to address charitable and political corporate donations. CalPERS Global Governance Principles state:

¹ Justice Anthony Kennedy, Supreme Court in [Citizens United v. Federal Election Commission, 130 S. Ct. 876, 916 \(2010\), p. 55.](#)

² See Committee on Disclosure of Corporate Political Spending Petition for Rulemaking, available at <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>, dated August 3, 2011

³ See <http://corp.gov.net/wp-content/uploads/2011/10/10-19-11-CII-Letter-to-SEC-on-political-contributions-final.pdf>, dated October 19, 2011

Charitable and Political Contributions: Robust board oversight and disclosure of corporate charitable and political activity is needed to ensure alignment with business strategy and to protect assets on behalf of shareowners. We recommend the following:⁴

- i **Policy:** The board should develop and disclose a policy that outlines the board's role in overseeing corporate charitable and political contributions, the terms and conditions under which charitable and political contributions are permissible, and the process for disclosing charitable and political contributions annually.
- ii **Board Monitoring, Assessment and Approval:** The board of directors should monitor charitable and political contributions (including trade association contributions directed for lobbying purposes) made by the company. The board should ensure that only contributions consistent with and aligned to the interests of the company and its shareowners are approved.
- iii **Disclosure:** The board should disclose on an annual basis the amounts and recipients of monetary and non-monetary contributions made by the company during the prior fiscal year. If any expenditure earmarked or used for political or charitable activities were provided to or through a third-party to influence elections of candidates or ballot measures or governmental action, then those expenditures should be included in the report.

In December 2013 the SEC removed a potential rulemaking on charitable and political contributions from its 2014 regulatory agenda. Subsequently, former SEC Chairs William Donaldson, Arthur Levitt and former Commissioner Bevis Longstreth wrote⁵ Chair White expressing support for action on the rules stating, "SEC's failure to require these disclosures was inexplicable," and said that the lack of action "flies in the face of the primary mission of the commission." In August 2015, forty-four Senators wrote a letter⁶ to Chair White expressing their support for the 2011 rulemaking petition and asking that the SEC "make this a top priority in the near term."

⁴ CalPERS Statement of Investment Policy for Global Governance, Global Governance Principles, Updated March 16, 2015. <https://www.calpers.ca.gov/docs/policy-global-governance.pdf>

⁵ See <http://www.citizen.org/documents/sec-commissioner-letter-re-political-spending.pdf>, dated May 27, 2015

⁶ See http://corpgov.law.harvard.edu/wp-content/uploads/2015/09/20150831_SECLetter.pdf, dated August 31, 2015

ANALYSIS

Since *Citizens United*, there have been more than 500 shareowner proposals focused on corporate political donations, 4 have passed. CalPERS has voted on these proposals regarding political donations in line with the Global Governance Principles, voting in support in the overwhelming majority of cases.

Some corporations have voluntarily adopted policies to disclose political contributions, as shown in the Center for Political Accountability (CPA), fifth annual CPA-Zicklin Index report.⁷ The report finds that companies across the S&P 500 are exercising greater board oversight of company political contributions and expenditures, but half of those corporations provide no information at all regarding political contributions. The information that is provided by reporting corporations in most cases is neither comprehensive nor consistent.

Given the disparate nature of voluntary efforts, SEC rulemaking would bring clarity and consistency in the format and scope of the disclosures. Furthermore, support of mandated disclosure of corporate charitable and political donations aligns with CalPERS long-standing position as a financial market leader ensuring greater transparency and accountability in responsible investing. Contribution disclosure is consistent with the SEC's requirement for public companies to disclose meaningful financial information and prudent use of corporate shareowner resources for political activities. Furthermore, the current SEC consultation on disclosure effectiveness provides a timely opportunity to request new rulemaking.

The necessary update in the Legislative and Policy Engagement Guidelines would add an item II.B.1.i. that would read as follows:

- i. Promote rulemaking to require full transparency in corporate expenditures, including reporting charitable and political contributions.

BUDGET AND FISCAL IMPACTS

Work associated with this item is expected to be addressed within existing staff and resources.

BENEFITS/RISKS

The benefit of supporting rulemaking around charitable and political contribution disclosure is improved transparency. Risks are associated with the potential for misalignment with CalPERS' investment objectives.

⁷ See http://files.politicalaccountability.net/index/CPA-Zicklin_Index_Final_with_links.pdf, dated October 8, 2015

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