

Carleton College
One North College Street
Northfield, Minnesota 55057

January 28, 2013

Dear Mr. Weitz and the members of the Investment Committee,

Please find enclosed the 2013 report for Trustees from the Committee on Responsible Investment at Carleton (CRIC). In addition to new efforts in direct shareholder engagement, CRIC continued its primary role of actively reviewing shareholder resolutions. The process was aided by a proxy voting pre-approval policy that was approved at last year's meeting for a one year trial run. This report will summarize the policy (and ask for its renewal), discuss other shareholder resolutions not encompassed by the policy, and outline CRIC's position concerning a petition to the SEC concerning rulemaking on the disclosure of corporate political spending (and ask for the Trustees' support on the issue).

Proxy Voting Policy

In February 2012, the Investment Committee of the Board of Trustees granted CRIC permission to operate under a proxy voting policy for a one year trial basis. As mentioned above, the policy allows for CRIC to manage corporate resolutions in a more effective and comprehensive manner. The policy is stated as follows:

For all resolutions and issues that appear on a PROXY VOTING LIST approved by the Investment Committee, the College will vote YES, assuming that CRIC has done due diligence to determine that there are no extenuating circumstances.

The proxy voting list currently includes the following six resolution types, approved by the Board of Trustees:

1. Greenhouse Gas Emission Reduction Goals
2. Hydraulic Fracturing (Toxic Chemicals)
3. Executive Compensation (Say on Pay)
4. Political Contributions

-
5. Separate Chair and CEO
 6. Equal Employment Opportunity

By allowing CRIC to recommend votes on these resolutions to the Investment Office, the policy removes the repetitive process of having to regain approval on the same types of resolutions every year. This saves both the Board of Trustees and CRIC time. Furthermore, the policy allows Carleton to have representations on resolutions that arise between January and shareholder meetings in the spring. Carleton would not be able to vote on these resolutions without the pre-approval of the Board of Trustees under the policy.

Under the trial period, CRIC exercised the policy most heavily in March and April of 2012, casting an additional \$2.5 million worth of proxy votes due to the policy's coverage of the gap in timing. Details of the votes cast and results are contained in the following report. CRIC strongly believes that the proxy voting policy is necessary to ensure adequate shareholder participation on resolution types that have been approved as being in line with the College's core values and interests. Based on these grounds and the success of the policy during the one year trial period, CRIC recommends that the proxy policy be renewed beyond 2013.

2013 Resolutions Not Covered by Proxy Voting Policy

Several resolutions not covered by the proxy voting policy were filed by shareholders of companies in which Carleton is invested. CRIC is recommending that the Trustees vote "yes" on the following three resolutions:

1. Genetically Modified Organisms: Herbicide Resistant (Dow Chemical)
2. Electronics Recycling (Wal-Mart)
3. Payday Lending (Wells Fargo)

SEC Petition

CRIC intends to issue a public comment to the Securities and Exchange Commission in support of File 4-637, requesting the mandatory disclosure of corporate political spending to investors. While this is a new undertaking for the Committee, we believe that the information that would be provided is crucial for our ability to be responsible and engaged shareholders in today's world. This proposal is consistent with our stance on transparency and responsiveness, and it would mandate a clear and consistent

standard across all companies. We will ask the trustees to consider joining the committee in support of the petition.

Summary

Pursuant to our mandate, we present our efforts over the past year and our recommendations for 2013, after having conducted independent research and having followed the values of the Carleton community to the best of our ability. In the process of compiling this report, we based our recommendations on the responses we received on surveys done in the past and other information and insights gleaned through our various contacts with constituent groups.

In sum, CRIC is asking the Trustees to support each of the following requests:

1. A renewal of the proxy voting pre-approval policy.
2. “Yes” votes for the three resolutions (mentioned earlier in this letter and detailed later in the report) which are not categorized under the proxy voting policy.
3. The backing of the Trustees concerning CRIC’s support of the SEC petition.

We hope that the board accepts our recommendations and instructs the Fund Managers to vote in favor of the proxy ballots. Please let us know if you require any additional information. Thank you for your time and your consideration.

COMMITTEE MEMBERS

Bakhtawar Chaudhary (Co-Chair, Student)

Duncan Sallstrom (Co-Chair, Student)

Joel Weisberg (Co-Chair, Faculty)

Jason Decker (Faculty)

Danette DeMann (Staff)

Ellen Farnham ('13)

Fadi Hakim ('13)

Forrest McKnight ('13)

Claire Milsted ('14)

Melissa Thomas (Staff)

REPORT TO THE TRUSTEES

CARLETON RESPONSIBLE INVESTMENT COMMITTEE (CRIC)

February 7, 2013

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1 Report on 2012 Resolution Voting

At the February 2012 Board of Trustees Meeting, CRIC requested that the Board of Trustees Investment Committee authorize the Carleton Fund Managers to vote in favor of the following 18 shareholder resolutions affecting 13 companies. The Investment Committee granted the request. In the list below, each entry is accompanied by the results of the vote (if a vote took place), and any other information about the outcome of the resolution that CRIC has been able to gather.

1.1 Corporate Governance

(1) Lobbying Expenditures Disclosure

- (a) **3M:** 39.25% voted in favor. The lead filers did refile for the 2013 proxy and have been in an extensive dialogue with 3M, which has agreed to expand its disclosure as requested. Therefore, the filers will be withdrawing the resolution and it will not be in the proxy. (But apparently the resolution seeking an end to political spending has been filed again so the broader issue may well be on the proxy.)
- (b) **Altria Group:** 20.50% voted in favor. The lead filers had a conversation with Altria about the resolution but Altria failed to convince the filers that it was sufficiently transparent on the relevant matter. The filers have refiled this year because they are not convinced Altria is not lobbying in ways that are undermining public health.
- (c) **Coca-Cola Company:** Withdrawn. Company agreed to increased disclosure.
- (d) **Goldman Sachs:** 8.38% voted in favor.
- (e) **IBM:** 9.8% voted in favor.
- (f) **Johnson & Johnson:** Withdrawn. Company responded to each point in the filers' resolution, indicating what it will do in terms of expanding its disclosure.
- (g) **Union Pacific Corp.:** 35.47% voted in favor.
- (h) **United Health Group:** 20.90% voted in favor.

(2) Political Contributions — Trade Associations:

- **IBM:** Resolution withdrawn.

(3) Legislative Risks of Aggressive Tax Strategies

- **Amazon.com Inc.:** Resolution omitted. Ordinary business.

(4) **Offshore Banking Secrecy Risks:**

- **Goldman Sachs:** Resolution withdrawn.

1.2 Environmental and Sustainability Issues

(1) **Report on BPA Use**

- (a) **Coca-Cola Company:** Resolution omitted — 14a-8(i)(10) — substantially implemented.
- (b) **Safeway Inc.:** Resolution withdrawn. Company agreed to release a web statement addressing many of the issues the resolution asked for.

(2) **Adopt Greenhouse Gas Reduction Goals**

- **Exxon Mobil:** 27.09% voted in favor.

(3) **Hydraulic Fracturing — Community Impact**

- **Exxon Mobil:** 29.58% voted in favor.

1.3 Human Rights and Worker Rights

- **Exxon Mobil (Gender Identity Non-Discrimination):** 20.57% voted in favor.

2 Proxy Voting Policy

2.1 Explanation

One year ago, the Investment Committee of the Board of Trustees also granted CRIC the freedom to operate under a proxy voting pre-approval policy on a one-year trial basis. The policy has allowed the committee to be more effective in its handling of corporate resolutions. It is stated as follows:

For all resolutions and issues that appear on a PROXY VOTING LIST approved by the Investment Committee, the College will vote YES, assuming that CRIC has done due diligence to determine that there are no extenuating circumstances.

