MEMORANDUM

To: File

From: Allison Herren Lee
Counsel to Commissioner Kara Stein
U.S. Securities and Exchange Commission

Date: November 7, 2014

Re: Discussion with Representatives from Public Citizen

On November 7, 2014, Andrew Green and Allison Herren Lee, counsel to Commissioner Stein, met with Ms. Lisa Gilbert and Mr. Bartlett Naylor of Public Citizen. Among the topics discussed were the proposed rule on Incentive-Based Compensation Arrangements and the Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities. Ms. Gilbert and Mr. Naylor also provided the attached documents.

MEMORANDUM

TO:	MARY JO WHITE, CHAIR, SECURITIES & EXCHANGE COMMISSION
FROM:	ADAM KANZER, MANAGING DIRECTOR & GENERAL COUNSEL, DOMINI SOCIAL INVESTMENTS LLC
SUBJECT:	CORPORATE POLITICAL ACCOUNTABILITY – 2013 PROXY SEASON REVIEW
DATE:	SEPTEMBER 9, 2013

In August 2011, a group of ten prominent law professors whose teaching and research focuses on corporate and securities law submitted a rulemaking petition to the SEC, seeking a rule that would require public companies to disclose the use of corporate resources for political activities.[1]

The rulemaking petition followed a multi-year shareholder campaign seeking greater corporate political spending transparency and accountability. This memorandum summarizes the results of this proxy season and seeks to place this season in context by describing the basic components of corporate political spending disclosure, an overview of political disclosure among S&P 500 companies, and the rationale for a rulemaking in this area.

Each year, a variety of shareholder proposals are submitted that focus on corporate political activity, ranging from electoral spending transparency to lobbying disclosures. This memo focuses on the core proposal sponsored by investors working with the Center for Political Accountability (CPA)[2], the organization that has been coordinating the bulk of the shareholder actions on this issue since 2004. The CPA proposal is focused on the same types of spending targeted by the rulemaking petition, and may serve as a template for the Commission.

The CPA proposal seeks the following:[3]

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[1] File No. 4-637, *Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities*, available at https://www.sec.gov/rules/petitions/2011/petn4-637.pdf

[2] www.politicalaccountability.net

[3] The standard CPA "resolved" clause is as follows: **Resolved,** that the shareholders of XX ("Company") hereby request that the Company provide a report, updated semiannually, disclosing the Company's:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.

2. Monetary and non-monetary contributions and expenditures (direct and indirect) used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, and used in any attempt to influence the general public, or segments thereof, with respect to elections or referenda. The report shall include:

    a. An accounting through an itemized report that includes the identity of the recipient as well as the amount paid to each recipient of the Company's funds that are used for political contributions or expenditures as described above; and

- Board oversight of corporate political spending;
- Disclosure of policies and procedures for political spending; and
- Semi-annual disclosure of ***direct and indirect*** political spending. This request is directed to:
    - The expenditure of **corporate treasury funds**, not corporate Political Action Committee (PAC) spending, which represents employee money.
    - "Indirect" spending refers to payments to third party organizations that engage in political spending, including trade associations, 501(c)(4) social welfare organizations, 527 organizations, Super PACs, etc.
    - Spending to influence the outcome of elections or to influence the general public with respect to elections or public referenda.

2013 Proxy Season Update[4]

In 2013, 46 CPA-coordinated proposals were filed:

- 15 proposals were withdrawn by the shareholder, after reaching a form of agreement (33%)
- 31 proposals went to a vote (67%):
    - Average shareholder support: 32.1% (23 companies voted to date). If abstentions are counted, an average of 41.1% did not agree with management's recommendation.
    - Highest vote: 66% at CF Industries (counting abstentions, the vote rises to 70.4%)
    - 12 proposals exceeded 30% support; 3 exceeded 40% support.
    - The CPA proposal received an average of 30% or greater support for the 2010, 2011 and 2012 proxy seasons.

This season also marked a new tactic, when the New York State Comptroller's Office filed suit to review the books and records of **Qualcomm** relating to political expenditures.[5] The company ultimately agreed to disclose its political contributions.[6]

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b. The title(s) of the person(s) in the Company responsible for the decision(s) to make the political contributions or expenditures.

The report shall be presented to the board of directors or relevant board oversight committee and posted on the Company's website.

[4] Data source: Center for Political Accountability.

[5] http://www.nytimes.com/2013/01/04/nyregion/new-york-comptroller-sues-qualcomm-for-data-on-political-giving.html?_r=0

[6] http://www.qualcomm.com/media/releases/2013/02/22/qualcomm-implements-industry-leading-political-spending-disclosure-policy

Survey of Political Spending Disclosure: S&P 500

Since 2004, investors working with the CPA have engaged 217 companies through the submission of shareholder proposals, and reached withdrawal agreements with 118 (See *Shareholder Resolutions on Corporate Political Spending Disclosure & Accountability, Summary Analysis of Vote Results and Agreements, 2004-2013*, enclosed). Despite this level of success, however, corporate political spending disclosure based on agreements with a wide range of investors has produced inconsistent disclosures, as detailed in the table below. In addition, it is difficult for investors to ensure that companies are living up to their agreements.

	NA*	No	Partial**	Yes***	Y%	P%	NA%	Y+P+NA%
Detailed policy?	0	103	226	169	33.9	45.4	0.0	79.3
Board oversight?	25	289	17	167	33.5	3.4	5.0	42.0
Disclosure of $ to candidates, parties, and committees?	73	284	49	92	18.5	9.8	14.7	43.0
Disclosure of $ to 527 organizations?	54	329	38	77	15.5	7.6	10.8	33.9
Disclosure of $ for independent expenditures?	80	352	33	33	6.6	6.6	16.1	29.3
Disclose $ to trade associations for political purposes?	14	348	77	59	11.8	15.5	2.8	30.1
Disclosure of $ to 501c4 organizations?	32	408	28	30	6.0	5.6	6.4	18.1
Disclose $ to ballot measures?	32	351	40	75	15.1	8.0	6.4	29.5

Source: Center for Political Accountability, June 2013. Total of 498 companies, excluding Coventry (merger) and Phillip Morris International (no operations in the US).

* Not applicable. This covers companies that do not engage in these categories of political spending.
** Category includes no amounts listed, aggregate numbers given, ambiguous information, etc.
*** Complete, detailed disclosure.

The Rationale for a Rule Mandating Corporate Political Spending Disclosure

The following is excerpted from a comment letter I drafted in support of the rulemaking petition on behalf of a coalition of investment professionals, including mutual fund and other institutional asset managers, foundations, religious investors and financial planners managing more than $690 billion on behalf of individual and institutional clients in North America and Europe.[7]

The Rulemaking Petition notes that "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." Undisclosed corporate political spending can encourage behavior that poses legal, reputational and operational risks to companies and systemic risks to

[7] The full letter is available at https://www.sec.gov/comments/4-637/4637-11.pdf.

our economy and to our political and judicial institutions. The Supreme Court said that full, real-time disclosure of corporate political payments allows shareholders to "determine whether their corporation's political speech advances the corporation's interest in making profits."

Corporations use treasury funds to make a variety of political payments, including direct contributions to state-level political candidates, including judges, to fund ballot initiatives, political parties and a range of tax-exempt entities, such as trade associations and 527 organizations that engage in political activity. Corporations may also contribute funds to finance political advertising on public policy issues or to advocate for or against the election of particular candidates ("independent expenditures").[8] These activities are subject to a variety of state and federal laws, but there are no current rules that require that companies disclose this spending to their shareholders, and there are significant gaps in the type of spending that is required to be disclosed to anyone. As a result, it is virtually impossible for an investor to obtain a complete picture of any individual company's political spending, with the exception of those companies that have elected to voluntarily disclose this information.

Shareholders have no uniform means to monitor these activities, or assess the risks of corporate political spending without an SEC rule requiring full disclosure for all public companies. Full disclosure would allow investors to manage, and help to mitigate, the full range of risks presented by corporate political spending. For example:

- Political spending disclosure helps prevent corporations (and unaccountable corporate executives) from using corporate treasury funds to obtain competitive advantages through political means, rather than by adding value in the marketplace (in economics, what is commonly known as "private rent seeking"). Secret political giving undermines free enterprise and creates unearned advantages in the marketplace. These activities distort the workings of the market, and result in misallocations of capital. Mandatory corporate political spending disclosure would further a marketplace where companies compete and win based on superior products and services, rather than by superior access to lawmakers, in keeping with the SEC's mandate to "maintain fair, orderly, and efficient markets."

- Political spending disclosure would help to mitigate the high risk of conflicts of interest and self-dealing by politically active CEOs and other senior executives that may be using corporate treasury funds for their own political purposes. The Commission has consistently favored disclosure as an effective means to address conflicts of interest.

- Trade associations, and a range of other tax-exempt entities such as 501(c)(4) social welfare organizations, have become significant conduits for 'indirect' corporate political spending. Many of these organizations are not required to disclose the source of their funding. Without full disclosure of the payments corporations make to these groups for political purposes and the corporate policies and procedures that guide such payments, neither shareholders nor corporations have any effective means to hold these increasingly influential and powerful organizations accountable. This lack of

[8] Corporations are prohibited from making direct contributions from the corporate treasury to federal campaigns or national party committees.

accountability can lead corporations to finance both sides of controversial public policy issues or to finance policies (or candidates) that run contrary to the company's interests.

- Political spending disclosure can protect companies from the risks posed by pay to play political fundraising. The SEC recently passed a rule to address the risks of pay to play arrangements between registered investment advisers and state entities, and issuers of municipal securities are also covered by pay to play regulations requiring, *inter alia*, the adoption of compliance policies and procedures and internal monitoring of political spending of certain key executives. Many public corporations, however, are also exposed to these risks and are not subject to similar regulations.

- Corporations face a complex patchwork of legal risks at the state and federal levels when they engage in political spending.

All of these concerns were dramatically increased by the Supreme Court's decision in *Citizens United v. Federal Election Commission* which legalized unlimited corporate spending to influence the outcome of elections, so long as this spending is not coordinated with a candidate ("independent expenditures"). Most public companies have no publicly available policies to address this new and risky avenue of political spending.

