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Notes: Investor Roundtable on Corporate Political Spending Disclosure

Hosted by the Shareholder Association for Research & Education and OPSEU Pension Trust
October 8, 2015, Toronto

The Canadian Roundtable on Corporate Political Spending Disclosure was held at the offices of OPTrust in Toronto on October 8, 2015. There were 24 participants representing a range of institutional investors and asset managers as well as issuers. The roundtable featured presentations from:

- Timothy Smith, Senior Vice President, Walden Asset Management
- Kevin Thomas, Director of Shareholder Engagement, SHARE
- Julia McLeod, Manager, Investor Relations, RBC
- Yulia Sofronova, Networks & Global Outreach Manager, Principles for Responsible Investment
- Dan Bross, Senior Director of Corporate Citizenship, Microsoft

These notes include highlights of the discussion, organized around the issue headings originally presented in SHARE's discussion paper, "Dollars, Democracy and Disclosure".[1] They also include contributions from SHARE's online survey regarding the same questions.[2]

The discussion points are not attributed and the participants are not assumed to universally endorse any particular point of view represented here. These notes were prepared by SHARE.

[1] Available at: http://share.ca/files/Dollars_Democracy_Disclosure-SHARE.pdf
[2] SHARE's online survey asked questions related to its earlier discussion paper. Due to the number and variety of respondents, we do not consider the numerical results to be a statistically significant representation of the views of particular constituents (e.g. asset owners, asset managers, issuers). However, as part of the survey we solicited commentaries, some of which are included here.

Discussion:

A. Management of political spending: what are best practices? What should be disclosed about the board's oversight?

What should be addressed in a corporate policy on political spending?

- Participants noted that one policy option is to ban political contributions altogether. Some companies have made thoughtful decisions not to make political contributions at all, e.g. **IBM, Proctor & Gamble, JP Morgan Chase, Goldman Sachs**. That does not mean that their US Political Action Committees (PACs) aren't giving money, but rather that it is not shareholder money.
- Other companies are carrying out political spending, but have set out criteria and explained the business case for their spending. It is important for the Board and shareholders to know the logic behind spending decisions.
- Shareholders do not want the CEO using shareholder money as a slush fund for his/her political preference. For example, **Devon Energy**'s CEO gave US$250,000 to Scott Walker's gubernatorial campaign in Wisconsin, where the company has no operations; the business case for that decision was not clear to shareholders.
- The Board should ask itself questions for evaluating spending: "Does this match with our agenda?" "Is this a good use of money?" "Does this align with the interests of our shareholders?"
- The policy should be consistent and state clear global objectives for the company's political activity. There is a need for a long-term perspective, a long term view of what's good for the company. Respondents commented that the policy should articulate how action supports the company's vision, mission, mandate & values.
- Respondents to SHARE's online survey almost unanimously agreed that policies should set out who, within the organization, is responsible for decisions, the reasons the organization undertakes political spending, and criteria for political spending decisions.
- Disclosure/oversight is relevant across the board, but there may be a need for some sectors/industries to focus more on certain issues of concern, e.g. in relation to climate.
- A policy should be revised on an annual basis, as is the case with codes of conduct.

What should a policy say about membership in trade associations or other third party organizations?

- The question that should guide Boards is, "Are we getting what we want re: trade associations?"
- Shareholders should ask Boards, "do you review the policies and practices of the trade associations you belong to?" "How often?" Companies don't necessarily have to track everything a trade association does, but they should know the policies and practices that are relevant to their company/sector.
- Climate change issues are very important to investors, so there is a strong need to know what positions trade associations are taking in this area.

- The Board may well decide to remain as members of trade associations with which it disagrees on a given issue. **Pfizer In**c., for example, has outlined eight points regarding the value of its membership in the **American Legislative Exchange Council** (ALEC); hence, it is going to remain as a member despite having different views on climate issues. Some shareholders may not agree, but at least the company's logic is known.

Who should be responsible for overseeing and/or signing off on political spending?

- Given the reputational risk involved, there should be some oversight at the Board level.
- The Board or a committee of the board should at least be aware, though may not necessarily approve each expenditure. Oversight, but perhaps not control. Overseeing risk requires processes/policies in place that management follows. Boards should oversee this.
- Should Boards also oversee **charitable contributions**? Charitable contributions/donations are often considered a component of public relations. Companies are proud of charitable giving and often want to disclose such contributions; it can be part of the process of building a brand. Yet a Board would not generally authorize the amount to be spent on advertising.
- On the other hand, think tanks may be charitable but policy-oriented (e.g. **Fraser Institute**) and there can be political risks associated with that funding.
- Maybe management should administer the policy, but the criteria should be established by the Board.