The proxy voting list looks to align Carleton's values with its investments, currently encompassing the following categories of resolutions:

PROXY VOTING LIST

1. **Greenhouse Gas Emission Reduction Goals:** Resolutions requiring disclosure of GHG emissions and on resolutions requiring reasonable action to reduce GHG emissions.
2. **Hydraulic Fracturing (Toxic Chemicals):** Resolutions requesting disclosure to stockholders of information about the risks and impacts of hydraulic fracturing and policy options for dealing with any potential risks and impact.
3. **Executive Compensation (Say on Pay):** Resolutions requesting an advisory vote on executive compensation.
4. **Political Contributions:** Resolutions requesting reporting on political contributions.
5. **Separate Chair & CEO:** Resolutions requesting that the Board adopt a policy requiring the Chair of the Board of Directors to be an independent member of the Board.
6. **Equal Employment Opportunity:** Resolutions requesting the adoption and reporting of anti-discriminatory policies based on race, gender, gender identity, sexual orientation, and national origin.

The policy allows CRIC to recommend votes on certain types of resolutions to the investment office with the expressed permission of the Board of Trustees. This removes the repetitive step of having to regain approval on the same types of resolutions every year, saving both CRIC and the Board of Trustees time. Furthermore, it allows Carleton to vote on policy-approved resolutions that arise between January and shareholder meetings occurring later in the spring. Carleton would not have been able to vote on these resolutions if not for the proxy voting policy.

2.2 2012 Results

In March and April of 2012, CRIC exercised the new policy, requesting that the Investment Office vote on a number of resolutions from categories 4 and 5 of the PROXY VOTING LIST. Here is a list of the resolutions, together with some information that CRIC has gathered concerning the outcome of the resolution.

(4) Political Contributions (Lobbying Expenditures Disclosure)

- (a) **Pepsico:** 7.2% voted in favor.

- (b) **FedEx:** Withdrawn due to anticipation that the SEC would agree with FedEx's arguments to have the resolution omitted and the company offered dialogue. However, this has not resulted in any changes to FedEx's lobbying transparency and the company's website does not state any of the discussion and clarification of priorities that filers have requested. Lead filers are still considering whether to go forward with another resolution for 2013.

(5) **Separate Chair and CEO**

- (a) **News Corp:** Result is unavailable at the moment; however, we are in contact with the lead filer (Julie Tanner, Christian Brothers Investment Services) in order to gain more information.
- (b) **Goldman Sachs:** Withdrawn due to the event of John Bryan, a former head of Sara Lee and an outside director at Goldman since 1999, being given the title of lead director.
- (c) **American Express:** 22.21% voted in favor.
- (d) **Johnson and Johnson:** 42.86% voted in favor.

2.3 Conclusion

CRIC strongly believes that the proxy voting policy is necessary to ensure that Carleton is adequately participating in the corporations it is invested in. In the 2012 proxy season, Carleton cast \$2.5 million worth of additional proxy votes due to the policy's coverage of the gap in timing. Previously, these would have been beyond reach purely due to structural issues, rather than any question as to their propriety.

Additionally, the proxy voting policy makes the process of shareholder participation less cumbersome for both CRIC and the investment committee. Coming to the investment committee for approval on the same types of resolutions year after year was redundant, and the additional preparation of those reports prevented CRIC from pursuing other avenues of positive shareholder engagement.

In brief, the new proxy voting policy allows the Responsible Investment Committee to be more effective in promoting stances that the College has already endorsed. Renewal would result in Carleton asserting its prerogatives as a shareholder more consistently, without affecting its judgment mechanisms or disposition on any given issue. On these grounds, CRIC recommends that the proxy policy be renewed beyond 2013.

3 2013 Proxy Resolution Voting Requests Not Covered by the Pre-approval Policy

CRIC requests that the Investment Committee of the Board of Trustees authorize votes in favor of the following three resolutions. While they do not fall under the categories authorized in the pre-approval policy of February 2012, we believe that a vote in favor of these resolutions would reflect Carleton values. In what follows, we present a summary of the three resolutions and CRIC's reasons for recommending a vote in support of them. (The full texts of the resolutions are reproduced in the Appendix.)

3.1 Genetically Modified Organisms: Herbicide Resistant

Dow Chemical Company

Carleton holds 18,390 shares worth \$594,530.31 as of 12/31/2012

Resolution Summary (See Appendix for full text)

Current agricultural industry practices on GMOs are driving an increase in the volume and toxicity of agricultural herbicide use in the United States, leading to increased environmental and human exposure. At the same time, Dow develops and markets both GMO seed and corresponding herbicides. CRIC evaluated this resolution in light of the college's stated positions on environmental sustainability and social justice, as well as the campus community's readily evident interest in agricultural issues.

This resolution calls for a report from DOW, to be published by November 2013, updating investors on risks involving the current company policy regarding GMO use. The report shall include systems of response that DOW has in place to remediate damage and protect assets in case of unforeseen consequences due to GMO marketing. Adrian Dominican Sisters filed a similar resolution in 2008, and company responses are likely to include two principal items: (1) Genetic modification is "strongly regulated" by governmental agencies; and (2) widespread use of modified seeds indicates that farmers view them as beneficial.

CRIC's Position

CRIC concludes that federal regulation is not sufficient to guarantee the safety of GM crop production at all stages. Introduction of herbicide-resistant GM-DNA has consistently driven herbicide use upwards over the last decade. The growth of herbicide-resistant "superweeds" resulting from these practices continues to propel demands for stronger and more varied herbicides. These chemicals persist in soil and water

runoff, especially problematic for Minnesota’s inordinately vulnerable watersheds. This trend is demonstrably unsafe, as the greater toxicity of herbicides enabled by resistant GMOs endangers end consumers and agricultural laborers alike. CRIC emphasizes that while there are no demonstrated health risks associated with the consumption of GM crops per se as of this writing, conclusions describing them as “safe” fail to account for the secondary impacts of the production process, including herbicide residue potentially reaching the point of consumption outside of laboratory settings.

Although GMO proponents, including Dow management, argue that genetic engineering can be used to improve crop yields and thereby reduce hunger, it instead appears that the role of heavy herbicide use is to temporarily reduce labor costs with minimal or slightly negative effects on productivity.

Finally, Carleton’s own stance on agricultural issues is unambiguous. Every level of the college community is heavily invested in the importance of responsible farming, as is apparent from broad and deep activism by student groups, the successful and popular college farm program, dining hall purchasing policies, and the Environmental Statement of Principles.

GMO development places Dow shareholders at risk along multiple avenues, including liability connected to the direct effects of their cultivation, the reputational risks of continued involvement in high-profile controversies, and the potential costs of changes in regulation resulting from either. We believe that the company should investigate the moral and economic issues relating to GMO production and marketing, and fully inform shareholders of possible negative outcomes of current business strategies.

For the aforementioned reasons, CRIC recommends that we vote in favor of DOW’s “Report on Adverse Impacts of GMOs (Herbicides)” shareholder proposal.

3.2 Electronics Recycling

Walmart Stores, Inc.

Carleton holds 17,600 shares worth \$1,200,848 as of 12/31/2012

Resolution Summary (See Appendix for full text)

Walmart has a zero-waste-to-landfill commitment for operational waste. However, there is no parallel commitment for keeping waste related to the company’s substantial sales of electronics out of landfills. Walmart does not provide recycling—either in its stores or nearby—for all the brands of electronics that they sell. (They do have e-recycling agreements with some of their electronics manufacturers.)

Despite four years of dialogue, the company has not substantially moved toward even limited testing of in-store take-back of e-waste. The resolution asks the Board

of Directors to prepare a report on the following policy options:

1. Providing for in-store or nearby take-back of electronics,
2. Promoting reuse of returned working equipment,
3. Preventing improper export of hazardous e-waste and untested or non-working equipment.

