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Re: File Number 4-637

Dear SEC:

Here are my comments on the request for a rulemaking to require public companies to disclose corporate political spending.[2] I must respectfully disagree with my dear Georgetown colleague Professor Langevoort and his co-authors and point out that this proposal is a bad idea that could cause less transparency by pushing more publicly-held companies to become opaque private companies.

In summary:

- Continuing to place burdens on public companies but not private ones will accelerate the shrinkage of our public capital markets. The continued flight of companies from the public markets will result in **less transparency and accountability** from large corporations. Good investment opportunities will only be available to private equity firms and not to retail investors and the mutual funds that we have access to.
- Many of the proponents and commenters conflate political spending by public companies with political spending by all corporations. Political contributions are rightly regulated in other venues that can deal with ***all*** political contributions, not just those of public companies.

[1] I am also on the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, the University of Pennsylvania, EDGX, EDGA, or anyone else for that matter.

[2] See http://www.sec.gov/rules/petitions/2011/petn4-637.pdf

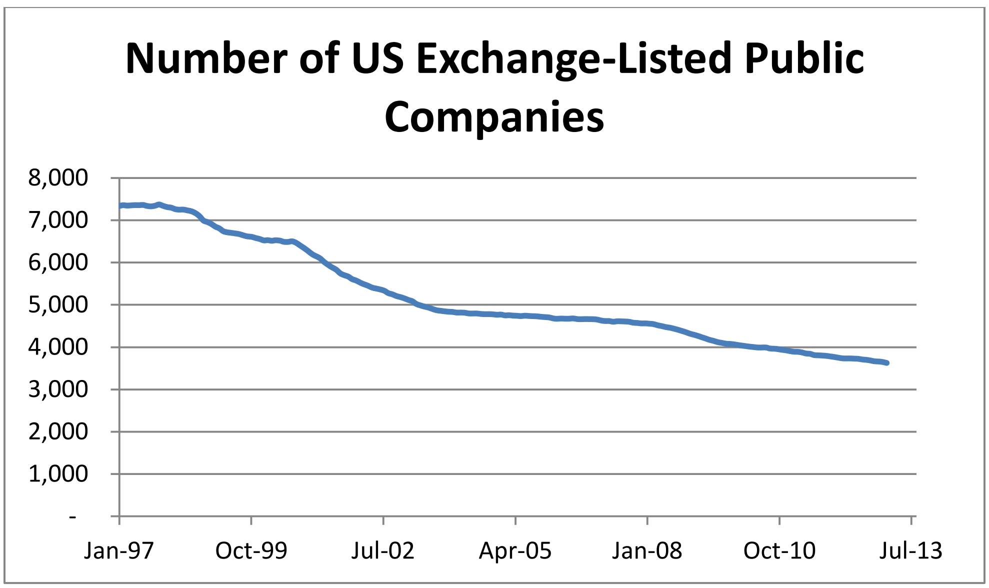
- Political spending information is not important to most investors. They have routinely voted down such proposals by overwhelming majorities.

- Political spending is not just another form of executive compensation.

- The downside costs outweigh the non-existent benefits.

Continuing to place burdens on public companies but not private ones will accelerate the shrinkage of our public capital markets. The continued flight of companies from the public markets will result in *less* transparency and accountability from large corporations.

The number of U.S. public companies listed on our exchanges has been shrinking steadily for the last 15 years. We have gone from 7,337 U.S. firms traded on our exchanges in January 1997 to only 3,626 at the end of December 2012, a loss of over 50%.[3]



