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New Report Adds Pressure for Public Companies to Voluntarily Disclose Political Spending

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Election and Political Law

A report published today by the Center for Political Accountability will result in more pressure on public companies to voluntarily disclose information about their political spending.

Each year, CPA in collaboration with the Zicklin Center at the University of Pennsylvania issues a detailed report "scoring" companies on their corporate political disclosure practices according to a 70-point metric it has created. Companies that voluntarily disclose more information about their political spending on their websites—even though such disclosures are not required by law—get higher scores. For example, companies that disclose information about payments to 501(c)(4) social welfare organizations, so-called "dark money" groups, can receive 6 points. Similarly, the index places a high value on board involvement in the process. To receive a perfect score, a company's board of directors must pre-approve its political spending, even though board pre-approval would seem to have little to do with disclosure. Some of the scoring factors also suggest that the Index is biased against certain types of speech as compared to others. For example, the scoring key asks if the company publicly discloses "a list of the amounts and recipients of payments made by trade associations or other tax exempt organizations of which the company is either a member or donor." The few companies that receive points on this indicator typically receive them because they prohibit trade associations and tax-exempt organizations from using their funds for political purposes.

Traditionally, campaign finance reform groups and activist shareholders have used the CPA-Zicklin Index as a resource for identifying and targeting low-scoring companies for adverse press, shareholder resolutions, and litigation, all aimed at pressuring them to voluntarily disclose (or outright ban) political spending.

This year's report will add to that pressure for two reasons.

First, as we previewed earlier this year, for the first time the report surveys the entire S&P 500. The expanded index now provides information about a greater number of companies, which means that there is now data that may support campaigns against a greater number of companies. Almost half (220 out of 497) of the companies surveyed in today's report fall in the bottom of the five tiers, with 57 companies receiving scores of zero. Within hours of the report's release, campaign finance reform groups were already singling out some of these companies for "scoring a goose egg." And the report itself appears to encourage activist shareholder groups to target these companies with political spending resolutions, noting that companies are more likely to receive higher scores when they have been "engaged" by shareholders.

Second, even high-scorers and middle-of-the-pack companies may feel uneasy with the latest report. The report cryptically suggests that companies will be scored more rigorously next year: "In order to analyze 500 companies accurately and consistently across 24 indicators, we must adhere closely to our rigorous scoring guidelines. CPA will score each company based solely on the information that is publicly available on the company's website *and without regard to how the company was scored in previous years*." How this plays out—and whether it means companies will need to disclose more to keep their same scores—is not clear.

For tips on working with CPA and resolving corporate political disclosure issues, in-house counsel can consult our guide, published earlier this year, on "Responding to Corporate Political Disclosure Initiatives."

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Election and Political Law practice group:

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