Additional Resources

- Professors Lucian Bebchuk, Harvard Law School, and Robert J. Jackson, Jr., Columbia Law School, the lead authors of the rulemaking petition, have written a law review article responding to critics of their rulemaking petition, *Shining a Light on Corporate Political Spending*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142115

- Professors Bebchuk and Jackson also responded to objections to their petition in a series of posts on the *Harvard Law School Forum on Corporate Governance and Financial Regulation* blog. The full series of posts, based on their *Shining a Light* article, is available at: http://blogs.law.harvard.edu/corpgov/tag/shining-light-on-corporate-political-spending/

- Center for Political Accountability Fact Sheet: *Meaningful Disclosure of Corporate Political Spending (Enclosed)*

- *The Conference Board:* Handbook on Corporate Political Activity: Emerging Corporate Governance Issues, available at *http://www.conference-board.org/publications/publicationdetail.cfm?publicationid=1867 (members only)*

Encl.

CENTER FOR POLITICAL ACCOUNTABILITY

Shareholder Resolutions on Corporate Political Spending Disclosure & Accountability

Summary Analysis of Vote Results and Agreements, 2004-2013

The Center for Political Accountability and its shareholder partners started engaging public U.S. companies on their political spending disclosure and accountability in 2004. To date, a total of 217 companies have formally been engaged through a shareholder resolution on the issue, resulting in a total of 118[1] agreements that lead to a withdrawal. The following information provides a more detailed look on how these companies came to an agreement with shareholders, as well as patterns in support for the resolution by the broader shareholder communities.

Table 1: Number of Agreements and Average Shareholder Support

Year	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
# Agreements	16*	14	12	12	12	17	24	8	2	0
Average Shareholder Support on Resolutions	NA	30%	33%	30%	29%	26%	25%	19%	11%	10%

Table 2: Number of Companies Coming to Agreement after Different Vote Results

	No Vote	Vote<10%	Vote>10%	Vote>20%	Vote>30%	Vote>40%	Vote>50%
Total # of Agreements	78	7	7	6	11	4	4

Table 3: Companies that Received Majority Shareholders Support

Company	Year	Percentage
Plum Creek Timber	2005	56%
Amgen[2]	2006	76%
Unysis	2007	51%
Sprint Nextel[3]	2011	53%
WellCare	2012	53%
CF Industries	2013	66%

[1],* This number includes Qualcomm, which came to a disclosure agreement through a "books and records" request by the New York State Common Retirement Funds in 2013.

[2] Amgen's board of directors *supported* the resolution, leading to the extremely high vote. See Amgen's 2006 Proxy Statement here: http://www.sec.gov/Archives/edgar/data/318154/000110465906018306/a06-5806_2def14a.htm

[3] Sprint Nextel has not come to an agreement to date.

CENTER FOR POLITICAL ACCOUNTABILITY

What Makes Meaningful Disclosure of Corporate Political Spending?

Key Elements of Corporate Political Disclosure & Accountability

I. Policies

a. Ways in which we participate in the political process;
b. Who makes spending decisions; and
c. Our commitment to publicly disclose all of our expenditures, direct and indirect.

II. Disclosure

a. Itemized Direct Expenditures
   i. State-level candidates and committee contributions;
   ii. Ballot measure spending; and
   iii. Independent expenditures.
b. Itemized Indirect Expenditures
   i. Trade association dues *and* other payments, including special assessments used for political purposes; and
   ii. Payments to other tax-exempt organizations [527 groups, super PACs, and 501(c)(4) "social welfare" organizations] used for political purposes.

III. Oversight

a. Board of directors regularly reviews our spending, direct and indirect, and existing policies.

By setting out objective criteria for political spending, a company provides a context for decision-making. ***An articulated policy*** *provides a means for evaluating benefits and risks of political spending; measuring whether such spending is consistent, and is aligned with a company's overall goals and values; determining a rationale for the expenditure; and judging whether the spending achieves its goals.*

Disclosure of political spending from corporate treasury funds *gives shareholders the information they need to judge whether corporate spending is in their best interest. It identifies possible sources of risk. It also helps ensure that board oversight is meaningful and effective.*

Board oversight *of corporate political spending assures internal accountability to shareholders and to other stakeholders. It is becoming a corporate governance standard.*

The Center for Political Accountability. 1233 20th Street, NW, Ste. 205, Washington, DC 20036. Tel: 202-464-1570. Fax: 202-464-1575

The New York Times http://nyti.ms/1qArusR

BUSINESS DAY

Activists Demand U.S. SEC Rule to Make Companies Reveal Political Spending

By REUTERS SEPT. 4, 2014, 3:51 P.M. E.D.T.

WASHINGTON — A group of activists stood outside of the U.S. Securities and Exchange Commission's Washington headquarters on Thursday to scold the regulator for failing to advance a rule requiring companies to disclose their political contributions.

In an hour-long press conference on the SEC's doorstep, the Corporate Reform Coalition said that more than a million comments in support of a corporate political spending disclosure rule have been sent to the SEC, a number they called "record breaking."

Flanked by signs that read "Your money is being invested in secret. Why is the SEC doing nothing?" the activists accused the SEC of caving into pressure from Republicans who oppose a political spending rule and restrictions on campaign spending in general.

To date, SEC Chair Mary Jo White has not publicly expressed a view on the issue, though in the past she has said generally she opposes writing rules to exert "societal pressures on companies."

She has also noted the agency has a full agenda and is struggling to complete rules called for in the 2010 Dodd-Frank Wall Street reform act and other legislation.

"The SEC should closely consider a rule like this, rather than turning its back on investors' interests because of Republican objections," said Robert Jackson, a Columbia University law professor who along with other

academics first submitted a public petition for the rule in August 2011.

"The SEC is an independent agency. They are charged with protecting investors - not politicians."

The effort by the activists dates back to the Supreme Court's 2010 Citizens United decision, which loosened campaign finance rules and opened the floodgates to millions of dollars in political spending by businesses and individuals.

The decision inspired a new wave of politically focused non-profit groups which are not required to disclose the identity of their donors.

A network of conservative groups backed by the billionaires Charles and David Koch, for instance, spent at least $400 million in the 2012 elections. Those "dark money" groups, organized under section 501(c) of the tax code, differ from so-called "Super PACs," which can advocate directly for candidates, but must disclose the identity of their donors.

"As we start to see the wave of dark corporate political money crest in the 2014 elections, the need for this rule has really never been more obvious," said Lisa Gilbert, the director of Public Citizen's Congress Watch, a nonprofit that promotes good government.

Activists at one point had hoped the SEC would take up a rule, after the agency's former Chair Mary Schapiro included the item on a list of her topic policy priorities in 2013.

Since then, however, the SEC's current Chair White had the item removed from the rulemaking agenda.

Republicans in the U.S. House of Representatives, as well as both SEC Republican commissioners, have staunchly opposed an effort to enact a political spending disclosure rule, saying campaign spending is not material for investors.

The renewed push by the activists and professors for action on a rule targeting public company spending comes at the same time that the SEC is also facing a legal battle with Republicans over "pay-to-play" rules that limit investment advisers from making campaign contributions.

Last month, Republicans in New York and Tennessee sued the SEC to block a 2010 rule prohibiting investment advisers from making campaign

contributions in exchange for contracts to manage public pension funds, saying the rule violates their free speech rights.

The SEC will face off in court against the Republicans on Sept. 12.

(Reporting by Sarah N. Lynch; Additional reporting by Andy Sullivan; Editing by Lisa Shumaker)

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SECRETARY OF STATE
STATE OF MISSOURI

STATE CAPITOL
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March 13, 2014

Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. 4-637 Petition to require public companies to disclose to shareholders the use of corporate resources for political activities

Dear Ms. Murphy:

As the state regulator responsible for oversight of the securities laws, I respectfully write to urge the U.S. Securities and Exchange Commission (the "Commission") to promptly issue rules requiring transparency in corporate political spending and in the use of corporate resources on political activities.

The above-referenced rulemaking petition was submitted on August 3, 2011, by a group of prominent law professors who have dedicated their careers to the areas of corporate and securities laws. This petition effectively outlines the current lack of transparency in corporate political spending. Investors are extremely interested in receiving these disclosures, as demonstrated by shareholder proposals, investor polls, policy statements of institutional investors, and more than 700,000 comment letters on Rulemaking Petition 4-637. For example, during the 2012 proxy season, political spending was the most common shareholder proposal that appeared on public company proxy statements.[1] As early as 2006, polls indicated that 85 percent of shareholders held the view that there is a lack of transparency surrounding corporate political activity.[2] Moreover, investors in Missouri and elsewhere want to know how – and to what degree – their money is being spent for political purposes.

The reasoning inherent in *Citizens United v. FEC*[3] demonstrates why requiring this disclosure is so important. In that case, the United States Supreme Court noted that shareholders

[1] Bebchuk, Lucian A. and Jackson, Robert J., Shining Light on Corporate Political Spending, 101 Geo. L.J. 923, 938 (2012).
[2] MASON-DIXON POLLING & RESEARCH, CORPORATE POLITICAL SPENDING: A SURVEY OF AMERICAN SHAREHOLDERS (2006), http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918.
[3] 130 S. Ct. 876 (2010).

could, on their own, "determine whether their corporation's political speech advanced the corporation's interest in making profits." Full disclosure of corporate political spending is imperative to ensure all investors have equal access to accurate, complete, and timely information about the corporations in which they are invested.[4]

The Commission was specifically granted rulemaking authority to "improve disclosure, [and] facilitate the flow of important information to investors and the public," among other things.[5] The SEC has long utilized this rulemaking authority as a necessary mechanism for accountability where the interests of directors and executives diverge from those of shareholders. For example, the SEC requires extensive disclosure of directors' decisions on executive compensation and also requires public companies to give investors detailed information about any transactions between the company and insiders.[6] In my judgment, there is no doubt that reasonable and responsible corporate transparency – including with respect to political spending – is in the best interests of investors, companies, and the general public.

The SEC is fully empowered to prescribe standards for the disclosure of political spending that will ensure transparency and accountability, consistent with the best interests of shareholders and the public. I strongly urge the Commission to exercise this authority.

Sincerely,

Jason Kander
Secretary of State

[4] U.S. SECURITIES AND EXCHANGE COMMISSION, DRAFT SEC STRATEGIC PLAN FOR 2014-2018 (2014), https://www.sec.gov/about/sec-strategic-plan-2014-2018-draft.pdf (Noting that one of the central principles from which securities laws and regulations flow is that "all investors should have equal access to accurate, complete and timely information about the investments they buy, sell, and hold.").
[5] *Id.* at p. 6.
[6] Bebchuk & Jackson, supra note 1, at 944.