CRIC's Position

Walmart is the second largest U.S. retailer of consumer electronics and they should be more proactive in offering either in-store recycling or nearby certified take-back programs. Their competitor, Best Buy, kept 180 million pounds of electronics out of landfills in the last three years, and at least two of their other competitors also offer take-back programs.

When companies fail to provide regulated resources for electronics recycling, the electronics routinely end up in landfills or are exported to developing countries for recycling. In 2009, only 38% of computer, 18% of televisions, and 8% of mobile devices were collected for recycling. In 2010, more than 4.6 million tons of e-waste ended up in U.S. landfills. Electronic waste causes serious consequences to public health and to the environment, as electronics contain hazardous chemicals such as lead, mercury, cadmium, brominated flame retardants, and polyvinyl chloride. These toxins are released into the groundwater and atmosphere when improperly disposed of. Seventeen states have banned electronic waste from landfills and 25 states have passed e-waste recycling laws, 15 of which include disposal bans.¹

Even electronics that are sent to recycling centers may still be causing harm. In the 1990s, governments in the EU, Japan and some US states began exporting e-waste to developing countries where laws to protect workers and the environment are inadequate or not enforced.² The company needs to make sure that the proposed electronics recycling is adequately regulated and not harming workers or the environment.

This resolution is related to issues of demonstrated importance to the Carleton community. For example, Carleton's own Environmental Statement of Values emphasizes our efforts toward sustainability.

For the aforementioned reasons, CRIC recommends that we vote in favor of Walmart's "Electronics Recycling" shareholder proposal.

¹USA TODAY, <http://usatoday30.usatoday.com/tech/news/story/2011-12-18/electronics-recycling/52055158/1>.

²Greenpeace International, <http://www.greenpeace.org/international/en/campaigns/toxics/electronics/the-e-waste-problem/where-does-e-waste-end-up/?accept=4b39dfff0cc9a8cfd391bc645eafa7d3>

3.3 Payday Lending

Wells Fargo

Carleton holds 41,250 shares worth \$1,409,925 as of 12/31/2012

Resolution Summary (See Appendix for full text)

Wells Fargo offers payday loans as “Direct Deposit Advances,” which charge customers \$7.50 for each \$100 borrowed. Payday loans can be classified as a form of subprime lending with APR’s reaching as high as 365%.

The resolution mandates that Wells Fargo produce a report exploring the financial and social consequences of the program, especially as they pertain to vulnerable customers. The proposed report would included details such as: the frequency with which the program is used, the cost of having the program, the total revenues from the program, and the impact of overdraft and nonsufficient funds fees.

CRIC’s Position

There is good reason to believe that payday lending has a detrimental impact on the financial situations of low-income consumers. Carleton, as a shareholder in Wells Fargo—one of the biggest financial institutions in the country—has a duty to place pressure on it to carefully consider its lending practices and their effects on consumers, especially those who are financially vulnerable. The current Resolution asks that a report be prepared which addresses “the adequacy of the company’s policies in addressing the social and financial impacts of direct deposit advance lending”.

According to its vision statement³, Wells Fargo aims to satisfy its customers financial needs and “help them succeed financially” (p. 2). Short term, high cost payday loans, however, tend to create a debt trap for customers. These loans are automatically paid back with fees from the next direct deposit paycheck of the customer. However, many customers end up turning around and requesting a payday loan for the next month immediately upon paying back the present month’s loan. The Center for Responsible Lending’s study indicates that typical users of direct deposit advancing use it many times over the course of a year and indeed remain indebted by these loans for about 175 days out of the year.⁴ With the high relative cost of these loans, and their typical use, the tendency appears to be to amplify the consumer’s financial woes instead of assuaging them.

The CRL report on payday lending also suggests that there are potential regulatory and reputational risks as well. The FDIC has issued guidelines on payday

³“Wells Fargo Today,” *Quarterly Fact Sheet* (3rd Quarter, 2012).

⁴Borné, Frank, Smith, and Schloemer. “Big Bank Payday Loans: High-interest loans through checking accounts keep customers in long-term debt,” a report from the Center for Responsible Lending (July 2011).

lending which advise institutions to “ensure that payday loans are not provided to customers who had payday loans outstanding to any lender for a total of three months during the previous 12 months.”⁵ The guidelines go on to clarify that “when calculating the three-month period, institutions should consider the customers’ total use of payday loans at all lenders”. If the data from the Center for Responsible Lending’s study are a reliable indicator, users of direct deposit advancing are typically indebted for twice the recommended limit. It is thus in Wells Fargo’s interest, and in the interest of its shareholders, to take a close look at this practice to make sure that it is not likely to open Wells Fargo up to regulatory or reputational problems.

For the aforementioned reasons, CRIC recommends that we vote in favor of Wells Fargo’s “Payday Lending” Proposal.

4 CRIC’s Ongoing Engagement with Companies

CRIC has undertaken several activities (beyond recommending proxy votes) to engage in dialogue concerning socially responsible policies with companies in the Carleton portfolio. These include our presence at one company’s shareholder meeting, and our writing letters to, and speaking with, representatives of other companies. In total, we contacted 19 companies. We find the respectful exchange of views to be very useful.

4.1 Attendance at the 3M Shareholder meeting

On May 8th, 2012, members of CRIC attended 3M’s Annual General Meeting in Saint Paul to deliver a statement in support of the Lobbying Expenditures Disclosure resolution. While the management was reluctant to address the issues of transparency in lobbying expenditures that the proposal requested, a Star Tribune article on May 9th, 2012, mentioned Carleton College’s support for the proposal as part of a nation-wide movement against the decision of the Citizens United vs. FEC Supreme Court case.

4.2 Correspondence and follow-up communication with Companies Concerning Resolutions

After the 2012 proxy season, CRIC also sent letters to individual companies to affirm our support for all resolutions for which we had recommended an affirmative vote with the approval of the Investment Committee. As of January 21, 2013, we have had e-mail and telephone conversations with these three companies:

- 1. Union Pacific Corporation:** In response to CRIC’s letter that was sent on December 21, 2012, Union Pacific Corp. arranged a conference call with CRIC

⁵*FDIC Financial Institution Letters*, “Guidelines for Payday Lending”, FIL 14-2005, February 2005, available at <http://www.fdic.gov/news/news/financial/2005/fil1405a.html>.

on January 8th, 2013 to discuss our letter sent in support of the 2012 Lobbying Expenditures Disclosure proposal. Christine Neuharth (Senior General Attorney), Michelle Gerhardt (AVP — Investor Relations), and Jim Theisen (Associate General Counsel) explained the company’s updated political spending policy as well.

2. **PepsiCo:** In response to CRIC’s letter that was sent on December 21, 2012, Amy Cariello (Senior Counsel — Corporate Governance) discussed our letter sent in support of the 2012 Lobbying Expenditures Disclosure proposal.
3. **Johnson & Johnson:** In response to CRIC’s letter that was sent on December 21, 2012, Douglas Chia (Associate General Counsel — Corporate Governance) contacted us on January 9, 2013 to discuss our letter sent in support of the 2012 Lobbying Expenditures Disclosure proposal.

5 SEC Petition 4-637: Rulemaking on Disclosure of Corporate Political Spending

CRIC currently intends to issue a public comment (speaking for itself, and not for the College) to the Securities and Exchange Commission (SEC) in support of File 4-637,⁶ requesting the mandatory disclosure of corporate political spending by publicly traded companies. We would very much like for the Investment Committee to allow us to endorse the proposal on behalf of Carleton College as well.