Should there be a shareholder vote to approve political spending, and if so should it be binding or advisory in nature?

- In the UK, there is a regulatory requirement for binding shareholder votes on amounts allocated for political spending. This is the only jurisdiction where holding these votes is a legal requirement. However the experience in the UK is that companies get approval just to cover any eventuality, but do not spend the amounts approved. One respondent noted that it seems to have turned into a bit of a compliance exercise in the UK and hence does not seem meaningful.
- Getting disclosure on the regulatory agenda is hard. The **Ontario Securities Commission** (OSC) has enough to do, so it's not on their radar. One respondent noted that while it may be beyond the capacity of securities regulators, they should at least be asked to improve reporting standards of public companies. Another did not appear to favour a regulatory approach: "... because 'regulate everything' has worked *so well* every time it's been attempted." One said that securities commissions are not the appropriate regulator for corporate disclosure, favouring federal regulation under corporate law statutes: "Canadian securities regulators, other than the Ontario Securities Commission, generally lack the legal sophistication and human resources capacity required to enforce existing disclosure obligations. In addition, material risk information should be disclosed uniformly across all provinces and territories, not in an ad-hoc fashion."
- In the USA, the issue of political spending disclosure accounts for the greatest number of shareholder proposals/motions filed each year. An increase in proposals is often the lead up to regulation, i.e. regulators pay attention to the investor interest as demonstrated by proposals and votes.

B. Practice of political spending: what types of data should be disclosed? Is there a threshold for disclosure?

What range of activities should be disclosed to shareholders (e.g. campaign contributions, lobbying, memberships, advertising)?

- **Policy and process:** There is a responsibility to disclose *how* companies participate in the political process. Engagement is necessary and important; public policies are central to business and returning value to shareholders. There needs to be information regarding the company's agenda, the programs in place, lobbying to advance policies in the agenda. It needs to be a principle-based approach. The company should disclose its oversight, philosophy, agenda, and the logic governing it, as well as the actual amount of money spent. **3M** is an example of excellence. A good company will tell you its priorities, e.g. **Johnson & Johnson**, **Exxon**. You might not agree with them, but there is transparency.
- **Campaign contributions:** There is no *Citizens United* decision in Canada and corporate campaign contributions are banned federally, but campaign contributions are still an issue here. There is some spending on the provincial level - seven provinces allow limited spending, four allow unlimited. There are eight provinces that allow contributions to leadership races, and in some cases these contributions do not have to be disclosed. The largest campaign contribution in 2013 was $210,000 from **Goldcorp** to the BC Liberal Party – this sounds like "chump change" in the US context but that amount was 2% of what BC Liberals spent on their provincial campaign, so not insignificant. Still, in terms of the corporate treasury, it's not a huge amount of shareholders' money.
- **RBC**'s disclosure of campaign contributions is made by providing links to provincial registry websites, listed on the RBC website. The amounts are not listed on the RBC site, because it's difficult to track, given that money is most often given to local riding associations by local branches, and RBC does not want to miss something and report inconsistently with official registries. The amount of money at issue is very minimal – less than $100,000 on campaign contributions. To put this figure in context, RBC donates ~$100,000,000 to charities annually.
- **Lobbying activity and expenditures:** Lobbying represents a different component of the same theme. Ten times more money is spent on lobbying compared with campaign contributions in the US, and while the figures are not disclosed in Canada lobbying expenditures are likely many times higher than campaign spending. According to US federal laws, every company must file a quarterly report describing its lobbying activity and expenditures. It's complicated to analyze, but the information is public. What it does not show is dark or secret money, money that is spent through third parties (e.g. trade associations). This is money that influences policy, but does not have to be disclosed. In Canada, while there is some disclosure of the fact of lobbying in jurisdictions that post a public registry, the amounts spent on lobbying are not disclosed.
- **RBC** reports on its lobbying, again directing people to public registries. However, there is no reporting on lobbying done through trade associations/third parties – the sheer number of branches, etc. constitutes a challenge to the company in terms of getting a complete list of the associations to which it belongs (e.g. local Chambers of Commerce).