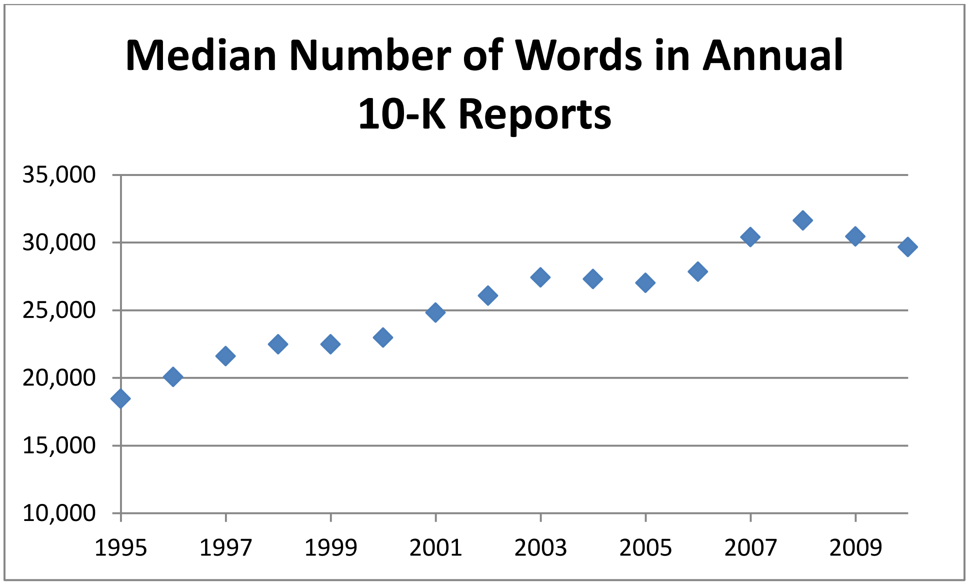
One of the main drivers of this trend has been the increasing compliance costs that we have placed on U.S. public companies but not on private companies.[4] Regulators continue to require ever more extensive disclosures of public companies but not private ones. For example, recent regulations require companies

[3] Data from CRSP.

[4] Other drivers include the litigation quagmire facing public companies, changes in equity market structure, alternative sources of financing, and overall economic conditions.

to provide expensively audited reports on the use of "conflict minerals" from the Democratic Republic of the Congo in their supply chains, even if they purchase no such minerals from the Congo.[5] However, private companies that do business in the Congo have no such disclosure requirements.

Even before the conflict minerals requirements, the creeping nature of required disclosures has resulted in longer and longer required annual reports on Form 10-K. From 1995 to 2010 the median number of words in a 10-K filing has increased from 18,450 to 29,653, a 61% increase. [6]

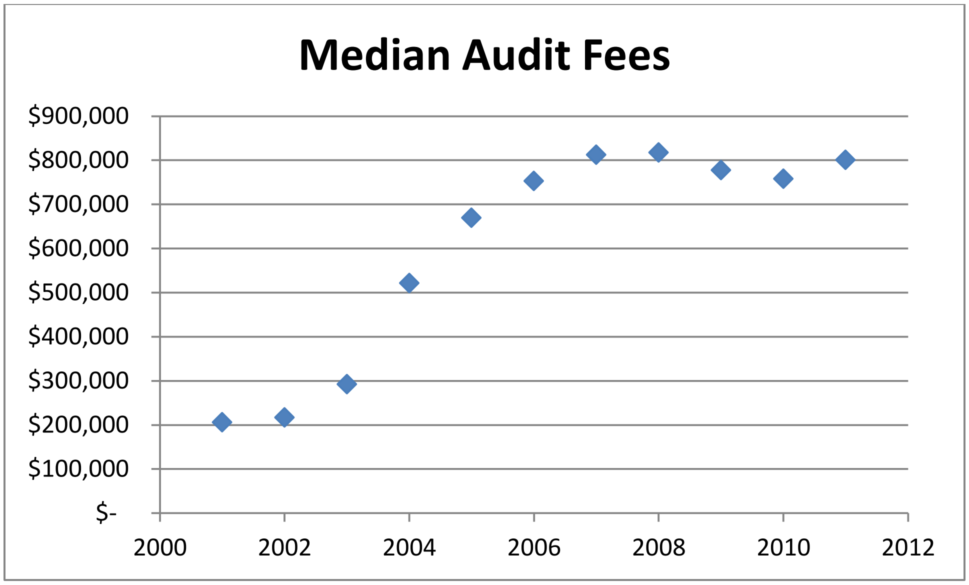


Costs rise commensurately with this increase in disclosures. The following chart demonstrates that the median audit and audit-related fee paid by a U.S. exchange listed company quadrupled from $205,620 in 2001 to $800,608.[7] A large part of this is the result of Sarbanes-Oxley requirements, which are applied to public but not private companies.

