



ICGN

International Corporate Governance Network

ICGN Viewpoint

Corporate Lobbying Practices and the US elections

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The 2016 US Presidential election campaign is set to be the most expensive yet - a whopping \$10 billion in total costs. This has brought corporate political spending and lobbying in the US to the forefront of public visibility and scrutiny. Yet many investors during this election cycle may not be fully aware of the political risk posed by dark money flow by US corporations they invest in, or the special interest groups that these corporates belong to may be affiliated with.

This Viewpoint provides an update on the issue of corporate lobbying and political donations through a corporate governance lens. While ICGN's focus on this and other governance issues takes a global perspective, the primary focus of this Viewpoint is on developments in the US, given the 2016 Presidential election and the magnitude of campaign finance in the US.

The global nature of this issue reflects the fact that many ICGN Members from outside the US are invested in US companies, and hence are indirectly financing US political activities and campaigns. The corporate governance questions here relate to how and why shareholder funds are deployed by public companies, as well as to the potential ethical and reputational risks that come from corporate political activity. From this, specific questions for investors relate to how they can best understand their exposure to corporate political activity, both through direct engagement and for calling for better transparency standards.

US in the spotlight

ICGN's initial review of political lobbying and donations was prompted by the 2010 US Supreme Court ruling in the *Citizens United v. Federal Election Commission* case. This decision resulted in corporations and unions having no limits on the amounts of money they could spend to advocate for or against political candidates, as long as such spending was not coordinated with a candidate's own campaign. A result has been the rise of super PACS (Political Action Committees) which allow money from anyone or any company in the US or foreign sources to flow freely during each election cycle thereby increasing investor and company risk. PACS warrant special scrutiny by ICGN members

This 2010 ruling in the US stimulated the development of ICGN's 2011 Statement and Guidance on Political Lobbying and Donations. This guidance document noted that it is "a matter of good corporate governance for companies to ensure that any political involvement is both legitimate and transparent, and that companies and their boards are held properly to account for their political activities". The Guidance frames

the governance concerns relating to corporate political activity through the broad principles of legitimacy, transparency, accounting and responsibility. This statement formally discouraged the practice of corporate financial donations, but also outlined a governance framework to guide companies who are active with both political lobbying and donations.

Transparency is a key starting point. As an investor-led body ICGN encourages transparency and accountability in a company's use of corporate funds to influence legislation and regulation. ICGN advocates a uniform clear standard of disclosure to assess the risks of corporate political spending and lobbying. However in the U.S., as well as many other countries, there are no regulations requiring companies to detail publicly whether they have made direct or indirect payments to political parties, candidates, trade associations, special interest groups or lobbyists. This creates a lack of transparency and in the extreme increases the risk of corruption. Payments to PACs or other donations such entities might only reflect the personal views or ambitions of the CEO and may not be in the best interest of the company. Further, a lack of transparency often indicates that companies may not fully know what trade associations are doing on behalf of their members.

This Viewpoint supplements ICGN's existing guidance to focus not just on the material risk posed by direct corporate political activity which was a major focus of ICGN's original guidance but also on lobbying and indirect activity through trade associations. It underscores the need for a consistent and transparent approach for corporate political and lobbying activities. We saw the vast influence that the big banks had in watering down key financial reform provisions under the Dodd-Frank Act over its three-year rollout (2010-2013). This was tracked by the Sunlight Foundation's Dodd-Frank Meetings Tracker analysing over 2,118 meetings based on the logs of Dodd-Frank meetings at the Commodities Futures Trading Commission (CFTC), the U.S. Treasury, and the U.S. Federal Reserve Board. This stark asymmetry of lobbying activity demonstrates how corporate resources have the potential to skew the policy making process in the US in ways that may or may not be supportive of investor interests.

Calling for more disclosure

Corporate board member opinion in the US and the regulatory environment related to political and lobbying disclosure is rapidly evolving. Although some companies already disclose corporate political spending voluntarily, a majority (53%) of US public company board members believe that the Securities & Exchange Commission (SEC) needs to develop mandatory disclosure rules for corporate political contributions¹. Many institutional investors, leading academics, state treasurers, and even two former SEC Chairs Arthur Levitt and William Donaldson were part of the 1.2 million submissions in support of mandatory disclosure in the US through a petitioned SEC rule-making process. However, the SEC has yet to act, and the US Congress, often the beneficiary of such contributions, has put up a bill to block the SEC from doing so.