EMBARGOED UNTIL:
11 a.m. EDT Sept. 4, 2014

Contact: Liz Kennedy, Demos (212) 419-8772
Lisa Gilbert, Public Citizen (202) 454-5188

One Million Comments Urge the SEC to Stop Secret Corporate Political Spending

The SEC should respond to this mandate by requiring corporations to disclose their use of corporate resources for political activities

WASHINGTON, D.C. – In a record-breaking demonstration of support, over one million commenters have submitted comments to the U.S. Securities and Exchange Commission (SEC) calling on the agency to take immediate steps to require publicly traded corporations to disclose their use of corporate resources for political purposes to their shareholders.

In a press conference outside the agency today, members of the Corporate Reform Coalition urged the agency to move swiftly on the rule in response to the overwhelming demand. A petition requesting this rulemaking was filed in 2011 by a bipartisan committee of leading law professors. The rulemaking was placed on the agency's agenda by former SEC Chair Mary Schapiro in 2013 but was removed by Chair Mary Jo White earlier this year, sparking outrage among investors and the public.

John C. Bogle, founder of Vanguard, said "It's high time that the abuse of corporate political spending comes to an end. Disclosure of corporate political contributions to the corporation's shareholders—its owners—is the first step toward dealing with the potentially corrupt relationship between corporate managers and legislators. Shareholders must not be left in the dark while their money is spent without their knowledge."

"The overwhelming support from public comments the petition has attracted, and the strength of the arguments for transparency put forward in the petition, provide a strong case for SEC initiation of a rulemaking process," said Lucian Bebchuk, professor and director of the program on Corporate Governance at Harvard Law School and co-chair of the committee that filed the petition. "Furthermore, opponents of the petition have failed in their comments to provide any good basis for avoiding such a process."

The one million supportive comments have come from diverse sources such as John C. Bogle, founder and former CEO of Vanguard; U.S. Reps. Chris Van Hollen (D-Md), Mike Capuano (D-Mass.) and 70 other members of the U.S. House; fifteen U.S. senators including Sen. Elizabeth Warren (D-Mass.), Sen. Robert Menendez (D-NJ), and Sen. Jeff Merkley (D-OR); five state treasurers; the Maryland State Retirement Agency; US SIF: The Forum for Sustainable and Responsible Investment; CREDO Mobile; the Sustainable Investments Institute; a large group of firms managing more than $690 billion in assets and many more.

"SEC Chair Mary Jo White should seize this moment to safeguard investors by providing them with information necessary to make their investing decisions" said Lisa Gilbert,

director of Public Citizen's Congress Watch division. "Concerns have been raised that the agency has delayed action on this commonsense rule because of the opposition of powerful business lobbies, themselves beneficiaries of dark corporate money."

"The SEC has the authority and the responsibility to regulate for the protection of investors and the public interest, and has a duty to respond to the changed circumstances brought by the *Citizens United* decision" said Liz Kennedy, counsel at Demos. "Americans are demanding long-overdue action on the corporate political disclosure rule from the SEC."

The U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* allowed corporations to spend unlimited sums to influence elections and led to the rise of "dark money" groups that advocate for the election or defeat of candidates but don't disclose their donors. More than $300 million in secret political spending was spent to influence the 2012 elections; two months before Election Day in the 2014 cycle, $50 million dark money has already been spent.

In *Citizens United,* Justice Anthony Kennedy emphasized the importance of disclosure and accountability for corporate political spending, writing that disclosure requirements "provide[] shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters." The petitioners are urging the SEC to require all companies to disclose comparable information about their political spending.

The area of corporate political spending requires particular investor protections because it exposes investors to significant new risks. Certain corporate political spending choices may diverge from a company's stated values or policies, or may endanger the company's brand or shareholder value by embroiling it in hot-button issues. Investors have a right to know what candidates or issues their investments are going to support or oppose. As evidence of strong investor concern about political spending, in the past five years there have been 166 votes on shareholder resolutions calling for the disclosure of political contributions, with an average support level of 30 percent. Moreover, 76 additional resolutions were withdrawn after negotiations led to companies expanding their disclosure policies.

Americans across the political spectrum strongly support requiring transparency and accountability in corporate political spending. Polling shows that eight out of 10 Americans (81 percent) believe that corporations should spend money on political campaigns only if they disclose their spending immediately (including 77 percent of Republicans and 88 percent of Democrats). Eighty-six percent of Americans agree that prompt disclosure of political spending would help voters, customers, and shareholders hold companies accountable for political behavior (support ranged from 83 percent to 92 percent across all political subgroups).

"For more than a decade, the Maryland State Retirement and Pension System, with more than $45 billion in assets, has required the disclosure of corporate political spending in

its proxy voting guidelines," said State Treasurer Nancy K. Kopp, chair of the Maryland State Retirement and Pension System Board of Trustees. "We believe such disclosures ensure transparency and accountability of corporations to their investors. Since the petition was offered to the SEC three years ago to adopt the rulemaking project on corporate political spending, the Maryland State Retirement and Pension System has been and will continue to be in support of this effort."

Laura Berry, executive director of the Interfaith Center on Corporate Responsibility said "It is no surprise that over one million comments have been received demanding greater transparency on corporate political spending. As investors, this information is crucial to understand corporate strategies that impact the future value of our investments. As citizens, we must fully understand how our government is influenced by corporate interests. Understanding where and how corporate dollars flow is the most straightforward approach."

Amanda Ballantyne, national director of the Main Street Alliance said "Given the studies showing that political spending by corporate executives does little to benefit the overall company, equity shareholders like small business owners deserve to know how the money they invest is being used. It is the duty of the SEC to protect these consumers and to require the disclosure of political expenditures to stockholders."

"Investors have filed hundreds of shareholder resolutions urging companies to disclose their political spending and lobbying expenditures, convinced that companies should be transparent about how investor dollars are spent directly or indirectly to impact elections and influence policy. Despite the progress of close to 150 companies choosing to disclose information about their political spending we desperately need a level playing field where all companies disclose comparable information. The SEC can play an important role for investors by creating a standard regulation providing for such disclosure" said Tim Smith, director of ESG Shareowner Engagement, Walden Asset Management.

"Americans want a democracy where facts and evidence hold more sway than secret corporate influence. The public overwhelmingly wants the SEC to help make that a reality" said Gretchen Goldman, lead analyst at The Center for Science and Democracy at the Union of Concerned Scientists.

"We need to get all corporate money out of politics, period," said Becky Bond, CREDO Mobile's vice president. "But until that happens, the SEC can at the very least make corporate CEOs disclose to their shareholders and the public how much money they are spending out of company coffers in order to influence the outcome of our elections."

Some of the participants in the Corporate Reform Coalition, which works to increase transparency and accountability for corporate political spending, are:

US SIF: The Forum for Sustainable and Responsible Investment

The Interfaith Center on Corporate Responsibility

Founder of GMI Ratings Nell Minow
Demos
Public Citizen
Main Street Alliance
Domini Social Investments
Alliance for a Just Society
AFL-CIO
Walden Asset Management
Green Century Capital Management
Center for Political Accountability
The Sisters of St. Francis of Philadelphia
CREDO
Common Cause
The Social Equity Group
Christopher Reynolds Foundation
Socially Responsible Investment Coalition
Communications Workers of America
Democracy 21
Zevin Asset Management
Congregation of Sisters of St. Agnes
Greenpeace
Responsible Endowments Coalition
The Center for Science and Democracy at the Union of Concerned Scientists
Trillium Asset Management
American Federation of State, County and Municipal Employees (AFSCME)
Newground Social Investment
Sisters of the Presentation of the BVM
Corporate Responsibility Committee, Sisters of Charity of Cincinnati
People For the American Way
International Brotherhood of Teamsters
USAction
Unitarian Universalist Association
Unitarian Universalist Service Committee
New Progressive Alliance
Free Speech For People
Friends Fiduciary Corporation
Brennan Center
Progressives United
U.S. Public Interest Research Group
Public Campaign
Northwest Coalition for Responsible Investment
CT Citizen Action Group
WV Citizen Action Group
Wisconsin Democracy Campaign
Boston Common Asset Management
Coffee Party USA
Citizen Works
NorthStar Asset Management, Inc.
Harrington Investments
Corporate Responsibility Office, Province of St. Joseph of the Capuchin Order
As You Sow
Investor Voice

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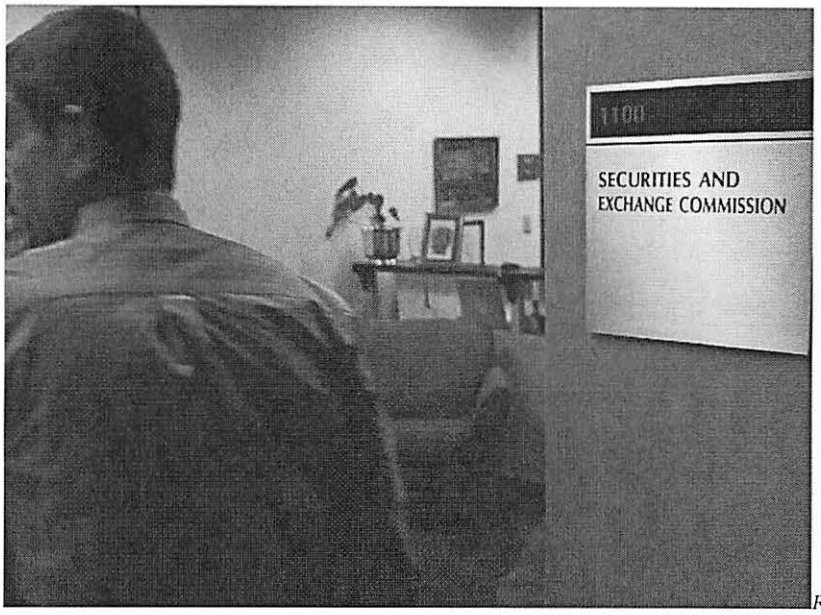
BUSINESS INSIDER