5 See the 356 page final rule at http://www.sec.gov/rules/final/2012/34-67716.pdf

6 This is based on the word count data found on Li Feng's web site, http://webuser.bus.umich.edu/feng/.

7 Data on audit fees obtained from Audit Analytics.



The bottom line is that we have made it so expensive to be a public company that smaller companies can no longer cost-effectively access the public equity markets. Growing companies have no other choice but to go to the private equity market.

The shutting down of the public equity markets for smaller firms has created lucrative opportunities for private equity firms that are not available to ordinary investors and the mutual funds we invest in. By raising costs for public companies, public policy is driving a trend for there to be fewer but bigger public companies.

Public companies are far more transparent in their activities than private firms. **By shrinking the activity in our public equity markets, we create a world with less transparency and accountability, not more.**

Adding additional burdens on public companies will just make it worse.

Many of the proponents and commenters conflate political spending by public companies with political spending by all corporations.

The proponents site a telephone poll of 800 randomly selected participants conducted on behalf of the Center for Political Accountability, alleging that "polls indicated that 85% of shareholders held the view that there is a lack of transparency surrounding corporate political activity."[8] Note that they refer to "***corporate*** political activity" and not "***public company*** political activity". Many of the other poll questions asked for respondents' opinions on "corporate" but did not specify public companies. For example, they report strong support for "Corporations should be required to publicly disclose all political contributions."[9]

I doubt many of the proponents and commenters would support at all a proposal that "Private corporations should not have to make any additional reports about their political spending but publicly held corporations should." However, this latter proposal is exactly what the proponents are asking the SEC to implement: Require Whole Foods Markets to spend more to comply with new regulations but leave non-public companies alone.

Political contributions are rightly regulated in other venues that can deal with *all* political contributions, not just those of public companies.

Many proponents and commenters believe that the Supreme Court's decision in *Citizens United v. the FEC* created a loophole that permits unlimited political spending by unions, corporations, and not-for-profit organizations in elections. The proponents are calling for disclosure of such activity from a tiny subset – just a few thousand - of the literally millions of affected organizations. This will do little to offset the alleged effects of the *Citizens United* decision. Many large participants in the political arena are not publicly traded companies. Any regulation of political spending should be applied to all political spending, not just spending by a small number of entities. Regulations that affect only a small fraction of politically active entities leaves a huge loophole that will just shift the spending to less transparent organizations.

Forced disclosure of political spending may result in political pressure on corporations to spend more, not less, on political activities.

It should be no surprise that several public sector pension funds are proponents of the idea of forced disclosure. These funds are often managed by political appointees with political agendas. They will have an obvious temptation to use the knowledge gained from such disclosures to pressure public corporations to spend resources in accord with the political agendas of the pension fund managers.

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[8] http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918

[9] Another curious feature of the poll is that it reports that respondents would overwhelmingly vote their corporate proxies "to implement these corporate political spending reforms." How curious then, that the actual shareholder votes on such shareholder proposals are so overwhelmingly negative. This casts doubt on whether the cited survey's methodology really reflects shareholders' views.

Political spending information is not important to most investors. They have routinely voted down such proposals.

There has been a recent spate of shareholder proposals that would require a corporation to reveal its political spending. Shareholders routinely vote them down by overwhelming votes. A search of sharkrepellent.net on February 22, 2013 yielded 345 shareholder proposals to require disclosure of political contributions for 131 companies from 2005 to the present. Only one passed, and it was supported by management. [10] The average yes vote was only 18.59% of the votes cast on the 345 proposals and only 13.61% of the shares outstanding.

The proponents cite a number of shareholder resolutions calling for this disclosure as evidence of "increasing investor interest" in the idea. However, these 131 companies represent less than 4% of the approximately 3,500 US exchange-listed companies.[11]

It appears that many of the proposers are from special interests that have agendas other than the wellbeing of their fellow shareholders. Unions proposed 19.4% of the proposals. Many of these unions were engaged in organization campaigns against non-union companies. Similarly, 22.0% were proposed by public pension plans, with a clear self-interest in political activities.