Reflecting these concerns, a large number of lobbying disclosure shareholder proposals are filed in the US each year. In 2015, more than 33 shareholder proposals went to vote with an average vote of 26% in favour². Over the last five

¹ See: <https://www.bdo.com/insights/assurance/client-advisories/2015>

² Source: <http://www.afscme.org/news/press-room/press-releases/2016/institutional-investors-continue-to-press-companies-for-disclosure-of-lobbying-in-2016>

years, these proposals have led many companies to improve their lobbying disclosure, leading to settlements and improved disclosure at more than 50 companies³. During the 2016 proxy season, as many as 100 proposals were filed asking for disclosure of political spending – which includes political contributions and lobbying. This has been the most common shareholder proposal put forth in the last five years in the U.S. These precatory proposals focus on a company’s policies and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications and cover lobbying activity at the national, state and local level. They typically ask for annual disclosure to include:

1. Payments by the company used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
2. A company’s membership in and payments to any tax-exempt organization that writes and endorses model legislation such as the American Legislative Exchange Council (ALEC); and
3. A description of management’s decision making process and the Board’s oversight for making payments.

These proposals further ask for the stated disclosure above to be published on a company’s website and shared in an annual report with the Audit Committee.

While companies in the US are required to report all of their federal and state lobbying, reporting at the state level is incomplete at best. For example, according to the Center for Responsive Politics, the US corporate Verizon lobbied in all 50 different states from 2010 – 2014. Verizon states that it fully complies with state lobbying disclosure obligations; however, obtaining this information is no simple task as it tends to be deeply buried. The ability to uncover state lobbying disclosure information has been described by an expert as “nearly impossible” given “the ‘Byzantine’ manner in which the data is captured and made available online.”⁴

Investors can have most impact when they can demonstrate the reputational risk or clear misalignment of a trade association’s lobbying activities with a company’s stated values or public policy positions. One clear example of this has been the lobby activities of the American Legislative Exchange Council (ALEC) which is a tax-exempt organization that convenes state lawmakers and corporations to approve model legislation for passage at the state level. ALEC has been involved in drafting controversial model state legislation on gun control, Voter ID laws, Stand Your Ground laws, anti-immigration bills, blocking EPA regulations, and reversing state regulations on renewable energy.

During the 2016 proxy season more than 50 investors (public pension funds, labour funds, asset managers, foundations, religious filers and individuals) filed over 50 lobbying disclosure proposals including at least 20 ALEC member companies. Over the last five years Ford Motor Company is just the latest to join 108 companies (including iconic brands Microsoft, PepsiCo, Mars, Wal-Mart, and Unilever), which have left ALEC. Similarly, a number of US companies including Apple have left the U.S. Chamber of Commerce, which has spent over \$1bn on lobbying since 1998,

³ Liz Essley Whyte and Ben Wieder, “Amid federal gridlock, lobbying rises in the states,” [The Center for Public Integrity](#), February 11, 2016.

⁴ Nathan Layne, “Wal-Mart improves lobbying disclosure after shareholder push,” Reuters, May 13, 2015

and in 2015 opposed the EPA Clean Power Plan rulemaking, and even sued the EPA.⁵

In addition to working with the *Institutional Investors Group on Climate Change (IIGCC)*, PRI is coordinating a working group of investors engaging companies in Australia, Canada and the US. One of the key 2016 proxy season tactics was an initiative demonstrating pre-AGM public support for a select group of lobbying disclosure shareholder proposals filed at U.S. companies primarily in the oil and gas sector.

What Best Practices Should Investors Promote?

Companies exist within society and must relate to society. Lobbying is part of that relationship but it is fraught with risks. Lobbying becomes unacceptable either when it serves the personal interests of the corporate leadership or when it is in the narrow interest of the company such as promoting regulations that are favourable to it but potentially damaging to society as a whole. Corporate lobbying becomes acceptable, if not positive, when it takes a longer term view aimed at the promotion of high quality regulation which will serve the broader social interest and thereby create a climate in which the company can deliver value and flourish.

ICGN suggests that its members consider additional action to support a positive approach. This could include supporting shareholder proposals on political and lobbying disclosure, supporting mandatory lobbying disclosure legislation such as the U.S. SEC rule-making process. There is also scope for investor and company engagement (both individual and collective) to allow companies to better explain the nature and purpose of their political activities and for investors to encourage robust governance practices in this area including both board oversight and company transparency.

When corporate lobbying and political contributions take place in the dark it is not only shareholder value that is put at risk, democracy itself is also weakened.

Some useful tools

There is a growing body of best practice guidance for companies and investors which include ICGN's Statement and Guidance on Political Lobbying and Donations, the *OECD's 10 Principles for Transparency and Integrity in Lobbying*, and *Transparency International's UK Corporate Political Engagement Index*.

In the US the Center for Political Accountability (CPA) publishes an annual report, the CPA-Zicklin Index of Political Accountability, which ranks companies according to their responsiveness. In 2015, the index showed shareholder engagement had led to significantly better disclosure and accountability among targeted companies. The index found that 124 US companies, or 25 per cent of those surveyed, had placed some type of restriction on political spending, while 87 per cent of S&P 500 companies had a detailed policy or some policy governing political spending on their websites.