Investors Want Public Companies To Disclose Political Contributions

JIM ALLEN, CFA INSTITUTE
SEP. 4, 2014, 5:47 PM

For a couple of years now, the Securities and Exchange



REUTERS/Mike Stone

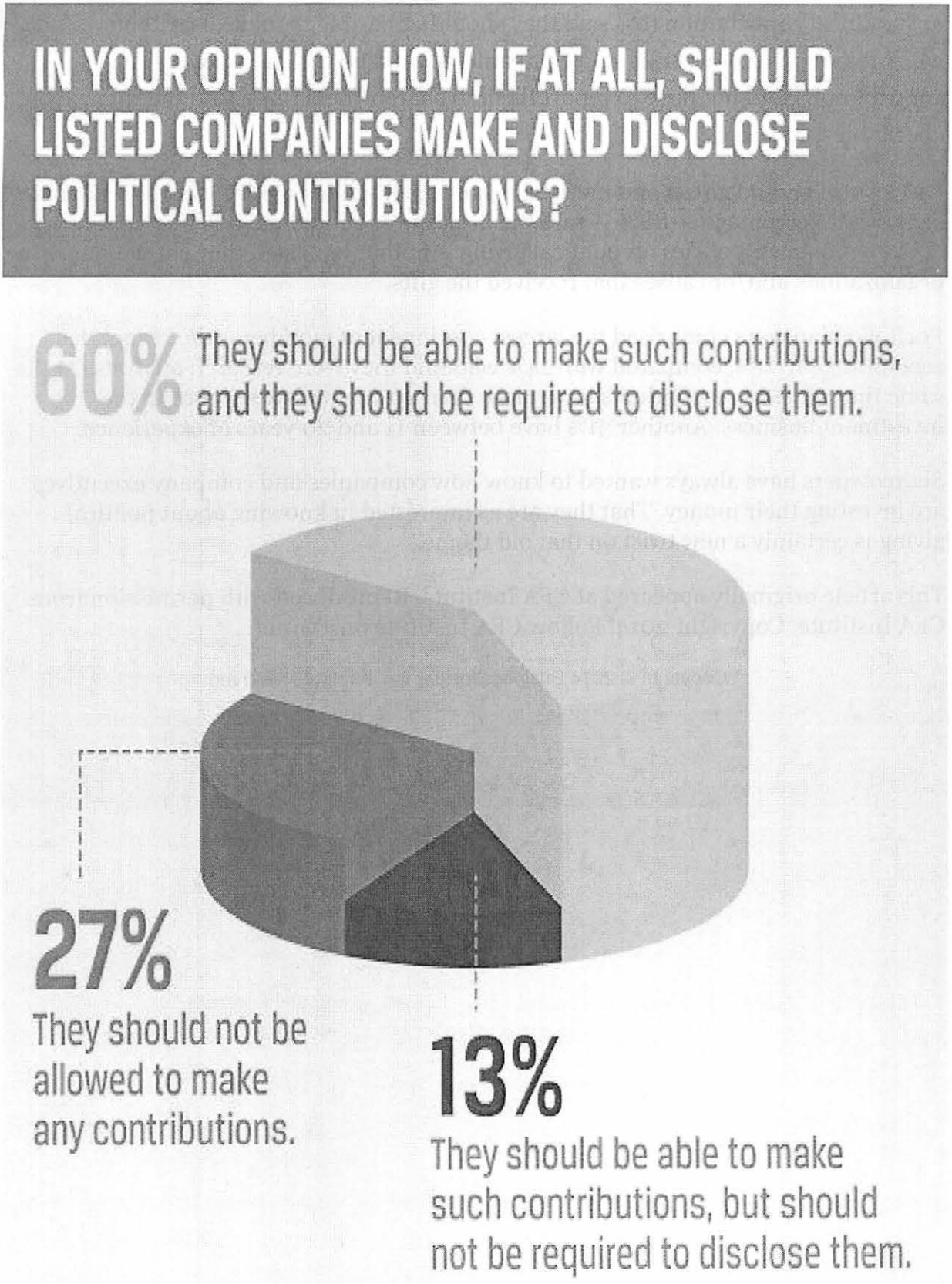
Commission (SEC) has said it is weighing the benefits of a proposed disclosure of political contributions by public companies. A new survey of CFA Institute members supports the idea of disclosure, but with some caveats.

Interest in corporate giving gained following the US Supreme Court's 2010 decision in the *Citizens United*case, which ruled that corporations could contribute to political campaigns. According to opensecrets.org, donations in Congressional elections that year grew to $3.6 billion, nearly 50% higher than in 2008. Growth in spending on Congressional races grew just 0.6% between 2010 and 2012.

The survey of randomly chosen CFA Institute members from the United States, which closed on 4 August, was conducted to determine whether CFA Institute members would support a disclosure requirement related to companies' political and charitable contributions. This information already is publicly available for companies through websites such as opensecrets.org, which looks at political giving over a number of years. The responses from this survey, however, indicate that these disclosures aren't

sufficient. Investors want these gifts to be made part of the standard disclosures included in the Management Discussion & Analysis that companies must provide as part of their year-end SEC filings.

The respondents indicated they are not so troubled with companies contributing their — as in shareowners' — money for political purposes so long it is properly disclosed. Of the 1,511 survey respondents — a 5% response rate with a +/- 2.5% margin of error — 60% said companies should be able to make political contributions; 70% agreed they should be able to make charitable contributions. Nevertheless and regardless of the type, the respondents said that companies should have to disclose those contributions. The preferred means of disclosure was the annual 10-K that public companies must file with the SEC.



CFA Institute

By comparison, just 27% of respondents said companies shouldn't be allowed to make

any political contribution (6% said they shouldn't be able to make charitable contributions). And just 13% said companies should be able to make political contributions *and* not have to report them to shareowners (24% said the same about charitable gifts).

Disclosures should go beyond mere tallies of contributions made, said respondents. A significant percentage — 88% — said the disclosures should include information about companies' policies on political giving. Another 85% said they should name the organizations and/or causes that received the gifts.

Portfolio managers comprised the largest contingent of members who responded, accounting for 21%, compared with 14% who said they were research analysts. At the same time, 43% of respondents have more than 20 years of experience in the investment business. Another 31% have between 11 and 20 years of experience.

Shareowners have always wanted to know how companies and company executives are investing their money. That they are as interested in knowing about political giving is certainly a new twist on that old theme.

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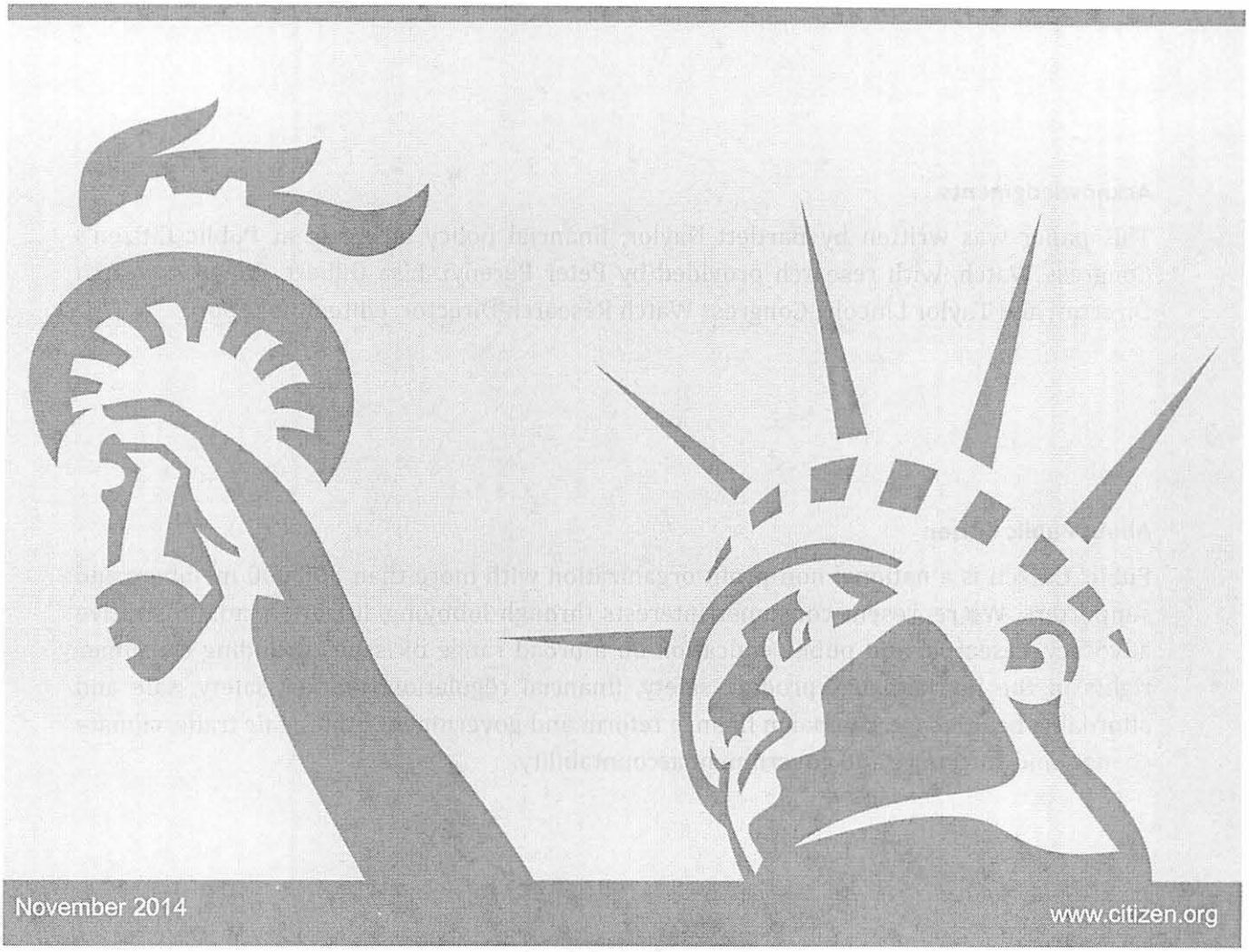

November 2014

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Lowered Expectations

Even After Trimming Its Agenda, Securities and Exchange Commission Is Missing Its Marks on Public Safeguards

Acknowledgments

This paper was written by Bartlett Naylor, financial policy advocate at Public Citizen's Congress Watch, with research provided by Peter Perenyi. Lisa Gilbert, Congress Watch Director, and Taylor Lincoln, Congress Watch Research Director, edited the report

About Public Citizen

Public Citizen is a national non-profit organization with more than 300,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

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Lowered Expectations

Even After Trimming Its Agenda, Securities and Exchange Commission Is Missing Its Marks on Public Safeguards

More than six years after the financial crash of 2008 and four years after Congress responded with the Dodd-Frank Wall Street Reform Act, the Securities and Exchange Commission is well behind in its task to implement the law.