However, not all were proposed by parties with interests clearly separate from other shareholders. Religious organizations proposed 7.5%, and socially oriented investors proposed 15.4%. The venerable Evelyn Davis proposed 45 (13.0%) of the 345 proposals.

The following table contains a classification of the proponents of these 345 proposals:

[10] Amgen in 2006. Management recommended a yes vote. However, a stricter Amgen shareholder proposal failed in 2012.

[11] As of January 31, 2013, there were 3,579 companies in the Wilshire 5000 Total Market Index, an index which includes virtually all U.S. domestic public companies listed on U.S. exchanges. http://web.wilshire.com/Indexes/Broad/Wilshire5000/Characteristics.html If unlisted companies that trade over the counter are counted, the number of public companies is approximately 12,000. http://media.broadridge.com/documents/Broadridge_2012_Proxy_Season_Stats_Presentation.pdf

Classification of Political Spending Proposals 2005-2012		
Proponent classification	Number of resolutions	Percentage
Evelyn Y. Davis	45	13.04%
Public Pension Funds	76	22.03%
Religious Institutions	26	7.54%
Social Investors	53	15.36%
Union affiliated	67	19.42%
Other unclassified	78	22.61%
Total	345	100.00%
This table classifies the type of investor proposing shareholder resolutions for U.S. public companies from 2005 to 2012. Information on the proposals was obtained from sharkrepellent.net.		

Some companies voluntarily report their political activities. This is an appropriate decision for them to make under the business judgment rule.

Political spending is not just another form of executive compensation.

The notion that advocacy activities are an executive perk that should be disclosed along with other executive compensation is quite a stretch. One could make the same argument about almost every corporate expenditure. Might not the CEOs spend too much on landscaping corporate facilities because they like exotic landscaping? Let's disclose all the landscaping expenditures! Maybe the company's new product R&D is to develop a new pet flavor preferred by the CEO. Let's force companies to disclose their entire secret R&D! Perhaps the company chose a site for a new facility because it was close to the CEO's favorite golf course. Let's disclose every email on the site decision process!

It is not feasible or efficient for shareholders to monitor and vote on every last paperclip of company business. This is why the business judgment rule exists – to permit an efficient delegation of the supervision and operation of the firm to management and the board of directors. It is the job of the board of directors to monitor the activities of the CEO. As shareholders, we need sufficient information to judge the present and future financial condition of the company. Granular information on advocacy expenditures is immaterial for this investment decision. Indeed, burdening shareholders with such extraneous information makes it even harder for us to dig through already voluminous disclosures to find the truly relevant material.

The downside costs outweigh the non-existent benefits.

This proposal would clearly increase compliance costs for public companies. Legally mandated disclosures need to be prepared with great care, which consumes significant staff time and effort to comb through all of a firm's expenditures to determine which need to be disclosed. The disclosure forms would presumably be audited and that adds another level of expense as well. Management time which should be devoted to more important tasks will be diverted to compliance activities. Such a rule would pound yet another nail into the coffin of the U.S. public companies. It would also consume substantial SEC resources to monitor and enforce compliance.

A thorough analysis of the cost of this proposal needs to include not only the direct legal and paperwork costs of compliance and enforcement, but also reliable estimates of the downstream costs to investors and society as a whole. A thorough analysis must include the downstream costs imposed by further shrinkage of the public capital markets on employment and economic growth.

I see no benefits to society from such partial disclosures of political activities from some organizations but not others. Forcing public but not private corporations to disclose their political spending will discourage private companies from going public and encourage still more companies to exit our public capital markets. This will result in less overall transparency rather than more. The proper mechanism for regulating political expenditures by corporations, unions, and non-profit entities is one that applies to all such organizations, not just the small subset of them that are public companies.

In summary, this proposal is a narrow feel-good proposal that will do nothing to improve the quality of our political discourse and will actually do more harm than good. A rulemaking based on this petition would be a waste of the Commission's time and resources. With all of the other pressing issues that the Commission faces, it should not squander its scarce resources on this or a similar proposal. The Commission has more important things to do.

If you have any questions, feel free to email or call me.

Respectfully submitted,

James J. Angel, Ph.D., CFA