In previous years, all of CRIC’s requests and suggestions to the Investment Committee have centered on proxy voting and other responsible action directly through correspondence with various companies in which Carleton has invested assets. While our plan to support File 4-637 is a new kind of undertaking for CRIC, we believe that the information that would be provided by corporate political spending disclosures is crucial for our ability to be responsible and engaged shareholders in today’s world. The proposal outlined in File 4-637 is consistent with our stance on transparency and responsiveness, and it would mandate a clear and consistent standard across all corporations.

5.1 Background

Since the Supreme Court Citizens United ruling in 2010, corporations have gained an unprecedented amount of influence over the way in which political campaigns and lobbying activities are conducted. However, most shareholders cannot directly influence corporate political spending priorities. Furthermore, contributions by smaller publicly traded companies are overshadowed by those by industrial giants, leaving

⁶See Appendix B for the full text of the petition.

Citizens United beneficial only to a very selective subgroup of investors. In response, a committee of ten academics, whose research specializes on corporate and securities law, filed Petition 4-637 at the SEC on August 3, 2011. If the SEC were to accept this petition requiring publicly traded corporations to disclose political contributions, investors would be fully informed about, and participate in, the process of deciding how company assets are spent in political processes.

5.2 CRIC's Position

CRIC believes that this petition is in line with the proxy voting pre-approval policy regarding political and lobbying expenditures that was provisionally approved by the Investment Committee in February 2012. This petition would also complement our current engagement with individual companies on this issue by pursuing a dialogue with relevant policy-makers.

5.3 Request to the Investment Committee

CRIC would like to request the IC's approval for the following action items regarding this petition:

1. Sending a formal letter to the SEC (before the SEC's formal consideration of this petition for rulemaking at the beginning of April) as a gesture of Carleton College's endorsement of the proposal .
2. Submitting the following comments to the SEC's website, indicating Carleton's support for the petition:

We, the Investment Committee and the Responsible Investment Committee of Carleton College, Northfield, MN, would like to express our institution's concern about the influence of corporate money on our electoral process.

In particular, we are concerned that, because of the Supreme Court's ruling in *Citizens United v. Federal Election Commission*, publicly traded corporations can spend money on political activity—and can do so in secret. We are writing to urge the Securities and Exchange Commission to issue a rule requiring publicly traded corporations to publicly disclose all of their political spending.

Both shareholders and the public should be fully informed as to how much each publicly traded corporation spends on political activities and which particular candidates are being promoted or undermined. Disclosures should be posted promptly to the SEC's web site. Thank you for considering our comments.

6 Conclusion and Summary of Requests

In the foregoing, CRIC has asked the Trustees to support each of the following requests:

1. A renewal of the current proxy voting pre-approval policy (see §2).
2. “Yes” votes for three resolutions not currently categorized under the proxy voting policy (see §3).
3. The backing of the Trustees concerning CRIC’s support of Petition 4-637 to the SEC (see §5).

We appreciate the Board of Trustees taking the time to consider these requests. We believe—and hope that the Board will agree—that these action items will lay the groundwork for another productive year for CRIC.

7 Appendix A: Full Texts of Proxy Resolutions

The following subsections contain the full texts of proxy resolutions not covered by the preapproved PROXY VOTING LIST (see §2.1).

7.1 Genetically Modified Organisms : Herbicide Resistant : 2013 — Dow Chemical Company

WHEREAS: Disclosure of material information is a fundamental principle of our capital markets. Investors, their confidence in corporate bookkeeping shaken, are starting to scrutinize other possible “off-balance sheet” liabilities, such as risks associated with activities harmful to human health and the environment that can impact long-term shareholder value.

SEC reporting requirements include disclosure of environmental liabilities and of trends and uncertainties that the company reasonably expects will have a material impact on revenues. Company directors and officers must proactively identify and assess trends or uncertainties that may adversely impact their revenues and disclose the information to shareholders. Public companies are now required to establish a system of controls and procedures designed to ensure that financial information required to be disclosed in SEC filings is recorded and reported in a timely manner.

RESOLVED: That shareholders request the board of directors to review and report to shareholders by November 2013 on the company’s internal controls related to potential adverse impacts associated with genetically engineered organisms, including:

- adequacy of current post-marketing monitoring systems;
- adequacy of plans for removing GE seed from the ecosystem should circumstances so require;
- possible impact on all Dow seed product integrity;
- effectiveness of established risk management processes for different environments and agricultural systems.

Supporting Statement: Indicators that genetically engineered organisms may be harmful to humans, animals, or the environment include:

- Analysis of pesticide use with GE Crops over 16 years indicates an increase of an estimated 183 million kgs (404 million pounds), or about 7%. *Environmental Sciences Europe*, September 28, 2012.
- 24 weeds are resistant to glyphosate, as reported in *Weed Science Society of America*, <http://www.weedscience.org/Summary/UspeciesMOA.asp?lstMOAID=12>.

- An analysis of current toxicity protocols, Debate on GMOs Health Risks after Statistical Findings in Regulatory Tests. *Int J Biol Sci* 2010; 6:590-598. <http://www.biolsci.org/v06p0590.htm> calls for longer, more detailed, and transparent toxicological tests on GMOs or GE-foods.
- The Australian GE Pea study, (*J. Agri. Food Chem* 2005 53, 9023-9030) concluded, “[T]ransgenic expression of non-native proteins in plants may lead to the synthesis of structural variants possessing altered immunogenicity.”
- Producers of GE-seeds are merely encouraged to have voluntary safety consultations with the FDA. The FDA does not issue assurances as to the safety of these products.

7.2 Electronics Recycling : 2013 — Walmart Stores, Inc.

WHEREAS Walmart is the second largest U.S. Retailer of consumer electronics, and such devices contain toxic materials such as lead, mercury, cadmium, brominated flame retardants, and polyvinyl chloride. Improper disposal of electronics can result in serious public health and environmental impacts.

Less than 20% of discarded electronics are collected for recycling, according to the U.S. Environmental Protection Agency. E-waste is the fastest growing and most hazardous component of the municipal waste stream, comprising more than 5%. The estimated collection rate for ewaste lags the U.S. recovery rate for all municipal waste of 34%.

Improper disposal of electronics can result in serious public health and environmental impacts. Analog TV sets and monitors with cathode ray tubes contain large amounts of lead, flat screen monitors contain mercury switches, and computer batteries contain cadmium, which can be harmful to human health if released to the environment.

The company has a zero waste to landfill commitment for operational waste. In Walmart’s 2012 Global Responsibility Report, the top environmental accomplishment cited was keeping 80% of waste generated by U.S. operations out of landfills. However, there is no parallel commitment for keeping waste related to the company’s substantial sales of electronics out of landfills.

While it is important to recycle paper and plastic packaging materials from company operations, it is even more important to develop practices which assure that toxic materials in end-of-life electronics are diverted into responsible recycling streams. Electronics contain valuable metals such as gold, copper and silver that can be profitably reclaimed. Better recycling and reclamation of metals could take pressure off of conflict mineral zones where mining takes place under inhumane and forced labor conditions.

Our competitor Best Buy takes back a wide variety of electronics for free and Staples and Office Depot also offer take back. Best Buy’s actions have kept 180 million pounds

of electronics out of landfills in the last three years. After four years of dialogue with proponents, the company has not acknowledged even undertaking a substantive pilot program to test in-store take back of ewaste. Proponents believe our company should develop an in-store take back program using stores or nearby locations convenient for customers.

Electronic goods collected for recycling in the U.S. are often shipped by recyclers to developing countries where they endanger human health and the environment. Reports by Basel Action Network have revealed appalling conditions in China and parts of Africa where migrant workers break apart and process old electronic equipment under primitive conditions. Electronics collected by our company should be recycled or refurbished by responsible electronics recyclers who are independently verified to meet a leading certification standard such as the e-Stewards standard.