The agency is both failing to meet own deadlines and also compares unfavorably to the Commodity Future Trading Commission (CFTC), a sibling of SEC with similar responsibilities.

For example, through October 2014, the CFTC has finalized 80 percent of the Dodd-Frank rules under its purview, according to Davis Polk, a law firm that issues monthly progress reports. At the SEC, this figure is 60 percent.[1] Of the Dodd-Frank rules under its jurisdiction, the SEC has only finalized five so far in 2014. At its current pace, the SEC will not complete promulgating the Dodd-Frank rules it was assigned until the year 2020. Without these safeguards, Wall Street may run off the same rails as in the financial crash of 2008.

SEC Chair Mary Jo White pledged in her confirmation hearings to get the rules "done."[2] She described herself as an "efficiency nut."[3] Yet, since becoming chair of the SEC in 2013, White has postponed many rules. A Public Citizen analysis published in June found that the SEC moved back the deadlines for more than half of the rules on its agenda released in the Spring of 2014 from those previously established in its Fall 2013 agenda.[4]

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[1] *Dodd-Frank Progress Reports*, DAVIS POLK, available at: http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report/.

[2] Testimony, U.S. Senate Banking Committee (March 12, 2013) available at: http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=619e5603-c2c8-4085-98c6-0014ce29bde7.

[3] Mary Jo White Defies Political Meddling, BLOOMBERG (April 2014), available at: http://www.bloomberg.com/news/2014-04-11/sec-s-mary-jo-white-defies-political-meddling-in-year-one.html.

[4] BARTLETT NAYLOR 'EFFICIENCY NUT,' PUBLIC CITIZEN (June 2014), available at: http://www.citizen.org/documents/sec-rulemaking-efficiency-report.pdf.

This Spring 2014 agenda left a much shorter list of rules for action in 2014. The SEC justified this winnowed agenda as one that "represents our best estimate as to what would be ready for Commission consideration by fall of 2014."[5]

[5] Dina ElBoghdady, SEC Drops Disclosure of Corporate Political Spending From Its Priority List, The WASHINGTON POST (Nov. 30, 2013), http://www.washingtonpost.com/business/economy/sec-drops-disclosure-of-corporate-political-spending-from-its-priority-list/2013/11/30/f2e92166-5a07-11e3-8304-caf30787c0a9_story.html.

SEC Progress on Meeting Its Deadlines Remains Poor

In this Public Citizen analysis, we examine the SEC's level of success at meeting deadlines for this reduced number of items. Our analysis shows that the agency is not faring well under its less ambitious agenda.

Public Citizen examined the Spring 2014 "Agency Rule List" published on May 23, 2014, by the Office of Information and Regulatory Affairs (OIRA), a division of the Office of Management and Budget.[6] OIRA is obliged to publish these agendas, which consists of submissions from agencies, in the spring and the fall of each year. The agendas cover the expected milestones pursuant to the development of regulations.[7]

The items included in the agendas primarily concern rules for which agencies intend to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), or a Final Rule within the next 12 months. The SEC lexicon is slightly different. Its agendas include items in a "Proposed Rule Stage" (meaning that it intends to propose a rule and request public comment on it by a certain date) and items in a "Final Rule Stage" (those that it has already proposed and it intends to finalize by a certain date).

In its Spring 2014 agenda, White's SEC rolled back its expected deadlines on more than half of the rules listed in its Fall 2013 agenda.[8] This left 25 rules that the agency expected to propose or finalize by various deadlines between May 2014 the end of October 2014. The agency met only three of these deadlines.

Among the 12 items in the "Proposed Rule Stage," the SEC said it would issue by no later than October, it met its deadline on three. Among the 13 items in the "final rule stage," it did not meet its deadline on any. Overall, Chair White's SEC failed to meet its self-imposed deadlines in 88 percent of these cases. [See Table, below]

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[6] Katie Weatherford, *Spring 2014 Unified Agenda: Agencies Expect Lengthy Delays of Critical Safeguards in Year Ahead,* CENTER FOR EFFECTIVE GOVERNMENT (May 30, 2014), http://www.foreffectivegov.org/blog/spring-2014-unified-agenda-agencies-expect-lengthy-delays-critical-safeguards-year-ahead.

[7] Since 1978, federal agencies such as the SEC have been required by executive orders to publish agendas of regulatory and deregulatory activities twice a year. The Regulatory Plan is published as part of the fall edition of the Agenda with detail about the most important significant regulatory actions that agencies expect to take in the coming year. The plan is updated in the spring as part of a corresponding requirement in the Regulatory Flexibility Act. This requires that agencies publish semiannual regulatory flexibility agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda.

[8] Agency Rule List, Spring 2014, Office of Information and Regulatory Affairs (Visited October 2014), available at: http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=20&Image58.y=22.

Security and Exchange Commission Progress on Rulemakings in Progress

	Number of Rules Listed in Spring 2014 for Action By Some Date Between Spring and October 2014	Number of Items Accomplished by Deadline	Pct. Delayed
Proposed Rule Stage	12	3	75%
Final Rule State	13	0	0%
Total	25	3	88%

Some of the SEC's accomplishments in the past six months do not fit within the scoring system used in this review. It is worth noting that the SEC did report progress on more than just the three rules for which it met the deadlines it laid out in its Spring 2014 agenda. In one case, the SEC advanced a final rule that was not included in this review because the agency had set a deadline far beyond October 2014. The agency proposed to finalize its rule governing what it calls "Regulation of Cross-Border Security-Based Swap Activities" by March 2015. In fact, the agency finalized an important element governing definitions within this important financial arena on June 25, 2014.

In another case, the agency proposed a temporary rule "regarding principal trades with certain advisory clients" on August 12, 2014. Its agenda posted this item not as a "temporary" rule but as a rule it expected to propose by December 2014.[9]

In a third case, the SEC finalized a rule it called "Credit Risk Retention."[10] This rule had not appeared on the Agency's Spring 2014 agenda. It is an interagency rule and was adopted along with the other agencies, including the Federal Reserve Board, the Federal Deposit Insurance Corp. and the Comptroller of the Currency.

In sum, the agency issued a total of five final rules by October 2014. In three cases, the Commission acted after its posted deadline. In the fourth case, the Agency had set a deadline later than October. In the fifth case, the agency had not listed the rule at all on its agenda.

Within the items listed in the proposed stages in its Spring 2014 report, it issued three proposed rules for which it missed its deadlines in addition to the three for which it met

[9] See OMB, regulatory agenda (Spring 2014), available at: http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201404&RIN=3235-AL56.

[10] Credit Risk Retention, a joint agency rule (Oct. 22, 2014), available at: http://www.sec.gov/rules/final/2014/34-73407.pdf.

deadlines. Within the proposed rules, it also re-opened or extended the comment period on two others, indicating at least renewed attention.

'Complexity' Does Not Excuse Glacial Pace of SEC's Rulemakings

White has frequently mentioned "complexity" as a persistent challenge to rule-making.[11] Yet some rules the SEC has yet to complete are not complex. For example, Dodd-Frank requires that corporations list their CEO's pay as a multiple of the median-paid employee at the firm. This may be the simplest of all the Dodd-Frank rules. After many years of study, the SEC proposed this rule in 2013, which means that it has already hurdled whatever complexity may be involved. But a year after proposal, the SEC has yet to issue a final rule.

Many of the rules involving financial derivatives are more complex than the pay ratio rule. Yet the CFTC, which deals with nearly identical issues and struggles with a budget and staff roughly 20 percent the size of the SEC's, has completed most of its rule-making obligations relating to derivatives.

Another reason for delay may be that some rules require coordination with other agencies. For example, six regulators must adopt rules to prevent pay incentives from promoting inappropriate risk taking by bankers. All of the other regulators list this rule making in the proposed rule stage. The SEC does list this rule anywhere on its agenda.

In one case, the SEC acted only after pressure from the Financial Stability Oversight Council. This is the uber-regulatory body composed of the leaders of nine financial regulatory agencies, including the SEC as well as the Federal Reserve, Comptroller of the Currency, and Federal Deposit Insurance Corp. In 2012, this group called on the SEC to reform the money market industry. [12]

Public Citizen believes that complexity, volume and interagency coordination may partly explain but do not justify the SEC's slow pace. The SEC bears the responsibility to complete rules for which Congress has mandated and to look ahead to new aspirational topics demanded by investors. Americans who have suffered the ravages of unbridled Wall Street recklessness deserve no less.

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[11] See, for example, Testimony Before U.S. Senate Banking Committee (Sept. 9, 2014), available at: http://www.sec.gov/News/Testimony/Detail/Testimony/1370542893146#.VEUYkRCs_-p.

[12] Proposed Recommendations Regarding Money Market Fund Reform, FINANCIAL STABILITY OVERSIGHT COUNCIL, (November 2012), available at: http://www.treasury.gov/initiatives/fsoc/rulemaking/Documents/Proposed%20Recommendations%20Regarding%20Money%20Market%20Mutual%20Fund%20Reform.pdf. See also: Jesse Eisinger, *Blackrock Doesn't Need a Scarlet Letter*, PROPUBLICA (June 16, 2014), available at: http://www.propublica.org/thetrade/item/blackrock-doesnt-need-a-scarlet-letter.