InfluenceMap provides investors with further insight into how companies are influencing climate change legislation. According to new research by InfluenceMap, major oil companies and their trade associations spent over \$100m in 2015 on efforts to obstruct and delay climate policy. Some companies cited by InfluenceMap as

⁵ Source: John Keenan, The American Federation of State, County and Municipal Employees (internal document).

publicly supporting progressive climate legislation include Apple, GlaxoSmithKline, Tesla, and National Grid. Nevertheless, they are few and far between.

A more market-specific resource for investors was published in 2015 by Transparency International. TI-UK's 2015 Corporate Political Engagement Index assessed the public reporting practices of the 40 largest companies in the FTSE 100 Index in relation to their political engagement. Each company was ranked from Band A (highest) to F (lowest) using publicly available information. Not surprising, a majority of companies performed poorly, demonstrating a lack of transparency by not disclosing information that is already internally tracked. TI states that this "contributes to high levels of public mistrust in this area and recommended "to restore public trust, companies need to reassess their policies and procedures, increase their reporting and consult with stakeholders on their political engagement". The report also focused on the revolving door between the public and private sectors and highlighted particular risks of conflicts of interest, trading in influence, bribery, reputational damage and public mistrust. TI recommended that companies disclose how they manage risks including policies and procedures for the revolving door, provisions for 'cooling-off periods' for former public officials, and details of secondments and politicians associated with the company.

About ICGN Viewpoints

ICGN Viewpoints provide opinion on emerging corporate governance issues and are intended to generate debate, whilst not defining a formal ICGN position on the subject. ICGN Viewpoints are produced by our member-led Policy Committees and we encourage dialogue by contacting Committee chairs or the ICGN Secretariat.

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Resource List

Accountable Influence: Bringing lobbying out of the shadows (Transparency International UK, 2015) <http://www.transparency.org.uk/publications/accountable-influence-bringing-lobbying-out-of-the-shadows/>

CPA-Zicklin Index of Corporate Political Disclosure and Accountability (Center for Political Accountability) <http://www.politicalaccountability.net/>

Cabs for Hire? Fixing the revolving door between government and business (Transparency International UK, 2011)
http://www.transparency.org/files/content/pressrelease/20110517_UK_Revolving_Door_EN.pdf

InfluenceMap: <http://influencemap.org/report/The-COP-21-Guide-to-Corporate-Climate-Lobbying>

Investor Expectations of Corporate Climate Lobbying http://www.unpri.org/wp-content/uploads/Investor-Expectations-on-Corporate-Climate-Lobbying_en-GB.pdf

Open Secrets: <http://www.opensecrets.org/lobby/index.php>

Lifting the Lid on Lobbying: the hidden exercise of power and influence in the UK (Transparency International UK, 2015)
<http://www.transparency.org.uk/publications/liftthelid/>

Lobbying and democracy representing interests in Italy (Transparency International Italy, 2014) <https://www.transparency.it/lobbying-and-democracy/>

Lobbying in Europe: Hidden Influence, privileged access (Transparency International, 2015) http://www.transparency.org/whatwedo/publication/lobbying_in_europe

Principles for Transparency and Integrity in Lobbying (OECD, 2013)
<http://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>

Responsible Lobbying: A short guide to ethical lobbying and public policy engagement for professionals, executives and activists (Transparency International Ireland, 2015)
http://transparency.ie/sites/default/files/15.12_Responsible_Lobbying_Guide.pdf

Responsible Lobbying in Europe: An overview of voluntary lobbying standards and practices (Transparency International Ireland, 2015)
http://transparency.ie/sites/default/files/15.12_Responsible_Lobbying_Europe_Report.pdf

The revolving door and the Corporate Colonisation of UK politics (The High Pay Centre, 2014) http://www.barrowcadbury.org.uk/wp-content/uploads/2015/03/REVOLVING-DOOR_High_Pay_Centre_report.pdf

Sunlight Foundation: <http://sunlightfoundation.com/>

Transparency and Integrity of Lobbying: A new challenge for CSR (Vigeo, 2013)
http://www.vigeo.com/csr-rating-agency/images/stories/SUMMARY_TABLE_OF_CONTENT_final.pdf

Transparency International's Corporate Political Engagement Index
<http://www.transparency.org.uk/publications/corporate-political-engagement-index-2015/>.

Towards Transparency and Democratic Lobbying (Transparency International France, 2012) http://www.communication-publique.fr/wp-content/uploads/PDF/policypaper_lobbying__en.pdf

Wise Counsel or Dark Arts? Principles and Guidance for Responsible Corporate Political Engagement (Transparency International, 2015)
<http://www.transparency.org.uk/publications/wise-counsel-or-dark-arts-principles-and-guidance-for-responsible-corporate-political-engagement/>