RESOLVED that Walmart's board of directors prepare a report, at reasonable cost and excluding confidential information, on policy options to provide mechanisms for in-store or nearby take back of electronics, promote reuse of returned working equipment, and prevent improper export of hazardous e-waste and untested or non-working equipment.

7.3 Payday Lending : 2013 — Wells Fargo & Company

WHEREAS: Predatory loan products such as payday loans have received significant public criticism for their high interest rates and rates of repeat borrowing. Our company is currently extending high-cost direct deposit advances that resemble payday loans and could expose customers to a costly “debt trap.” We believe these advances present serious hazards to Wells Fargo most financially vulnerable customers and to the company itself.

Wells Fargo charges \$7.50 for each \$100 borrowed through direct deposit advance. Loans are repaid automatically, in full, out of the customer's next direct deposit. Research from the Center for Responsible Lending demonstrates that the typical user of this type of product pays 365%/270% APR on a 10 day loan and remains indebted for 175 days out of the year.

This lending may pose significant regulatory, legal, and reputational risks to Wells Fargo. Regulators have repeatedly warned banks to avoid making or facilitating payday loans that result in long-term debt. The FDIC has begun an inquiry into payday lending practices and the Consumer Financial Protection Bureau has begun examination of payday-type, short-term lending at both payday storefronts and banks. Wells Fargo is one of only four major banks exposed to these risks, as the majority of state and national banks do not offer this type of product line. In recent years, a host of predatory lending practices have cost households billions in fees and catalyzed instability in both the housing and financial markets. Payday lending can perpetuate this

instability, draining productive resources from the bank's own customer base and the economy as a whole.

Wells Fargo has disclosed information to its shareholders and on its website about this product but will not share the necessary information for shareholders to determine its suitability for vulnerable customers.

RESOLVED: Shareholders request the Board of Directors prepare a report discussing the adequacy of the company's policies in addressing the social and financial impacts of direct deposit advance lending described above. Such a report should be prepared at a reasonable cost, omitting proprietary information and not conceding or forfeiting any issue in litigation related to these products.

SUPPORTING STATEMENT: We believe responsible practices that are designed to strengthen rather than weaken customers' financial health are in the best interest of our company, its clients, the communities it operates in, and our economy.

The FDIC has stated that "providing high-cost, short-term credit on a recurring basis to customers with long-term credit needs is not responsible lending, increases institutions' credit, legal, reputational, and compliance risks; and can create a serious financial hardship for the customer."

We believe it would be helpful if the report includes information on the frequency with which the product is used, impact of the product on overdraft fees and nonsufficient funds fees, cost to the institution, and total revenues derived from these loans. We also believe the report should include metrics to determine whether loans extended are consistent with customers' ability to repay without repeat borrowing.

8 Appendix B: SEC Petition 4-637

COMMITTEE ON DISCLOSURE OF CORPORATE POLITICAL SPENDING PETITION FOR RULEMAKING

August 3, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549

Dear Ms. Murphy:

The Committee on Disclosure of Corporate Political Spending respectfully submits this petition for rulemaking under Section 14 of the Securities Exchange Act of 1934.¹ We ask that the Commission develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities.

Our Committee is composed of ten academics whose teaching and research focus on corporate and securities law:

- Lucian A. Bebchuk, William J. and Alicia Townsend Friedman Professor of Law, Economics and Finance at Harvard Law School;
- Bernard S. Black, Chabraja Professor, Northwestern University Law School and Kellogg School of Management;
- John C. Coffee, Jr., Adolf A. Berle Professor of Law at Columbia Law School;
- James D. Cox, Brainerd Currie Professor of Law at Duke Law School;
- Ronald J. Gilson, Charles J. Meyers Professor of Law and Business, Stanford Law School, and the Marc & Eva Stern Professor Law and Business, Columbia Law School;
- Jeffrey N. Gordon, Alfred W. Bressler Professor of Law at Columbia Law School;
- Henry Hansmann, Oscar E. Ruebhausen Professor of Law at Yale Law School;
- Robert J. Jackson, Jr., Associate Professor of Law at Columbia Law School;
- Donald C. Langevoort, Thomas Aquinas Reynolds Professor of Law at Georgetown Law School; and
- Hillary Sale, Walter D. Coles Professor of Law and Professor of Management, Washington University in St. Louis School of Law.

We act in our individual capacities; our institutional affiliations are noted for identification purposes only.

We differ in our views on the extent to which corporate political spending is beneficial for, or detrimental to, shareholder interests. We all share, however, the view that information about corporate spending on politics is important to shareholders—and that the Commission's rules should require this information to be disclosed. Our petition proceeds as follows:

¹ SECURITIES AND EXCHANGE COMMISSION, RULES OF PRACTICE AND RULES ON FAIR FUND AND DISGORGEMENT PLANS, Rule 192(a).

- First, we explain that the Commission’s disclosure rules have evolved over time in response to changes in investor interests and needs.
- Second, we present data indicating that public investors have become increasingly interested in receiving information about corporate political spending.
- Third, we explain that, in response to increased investor interest, a large number of public companies have voluntarily adopted policies requiring disclosure of the company’s spending on politics, and the disclosure practices of these companies can provide a useful starting point for the Commission’s design of disclosure rules in this area.
- Fourth, we explain that disclosure of information on corporate political spending is important for the operation of corporate accountability mechanisms, including those that the courts have relied upon in their analysis of corporate political speech.
- Fifth, we explain that the design of disclosure rules concerning political spending should draw on the Commission’s expertise and experience in designing disclosure rules in other areas, and we offer preliminary comments about the design of rules in this area.

We conclude that the Commission should promptly initiate a rulemaking project to require disclosure of corporate political spending to public-company shareholders.

The Evolving Nature of Disclosure Requirements

The Commission has clear and longstanding authority to determine what information public companies must disclose to their shareholders.² Although the Securities Exchange Act of 1934 originally specified only a few matters required to be disclosed, Congress, noting that corporate “practices constantly vary,” “opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable.”³ Thus, over time, the Commission has developed an elaborate body of disclosure rules that provide public-company shareholders with detailed information on the companies in which they invest.

The Commission’s development of this framework has been dynamic in nature. Over time, the Commission’s disclosure rules have changed in response to increased investor interest in receiving particular types of information about the companies they invest in, changes in disclosure practices, or external events that increase the importance of certain types of information for shareholders.

Shareholder interest in particular corporate information has often prompted the Commission to consider whether additional disclosure is needed. For example, in 1992 the Commission considered whether its rules requiring disclosure on executive pay, which had been promulgated nine years earlier, should be revised to require more detailed quantitative information. The Commission noted that investors had expressed considerable interest in

² See, e.g., Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a) (prohibiting the solicitation of proxies “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”).