Appendix A: Rules the Agency Intended to Propose by October 2014

Rule Subject	Expected Date for Rule Proposal	Delayed?
Compensation Clawback	October 2014	Yes
Pay for Performance	October 2014	Yes
Implementation of Titles V and VI of the JOBS Act	October 2014	Yes
Treatment of Certain Communications Involving Security-Based Swaps That May be Purchased Only by Eligible Contract Participants	May 2014	Yes. Proposed September 8, 2014.
Disclosure of Hedging by Employees, Officers and Directors	October 2014	Yes
Exchange-Traded Funds	October 2014	Yes
Investment Company Advertising: Target Date Retirement Fund Name and Marketing	April 2014	No. Rule re-proposed April 3, 2014
Form N-SAR and Portfolio Holdings Reporting Reform	October 2014	Yes
Reporting and Recordkeeping Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants	May 2014	No. Rule proposed May 2, 2014
Standards for Covered Clearing Agencies	March 2014	No. Rule proposed March 12, 2014
Broker-Dealer Leverage Ratio	October 2014	Yes
Exchange-Traded Products	May 2014	Yes

Appendix B: Rules the Agency Intended to Finalize by October 2014

Rule Subject	Expected Date for Rule Finalization	Delayed?
Asset-Backed Securities	May 2014	Yes. Finalized September 4, 2014
Rules Governing the Offer and Sale of Securities Through Crowdfunding Under Section 4(a)(6) of the Securities Act	October 2014	Yes
Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act	October 2014	Yes
Amendments to Regulation D, Form D and Rule 156 Under the Securities Act	October 2014	Yes
Pay Ratio Disclosure	October 2014	Yes
Money Market Fund Reform; Amendments to Form PF	May 2014	Yes. Finalized July 23, 2014
Reporting of Proxy Votes on Executive Compensation and Other Matters	October 2014	Yes
References to Credit Ratings in Certain Investment Company Act Rules and Forms	October 2014	Yes
Security-Based Swap Data Repository Registration, Duties, and Core Principles	October 2014	Yes
Regulation SBSR--Reporting and Dissemination of Security-Based Swap Information	October 2014	Yes
End-User Exception to Mandatory Clearing of Security-Based Swaps	October 2014	Yes
Rules for Nationally Recognized Statistical Rating Organizations	May 2014	Yes. Finalized August 27, 2014
Regulation Systems Compliance and Integrity	October 2014	Yes

End the flood of dark money in politics

By Lisa Gilbert
updated 8:27 AM EDT, Thu September 11, 2014

CNN.com

Editor's note: *Lisa Gilbert is director of the Congress Watch division of Public Citizen, a nonprofit group based in Washington. The opinions expressed in this commentary are solely those of the author.*

(CNN) -- Thanks to several overreaching court cases, including the most well-known, the Supreme Court's disastrous Citizens United decision, the past five years have given us a whole new understanding of corporate power and its intersection with "dark money" political spending.

The price tag for elections continues to steadily rise. Candidates and outside groups are closing in on $1 billion spent in the 2014 federal election cycle, and even worse, according to the Center for Responsive Politics, undisclosed money has made up $50 million of that spending.

Luckily, the Securities and Exchange Commission could offer a way out of the darkness.

A much-needed rulemaking petition to the SEC that would require public corporations to disclose their political spending to shareholders is receiving historic support. The petition has received a historic number of public comments: over 1 million as of last week.

The SEC can and should act to protect investors and our democracy by creating this rule, which should be as comprehensive as possible, including direct campaign expenditures and gifts to conduit groups like the U.S. Chamber of Commerce that play in politics.

Hardly anyone need be told that the campaign finance landscape has changed dramatically in the past three elections. And a big part of that story is the corporate political spending that is laundered through dark money conduits, nonprofit organizations and trade associations repurposed into political spending juggernauts with the ability to keep their donors secret.

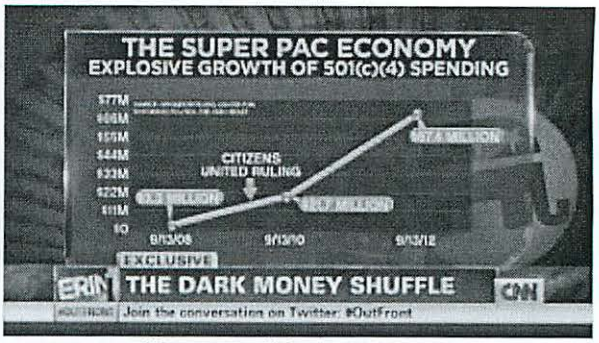
Corporations with an aversion to disclosure have found these organizations to be the perfect vehicle for influencing elections and avoiding the wrath of consumers.

Ciara Torres-Spelliscy, a law professor and expert in this type of spending, commented (PDF), "Corporate law is ill-prepared for this new age of corporate political spending by publicly traded companies. Today, corporate managers need not disclose to their investors -- individuals, mutual funds, or institutional investors such as government or union pension funds -- how funds from the corporate treasury are being spent, either before or after the fact."

And she's right. Although undisclosed corporate political spending has caused heartburn for transparency advocates and government watchdogs, another group of Americans has equal cause to fret: investors.

Investing in the United States has expanded by leaps and bounds over the past few

Meet Dems' answer to the Koch brothers



Big money, little transparency

GOP sets up fake sites to fool Democrats

decades; today, more than 50 million Americans participate in 401(k) retirement savings plans through their employers. The 401(k) system holds more than $2.8 trillion belonging to current employees and retirees, so when we talk about investors, we are actually talking about the public, not an elite class of shareholders.

Corporate political spending could jeopardize the retirement savings of millions of Americans. Gambling with a corporate brand through political spending is a high-stakes game for companies, for the people who depend on these companies to help them save, and the risks cannot be overstated.

For many middle-class Americans, the savings in their 401(k) plans are all they have to ensure a comfortable and secure retirement. These people cannot afford to lose their nest eggs because a company decided to gamble its name and their money on a controversial political cause.

In addition, when a CEO chooses to use corporate money to support causes or candidates, which may be antithetical to a given shareholder political views, in essence, he or she is substituting its judgment of what candidates an investing individual should support for that of their own.

Shareholders have a right to know whether the companies they invest in are playing politics with their money, and the pending SEC rule could put that much-needed information in their hands.

The SEC should immediately give priority to promulgating the rule requiring public corporations to disclose political spending. It can start by putting the petition back on the rulemaking agenda as well as by using its ongoing "disclosure review" process to recommend the rulemaking.

As we begin to crest the wave of the next tsunami of dark and outside money of the 2014 cycle, the need for this type of transparency is blatantly apparent.

This year, as we approach the five-year anniversary of the Citizens United decision, 1 million strong call on the SEC to act. Americans deserve to know who is bankrolling political advertisements, and shareholders need to know whether their investments are being

wasted on politics rather than being spent on productive plans to build a better business.

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The Honorable Thomas J. Curry
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Office of the Comptroller of the Currency
400 7th Street, SW
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The Honorable Mel Watt
Director
Federal Housing Finance Agency
400 7th Street SW
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The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

The Honorable Debbie Matz
Chair
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

The Honorable Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: RIN 3064-AD56, Incentive-Based Compensation Arrangements

Dear Officers,

We write to urge you to impose strong regulatory restrictions on Wall Street executive pay and bonuses to ensure that they do not create incentives to take inappropriate short-term risks. Section 956 of the Dodd-Frank Act contains a statutory mandate for you to take action in this area. However, this law has not been implemented, and the proposal for implementation made three years ago, in 2011, is inadequate to the problem and would not significantly shift pay practices on Wall Street.

Ensuring appropriate pay incentives at financial institutions should be a critical priority. By permitting executives and traders to 'take the money and run' excessive short term bonuses encouraged practices that earned money in the short run but blew up later, leaving taxpayers with the bill. One Harvard study estimates that top executives of Bear Stearns and Lehman took out

over $2.5 billion from the companies in the years prior to their failure, and never had to repay a dime of it.[1]

Many observers have emphasized the role of pay in creating the incentives that led to the 2008 financial crisis. The Senate Permanent Subcommittee on Investigations found that pay incentives throughout the firm played a major role in inducing Washington Mutual to make inappropriately high-risk loans, eventually driving the firm into bankruptcy.[2] The Financial Crisis Inquiry Commission found that pay systems too often encouraged "big bets" and rewarded short-term gains without proper consideration of long-term consequences.[3] Perhaps most telling of all, multiple surveys have found that over 80 percent of financial market participants believe that compensation practices played a role in promoting the excessive risk accumulation that led to the financial crisis.[4]

Section 956(b) of the Dodd-Frank Act is a direct response to this concern. Section 956(b) mandates that you prohibit "any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks". The near-universal consensus on the centrality and importance of compensation incentives to the behavior of financial institutions makes it all the more disappointing that Section 956 has not been implemented and that its proposed implementation is so inadequate.

Americans for Financial Reform and many of our member organizations submitted letters in response to the agencies' request for comment in the spring of 2011 that detail key weaknesses in the 2011 proposed rule.[5] In this letter, we detail our critique of the proposed rule and outline our key recommended changes. We urge you to take action on this long overdue mandate and to significantly strengthen your 2011 proposed rule by incorporating the recommendations discussed below.

The 2011 proposed rule mostly relied on conceptual and generalized instructions to boards of directors, and essentially reiterated broad statements of principle already included in the regulators "Interagency Guidance on Sound Incentive Compensation Policies". It is true that these broad principles were supplemented with some specific requirements concerning incentive pay structures. However, the specific requirements -- a 50 percent deferral of incentive pay for up to three years -- are weak, and would not substantially change existing Wall Street practices. In fact, these requirements would seem to permit many of the pay practices that existed at poorly managed institutions even prior to the financial crisis.

---

[1] Bebchuk, Lucian A. and Cohen, Alma and Spamann, Holger, "The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008" ; Yale Journal on Regulation, Vol. 27, 2010, pp. 257-282; Harvard Law and Economics Discussion Paper No. 657; ECGI - Finance Working Paper No. 287.

[2] United States Senate, Permanent Subcommittee on Investigations, "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse", April 13, 2011.

[3] Financial Crisis Inquiry Commission, "Financial Crisis Inquiry Report", February 25, 2011.

[4] Financial Stability Forum, "FSF Principles for Sound Compensation Practices", April 2, 2009. See page 4, footnote 2, for a review of these surveys.

[5] AFL-CIO, "Comment on Incentive Based Compensation Arrangements", May 31, 2011. Americans for Financial Reform, "Comment on Incentive Based Compensation Arrangements", May 31, 2011. Public Citizen, Congress Watch, "Comment on Incentive Based Compensation Arrangements". May 31, 2011.

Making Section 956 effective requires much stronger and more far reaching specific requirements for the deferral of bonus pay, a prohibition on executive hedging, and restrictions on risk-inducing pay structures practices such as stock options. As you move forward on implementing this rule, we urge you to make the following changes to the proposed rule:

- An adequate rule must address the form of pay, not simply its deferral. The use of equity-based compensation at banks should be restricted in order to align employee interests with the safety of the bank and the interests of the public.
- An adequate rule must require longer and more meaningful deferral, to ensure that incentive pay is not based on activity that has proven unsound over time.
- An adequate rule must ban hedging of incentive pay awards. The ability to hedge incentive pay effectively undoes the positive incentive effects created by pay deferral.
- The specific incentive pay requirements in the final rule must apply to a wider population of employees, not simply a few top executive officers.