- This was flagged as a key issue regarding disclosure – it is not supposed to be onerous for companies. Small town associations are not very relevant to investors, that's why only membership dues and/or contributions over a certain amount are often considered. This is part of assessing the practicalities regarding what counts and what doesn't. The most challenging aspect of reporting can in fact be internal accounting.
  - **Trade associations** play a major role in lobbying on both sides of the border. The **US Chamber of Commerce** has spent $1 billion on lobbying since 1998. It has a huge voice and considerable weight. Respondents commented that general fees paid to trade associations should be disclosed, with funds earmarked for political lobbying disclosed separately.
  - Funding for **think tanks** is an element of corporate influence in Canada. Of the top 15 Canadian think tanks, 8 had officials from publicly traded companies on their Boards.
  - The last component of lobbying – **grassroots communications** – is more difficult to quantify. "**Energy Citizens**" is an example – a lobby campaign to build more pipelines and grow the public's acceptance of pipeline projects, funded by the **Canadian Association of Petroleum Producers** (CAPP). Should this be disclosed as political activity?
- **Microsoft** conducts annual reviews of its trade association memberships. The company reports its membership dues, and asks that the trade associations disclose how much of the company's money is being used for lobbying. That amount is reported on the Microsoft website.

Should there be a de minimis exception for reporting and, if so, what should be the threshold?

- Spending can create reputational risks, so even small amounts of money can be relevant (materiality is not necessarily the most important lens).
- Yet there is a greyness to materiality – there may be a risk, but it might not be material. Likewise, the company and investors may view materiality differently. Sometimes the company will address important issues, even if they are not material. Even at zero materiality, it may still be relevant information for investors.
- There is a parallel in how these issues play out in relation to supply chain risks. A company may only have a small order in a factory, but if that factory was Rana Plaza, the size of the order wasn't the most important factor. One respondent noted that if one accepts the principal that political spending is material to investor decision-making and company performance, there should not be a minimum threshold for disclosure.
- **Microsoft** does have a *de minimis* threshold for disclosure related to trade associations, given that local organizations and trade associations are often fairly irrelevant for large companies. Microsoft has 120,000 employees in 120 countries, many operational groups and offices, so this is an issue – the number of trade associations, Chambers of Commerce, etc. that a company like Microsoft belongs to is very significant. Microsoft is committed to reporting, but this is not centralized information. Again, this is a challenge facing many companies, even those willing to report. What Microsoft did, which got the blessing of the **Center for Political Accountability** (CPA – a main US watchdog on political spending disclosure), was to focus on public reporting of all memberships managed by the legal and corporate

affairs department, because that department encompasses all lobbying. In terms of a *de minimis* dollar amount – $25,000 and above. All of this information is on the Microsoft website.

- Worth reiterating that this is not about trying to nickel and dime companies, but rather, recognizing that membership in ALEC, for example, even with just a $5000 contribution, could get you on a list that goes around the world, targeted by a Sierra Club campaign, damage reputation. This can act as a red flag.
- This is where oversight comes in. Expert committees should know what the hot button issues are. CAPP was mentioned as a hot button industry association in Canada. How do investors deal with it? That must be the starting point of a dialogue. Again, the ask is not "you can't belong", but rather, "talk to us".

C. Risk Management:

Are there potential negative consequences of political spending disclosure?

- How do investors use policy disclosure? Often, if a company has established basic criteria investors just say, 'Ok, great, you're on top of it'; it can be a way of calming investors.
- The other side is that disclosure provides useful information if a company has poor oversight and is very involved in political spending – this constitutes a concern to investors.
- A lack of political spending is not necessarily an indication of a best policy/performer. Companies that are spending, but managing disclosure very well should also get good points. Information in the public domain allows for debates. We could encourage positive lobbying rather than nefarious lobbying, so give points for that. Marks should also be given for being leaders and protecting shareholder interests.
- There is also the 'guilt by association' element of memberships in trade associations. When a trade association takes a policy position that **Microsoft** strongly disagrees with, the company shares its disagreement with the trade association. The trade association might be doing other good work, so it may not be in the interest of the entire company to pull out, e.g. Microsoft is vocal about their disagreement with the US Chamber re: climate, but is still a member.
- Disclosure is currently a race to the top in the US; companies are improving behaviour. It is hard to think of a company that has gotten worse in terms of disclosure. All of these issues are grounded in corporate governance. Corporate governance is the appropriate lens for talking to companies about these issues.

For further information:

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