³ *Natural Resources Defense Council, Inc. v. SEC*, 606 F.2d 1031, 1045 (D.C. Cir. 1979) (quoting H.R. Rep. No. 1383, 73d Cong., 2d Sess. 6-7 (1934)); see also *id.* at 1051 (“The Commission is given complete discretion . . . to require in corporate reports only such information as it deems necessary or appropriate in the public interest or to protect investors.”).

executive compensation: The preamble to its proposed rules cited shareholder proposals on executive pay at nine large, well-known public companies.⁴

Similarly, in 1975, while considering a proposal to require disclosure related to social-policy matters, the Commission carefully evaluated investor interest in that information. Eventually concluding that no special rules were required in this area, the Commission expressly noted that “corporations have apparently not received a significant number of social inquiries from their shareholders,” and that shareholder proposals on the issue were rare and received little support.⁵

More recently, the Commission considered whether to revise its rules to require disclosure on director oversight of risk taking. Here, too, the Commission concluded that increased investor interest in the issue—which had not previously been the subject of a disclosure rule—suggested that new disclosure rules were desirable. Noting that the financial crisis had caused “investors [to] increasingly . . . express[] the desire for additional information that would enhance their ability to make informed voting and investment decisions,” the Commission issued new rules requiring extensive new disclosure on this issue.⁶

In addition to investor interest, changes in the Commission’s disclosure rules have also been motivated by external events that rendered particular information about public companies more important for investors. Recently, for example, in connection with new rules requiring disclosure on director oversight of risk taking, the Commission concluded that “recent market events ha[d] demonstrated” that “the capacity to assess risk and respond to complex financial and operational challenges can be important attributes” for directors.⁷

Thus, the Commission’s disclosure rules have evolved over time in response both to investors’ changing interests and to external events that render particular information important for investors. As we explain below, both investor interest and external events related to corporate spending on politics indicate that information on such spending is increasingly important for shareholders.

Increasing Investor Interest in Corporate Political Spending

Investors have increasingly expressed significant interest in obtaining information on corporate spending on political activity. Investor polls, shareholder proposals, and the policy statements of the largest institutional investors all make clear that investors are increasingly interested in corporate spending on politics.

⁴ See Executive Compensation Disclosure, Exch. Act Release No. 33-6940, 57 Fed. Reg. 29,582 (1992).

⁵ See Environmental and Social Disclosure, Exch. Act Release No. 33-5627, 40 Fed. Reg. 51,656, 51,664 (1975).

⁶ Proxy Disclosure Enhancements, Exch. Act Release No. 33-9089, 74 Fed. Reg. 68,334 (2009).

⁷ Proxy Disclosure and Solicitation Enhancements, Release No. 33-9052, 74 Fed. Reg. 35,076, 35,082 (2009); see also *id.* 35,085 (noting that, “[g]iven the role that risk and the adequacy of risk oversight . . . played in the recent market crisis,” new disclosure rules were needed).

As early as 2006, polls indicated that 85% of shareholders held the view that there is a lack of transparency surrounding corporate political activity.⁸ According to these polls, “[i]ntensity among shareholder opinion was pronounced,” with 57% of shareholders “strongly agreeing” that there is too little transparency with respect to corporate spending on politics.

This substantial level of shareholder attention is also reflected in significant numbers of shareholder proposals requesting disclosure of corporate political spending. As the Commission has previously recognized, shareholder proposals can serve as a good indicator of the level of investor interest in particular corporate decisions. Shareholder proposals reflect, of course, the proponent’s interest in the subject matter; and, because proponents are more likely to focus their limited resources on proposals that have better prospects of attracting significant support, data about shareholder proposals indicate the types of proposals likely to attract support.

The evidence shows that shareholders have brought proposals requesting further disclosure of corporate political spending at a substantial number of public companies in recent years. According to the Sharkrepellent dataset of FactSet Research Systems, during the 2011 proxy season, out of the 465 shareholder proposals appearing on public-company proxy statements, 50 proposals were related to political spending, and more proposals of this type were included in proxy statements than any other type of proposal.⁹

By comparison, other types of shareholder proposals, including proposals related to issues that have long attracted significant interest from investors, appeared less frequently on public-company proxy statements. The number of proposals concerning political spending (50) exceeded the number of proposals related to board declassification (45), majority voting (39), the separation of the Chairman and CEO positions (23), the elimination of supermajority voting requirements (18), executives’ golden parachutes (7), clawback of incentive compensation (3), and requirements that executives retain equity in the company (7).¹⁰

⁸ MASON-DIXON POLLING & RESEARCH, CORPORATE POLITICAL SPENDING: A SURVEY OF AMERICAN SHAREHOLDERS 6 (2006).

⁹ Based on a July 25, 2011 search of the SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, available at <http://sharkrepellent.net>; see also SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROPOSAL TYPES (proposals related to “political issues” include “[s]hareholder sponsored proposals to request that the board provide a report detailing the company’s policies regarding political contributions.”).

¹⁰ The Sharkrepellent dataset includes a broad universe of shareholder proposals, including some proposals by individuals that may not reflect institutional shareholder preferences. SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, *supra* note 9. However, an analysis of the Sharkrepellent dataset focused only on proposals submitted by institutional investors also finds that proposals related to corporate political spending appeared on proxy statements more frequently than any other type of proposal. The percentage of proposals related to political issues that come from institutions (76%) is greater than the percentage of all proposals that come from institutions overall (55%). (Where Sharkrepellent does not have data on the nature of the proponent of a proposal, we assume that the proposal was not brought by an institution.) Among only those proposals brought by institutional shareholders, the number of proposals related to political issues (38) exceeded the number of proposals related to board declassification (23), majority voting (31), the separation of the Chairman and CEO positions (18), the elimination of supermajority voting requirements (1), executives’ golden parachutes (7), clawback of incentive compensation (1), and requirements that executives retain equity in the company (3).

Moreover, an analysis of the Institutional Shareholder Services dataset, which emphasizes proposals most relevant for large institutional investors, also found that proposals related to corporate political speech. According to that dataset, among the 419 proposals included on proxy statements in 2011, 50 were related to corporate

To illustrate the frequency of shareholder proposals seeking additional disclosure of political spending in large public companies, the following analysis, limited to S&P 100 companies, may be useful. During the 2011 proxy season, 25 companies in the S&P 100 included such a proposal on the proxy statement—indicating that proxies at one out of four of America’s largest corporations included proposals requesting disclosure of corporate spending on politics.¹¹ The level of shareholder interest in this area has been quite high, not just during the most recent proxy season but throughout the past five years. During this period, 105 companies that were in the S&P 100 received one or more shareholder proposals requesting disclosure of the company’s spending on politics and held votes on such proposals at an annual meeting.¹²

Furthermore, the figures above actually underestimate investor interest in, and demand for, information on political spending. As described below, a large number of public companies have already voluntarily changed their disclosure practices to provide this information to shareholders. In the most recent proxy season, focusing solely on companies currently in the S&P 100 that have not already agreed to disclose information about political spending, 50% of these firms included shareholder proposals on political issues. Thus, half of the S&P 100 companies that have not yet voluntarily agreed to provide this information to investors held a vote on a proposal related to these issues in 2011.

As discussed in the preceding section, the Commission has previously taken note of the frequency and support given to shareholder proposals in connection with considering changes to its disclosure rules. For example, when considering revisions to the disclosure requirements related to executive pay in 1992, the Commission noted that 9 large public companies had held a vote on such proposals, signaling increased investor interest in executive compensation.¹³ By comparison, during the 2011 proxy season 25 companies in the S&P 100, as well as another 19 public companies outside the S&P 100, held a vote on one or more proposals requesting further disclosure on corporate political spending. Thus, the total number of firms holding votes on such proposals is more than four times the number of proposals that moved the Commission to revise the executive-pay disclosure rules in 1992.¹⁴ It is also worth noting that shareholder support for proposals requesting disclosure on corporate political spending is currently far higher than the average support for proposals related to executive pay that motivated the Commission to expand compensation disclosure requirements in 1992.¹⁵

spending on politics, more than any other type of proposal in the database. See Email from Erik Mell, Institutional Shareholder Services, to Robert J. Jackson, Jr. (July 27, 2011).

¹¹ As previously noted, the Sharkrepellent dataset includes proposals from both institutional investors and individuals. Among the 25 companies in the S&P 100 to include proposals relating to political issues, 20 received at least one proposal from an institutional investor; five companies received only proposals from individuals.

¹² SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, *supra* note 9. Of course, this group of firms includes more than 100 companies, because the constituent firms in the S&P 100 changed during this period. However, a substantial proportion of the firms in this group received, and held votes on, shareholder proposals requesting disclosure of corporate spending on politics.