In addition to these basic changes, we also recommend that you devote additional consideration to the application of these rules to important investment advisory entities, including those that may not reach the threshold of a $50 billion balance sheet. Investment advisors are explicitly included in the Section 956 statutory mandate, and there would be public benefit from thoughtfully designed requirements to align incentive pay with long-term wealth creation at these companies. While the proposed rule does cover a number of the largest asset managers, the potential of the rule for addressing issues in asset management is not fully realized, as both the business model and regulatory oversight of investment advisors differs from banks in important ways that are not reflected in the proposed rule.

In the remainder of this letter, we discuss the March 2011 proposed rule and the nature and justification of our recommendations for improvement in greater detail. Should you wish to discuss these recommendations further, please contact Marcus Stanley, AFR's Policy Director, at 202-466-3672 or marcus@ourfinancialsecurity.org, or Bart Naylor, Public Citizen's Financial Policy Advocate, at bnaylor@citizen.org.

Comments on the March 2011 Proposed Rule

The March 2011 proposed rule limits incentive pay in two ways.[6] First, the rule requires all financial institutions to comply with a set of broad conceptual standards on pay. Incentive pay must "balance risk and reward", which may occur through a variety of methods including "deferral of payments, risk adjustment of awards, reduced sensitivity to short-term performance, or longer performance periods".[7] Other unspecified methods for balancing risk and reward developed by covered financial institutions could also be acceptable to satisfy this requirement.[8] These methods must also be "compatible with effective controls and risk management" and "supported by strong corporate governance". The discussion in the proposed rule indicates that these standards will be enforced through the bank supervisory process.

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[6] 12 CFR Part 1232, "Incentive Based Compensation Arrangements", Federal Register Vol. 76 No. 72, April 14, 2011.
[7] See e.g. Proposed Paragraph 236.5(b)(2) under Regulation JJ in the Proposed Rule.
[8] CFR 21179 of Proposed Rule.

As a supplement to these broad conceptual principles, the rule also includes some more specific pay deferral requirements that apply to top executive officers at financial institutions with over $50 billion in consolidated assets. At least 50 percent of incentive pay to such officers must be deferred over a period of three years, with equal pro rata payments permitted over each year of the deferral period. Deferred payments must be adjusted for actual losses that materialize over the deferral period.

This combination is unacceptably weak and does not satisfy the statutory mandate. First, the broad principles-based directives in the rule appear to effectively delegate the determination of specific required restrictions on incentive pay to boards of directors, which have consistently failed to effectively control pay incentives in the past. This self-regulatory approach is unacceptable. The range of practices cited in the rule as satisfying the requirement to 'balance risk and reward' in pay are so broad that they do not significantly restrict incentive pay structures. For example, companies could satisfy these requirements simply by calculating incentive bonus awards using ex ante and hypothetical risk adjustments generated by internal risk models. Similar internal models failed to predict losses prior to the financial crisis. In addition, the delegation of these key decisions to boards of directors does not satisfy the statutory requirement that *regulators* determine which pay arrangements create inappropriate risk.

The excessive reliance on the board of directors to provide effective and detailed direction concerning the broad conceptual principles laid out here is a particular weakness of the rule. The failure of bank corporate governance arrangements, which center on the board of directors, was a major contributor to the financial crisis.[9]

Since the financial crisis supervisors have attempted to strengthen corporate governance and risk management through supervisory action. The proposed rule states that the general principles in the rule will be enforced through the regulators' supervisory interactions with each financial institution. But this approach will result in an opaque and unaccountable process that is highly dependent on particular supervisory relationships. Prior to the financial crisis, prudential agencies already had safety and soundness authorities with respect to bank holding companies that would have permitted supervisors to examine whether incentive pay structures induced excessive short-term risk taking. Yet these authorities were clearly not sufficiently used.

While we welcome the new supervisory focus on corporate governance and pay arrangements, we do not feel that such supervisory action alone constitutes an adequate implementation of the statutory ban on incentive pay that induces excessive short-term risk. The very general principles referenced in the rule, and the wide range of options listed as adequate to satisfy the requirement to 'balance risk and reward' in pay, indicate that key decisions in pay structure will not be significantly constrained by supervisory enforcement of these principles. The lack of clear and specific guidance in the rule will make it difficult for supervisors to be effective in requiring meaningful change. Furthermore, current supervisory efforts to improve pay practices indicate

[9] Kirkpatrick, Grant, "Corporate Governance Lessons From the Financial Crisis", OECD Financial Market Trends, 2009.

that such efforts rely heavily on ex-ante risk adjustments using hypothetical models, as well as internal processes heavily dependent on judgments by the board of directors.[10]

The second part of the Proposed Rule, which places concrete and specific restrictions on incentive pay structures at financial institutions with over $50 billion in assets, could have done much to address the vague and conceptual nature of the other aspects of the Proposed Rule. Unfortunately, these restrictions are inadequate. They would not lead to improvements in current financial sector pay practices, and indeed would not have been strong enough to change pay practices even if they had been enforced prior to the financial crisis.

The proposed restrictions would require that half of incentive pay for top (named) executive officers be deferred over at least a three years period. Pay could be distributed in equal pro rata shares during the period. This standard does not represent meaningful change from the pre-crisis status quo, and is therefore clearly inadequate to make progress in addressing the problem. For Example, as far as we can tell, an incentive pay plan in which half of compensation consisted of an immediate cash bonus and half consisted of stock options that would vest in equal shares over the next three years would satisfy the requirement. These kinds of incentive plans are already common forms of payment in financial institutions, and were also common before the financial crisis.[11] Even institutions like Citigroup and Washington Mutual, whose conduct was a clear example of destructive short-term thinking, had stock award programs that would seem to satisfy the deferred compensation requirement under the proposed rule.[12]

To be effective in reforming financial sector pay practices, a final rule should incorporate the following four changes:

1) Restrictions on the use of equity-based compensation.
2) Longer and more stringent requirements for pay deferral.
3) A ban on executive hedging of incentive pay.
4) Application of the incentive pay requirements to a wider population of employees.

If these four changes were made, the rule would significantly alter pay incentives at major financial institutions, which the current proposal does not do. At the same time, these four changes would still allow institutions substantial flexibility in the level and structure of pay.

We also recommend a stronger application of these rules to non-bank asset managers than exists in the current rule.

These recommendations are discussed in more detail below.

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[10] For example, the Federal Reserve's review of compensation processes identifies the modeling of stressed add-ons for liquidity risk to incentive compensation awards as a 'leading-edge practice'. Federal Reserve, "Incentive Compensation Practices: A Horizontal Review of Practices at Large Banking Organizations", Board of Governors of the Federal Reserve System, October, 2011.

[11] See for example, page 200 of Citigroup's 2006 Form 10-K describing pay arrangements, available at http://www.citigroup.com/citi/fin/data/k07c.pdf.

[12] See for example pp. 93-94 of Washington Mutual's 2007 Form 10-K, available at www.sec.gov/Archives/edgar/data/933136/000104746908006870/a2185889z10-ka.htm .

1) Restrictions on equity-based compensation

The Proposed Rule does not address the form of incentive pay. It is common practice to pay bonuses at the typical company in stock so as to align the interests of equity owners and managers. Stock-based compensation gives asymmetric incentives, with substantial benefits for increases in stock price but without commensurate losses associated with poor performance or failure. For example, a stock option increases executive wealth dollar for dollar with increases above the exercise price, but losses below the exercise price have no wealth effect. This structure creates a fundamental misalignment between the incentives created by equity-based pay and the interests of those fully exposed to the downside risks of company failure, such as creditors and taxpayers.

It is well known that the interests of equity holders differ from those of creditors. This conflict may be particularly intense at financial institutions because they are highly leveraged. Bank equity is often a small percentage—less than 6%--of total bank funding. After interest payments, the class that only provides 6 percent of funding owns 100 percent of the profits as well. Yet the equity holders have strikingly different incentives from bank creditors. Particularly if there is any chance of debt default, which would wipe out equity holders while allowing more senior creditors at least partial recovery, the interests of equity holders as the most junior claimants is to 'gamble for resurrection' of the bank by taking excessive risks. If the risks pay off, equity holders will enjoy the upside and any additional losses created will fall on more senior creditors A related issue is the problem of 'debt overhang', or the disincentive for equity holders to raise additional capital when the firm is in distress, as such capital would dilute their equity stake while benefiting more senior creditors.

These incentive conflicts are also exacerbated at banks by the possibility of taxpayer funding of bank losses. Deposits are taxpayer-insured. This means banks enjoy not only subsidized leverage, but a class of creditors who need not pay attention to the credit worthiness of the bank. The risks that bankers may take with these deposits may benefit shareholders if successful, but can jeopardize taxpayers if not. Similarly, the possibility that government may be forced to back even the non-deposit liabilities of a large bank holding company, as occurred in 2008-2009, creates a situation where taxpayers are exposed to downside risks in the bank. Similarly to other creditors, equity-based payments do not align the interests of bank executives with taxpayers, and in fact create incentives for excessive risk-taking from the perspective of taxpayer's interests.[13]

We believe that a simple means of reducing inappropriate risk taking by bank managers is through the significant restriction or elimination of equity-based compensation, which could be accomplished under section 956. Equity awards could be limited and replaced with deferred cash bonuses, or with payments in company debt that must be held to maturity and are at risk based on bank performance. While the exact incentives created by such non-equity payments will vary depending on their design, they share in common that they create a significantly greater exposure to downside risks than equity-based payments do, thus better aligning executive incentives with the interests of creditors and taxpayers.

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[13] For a good discussion of all these issues see Squam Lake Group, "Aligning Incentives at Systemically Important Financial Institutions", March 19, 2013.

To serve as an effective form of incentive alignment, any non-equity based payment must remain at risk for a significant deferral period. For example, if payments are given in company bonds, there must be a requirement that such bonds are held to maturity, and there must be a mechanism for reducing or withholding bond payments based on outcomes during the deferral period.

The proposal to reduce or eliminate equity-based incentive pay in favor of deferred cash or debt instruments is hardly a radical one. It has been endorsed by many experts. For example, the Squam Lake Group, which includes over a dozen distinguished economists, has endorsed a payment method based on 'bonus bonds'. Lucian Bebchuk of Harvard Law School has advocated restrictions on equity-based pay and a greater use of payments in bonds.[14] New York Federal Reserve Bank President William Dudley has also stated that requiring senior management deferred compensation to be held in the form of long-term debt would "strengthen the incentives for proactive risk management."[15] Federal Reserve Gov. Daniel Tarullo similarly explored this idea in a June, 2014 speech, noting the appeal of "making incentive compensation packages more closely reflect the composition of the liability side of a banking organization's balance sheet by including returns on debt."[16]

There is also significant academic research demonstrating a link between equity-based compensation incentives, particularly stock options, and bank failure, as well as research drawing a link between non-equity deferred compensation and positive bank performance.[17] Such research also supports restrictions on equity-based pay.

Deferred compensation

As a supplement to the more principles-based directives to boards of directors, the proposed rule provides for a mandatory deferral of at least 50 percent of the annual incentive-based compensation granted to top (named) executive officers over a three year disbursement period. As banking generally involves risks whose results may not become apparent for a number of years, deferral represents an important mechanism for directing executive incentives toward long-term results. As economist Raghuran Rajan has pointed out, true financial returns can only be measured "in the long run and in hindsight", and in the short run financial executives have ample opportunities to disguise long-term risks while earning short-term profits. [18]

That is why an effective proposal needs a more robust deferral requirement. The deferral requirement in the proposed rule is much too limited and much too short. Half of incentive

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[14] Bebchuk, Lucian A., "How to Fix Bankers' Pay" Daedalus, Vol. 139, No. 4, Fall 2010; Squam Lake Group, "Aligning Incentives at Systemically Important Financial Institutions", March 19, 2013.

[15] Dudley, William, "Global Financial Stability: The Road Ahead", Remarks at Tenth Asia-Pacific High-Level Meeting on Banking Supervision, Auckland, New Zealand, February 26, 2014.

[16] Tarullo, Daniel, "Speech at American Association of Law Schools, June 9, 2014. available at: http://www.federalreserve.gov/newsevents/speech/tarullo20140609a.htm

[17] Bennett, Rosalind L. and Guntay, Levent and Unal, Haluk, "Inside Debt, Bank Default Risk and Performance during the Crisis", February, 2014. FDIC Center for Financial Research Working Paper No. 2012-3 .Kogut, Bruce and Harnal, Hitesh, "The Probability of Default, Excessive Risk, and Executive Compensation: A Study of Financial Services Firms from 1995 to 2008" Columbia Business School Research Paper, February 21, 2010; Bhagat, Sanjai and Bolton, Brian J., "Bank Executive Compensation and Capital Requirements Reform", May 2013;

[18] Rajan, Raghuram, "Bankers Pay is Deeply Flawed," by Raghuram Ragan, Financial Times, January 2008.

compensation can be granted immediately, and the other half may be granted in equal pro rata shares over a three-year period. This implies that almost 85 percent of incentive compensation may be paid within two years of the original grant.[19] As discussed above, pay packages that satisfied this requirement were common even prior to the financial crisis (e.g. stock options that vested over two to three years), and the requirement would not significantly change practices on Wall Street today. We believe that withholding only half of the incentive pay is too little, three years is too short a period for withholding, and the pro rata disbursement is inappropriate.

There can certainly be legitimate disagreement over the exact length of an appropriate deferral period. However, as a general principle, a deferral period should be at least adequate to cover a typical asset price cycle in the financial markets. That is, a decision maker should be aware that their incentive payments will only be forthcoming if the financial institution is able to sustain its returns through the entire run of a business cycle. The deferral period in this proposal clearly does not meet this requirement. For an example, under this proposal, if a bank became heavily involved in subprime mortgage markets in 2003, then top executives would have collected 85 percent of their bonuses by 2005 and the entire bonus by 2006, when pricing issues in the subprime markets first began to appear.

Evidence from past financial cycles should be used to determine a deferral period adequate to properly align incentives, and a *significant majority* of incentive pay should be held at risk over the full period. We would point out that a recent proposal from the Bank of England specifies that incentive pay should remain at risk for clawbacks over a seven year period.[20]

Employees covered

The deferral requirement also falls short in the scope of its application. The requirement would apply only to named executive officers and heads of major business lines. This would likely apply to less than a dozen persons at most large institutions. But there are hundreds if not thousands of individuals at major banks that receive large incentive awards due to their role in risk decisions. A report by then New York Attorney General Andrew Cuomo found that 1,626 employees of JP Morgan received a bonus more than $1 million annually. At Goldman Sachs, 953 employees received more than $1 million in bonuses.[21] Compensation rules for material risk takers in other jurisdictions apply to a far greater number of these employees. For example, the European Banking Authority proposed criteria for remuneration regulation that would apply to those who receive more than EUR 500,000 or fall within the highest 0.3% of pay at the firm.[22] The London Whale episode at JP Morgan stands as a reminder that individual traders can contribute to substantial losses. In this episode a few traders lost more than $6 billion, about 3 percent of the firm's capital.

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[19] Since half of bonus pay could be paid immediately, and the other half paid in equal pro rata shares over three years, this implies that up to 83 percent (50 percent + 16.3 percent in year 1 and 16.3 percent in year 2) could be paid within two years.

[20] Bank of England, Prudential Regulatory Authority, "Clawback", Policy Statement PS7/14, July, 2014.

[21] Cuomo, Andrew,"No Rhyme or Reason: The Heads I Win Tails You Lose Bank Bonus Culture", Attorney General of the State of New York, 2008.

[22] European Banking Authority, "Regulatory Technical Standards for Material Risk Takers,", December 2013.

The rule does require that the board of directors identify material risk takers beyond the named executive officers to whom the deferral requirement applies. The board of directors is instructed to ensure that these material risk takers have incentive pay packages that are appropriately risk sensitive. However, no specific pay restrictions are required for these designated risk takers, and the actual decisions on incentive compensation structure are left to the board of directors. As discussed above, we do not believe complete reliance on the board of directors is appropriate as a means of regulating financial sector pay incentives.

The agencies should apply specific compensation limitations well beyond the small population of senior managers that was designated in the initial proposed rule. In a 2011 review, the Federal Reserve found that at the large banking organizations, "thousands or tens of thousands of employees have a hand in risk taking." But these banks had failed to identify these employees or adjust their compensation so as to discourage excessive risk-taking.[23] We believe that broad compensation structure requirements involving pay deferral should apply to any material risk-taker.

Hedging

The agencies' proposed rule is silent on the issue of hedging. We believe hedging of compensation should be summarily prohibited as it clearly undermines the intent of the rule. Pay deferral will not be effective as a means of inducing sensitivity to long-term risks if employees can effectively undo the deferral by hedging their future pay. The consensus view of the 13 distinguished economists on the Squam Lake Group phrased the situation well[24]:

> "Of course, holdbacks only reduce management's incentives to take excessive risk if management cannot hedge its deferred compensation. Any hedging of deferred compensation should therefore be prohibited."

Incentive compensation hedging strategies reduce or eliminate the sensitivity of executive pay to firm performance, and thus can directly conflict with Congressional intent to mandate incentive pay structures that discourage inappropriate risks.[25]

Application of Incentive Pay Rules to Non-Banks

The statutory mandate in Section 956 explicitly covers investment advisors. The application of the Proposed Rule to investment advisors tracks its application to banks, with investment advisors holding $1 billion or more of consolidated balance sheet assets subject to the essentially principles-based portion of the rule, and investment advisors with $50 billion or more of consolidated balance sheet assets subject to the more specific deferral requirements. The SEC estimates that 68 registered advisors have $1 billion or more in balance sheet assets, and 7

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[23] Federal Reserve, "Incentive Compensation Practices: A Horizontal Review of Practices at Large Banking Organizations", Board of Governors of the Federal Reserve System, October, 2011.
[24] Squam Lake Group, "Aligning Incentives at Systemically Important Financial Institutions", March 19, 2013.
[25] Larcker, David and Brian Tayan, "Pledge (And Hedge) Allegiance to the Company", Stanford Graduate School of Business, Closer Look Series, October 21, 2010.

advisors have $50 billion or more.[26] We believe that the stronger deferral requirements recommended above should apply to these investment advisors as well.

However, we are concerned that the more principles-based portions of the rule may not be effectively enforced at investment advisors, given that there is no prudential supervision of investment advisors. In addition, we are concerned that many investment advisors with large amounts of assets under management, whose actions in the aggregate may have profound impacts on the financial system, may not be subject to the full scope of the rule due to limited assets on their balance sheet. A survey by Price Waterhouse Coopers conducted after the release of the Proposed Rule found that almost no asset managers expected the Proposed Rule to impact their pay practices.[27] This is likely partially due to the general weakness of the Proposed Rule, as discussed above, and the limitations in its applicability to asset managers.

We believe that the application of a stronger rule to a broader range of asset managers could have significant benefits for the stability of the financial system and the protection of investors. First, we believe specific incentive pay requirements oriented toward aligning incentives with long-term returns could address systemic risk concerns raised in regard to asset management practices, and in some cases could do so more effectively than prudential supervision. We believe that such pay restrictions could be an important element in the current effort by the Securities and Exchange Commission to regulate the potential systemic risks created by asset managers, and should be integrated with that effort. Second, properly designed pay requirements could also lessen incentives for abusive practices that impact investors, such as those revealed in SEC examinations of private equity firms.[28] We would urge the SEC and other agencies to reconsider the scope and nature of the incentive pay requirements applicable to asset managers.

Your consideration of these comments is appreciated. As one of the central causes of the financial crisis, inappropriate compensation incentives oblige the regulators to implement strong reforms. While we are dissatisfied that this reform is so long delayed, we encourage the agencies to implement a robust and effective rule and to make sure they get the text right in their next draft through either a revision or a re-proposal. By doing so, they will serve the American public well. For questions, please contact Marcus Stanley, the Policy Director of Americans for Financial Reform, at marcus@ourfinancialsecurity.org or (202) 466-3672; or Bartlett Naylor, Public Citizen's Financial Policy Advocate, at bnaylor@citizen.org.

Sincerely,

Americans for Financial Reform

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[26] See footnote 40 in the Proposed Rule

[27] Benjamin, Barry and Scott Olson, "2011 US Asset Management Reward and Talent Management Survey Results", PWC Incorporated, March 2012. See page 12 of the document, which states: "While every survey participant was familiar with the proposed compensation requirements under Section 956 of Dodd Frank, only one participant indicated the proposed compensation rules, in their current form, would have a direct impact on their organization's compensation structure."

[28] Bowden, Andrew, "Spreading Sunshine In Private Equity", Speech at Private Equity International, May 6, 2014.