¹³ See Executive Compensation Disclosure, *supra* note 4, 57 Fed. Reg. 29,582, 29,582 & n.8.

¹⁴ This difference is even more striking in light of the fact that, at the time of the 2011 proxy season, more than half of the S&P 100 firms had already agreed to provide disclosure of corporate political spending voluntarily. By contrast, in 1992 very few firms were providing voluntary disclosure of executive compensation.

¹⁵ The proposals noted by the Commission when the executive-pay rules were modified had the support of 11.2% of shareholders casting votes for and against. By contrast, during the 2011 proxy season proposals requesting disclosure on corporate political spending enjoyed, on average, 32.5% support.

The strong interest among shareholders in corporate spending on politics has also been expressed in public statements by institutional investors. For example, TIAA-CREF, which has over \$450 billion in assets under management, has said that “[c]ompanies involved in political activities should disclose . . . contributions as well as the board and management oversight procedures designed to ensure that political expenditures are . . . in the best interests of shareholders.”¹⁶ And the Council of Institutional Investors has similarly said that public companies should “disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made” from the company’s treasury.¹⁷

Evolving Disclosure Practices in Response to Investor Interest

As Congress anticipated when it first enacted the Securities Exchange Act in 1934, corporate practices with respect to disclosure vary considerably over time. With respect to corporate spending on politics, public companies’ disclosure practices have recently been evolving in ways that reflect the growing demand for transparency in this area—and indicate that such disclosure is practically feasible for public companies.

Since 2004, responding to shareholder demand for information about political spending, large public companies have increasingly agreed voluntarily to adopt policies requiring disclosure of the company’s spending on politics. Figure I below describes the growth over time of the total number of firms in the S&P 100 that have voluntarily adopted such policies:¹⁸

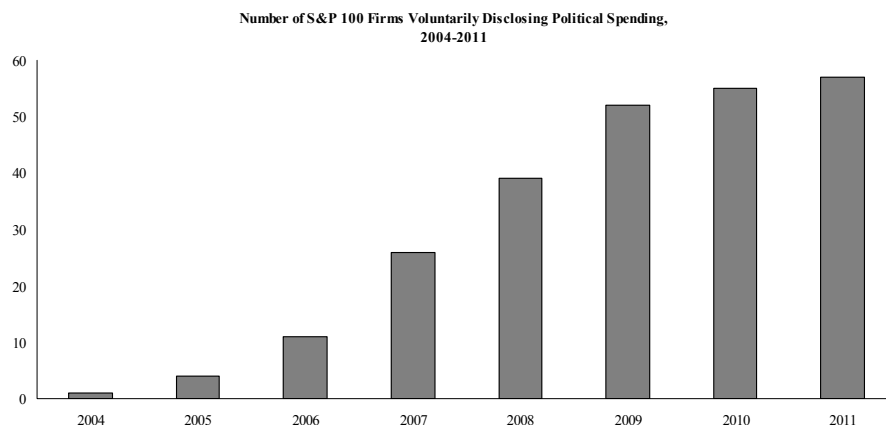


Figure I. Total S&P 100 Firms Voluntarily Disclosing Political Spending

¹⁶ TIAA-CREF POLICY STATEMENT ON CORPORATE GOVERNANCE 16 (6th ed. 2011); *see also id.* (“corporate political spending may benefit political insiders at the expense of shareholder interests”).

¹⁷ COUNCIL OF INSTITUTIONAL INVESTORS, CORPORATE GOVERNANCE POLICIES 7 § 2.14b (2011).

¹⁸ *See* CENTER FOR POLITICAL ACCOUNTABILITY, LEADERS IN POLITICAL DISCLOSURE, *available at* <http://www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869> (last accessed July 25, 2011).

As Figure I indicates, the fraction of S&P 100 companies that have adopted such policies has increased from a trivial level in 2004 to close to 60% by 2011. The evidence that many public companies have, in response to shareholder interest, voluntarily agreed to give investors information on corporate political spending is important for several reasons. First, the evidence illustrates that increased disclosure in this area is feasible and practical for large public companies. Second, the data provide a rich set of disclosure practices that a significant number of issuers have been comfortable using, and that may thus serve as a starting point for the Commission in designing disclosure rules in this area.¹⁹ Finally, the widespread adoption among S&P 100 firms of policies requiring some disclosure of political spending reflects companies' recognition of the strong investor interest in such information, discussed in the previous section, and the strong case, discussed in the next section, for giving shareholders this information.

The Importance of Disclosure to Investor Monitoring and Corporate Accountability Mechanisms

Disclosure of corporate political spending is necessary not only because shareholders are interested in receiving such information, but also because such information is necessary for corporate accountability and oversight mechanisms to work.²⁰ The Supreme Court has often recognized, and indeed relied upon, these accountability mechanisms, particularly when corporations use shareholder resources for political purposes. In particular, in its recent decision in *Citizens United v. FEC*,²¹ the Court relied upon “[s]hareholder objections raised through the procedures of corporate democracy” as a means through which investors could monitor the use of corporate resources on political activities. “Shareholders,” the Court hoped, could “determine whether their corporation’s political speech advances the corporation’s interest in making profits,” and discipline directors and executives who use corporate resources for speech that is inconsistent with shareholder interests.²²

For this mechanism to work, however, shareholders must have information about the company’s political speech; otherwise, shareholders are unable to know whether such speech “advances the corporation’s interest in making profits.” Because the Commission’s current rules do not require public companies to give shareholders detailed information on corporate spending

¹⁹ We note, however, that the type of disclosure provided by these firms varies substantially—as the Commission’s staff recently noted in an important decision strengthening shareholders’ ability to seek disclosure on political spending. In that case, *see* The Home Depot, Inc., SEC No-Action Letter, 2011 SEC No-Act. LEXIS 333, at *1 (Mar. 25, 2011), a Home Depot shareholder filed a proposal requesting, among other things, that the company provide more complete disclosure of its political spending. Home Depot responded that its existing policies on disclosure in this area “compare favorably” with those in the proposal, and that the proposal could thus be excluded from Home Depot’s proxy. The Staff disagreed, and Home Depot included the shareholder proposal in its 2011 proxy statement. *See id.*

²⁰ For detailed analysis of the importance of disclosure in this area for the functioning of corporate accountability mechanisms, *see* Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV 83, 97 (2010).

²¹ 130 S. Ct. 876 (2010).

²² *Id.* at 916. The Court has often relied upon these mechanisms in its First Amendment analysis. *See, e.g.*, *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 794-95 (1978) (“Ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues.”).

on politics, shareholders cannot play the role the Court described.²³ 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.

Members of our group differ in their views on the extent to which, even with perfect information, the existing procedures of corporate democracy will ensure that corporate political activity is aligned with shareholder interests. We unanimously agree, however, that these mechanisms cannot work without strong disclosure rules providing investors the information they need to assess and respond to corporate political spending. Thus, rulemaking is needed in order for the governance mechanisms the Supreme Court has relied upon to work effectively.

It might be argued that, because some information on corporate spending on politics is already required to be publicly disclosed under federal, state and local election laws, shareholders can readily obtain this information even in the absence of rulemaking by the Commission. However, this argument is incorrect for two reasons. First, the information that is publicly available on corporate political spending is scattered among several federal, state and local government agencies, presented in widely varying formats, and is ill-suited to giving shareholders a good picture of a particular corporation's political spending. Putting together all the information available from different public sources on a given company's political spending is a demanding task. Public-company investors should not have to bear the costs of assembling this information from these sources when the corporation, which already has the information, can easily provide it to shareholders. The corporation, rather than individual investors, is in the best position to assemble this information in an efficient manner.

Second, and importantly, a substantial amount of the public-company resources spent on politics are currently not disclosed in any public filing and thus would be hidden even from someone who invested significant effort in trying to put together all the publicly available information about a company's public spending. For example, a substantial amount of corporate spending on politics is conducted through intermediaries not required to disclose the sources of their contributions to the public.

To illustrate, five large intermediaries that likely receive substantial sums from public companies whose identities are not publicly known spent more than \$130 million on lobbying and politics during the 2008 election cycle alone.²⁴ Even a determined individual shareholder willing to collect all available public information on a public company's spending on politics would be unable to measure any spending through these intermediaries. Thus, in order to make use of the procedures of corporate democracy that the Court relied upon in *Citizens United*, shareholders will need more information than is currently publicly available.

²³ As one of us explained in testimony before the House of Representatives, "shareholders of public companies lack an effective means by which to control managerial behavior" with respect to the spending of corporate resources on politics, because they do not "receive adequate information (without which they have little incentive to take action)." *Corporate Governance After Citizens United: Hearing Before the Subcomm. on Capital Markets, Ins., & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 111th Cong. 10 (2010) (testimony of John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia Law School).

²⁴ See Bebchuk & Jackson, *supra* note 20, at 93-94 & tbl.

It might be argued that this information is not sufficiently important to shareholders to be relevant to shareholders' use of the procedures of corporate democracy. As explained above, however, investor interest in corporate political spending has been significant for some time—even before the Court's recent decision in *Citizens United*. It is worth noting, moreover, that—putting aside the level of investor interest in corporate spending on politics—the significance of the subject has objectively increased as a result of *Citizens United*. In *Citizens United*, the Supreme Court concluded that federal restrictions on corporate independent spending in support or opposition of political candidates are unconstitutional. These rules, and similar laws in two dozen states, previously restricted the scope of corporate resources that could be spent on political activities. *Citizens United*, however, removes these restrictions. Thus, we can expect that corporate spending on politics will continue to be of significance to investors in the future.²⁵

Finally, in light of the Supreme Court's recent decision in *Citizens United*, it might be argued that the Commission, and even the Congress, is precluded by the First Amendment from adopting rules requiring disclosure of this information. The Constitution, however, leaves ample room for effective disclosure rules in this area.²⁶ The Court in *Citizens United* upheld the disclosure rules challenged in that case by an 8-1 vote.²⁷ The Court has long given the Commission considerable deference in the development of rules designed to give investors information necessary to facilitate the functioning of securities markets.²⁸ The *Citizens United* Court noted that “prompt disclosure of expenditures can provide shareholders . . . with the information needed to hold corporations . . . accountable” for political spending, ensuring that the corporation's First Amendment rights are exercised in accordance with the wishes of its owners. We recommend that the Commission develop rules that would provide such disclosure.

The Design of Disclosure Requirements

For the reasons given above, it would be beneficial for investors to receive information on public companies' use of shareholder resources on politics. Some might argue, however, that designing rules in this area would be especially complex. But, as we explain below, the design of disclosure rules in this area would involve similar choices, and confront similar design issues, as those presented by the disclosure rules the Commission has previously developed. Thus, the Commission has significant experience and expertise in designing rules of this kind. Below we identify some of the design questions the Commission will face during the rulemaking process. As we explain, the Commission has ample experience and expertise to guide these choices.

²⁵ This will be particularly true if the holding of *Citizens United* is extended to laws that prohibit companies from making *direct* contributions to political candidates, see 2 U.S.C. § 441b. One court has already concluded that *Citizens United* requires the invalidation of these laws. *United States v. Danielczyk*, 2011 U.S. Dist. LEXIS 57158 (E.D. Va., May 26, 2011).

²⁶ See Bebchuk & Jackson, *supra* note 20, at 107-11.

²⁷ We note that the Court's more recent decision in *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011), might raise similar concerns. The *Sorrell* Court, however, considered a statute that prohibited the dissemination of certain commercial information subject to content-based exceptions. See *id.*, 180 L. Ed. 2d at 554-55. The Court did not suggest that its holding implicated its longstanding approach to rules requiring disclosure of certain information to securities investors. See, e.g., Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1779-80 (2004).

²⁸ See Schauer, *supra* note 27, at 1780.

First, we expect that the Commission will be required to determine whether certain *de minimis* corporate spending on political activity should be exempt from disclosure. We encourage the Commission to adopt such a *de minimis* exception. We note, however, that the symbolic significance of corporate spending on politics suggests setting an appropriately low threshold. The Commission's existing rules, such as its rules concerning disclosure of compensation and of related-party transactions, may offer a sound starting point for the development of such an exception.

Second, the Commission will likely be required to determine how often public companies should be required to disclose corporate spending on politics to shareholders. Highly frequent reporting would be disruptive and costly for many companies, and the Commission should, where possible, use existing disclosure mechanisms to minimize the costs of the rule. Thus, although the exact design of the proposed rules is beyond the scope of this petition, we encourage the Commission to use the existing proxy-disclosure regime as the method for providing investors with this information.

Third, we expect that the Commission will determine the types of political spending subject to disclosure. In particular, the Commission may consider whether contributions that are restricted from political use will be subject to these rules. On the other hand, there are cases, such as corporate contributions to intermediaries that spend a large fraction of their funds on politics, for which inclusion within the scope of the Commission's rules seems warranted.²⁹ To address less obvious cases, the Commission may wish to adopt criteria for determining the types of spending subject to disclosure. Overall, the Commission should delineate the scope of the expenditures subject to disclosure to address potential problems of over- or under-inclusion.

* * * *

Shareholders in public companies have increasingly expressed strong interest in receiving information about corporate spending on politics, and such spending is likely to become even more important to public investors in the future. Furthermore, shareholders need to receive such information for markets and the procedures of corporate democracy to ensure that such spending is in shareholders' interest. Still, while many large public companies have begun to provide such information, no existing rule requires disclosure of this information to investors, and corporate political spending remains opaque to investors in most publicly traded companies. The Commission should address this lack of transparency and, drawing on its expertise and experience in designing rules for disclosure of other information that is of interest to investors, should adopt rules concerning disclosure of corporate political spending.

For these reasons, we urge the Commission promptly to initiate a rulemaking project to develop such rules. If the Commission or the Staff have any questions, or if we can be of assistance in any way, please contact our Committee's co-chairs: Lucian Bebchuk can be reached at (617) 495-3138 or via electronic mail at bebchuk@law.harvard.edu, and Robert Jackson can be reached at (212) 854-0409 or via electronic mail at robert.jackson@law.columbia.edu.

²⁹ For example, the United States Chamber of Commerce, which lists several large public companies as among its members, spent 42.8% of the funds it raised in 2008 on lobbying and politics. *See* Bebchuk & Jackson, *supra* note 20, at 94.

Sincerely,

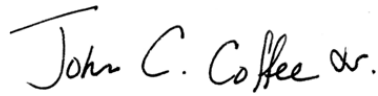
THE COMMITTEE ON DISCLOSURE OF CORPORATE POLITICAL SPENDING



Lucian A. Bebhuk, Co-Chair



Bernard S. Black



John C. Coffee, Jr.



James D. Cox



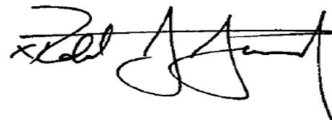
Jeffrey N. Gordon



Ronald J. Gilson



Henry Hansmann



Robert J. Jackson, Jr., Co-Chair



Donald C. Langevoort



Hillary A. Sale

cc: Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Meredith Cross, Director, Division of Corporation Finance
Thomas J. Kim, Chief Counsel and Associate Director, Division of Corporation Finance